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by the Ombudsman for Equality



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THE OMBUDSMAN FOR EQUALITY IN BRIEF

The Ombudsman for Equality is an independent authority whose domain is the promotion of gender equality.

The Ombudsman's responsibilities include:

- *Monitoring the observance of the Act on Equality between Women and Men, particularly its prohibitions of discrimination*
- *Providing information about the Equality Act and its application*
- *Promoting the purpose of the Act by means of initiatives, advice and guidance*
- *Monitoring the implementation of equality between women and men in different sectors of society.*

If someone suspects that he or she has been discriminated against in a manner referred to in the Equality Act, he or she may turn to the Ombudsman for Equality. The Office of the Ombudsman for Equality provides advice and instructions on rights and the application of the Equality Act and, if necessary, investigates a suspected case of discrimination by written procedure. If the Ombudsman finds that a violation of the Equality Act has been committed, she will issue instructions and guidance towards discontinuing the unlawful practice. In extreme cases, the Ombudsman may refer the case to the Gender Equality Board, which has the power to impose a conditional fine to prevent discrimination.

Statements issued by the Ombudsman for Equality are not legally binding. If you suspect that you have been discriminated against, you may take your case to a District Court and claim compensation.

The current Ombudsman for Equality is Ms Pirkko Mäkinen.

A word from the ombudsman for equality

■ In the Office of the Ombudsman for Equality, the year 2012 was characterised by the strengthening of the human rights' perspective. At the beginning of the year, the office published a report commissioned by the Ombudsman on the position of gender minorities in Finland. Various officials and organi-



sations representing gender minorities were interviewed for the report. The results show that gender minorities are invisible in Finnish society, legislation and official practices. In addition, professionals in the health care, social services and education sectors seem to have poor knowledge of gender diversity.

Discrimination due to pregnancy has long been a significant and rather concealed problem in Finland, and we wanted to raise it into the public arena. A major share of work-related cases brought to the attention of the Ombudsman for Equality concern suspicions of discrimination in connection with pregnancy or family leave. We know that these cases are only the tip of the iceberg because few of those who encounter discrimination turn to the authorities. In December 2012 we started a campaign called *Justice for Those Expecting*.

The target groups of the campaign were women of childbearing age on the one hand

and employers on the other. Women were reminded that national employment law and the Equality Act give them legal protection during hiring, upon decisions concerning continuation of fixed-term contracts and upon returning to work from family leave. The *oikeuttaodottaville.fi* website provides information on what to do, if someone suspects she has been discriminated against because of pregnancy. The website also enables visitors to send their employer an information package on statutory obligations or to "expose" a good employer. For employers, we compiled instructions on how to act during job interviews, or when an employee with a fixed-term contract goes on family leave or with an employee returning from family leave. We will continue our campaign against pregnancy discrimination in 2013.

We supervised equality plans within the limited resources available for this task. During the year under review, we started to examine



equality plans at companies under ownership steering by the Prime Minister's Office. We also conducted four workplace visits in various parts of Finland. At these meetings, we discussed equality planning and pay surveys with personnel managers and employee representatives at each workplace. In monitoring equality planning at educational institutions, we concentrated particularly on assessment of equality plans at sports-oriented upper secondary schools. During this process, we also collected information on the various sports available at these upper secondary schools and on whether boys and girls have equal opportunities to practise the sports.

In human rights matters, we have actively participated in discussions with actors in the

sector of fundamental and human rights. The Human Rights Centre, established at the Office of the Parliamentary Ombudsman, started its work and gained visibility for arranging, for instance, a seminar on observations by the Council of Europe's Commissioner for Human Rights on his visit to Finland. The Centre has a Human Rights Delegation where I am one of the members. The members of the Delegation include overseers of legality, non-governmental organisations and researchers.

The panel set up to monitor implementation of the Government action plan on human rights has continued its work, after a minor reform, and the Ombudsman for Equality is a panel member. The panel has, among other things, highlighted the need to reform the Act on Legal Recognition of the Gender of Transsexuals and investigated, whether human rights questions excluded from the action plan have seen any progress in administration.

Preparation of the Non-Discrimination Act continued at the end of the year on the basis of a joint proposal made by the Ministry of Employment and the Economy and the Ministry of Justice. This work will continue in spring 2013. During the same process, two working groups have been set to prepare amendments to the Equality Act. One working group's task is to reform regulation on equality planning and pay surveys. The other working group focuses

on including gender minorities in discrimination provisions and promotion obligations in the Act, and on expanding to comprehensive schools the obligation to promote equality at educational institutions. This work, too, should be finished in the course of 2013.

Pirkko Mäkinen, *the Ombudsman for Equality*

Discrimination on the basis of pregnancy and family leave

Discrimination on the basis of pregnancy and family is a significant and long-standing problem in Finland. A major share of work-related cases brought to the attention of the Ombudsman for Equality concern suspicions of discrimination in connection with pregnancy or family leave. However, few of those who suspect discrimination turn to the authorities. The Ombudsman for Equality wishes to raise public discussion on pregnancy discrimination.



Justice for those expecting

A major share of work-related cases brought to the attention of the Ombudsman for Equality concern suspicions of discrimination in connection with pregnancy or family leave. Pregnancy discrimination keeps coming up at labour unions, too; teachers, nurses and women working in commercial and service sectors are, for instance, often subjected to discrimination. However, women with any educational background and in any industry suffer discrimination on the basis of pregnancy or family leave.

Typical situations of pregnancy discrimination involve hiring, extension of fixed-term contracts and returning to work from family leave. An employee is passed over during hiring because of pregnancy or the employment contract of a fixed-term employee is not renewed when her pregnancy comes to light. Often the duties of an employee returning from family leave have “disappeared” or the employee has been replaced by a substitute. The majority of those who experience discrimination still are unable or too afraid to take issue with it.

In December 2012, the Ombudsman for Equality started a campaign against pregnancy discrimination called *Justice for Those Expecting*. The campaign’s objective was to increase

women’s awareness of their own rights and possibilities to act if they are discriminated against at the workplace because of pregnancy or family leave. The Ombudsman for Equality also wanted to alert employers to adjust their attitudes towards employees who are pregnant or on family leave and ensure the legality of their actions.

Separate pages were designed on the campaign website www.oikeuttaodottaville.fi for employees and employers, and they contain information on the rights of an employee who is pregnant or on family leave and on employer obligations. It is also possible to “expose” a good employer on the site – i.e., a workplace that has no discrimination and where matters involving pregnancy and family leave have been handled in an exemplary manner.

Approximately 6,500 people visited the website. The question “Do you suspect that you have been discriminated against because of pregnancy?” was answered by 511 persons, 63 per cent of whom suspected that they had been discriminated against due to pregnancy. The majority of the respondents, 55 per cent, said they worked at an enterprise, 21 per cent for a municipality, 12 per cent for the Government and 12 per cent at some other workplace, such as an organisation.

The campaign and its website were publicized in the media and advertised for a two-

week period on public transport in the largest commuting areas of Helsinki, Espoo, Vantaa, Turku and Tampere. The Ombudsman for Equality will continue this campaign in 2013.

Family status must not be enquired during hiring

During the year under review, the Ombudsman for Equality was contacted concerning many kinds of suspected discrimination involving pregnancy and family leave. Job applicants have sent the Ombudsman questions, for instance, on whether an employer can ask about pregnancy or family status during a job interview.

As a general rule, enquiring about family status and pregnancy during hiring is prohibited because applicants must not be placed on an unequal footing on the basis of parenthood or family commitments. This can neither be justified by stating that answering job interview questions is voluntary. Questions concerning, for example, pregnancy, plans of having children, the number of children, and arrangement of childcare are not allowed during interviews.

The Ombudsman for Equality has also been contacted by clients who report that certain companies enquire the family status of an applicant in a job application form. The

Ombudsman asked these companies for a report on the matter, and the companies have since deleted the questions about family status from their job application forms.

A pregnant teacher failed to get a new contract at her school

A female teacher asked the Ombudsman for Equality for an opinion on whether she had been discriminated against in a manner prohibited under the Equality Act, when her employment contract was not extended for the following school year after she had reported being pregnant. She applied for one permanent teaching position and for two fixed-term positions in the same school where she was working as a teacher of a class in flexible basic education, when she filed the application. Previously, she had also worked at the same school as a substitute special education and class teacher.

According to established practice in the municipality, all teacher positions, including fixed-term ones, were declared open for application. The municipality justified the selection of teachers on the basis of both merit and suitability. However, no interrelated comparisons of the applicants’ merits with regard to teachers’ duties as a whole had been made. In her statement, the Ombudsman for Equality

assessed some of the reasons for the selections presented.

Regarding the permanent teacher’s position, the report seemed to indicate that the teacher chosen for this position worked, in practice, as a teacher of a class in flexible basic education the following school year, and this should have been taken into consideration in the comparison of merits, according to the Ombudsman for Equality. The teacher who contacted the Ombudsman had, in a previous selection process, been specifically selected as the teacher for the class in flexible basic education at this school, and the person now chosen for the job had also applied for the same position in the previous round. The Ombudsman for Equality considered that the reports submitted were not sufficient to explain the change in the assessment of merits between the persons compared. The Ombudsman for Equality emphasised that in the legal proceedings instituted, it would be important to compare the applicants’ merits in a transparent way, in relation to the actual duties. A one-sided reference only to the characteristics of the person selected does not justify the selection.

As to the selection process for the fixed-term class teacher’s position for the entire school year, the reasons stated for selecting another candidate included the scope of the



chosen candidate’s degree and his/her grades. This person only had six more course credits in his/her degree than the person who requested the statement. Nor was there much difference in their grades; one cannot deduce very much about the teaching skills of the applicants on the basis of their degree grades, and certainly not after they have worked as teachers for several years. The person selected had approximately three years of work experience and the person requesting a statement about seven years, when they filed their applications. The Ombudsman for Equality assessed that this difference in work experience to the benefit of the person requesting a statement was more significant than the difference in the degree certificates that benefited the person chosen,

particularly since this case involved the duration of work experience at the early stages of the career. The person chosen for the shorter position as a substitute class teacher had worked as a teacher for 11 months. This person had previously been a kindergarten teacher. The person requesting a statement had worked as a teacher for seven years and thus had much more professional experience. The strong sports background of the successful candidate was given as the justification for the selection. However, the person requesting a statement had previously held the same temporary post that, even then, included a lot of teaching of physical exercise. A strong sports background was used as a selection criterion in all these decisions, although the notice of vacancy mentioned nothing about physical exercise with regard to any of the teaching positions under review.

The Ombudsman for Equality considered that, looking at the matter as a whole, it seemed probable that the pregnancy of the person requesting a statement had affected the decisions. In addition to other factors highlighted by the Ombudsman, this conclusion was supported by the fact that the person had been selected for three different teaching positions at the same school before the selection under review, and in one of these situations the applicants had included the two persons chosen this time. The Ombudsman for Equality also found that

the question, reported in differing ways by the parties, of whether the school's principal had directly stated that the pregnancy of the person requesting a statement was an impediment to choosing her, remained to be proven at a trial.

The parties have since reached a settlement. (TAS 203/2011)

No extension for the fixed-term contract of an office worker on family leave

Office worker A asked the Ombudsman for Equality to investigate whether she had been discriminated against in a manner prohibited under the Equality Act, when her fixed-term employment contract with a company was not extended after 31 December 2010, when she was on maternity leave.

While visiting her workplace during her maternity leave, A heard that a new employee, B, had been hired to manage her previous duties. According to the employer, B had not been hired to do the same work as A. A different number of hours and different working hours had been agreed on with B than what A had had. B had not been hired to substitute anyone but rather to provide an additional resource to carry out miscellaneous assignments and to lighten the other employees' workload. Since B's contract began during A's maternity leave,

it was natural that B had performed the same tasks as A and another employee on family leave. B's duties had also included managing the office supply store and handling sales desk materials and customer feedback.

The employer and A had diverging views on the differences in work assignments and working hours. In the opinion of the Ombudsman for Equality, the difference between A and B in terms of working hours and work assignments did not, in practice, seem material – instead, both the assignments and working hours had been flexible.

According to the report submitted to her, the Ombudsman for Equality deemed it likely that B had, in fact, been hired primarily to cover the need for labour arising from A's absence or for such duties that even A could have handled after the expiry of her fixed-term contract. Therefore, it seemed to the Ombudsman for Equality that A's employment contract had not been extended because of her family leave and this led to a presumption of discrimination in violation of the Equality Act.

In the end, any evidence of any material differences in the work assignments and working hours of A and B and of discrimination in breach of the Equality Act is left for the assessment of a district court during an eventual compensation trial, unless the parties can reach a settlement in the case. (TAS 202/2011)

A pregnant salesperson was not offered permanent employment

A woman working as a salesperson suspected that she had been discriminated against on the basis of her pregnancy, when her fixed-term contract as a salesperson at a department store was not extended after the summer, and she also was not selected as a permanent salesperson for a vacancy that was open in September. According to her, the common practice had been to always extend the contracts of fixed-term employees, and she had received a good assessment on her work.

The salesperson says she reported to the employer in May that she was pregnant. She reduced her wish for working hours to the employer's benefit because she thought she could work longer if she put in fewer hours. Later, however, she declared that she was willing to work any number of hours but stated that if the working conditions could not be changed in any way, she might not be able to work a full week until the beginning of her maternity leave.

The company says it is not able to extend the contracts of all fixed-term employees or offer them permanent positions. The reason why this salesperson's employment contract was not made permanent was not her pregnancy but the fact that two other fixed-term

employees had better professional skills, work experience and suitability for the position. For the vacant positions, the fewer than 20 hours per week which employee A wished for would not have been possible, since the employer's need was an average of 30 or 37.5 hours per week.

Employers have the obligation to take an employee's pregnancy into account such that the duties do not endanger the health of the mother or foetus. However, employees are under no obligation to reduce an employee's working hours on the basis of pregnancy; instead, any absence from work requires an assessment by a medical doctor. Although employee A reported that she had thought of the employer's benefit when suggesting a decrease in the number of working hours, the employer may have interpreted this to mean that, in practice, A was not prepared to put in the 30 or 37.5 hours per week required for the job.

According to a report submitted to the Ombudsman, the employer's recruiting practices do not seem to have been such that fixed-term contracts were automatically extended. Therefore, the present case did not involve a fixed-term job where a presumption of discrimination arises from the fact that a pregnant employee was not selected for the next fixed-term period even though the duties did not cease.

Instead, A's pregnancy may have contributed to her being chosen, among three fixed-term salespeople, as the one who was not offered an extension and whose employment relationship was not made permanent. In a situation like this, the employer's decision must be based on comparing the employees' work experience, training and suitability, and an employee's pregnancy must not influence the assessment. With regard to the vacant salesperson positions, establishing pregnancy discrimination in this case required a comparison of the merits and suitability between A and the employees chosen for the positions.

In order to prove pregnancy discrimination, A must show during an eventual compensation trial at a district court that she was more qualified for the position of a salesperson than those selected. After that, in order to rebut a presumption of discrimination, the employer must show that A's suitability was worse than the chosen persons', or that there was some other justifiable reason, not pregnancy, as to why she was not selected. (TAS 318/2010)

Equality of transgender and intersex people

Human gender identity and gender expression come in a multitude of forms, and not everyone can be unambiguously defined as a woman or a man. Gender minorities include transgender and intersex persons. Gender minorities are still often confused with sexual minorities.

The Ombudsman for Equality supervises the protection of gender minorities against discrimination. In 2012, the Ombudsman's work to promote the equality of transgender and intersex people focused on distributing correct information and on improving their status.



Correct and objective information as grounds for decision-making

In the spring, the Ombudsman for Equality published a report on the status of gender minorities. Various officials and organisations representing gender minorities were interviewed for the report. According to the report commissioned by the Ombudsman for Equality, gender minorities are an invisible quantity in Finnish society, legislation and official practices. The level of knowledge on gender diversity is also poor among professionals in the health care, social services and education sectors.

The report highlights not only the general lack of awareness and factual information but also several problems faced by gender minorities, including discrimination; injustices in the Trans Act (the Act on Legal Recognition of the Gender of Transsexuals) such as the sterility requirement; population register and name matters; health insurance compensation practices; outdated disease classifications; and care practices for intersex children. The report incorporates the recommendations of the Committee of Ministers and Commissioner for Human Rights of the Council of Europe on measures to combat discrimination on grounds of gender identity.

A representative of the Office of the Ombudsman for Equality participated in the

working group of the Ministry for Foreign Affairs that discussed the proposals of the Committee of Ministers of the Council of Europe to combat discrimination against sexual and gender minorities and the implementation of the conclusions of the Government report on the human rights policy of Finland. On 16 February 2012, Pirkko Mäkinen, the Ombudsman for Equality, participated in a panel of experts at an LGBTI seminar arranged by the Ministry for Foreign Affairs. One topic of the seminar included the rights of transgender and intersex people and the responsibilities of public authorities to promote them.

The Ombudsman for Equality was awarded a prize for pioneering work

Seta ry, a national non-governmental advocacy organization for LGBTI rights, awarded Pirkko Mäkinen, the Ombudsman for Equality, the annual *Asiallisen tiedon omena* (the “Apple of Objective Information”) reward at a Pride park party in Helsinki on 30 June. Seta awards the annual Apple of Objective Information to people or organizations that have improved the status of sexual or gender minorities or distributed objective information about the diversity of sexuality and gender. The reward was given to the Ombudsman for Equality for pioneering work done by an authority for the

rights of transgender and intersex people.

Co-operation with organisations promoting the rights of gender minorities has been important for the Ombudsman for Equality, so that she can obtain information about their status. In the year under review, the Office of the Ombudsman for Equality continued meetings and co-operation with organisations representing gender minorities, such as Trasek ry, DreamwearClub ry, Seta ry and Transtukupiste. Representatives from Trasek ry and DreamwearClub ry visited the Office of the Ombudsman for Equality, and Pirkko Mäkinen, the Ombudsman for Equality, took part in DreamwearClub ry’s spring meeting in Hauho on 4 May 2012. Also, representatives from the Office of the Ombudsman for Equality participated in an Amnesty event called *Making the Invisible Visible*, which dealt with the discrimination experienced by children and youths who belong to gender minorities.

Clarity to prohibitions of discrimination against gender minorities in Finland and the EU

In 2010, the Finnish Parliament decided that provisions concerning gender minorities must be incorporated into the Equality Act. Amending the Equality Act has proceeded to the draft of the Government Bill. Provisions

are proposed to the Act that would prohibit discrimination on the basis of gender identity and gender expression and promote the equality of gender minorities. The Ombudsman for Equality issued a statement on the draft to the Finnish Ministry of Social Affairs and Health. The Ombudsman stressed the importance of proposing the inclusion of the rights of gender minorities in the Equality Act on a broad scale, in terms of both anti-discrimination protection and the promotion of equality. The Ombudsman also suggested that the title “Act on Gender Equality” would better match the reformed content of the Equality Act than “Act on Equality between Women and Men”.

On 26 September 2012, the Ombudsman for Equality addressed a seminar called *Trans and Intersex Issues – Challenges for EU Law* of the LGBT working committee of the European Parliament on challenges concerning the legal status of trans and intersex people. The seminar presented a recent study commissioned by the European Commission on discrimination of trans and intersex people in the EU and its Member States. The Ombudsman for Equality deemed it important to include specific prohibitions in EU regulations on discrimination on the basis of gender identity and gender expression. The legal status of trans and intersex people can be secured to a certain extent by interpreting the current regulations and



legal practice. It would, however, be a different matter altogether for these people's legal protection, if prohibitions of discrimination against them were brought to the level of EU regulations.

The Trans Act (the Act on Legal Recognition of the Gender of Transsexuals) must be amended

On 21 November 2012, Pirkko Mäkinen, the Ombudsman for Equality, addressed a seminar arranged by Seta, Trasek and the Parliamentary human rights committee called *Missä translain uudistus viipyy? ("Why is it taking so long to reform the Trans Act?")*. The preconditions on which transgender persons can have their legal gender and personal identity number match their own gender identity are laid out in the Act in question. Such preconditions listed in the Trans Act include, for example, obligations on infertility and on being unmarried. The Council of Europe's Commissioner for Human Rights has among others demanded the elimination of these preconditions.

The opinion of the Ombudsman for Equality is that the infertility obligation of the Trans Act violates fundamental and human rights, such as the right of transgender people to equality, physical integrity, and private and family life. The Ombudsman for Equality

hopes that the amendment of said Act will proceed quickly and that representatives of trans people and experts on human rights be included in the preparation. Minister of Health and Social Services Maria Guzenina-Richardson has promised that a working group will be set up to determine the amendment needs of the Trans Act in 2013.

Gender reassignment and replacement of education certificates

A trans woman requested advice from the Ombudsman for Equality in a matter relating to the replacement of education certificates. She hoped to receive the certificates with her new female name which she had received on the basis of gender reassignment. However, the section that indicates gender in her personal identity number has not changed yet.

The Ombudsman for Equality has previously stated that it is very important that transgender people can have their employment certificates changed so that these documents bear their new name and personal identity number. If persons who have undergone gender reassignment have to rely on old employment and education certificates, they may be subjected to unlawful discrimination according to the Equality Act when applying for jobs or studies; this will also compromise their privacy.



A trans woman hoped to receive the education certificates with her new female name.

The Trans Act (the Act on the Legal Recognition of the Gender of Transsexuals, 563/2002) does not contain provisions on changing a person's first name; instead, provisions of the Names Act are observed in such situations. In practice, changing the first name from a man's name to a woman's name or vice versa, from a woman's name to a man's name, requires that a person has submitted a reliable statement of being transgender to a local register office.

The period between changing the first name and obtaining final, legal confirmation of gender and changing of the personal identity number varies and, for different reasons, may

be very long. In the meanwhile, a person must have their education certificates replaced so that the name in the certificates matches the new first name entered in the Population Information System and the gender matches that which the person already lives by. For this reason, the Ombudsman for Equality recommends that all education certificates be replaced as soon as the first name has been changed, should the person so desire.

The Ministry of Education has issued instructions concerning persons who have undergone gender reassignment, whereby there are no obstacles to issuing old matriculation examination certificates and other degree and qualification certificates with the new name and other personal data in cases where both the name and the personal identity number have changed. Updating of the instructions, issued in 1997, is underway at the Ministry of Education and Culture. (TAS 327/2012)

The right of a foreign citizen, who has undergone gender reassignment in Finland, to a Finnish identity card

The Ombudsman for Equality, acting at the request of the Ombudsman for Minorities, issued a statement on the granting of an identity card in situations where a person has confirmed his or her gender in Finland and has

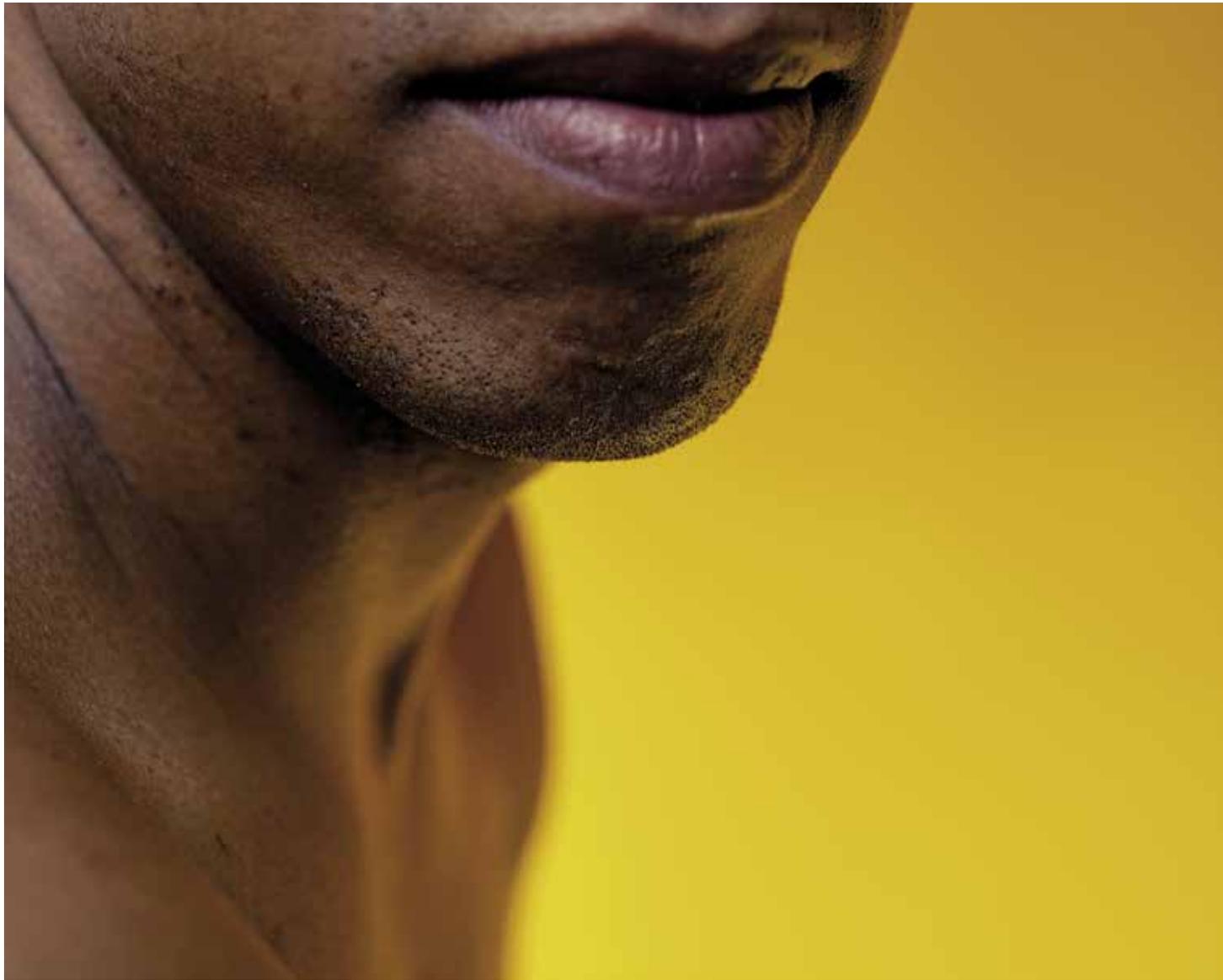
been registered accordingly in the Population Information System but is the citizen of a country that does not recognise the right of transgender people to officially confirm their reassigned gender.

In Finland, the recognition of gender is laid down in the Act on the Legal Recognition of the Gender of Transsexuals (563/2002). These days, the preferred term for transsexuals is "transgender people" which means the same thing. One purpose of this Act is to ensure that people whose gender has been confirmed are treated in accordance with their new gender upon the application of other laws, unless otherwise prescribed. The Identity Card Act is included among such other laws. An identity card can be issued to a Finnish citizen and to those foreigners who, according to the Municipality of Residence Act, live in Finland permanently and whose identity can be reliably established. The Identity Card Act does not include any exceptions regarding transgender people.

When a person has been registered in the Finnish Population Information System with a new first name and a personal identity number according to the new gender, the personal data prior to confirmation of gender in Finland, indicated in a passport issued by country of nationality, can be found in the Population Information System and associated with the person.

In the opinion of the Ombudsman for Equality, an obstacle to reliable identification of a transgender person cannot be solely the fact that a person can present, as an identity document, only a passport according to the old gender and first name because that person's country of nationality does not recognise the new, reassigned gender.

The Ombudsman for Equality also stated that refusing to issue an identity card makes life for transgender people unreasonably difficult and exposes them to discrimination on the basis of gender reassignment, prohibited in the Equality Act, and to violations of privacy. (TAS 180/2012)



Military service for men

The fact that military service has been imposed only on men is often deemed to be unequal. When the Finnish Equality Act was being prepared, the Finnish Parliament wanted to exclude mention of military service from the Equality Act and prescribe military service in the Conscription Act. That is why the Equality Act states that prescribing military service only for men cannot be regarded as discrimination on the basis of sex or gender, as referred to in the Equality Act. However, this does not justify treating men unequally on account of military service.

The Ombudsman for Equality has been contacted by men who suspect that they have been discriminated against because of service as a conscript in their studies, in employment and when applying for credit, for example.

Military service and fixed-term contracts

An employee's representative contacted the Ombudsman for Equality and reported that employers have an inappropriate attitude towards young men who have their service as a conscript ahead of them. Young men's employment contracts are not extended or made permanent due to their conscription, and, if entering military service is postponed, their employment relationship is only extended until the beginning of their time in the army.

In her reply, the Ombudsman for Equality stated that the fact that military service has been prescribed only for men cannot be regarded as discrimination on the basis of sex or gender, as referred to in the Equality Act. However, this does not justify treating men unequally on account of military service.

Questions about completion of military service or non-military service upon hiring are permissible only if the completion of military service can be deemed to be clearly significant in terms of the management of work duties. In other cases, questions about military service give rise to suspicion of intent to discriminate. If, upon hiring, a person is required to have completed military service even though the duties do not require it, the employer is guilty of indirect discrimination on the basis of gender.



The Act on the Continuation of the Employment and Civil Service Contracts of Persons Liable for Military Service Called to Service only protects an employee with a permanent employment or civil service contract against termination. According to the Employment Contracts Act, however, a fixed-term employment contract can only be made for a justified reason. Not having completed military service cannot be regarded as a justified reason. The Employment Contracts Act also prohibits discrimination, stating that employees or job applicants must not be discriminated against on the basis of age, family ties or any other comparable circumstance. Furthermore, Section 7 of the Act on Equality between Women and Men prohibits treating women and men

differently on the basis of gender. Section 8 of said Act complements this prohibition with regard to working life. These provisions also apply to military service.

In summary, the Ombudsman for Equality stated that although the Act on the Continuation of the Employment and Civil Service Contracts of Persons Liable for Military Service Called to Service does not directly apply to fixed-term employees, they cannot be treated differently on the grounds of not having completed military service. Provisions of the Employment Contracts Act and the Equality Act mentioned above can be applied to cases like these. (TAS 325/2012)

Retaking a test in the matriculation examination and service as a conscript

The Ombudsman for Equality was asked to investigate whether provisions on retaking a test in the matriculation examination treat girls and boys differently, considering that completing military service is compulsory for boys.

The law imposes a time limit for taking a matriculation examination because it gives eligibility for higher education institutions, and starting further studies as early as possible is regarded as an important goal for society at large. The matriculation examination must be

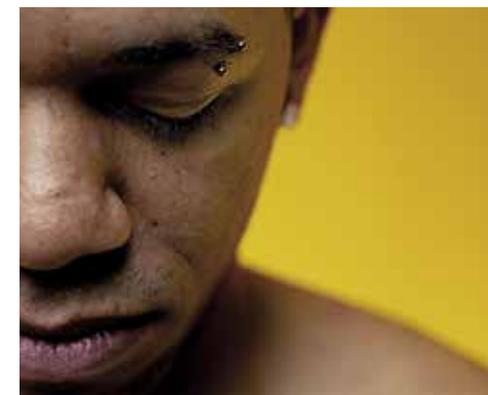
taken during not more than three consecutive examination periods. A Government Decree provides for the opportunity to take the examination during a longer period of time when a compulsory test is rejected or taking of the examination is interrupted. It is also possible to retake the entire examination from the beginning.

According to the Government Decree on the Matriculation Examination, a candidate who has failed a compulsory test may retake the test twice during the three examination periods immediately following the examination period in which the test was failed. A candidate who has participated in one examination period and lost two periods because of full-time studies abroad or a comparable reason, may continue taking the examination in the next two consecutive examination periods and retain the right to retake the failed test, so that the lost periods are not included in the examination periods intended for retaking the test.

According to the general regulations and instructions of the Matriculation Examination Board, reasons comparable to studying abroad include, for example, completing a one-year service as a conscript or an illness that has lasted for a year. Since completing military service has been taken into account in instructions issued by the Matriculation Examination

Board within the limits of the Act and Decree, the case does not involve discrimination as referred to in the Equality Act.

The Ombudsman for Equality stated that completing military service should be taken into consideration upon the enactment of legislation, so it would cause as little inconvenience as possible to those involved. According to the Constitution of Finland, the legislative powers are exercised by the Parliament, and rights and obligations prescribed for citizens in legislation can only be altered with the consent of the Parliament. Preparation of provisions on the arrangement of national defence and military service belong to the administrative sector of the Ministry of Defence. (TAS 355/2011)



Completed service as a conscript affected the amount of credit granted to men

The Ombudsman for Equality was asked to investigate whether a certain financing company acted in violation of the Equality Act when one of its credit conditions for car financing was completed service as a conscript for men of the call-up age. If that condition was not fulfilled, the company granted men a maximum of EUR 1,000 of financing. According to the credit terms, the maximum limit of credit was higher for all other applicants. Completion of service as a conscript was verified upon the application for financing with a separate question asked only of men. Female applicants were not enquired as to any completion of voluntary military service.

In a report submitted to the Ombudsman for Equality, the financing company referred to regulations on granting of credit issued by the Financial Supervisory Authority and declared that, in line with them, the purpose of its procedure was to make sure that the debtor would be able to pay his bills in the near future. The company said that asking about service as a conscript was only significant for such conscripts who had not yet completed their military service but who were liable to do so according to the Conscription Act. Therefore, this prerequisite affecting the amount of



financing did not apply to men exempted from military service or to women, since they are not liable for military service according to the law.

The Ombudsman for Equality stated that, although military service imposed only on men is not regarded as discrimination on the basis of gender as referred to in the Equality Act, it must not lead to a situation where men are treated more unfavourably than women for a reason due to military service in other contexts, such as in the provision of financing services. The Finnish Equality Act specifically prescribes that any practices of a trader are deemed to constitute discrimination prohibited in the Equality Act if a person is treated unfavourably on the basis of sex or gender in the provision of services that are generally available.

Direct discrimination on the basis of sex or gender, as referred to in the Equality Act, means practices where different rules are applied to women and men in similar situations without a justified reason. Such a situation would arise in the application of the credit-granting procedures that were under review, if a man who was about to start service as a conscript were only granted a maximum of EUR 1,000 in financing, as permitted by the credit terms, whereas a woman entering voluntary armed service at the same time as the man were granted a “full amount” of car financing applied for, i.e., without limiting the amount

as in the case of the male counterpart. Indeed, the Ombudsman for Equality considered that the credit terms of the financing company, as a whole, constituted direct discrimination against men and the terms and the credit-granting procedures should be changed to some extent.

In a report submitted to the Ombudsman for Equality, the company had declared its willingness to make its procedures gender-neutral by changing the application procedure such that, in the future, even women eligible for voluntary armed service in terms of their age would be asked about any plans to enter the military. The Ombudsman for Equality deemed the proposal appropriate and the change acceptable, if the application includes a question about whether the applicant intends to complete conscript or voluntary armed service in the near future. The Ombudsman asked the financing company to report to the Office of the Ombudsman for Equality what action it has taken on account of the statement. The company subsequently submitted a financing application that meets the conditions set by the Ombudsman. (TAS 117/2011)

Military service and the degree of Master of Science (Pharmacy)

The Ombudsman for Equality was contacted by a man who considered that men are

treated unfavourably compared with women as far as the granting of pharmacy licences is concerned. Because of military service, men are able to take the degree of Master of Science (Pharmacy) one year later than women. In addition, military service completed before the degree is not regarded as work experience, whereas maternity leave after the degree is included as work experience. The Ombudsman for Equality considered that this case does not involve a practice that violates the Equality Act. Before taking a Master of Science (Pharmacy) degree, women and men are in the same position: neither maternity leave nor time in military services is regarded as time at work. Military service after taking the degree, on the other hand, is usually completed at the military’s pharmacy, so this period is included as work experience in the same way as maternity leave taken after the degree. (TAS 202/2012)

Monitoring the prohibitions of discrimination

The Act on Equality between Women and Men prohibits discrimination on the basis of sex or gender. The Ombudsman for Equality monitors compliance with the prohibitions of discrimination and discriminatory vacancy announcements. An individual who suspects that he or she has been subjected to discrimination, as referred to in the Act on Equality between Women and Men, may request instructions and advice from the Ombudsman for Equality (Section 19 of the Act on Equality between Women and Men).

This chapter features examples of cases of discrimination processed by the Ombudsman for Equality in 2012. Cases involving discrimination on the basis of pregnancy are described on pages 8–13.



General prohibition of discrimination

The Act on Equality between Women and Men includes a general prohibition of gender discrimination; the scope of application of this prohibition is as extensive as that of the Act itself. Excluding some exceptions, the Act on Equality between Women and Men applies to all societal activities and all sectors of life. In addition to this, the Act on Equality between Women and Men features certain special prohibitions that apply to discrimination in working life, educational institutions, interest groups, and to matters related to the availability of and access to goods and services. Violation of these special prohibitions may entitle people to compensation in compliance with the Act on Equality between Women and Men.

The significance of the general prohibition of discrimination has decreased as discrimination becomes increasingly regulated by means of special prohibitions. However, not all forms of discrimination are yet covered by the special prohibitions; in some cases, discrimination is only prohibited on the basis of the general prohibition.

Women's opportunities to study in prison

The Ombudsman for Equality was asked to investigate whether women and men have equal opportunities to take part in group instruction in prisons.

According to the Criminal Sanctions Agency, approximately eight per cent of all prisoners are women. There are a total of 28 prisons in Finland, and 11 of them have places for women. Statistics on the use of time shows that slightly under 10 per cent of prisoners who study are women. Thus, women account for a slightly larger share of prisoners who study compared to the total number of prisoners.

A report issued by the Criminal Sanctions Agency shows that, in principle, there is no obstacle to having female and male prisoners study together. However, ensuring security and order has an impact on this matter, so prisoners have been divided into groups according to their gender. The report shows that prisoners can study in a number of different ways. Even though not all prisoners have the opportunity for group studies, either for security reasons or because the prison in question does not arrange group instruction, prisoners are still able to study upper secondary and comprehensive school subjects through distance learning.

Statistics does not indicate that female prisoners would be in an inferior position compared to men in terms of access to education. Instead, since female prisoners make up a smaller group than male prisoners, they are less able to attend group instruction, for example. In addition to the number of female prisoners, possibilities to arrange education are affected by the location of the prisons, the number of places for female prisoners in each prison and the available human resources for arranging education. Since the goal is to have as many prisoners as possible conduct their studies in a group format, particular attention should be paid to the fulfilment of this goal with regard to female prisoners.

The Ombudsman for Equality said in a statement that group instruction should be arranged for female prisoners according to the same criteria (e.g. group size) as for male prisoners. If prisons observe uniform grounds when establishing female and male study groups, the fact that one of the groups cannot be set up does not constitute discrimination as referred to in the Equality Act, because prisoners have the opportunity to conduct studies in the cell instead of group instruction. The Ombudsman for Equality pointed out that limited financial resources are not a justified reason for unequal division of resources between women and men. (TAS 415/2011)

Incentive given to female candidates in Parliamentary elections

The Ombudsman for Equality was contacted by a client who considered that the Finnish Equality Act had been violated because the women's organisation of a political party had given EUR 100 to the party's female candidates at Parliamentary elections.

The Ombudsman for Equality pointed out in her statement that associations are regulated by the Constitution of Finland and the Associations Act. The basis of the freedom of association comprises the associations' internal right of self-determination and freedom of action, the autonomy of associations. By virtue of its right of self-determination, an association is entitled, in principle, to freely arrange its organisation and other internal affairs. Thus associations can adopt such rules as they desire and select their members accordingly.

The women's organisation in question is the party's nationwide, registered women's organisation. According to the rules of the association, an individual member of the organisation must be a woman who is a member of the party. The rules of the party's women's organisation state that the association can support its members who are candidates on the party's candidate lists in general elections.

Since the women's organisation of the party in question was allowed to support its own members in election work according to its rules, the Ombudsman for Equality considered that the procedure could not be regarded as a violation of the Equality Act. (TAS 291/2012)

Guidelines on interpretation services for persons with disabilities

The Ombudsman for Equality was requested to investigate whether the guidelines of the Social Insurance Institution on interpretation services for persons with disabilities are in line with the provisions of the Act on Equality between Women and Men.

According to the person contacting the Ombudsman, an effort is made to arrange a female interpreter for a female client going to see a gynaecologist, for example. On the contrary, these guidelines, which were prepared in order to ensure consistent, equal and high-quality services, do not contain a mention of any effort to provide similar arrangements in a situation where a male client's intimate, personal affairs are discussed.

In a report submitted to the Ombudsman for Equality, the Social Insurance Institution says that providers of interpretation services have been placed in an order of priority on the basis of competitive bidding. Orders are

transmitted primarily on the basis of the order generated as a result of the competitive bidding among the service providers.

The guideline on interpretation services states that the most appropriate interpreter should be selected for each client. The client's individual needs and wishes must be taken into consideration when arranging interpretation services. The guideline also lists situations where the service providers' order of priority can be deviated from if the interpretation situation is such that it requires a certain kind of interpreter. The provided examples include a situation where an effort is made to arrange a female interpreter for a visit to a gynaecologist and a male interpreter to a sauna evening of a men's ice hockey team.

The Ombudsman for Equality pointed out in her statement that the guidelines on interpretation services for disabled persons should not be understood to mean that male and female clients are treated differently. Correspondingly, a male interpreter should be provided for a male client in a situation where the male client's intimate, personal affairs are discussed. Likewise, a female interpreter should be arranged for an event of a women's sports team. However, the small number of male interpreters may lead to a situation where a male client's individual needs and wishes regarding the gender of the interpreter cannot be taken

into consideration when arranging interpretation services.

The Ombudsman pointed out that every interpreter must always remain unbiased and impartial in their work and act in the way required by their profession, taking the nature of the situation into consideration during every assignment, regardless of the interpreter's own and the client's gender. (TAS 39/2011)

Maternity leave and qualification requirements

The Ombudsman for Equality was asked to comment on whether the period of maternity leave is included in work experience when the case involves fulfilment of qualification requirements for a teacher of vocational studies. According to the Decree on qualification requirements for teaching personnel, a person with the minimum of three years of practical work experience in the field is qualified to provide vocational education.

The European Court of Justice (ECJ) has in its rulings considered that when a case involves career advancement in the workplace, the period of maternity leave should be included in work experience. However, this case involved fulfilment of qualification stipulated by a decree, so the aforementioned view of the European Court of Justice cannot be directly

applied to this situation. The purpose of a vocational teacher is specifically to teach certain kinds of professional skills, and this requires that the teacher have a certain minimum period of work experience. The Ombudsman for Equality considered that the period of maternity leave is not included in the period of work experience when the case involves acquiring qualification or competence for a profession. (TAS 133/2012)

On the right to make a tax deduction for working clothes

The Ombudsman for Equality was requested to investigate whether the procedures of the Tax Administration on tax deductions for working clothes are in line with the provisions of the Act on Equality between Women and Men. According to the person contacting the Ombudsman, a tailcoat worn by a male academic officeholder would be accepted as tax-deductible work clothing but a similar outfit worn by women, i.e. a black dress, would not.

In a report submitted to the Ombudsman for Equality, the Tax Administration states that costs incurred from working clothes are generally regarded as living expenses. However, if a person can prove that a piece of clothing worn at work only has limited use, it is possible to make a tax deduction on working clothes.

According to the report, the practice of the Tax Administration is based on legal practice and also on the presumption according to which using a tailcoat is highly exceptional in "ordinary festive occasions".

The Ombudsman pointed out in her statement that a female academic officeholder must not be treated differently than her male colleague in how the person is expected to prove that using a certain black dress is limited to events relating to the job and that it, like a tailcoat, would only be worn on other festive occasions in very exceptional cases. A female officeholder must be able to deduct the purchase costs of a black dress worn only in official duties on the same preconditions as male officeholders can deduct the purchase costs of a tailcoat. If a man's own declaration is regarded as sufficient, this must also be true in the case of a woman. (TAS 274/2011)

Discrimination in hiring

According to the Act on Equality between Women and Men, bypassing a more qualified candidate is usually prohibited, but may be done for a particularly significant and accept-

able reason due to the nature of the job or task. Gender may be a significant or even deciding factor in selection, in the event that the job or task is determined on the basis of gender. The employer may also demonstrate that selection has been based on some other acceptable reason than gender. Acceptable reasons include issues such as personal suitability for the job.

Filling the vacancy of an administrative director

A man asked the Ombudsman for Equality for a statement on whether he had been discriminated against in a manner prohibited in the Equality Act, when he was not selected for the position of administrative director in a municipality, but a woman was chosen instead. The person in question regarded himself as more qualified than the woman who was selected. The person asking for a statement also pointed out that the municipality had not provided him with an explanation of the selection criteria, stipulated in the Equality Act, in spite of his requests. According to him, the municipality also had not made a comparison of how the applicants fulfilled the requirements set and in what ways the applicants had earned merits in terms of the different criteria.

The Equality Act does not restrict employers' right to choose the candidate they consider

the best for a particular job. The Act aims to prevent situations where a person is appointed unjustly on the basis of sex or gender when another candidate would have been more qualified.

Merits must be assessed in the light of the position in question and on the basis of the selection criteria that the employer has established before advertising each position. Attention is usually given to applicants' qualifications, previous work experience, and any qualities, knowledge and skills that could prove useful in the job and that can therefore be considered additional merits. The merits included in the comparison must be unambiguously and objectively demonstrable.

However, suitability, aptitude, ability and other subjective personal attributes of applicants can be used as grounds for employers' decisions and may constitute justifications, according to the Equality Act, for choosing a less qualified candidate for a position. The employer is obligated to prove that such justifiability exists.

According to the Equality Act, a comparison of merits must be carried out whenever applicants include both men and women. Merits must be compared appropriately and objectively.

When assessing the merits of applicants, the question ultimately is which of the candi-

dates who meets the competence requirements has the best professional and other capabilities to manage the duties of the job in an appropriate and successful manner.

On the basis of a report submitted to the Ombudsman for Equality, both the person requesting a statement and the person chosen for the job were qualified for the position. The person requesting a statement has a law degree as well as a degree of Master of Physical Education, and the person selected has a large number of credits toward a degree of Master of Administrative Sciences. The employer stated that during the selection process, an emphasis was placed on the selected female candidate's studies in financial management in the public sector, and the degree in physical education of the person requesting a statement was not regarded as an additional merit. Since the job in question involves acting as the deputy of the financial director, among other duties, the employer's emphasis could be deemed justified with regard to managing the work assignments.

The professional work experience of the person requesting a statement is longer than that of the person selected, but the difference is not big enough to warrant crucial significance in a comparison of merits. The person requesting a statement was interviewed when the vacancy was being filled, but no aptitude assessment was made of him. The person se-

lected was interviewed and also underwent an aptitude assessment. According to the report submitted in the case, the Ombudsman for Equality was unable to evaluate how the candidates' personal characteristics were compared with one another.

In her reply, the Ombudsman for Equality reminded the municipality that an employer is obligated, without delay, to provide an explanation to anyone who suspects that he or she has been subjected to discrimination, as referred to in the Act on Equality between Women and Men. The purpose of this report is to help the job applicant to evaluate whether there is reason to continue processing the case and possibly refer it to a court of law.

The Ombudsman for Equality principally issues statements concerning points of law in interpreting the Equality Act and does not, as a rule, conduct comparisons of merit between applicants in cases of suspected discrimination in employment procedures. Investigating whether a selection decision has been in line with the provisions of the Equality Act requires making a comparison of merits and assessing any justified reasons presented by the employer. Since the Ombudsman for Equality cannot in the written statement process address questions of proof that require, for instance, spoken evidence, the Ombudsman cannot assess the person-

al aptitude of applicants for the position in question. The presentation of evidence in this regard and in terms of any other controversial questions presented in the case takes place in a district court in connection with a possible claim for compensation against the employer. For the reasons stated above, the Ombudsman for Equality did not comment on whether the person requesting a statement has possibly been discriminated against in the selection in question. (TAS 253/2011)

Permissible to only search for a woman as a personal care assistant

The Ombudsman for Equality was asked whether an employer, when filing a job advertisement, is allowed to search for a member of just one sex to act as a personal care assistant without violating the provisions of the Act on Equality between Women and Men. The case involved the position of a personal care assistant for a seriously disabled young girl, and the wish was that the assistant would be a woman.

The Equality Act specifically provides that each employer shall promote gender equality within working life purposefully and systematically. Thus, the employer shall, for example, act so that both women and men apply for vacant positions. The clear basic premise is

that a certain job vacancy cannot be advertised as being open exclusively for a member of one sex. Usually, the most competent and suitable applicant from the perspective of the job in question must be selected for a certain job or position on the basis of the applicants' education, previous work experience and personal characteristics needed in the job, regardless of whether the applicant is male or female. Exceptions to this general rule can only be made in certain, rare situations specified in the provision of the Equality Act that prohibits discrimination in job vacancy announcements.

Deviating from the general rule must be based on a weighty, acceptable reason arising from the nature of the job or position being filled, such as the personal nature of the employment relationship. For example, it must be possible to choose either a woman or a man as a personal caregiver for an ill or elderly person, without it being prohibited by the Act on Equality between Women and Men.

Since this case specifically involved hiring a personal care assistant to a seriously disabled young girl, the Ombudsman for Equality considered that only selecting a woman for the position according to the advertisement was not in conflict with the prohibition of discrimination as referred to in the Equality Act. (TAS 256/2012)

Pay discrimination

For years, suspected cases of pay discrimination have been among the most typical issues with respect to requests for a statement submitted to the Ombudsman for Equality. The Office of the Ombudsman for Equality continues to regularly receive inquiries from people who suspect that they have been discriminated against in terms of pay because of their gender. In 2012, the Office dealt with several suspected cases of discrimination relating, for example, to the pay of psychologists.

Journalists' pay differences were not acceptable

Female journalist A asked the Ombudsman for Equality for a statement on whether her employer had been guilty of discrimination, as prohibited by the Act on Equality between Women and Men, by paying A a lower salary than to two male journalists B and C.

On 1 January 2008, the newspaper had been transferred to a new employer during a transfer of business. After that, no special reporters were needed any more; instead, they became general reporters. Two men who had previously worked as special reporters were, however, allowed to keep their level of



pay which was higher than that of the general reporters.

In 2008, the employer had assessed that the working duties of A, B and C belonged to the same competence category. They all had the same, job-specific minimum wage and equal experience bonuses. However, their personal pay components differed such that B's pay was EUR 200 and C's pay EUR 339 higher than A's.

Since the duties were deemed to be equal, with regard to the Equality Act the case involved a question of whether there was some reason other than gender which made the pay difference between the reporters acceptable. The burden of proof for this rested with the employer.

The employer justified the differences in pay with the transfer of business and provisions in the collective agreement. Before the transfer of business, the male journalists had had higher pay than A, and no-one's pay was allowed to decrease upon the transfer of business.

According to legal practice, certain situations of change, such as a transfer of business, may be an acceptable reason for pay differences for a reasonable transition period. There is, however, no unambiguous legal practice on the duration of a reasonable transition period.

In the situation under review, the transition period had lasted for more than four years. In

the opinion of the Ombudsman for Equality, the employer had not tried effectively enough to eliminate the difference in pay between the journalists. (TAS 162/2009)

Suspected pay discrimination concerning the pay of a psychologist working for a day-care centre

A psychologist asked the Ombudsman for Equality for a comment on whether her employer, a city in Finland, was acting in violation of the Act on Equality between Women and Men by paying her a lower job-specific salary than to a male psychologist.

The provision on equal pay in the Equality Act is based on a comparison of work and duties at work. This provision can only be applied in situations where the duties being compared are so similar that they can be regarded as identical or where different duties, on account of their demanding nature, can be considered of equal value. The concepts "same work" or "work of equal value" only refer to the nature of the work done by the employees in question. A crucial aspect for the concepts is a comparison between the actual duties of the persons being compared; the employees' job titles or a classification of employees into certain groups of workers alone are not enough to draw a conclusion on whether those employees do

the same work or work of equal value. Instead, in order to determine whether the work is the same or of equal value, one must investigate whether one can find that the employees are in a mutually similar situation, considering the nature of their work, the education required for the work, professional experience and the working conditions.

According to a report submitted by the city, the pay differences between the psychologists were solely caused by the difference in the level of complexity of the duties.

It was determined in the case, however, that the job descriptions of the three day-care and family counselling psychologists working for the city were at the same level, number 3 (significant), in terms of the same five factors of job demands. According to the employer, the difference in pay is due to the fact that the day-care psychologists, such as the person requesting a statement, do not in their work give individual, family, relationship, crisis or group therapy, or provide family investigations or assessments of guardianship or parenthood, which are duties of higher-paid psychologists working at family counselling centres, such as a male psychologist used for comparison. According to the person requesting a statement, extensive assessment, consultation, care and referral duties of psychologists in day care and at comprehensive and upper secondary

schools are more demanding and wide-ranging than assessment and care of individuals.

Therefore, the person requesting a statement and the employer had conflicting views concerning the demands of the work duties. With regard to this, the Ombudsman for Equality stated that the provision on equal pay in the Equality Act does not require the duties to be identical; instead, they can include different factors but still be equal in terms of demands. If employees do the same work or work of equal value, the group or category of employees that an individual employee belongs to must neither have a bearing on the pay. An employer cannot justify a difference in pay by saying that, in addition to the employee suspecting discrimination, the employer also employs other workers who receive the same or a lower salary as the employee suspecting discrimination.

Remuneration systems must be open to guarantee that the principle of equal pay is observed. In other words, the remuneration system must be such that employees can find out the various factors impacting on their remuneration, and the contribution of each factor. In her statement, the Ombudsman for Equality pointed out that an assessment by the city on the demands of the psychologists' duties already included the different job descriptions of psychologists working in day care and

at school and family counselling centres, such as the individual, family, relationship, crisis and group therapy as well as assessments of guardianship and parenthood, specified by the employer. Nevertheless, the duties have been assessed to be equally demanding in terms of the same factors of demandingness. Therefore, if the case goes to court, the employer must be able to prove that the duties are not equally demanding. (TAS 163/2011)

Suspected pay discrimination in the case of four psychologists

A case initiated by the Finnish Psychological Association involved the question of whether the job-specific pay component of four of its members was in compliance with the Act on Equality between Women and Men. The difference in job-specific salaries between female psychologists working at the psychiatry ward of a health centre in a Finnish city and a man employed as a psychologist at an occupational health centre of another city, used for comparison, ranged between EUR 18 and EUR 334 per month to the benefit of the male psychologist.

According to a report submitted by the city, the job-specific pay of the psychologists was determined in accordance with the General Collective Agreement for Municipal Personnel (KVTES), on the basis of the demands

of each job. The employer stated that, due to differences in the content of the work duties and differing educational requirements, it was not possible to regard the duties as equal in terms of demands; thus the difference in pay was not unjustified. However, the gap in pay has narrowed because the human resources department of the city in question had decided to raise the salaries of psychologists at health centres in 2008 and 2010, after evaluating the demands of duties and salary levels of psychologists working for various agencies in the city.

One of the crucial elements when suspected cases of pay discrimination are investigated is the requirement for the transparency of remuneration systems, laid down by the European Court of Justice. It states that all elements of remuneration must be compared separately and that it must be possible to discover the non-discriminatory nature of each separate pay component. With regard to the transparency of the remuneration system, the Ombudsman for Equality stated that, at least on the basis of individual job descriptions submitted to her, it is not easy to make a reliable comparison between the demands of the psychologists' jobs employed by said city in the various sectors and offices.

The psychologists asking for a statement and the employer had conflicting views on the

true demands of the work duties. The female psychologists said there was no documented proof that their duties were less complex than those of the person used for comparison, the reason being that no comparison of the mutual demands of said duties had ever been made. The employer contended that a comparison had been made, showing that the duties of health centre psychologists and those of the occupational health psychologists were so different, in terms of content and requirements on education, that they could not be deemed to be equally demanding.

The Ombudsman for Equality does not carry out actual assessments on the demands of work in cases involving pay discrimination. Since the Ombudsman for Equality has a purely written statement process, it is not possible to investigate contradictory questions involving issues of proof. If the parties in this dispute cannot reach a settlement and the female psychologists decide to institute a trial for compensation, they will have to present actual proof about the detailed content of their duties, preconditions for managing the duties and the demands of their work. In any compensation trial, the burden of proof usually rests with the party suspecting discrimination. If a court of law finds that the remuneration system in question is non-transparent and makes it impossible to determine the true reasons for

differences in pay, the employer must prove at the trial that the system is not discriminatory. (TAS 43/2010)

Suspected pay discrimination concerning the office of a special instructor in social work at a prison

A female special instructor in social work asked the Ombudsman for Equality for a statement on whether she had been discriminated against in a manner prohibited in the Equality Act, because she was paid a lower salary than a male special instructor and social worker.

The procedure followed in the interpretation of the Equality Act's prohibitions of discrimination in working life has two phases. In the first phase, it must be determined whether the case has grounds for a presumption of discrimination. Any presumption of pay discrimination requires that the employee suspecting discrimination must be able to prove that the employer applies unfavourable remunerative terms to the employee in question compared to a person of the opposite sex who does the same work or work of equal value.

Implementation of the principle of equal pay must be investigated separately for each pay component; thus a presumption of discrimination may originate on the basis of a difference in the job-specific salary, for example.

If a presumption of discrimination does arise, in the second phase it must be investigated whether the employer can present an acceptable reason for a procedure that appears to be discriminatory. If no such cause is presented, the remuneration shall be considered to be discriminatory. The share of remuneration based on the demands of the work must be the same for employees doing the same work and work of equal value, but the overall remuneration of the employees does not always have to be equal. Referring solely to some technicality, such as the fact that the employer's procedure has been based on the law, on a collective agreement or an administrative regulation, is not enough to rebut a presumption of discrimination.

In this case it was undisputed that the special instructor in social work and the special instructor do the same work but the male special instructor is paid a higher salary. In their statement, the employer did not even claim that there was an acceptable reason for the difference in pay. Therefore, the remuneration of the female special instructor in social work, in comparison with that of the male special instructor, had to be deemed discriminatory in the manner prohibited in the Equality Act.

According to the employer's explanation, the other person used for comparison – the male social worker – has a level of job demand

that is two steps higher and justified according to a social worker's statutory competence requirement and duties prescribed in law for a social worker (such as cases of taking children into care).

It was determined in this case that the male social worker is competent for the job of a social worker but, according to the report received, he does not have a higher university degree but a college-level degree instead. Therefore, the degree of the person requesting a statement and the degree of the social worker can be deemed similar, and the difference in pay between them cannot be justified with the university degree required of a social worker, since the male social worker does not have one.

As for the difference in pay, it needed to be investigated whether it – and to what extent – can be justified by special assignments that a social worker must handle according to the employer. In the opinion of the person requesting a statement, the work duties are determined in a comprehensive manner, according to the needs of each prisoner in question; they have not been itemised on a duty-specific basis. Thus the person requesting a statement may also have to deal with tasks involving taking children into care, regardless of the official title.

The Ombudsman for Equality stated that, if the higher salary paid to the male social



worker cannot be wholly justified with actual special assignments – ones that can be deemed more demanding than those belonging to the person requesting a statement – the remuneration of the person requesting a statement in relation to the social worker's pay must be deemed discriminatory, in the manner prohibited in the Act on Equality between Women and Men.

The Ombudsman for Equality stated that basic pay is not always determined solely on the basis of the demands of the work. In the Government's traditional remuneration system, where pay is determined by the wage bracket and seniority allowances specified for

the office, employees doing the same work can be paid a different basic salary. For placement into different wage brackets to be justified from the perspective of the goal for equal pay, the placement must be based on genuine differences in the employees' competence. The remuneration system may lead to a conflict with the principle of equal pay if positions involving the same or similar duties are placed in different wage brackets merely due to an office and pay structure established inside the agency, even though there are no differences between the officeholders when it comes to education or work experience.

Cases involving pay discrimination are ultimately settled in a court of law. If the parties cannot reach a settlement on remuneration, the employee suspecting pay discrimination may initiate court proceedings in the district court where the employer has its registered office. In cases involving pay discrimination, such legal action must be instituted within two years of the violation of the prohibition of discrimination. If the employer has violated the prohibition of discrimination as referred to in the Equality Act, the employer can be ordered to pay compensation. In addition, the employee may demand payment of the difference in pay, i.e. the difference between the higher remuneration paid to the person used for comparison and his or her own pay. (TAS 160/2011)

Other discrimination at work

The Act on Equality between Women and Men prohibits discrimination in hiring and pay discrimination but also other kinds of discrimination in working life. As well as concerning pay, discrimination is prohibited in other terms of employment as well. The Equality Act prohibits discrimination in termination of employment, arrangement of working conditions and supervision of work.

Women's turns at a gym used by employees

The Ombudsman for Equality was requested to investigate the arrangement of turns at a gym provided by an employer to its staff. The gym in question was reserved for the use of women for three hours on two working days and for as much as five hours on three working days. The gym was also reserved only for women for five hours on Saturdays and Sundays. There were no turns specifically reserved for men.

The employer justified this practice by saying that most of its employees were women and by stating that it would be difficult to arrange separate locker rooms for men and women.

However, the employer did not explain how the issue with changing rooms was solved when the gym was used by both women and men.

Any gym provided by an employer is considered a benefit relating to the employees' working conditions, not a gym covered by the freedom of trade which includes the right to choose the form and method by which a trader wishes to earn his or her livelihood. If an employer offers its employees benefits or arranges their working conditions, such as access to common exercise facilities and related changing rooms, it is crucial in terms of the Act on Equality between Women and Men that representatives of neither gender are placed in an unfavourable position over those of the other gender.

In her statement, the Ombudsman for Equality pointed out that, in terms of the equal arrangement of working conditions in a work community, it is important to find a solution to a situation where only women or men are offered appropriate changing rooms at a gym, regardless of how many female or male employees attend the gym at any one time. (TAS 34/2012)

Working clothes at a bus company

A person working for a bus company asked the Ombudsman for Equality whether rules concerning the summer clothes of female and male drivers discriminated against the men. Accord-

ing to the rules, men must wear long trousers in all circumstances, whereas female drivers can wear a shorter model of trousers in summer.

Employers have a so-called managerial prerogative over employees. According to the Employment Contracts Act, employees must perform their work observing the instructions concerning performance, issued by the employer within its authority. If an employer operating in a service industry issues different uniforms to employees of different gender, this procedure cannot generally be regarded as discriminatory, according to legal literature. For example, if women are given a skirt and blouse to wear and men trousers, a shirt and tie, the procedure is acceptable according to a generally observed dress code. If, on the other hand, only women are given uniforms and men have to buy their own uniforms, this may constitute discrimination on the basis of sex or gender.

The purpose of the Act on Equality between Women and Men is not to prevent all different treatment of men and women as such, only different treatment that is unfavourable or unfair. There may be appropriate and justified reasons for different treatment, in which case it is not deemed discriminatory. In her statements, the Ombudsman for Equality has issued instructions relating to clothes, for example, in a situation where female office workers were obligated to wear clothing re-

garded as a uniform benefit, but men in supervisory and managerial positions were allowed to relinquish that benefit.

The dress code at individual workplaces has often been created over a long period of time, with specific codes having been formed and tacitly approved by the employer for female and male employees working in different departments, different positions and jobs at different levels. In addition, clothing of employees in customer service positions, in particular, is influenced by the corporate and employer image that the employer specifies and wishes to give to customers.

In a statement (TAS 126/2011, an employer's right to determine the length of hair and beard of male employees), the Ombudsman for Equality expressed a wish that the employer's discretionary power in matters pertaining to its employees' clothing and appearance enable flexible adaptation to changes in values and expectations in Finnish society. General perceptions pertaining to the appearance of the genders have changed so that, for example, hair length is no longer related to gender in the same way it previously was, and long hair for men should not be regarded as untidy in principle. Against this background, the appropriateness of wearing shorts and their suitability as work clothing could possibly be re-evaluated. (TAS 195/2012)

Discrimination in the availability and supply of goods and services

In 2012, the Ombudsman for Equality was contacted over suspected cases of discrimination related to the supply of goods and services. These queries were highly varied insofar as subject matter is concerned. As in previous years, many of the queries were related to different price discounts given to only women or men, gender-based pricing of barbers' and hairdressers' services and of different events, and gym services aimed only at women.

The Finnish Act on Equality between Women and Men prescribes that any practices of a supplier of goods or services are deemed to constitute discrimination prohibited in the Equality Act if a person is treated unfavourably on the basis of sex or gender in the provision of services that are generally available.

Prohibition of different treatment in consumer insurance policies based on gender

In December 2012, an amendment to insurance legislation entered into force, requiring

that insurance policies granted to consumers must not have gender-based differences in insurance premiums or benefits. This was permissible in earlier years on the basis of the EU Directive implementing the principle of equal treatment between men and women in the access to and supply of goods and services (2004/113/EC), provided that gender could be deemed a determining factor in a risk assessment. The amendment to legislation is due to a ruling by the European Court of Justice in March 2011. In it, the ECJ considered that the provision on the basis of which the main principle could be deviated from for an unlimited time was not compatible with the Charter of Fundamental Rights of the European Union.

The Ombudsman for Equality issued a statement on the draft to the Finnish Ministry of Social Affairs and Health when the government bill was being prepared, and was heard at the Parliament. When the Directive 2004/113/EC was being prepared, the Ombudsman for Equality already favoured the Commission's original proposal that use of gender as an actuarial factor be prohibited.

With regard to the present amendment to insurance legislation, the Ombudsman for Equality expressed concern that it only applied to insurance policies granted to consumers, not other policies. Gender-based differences in premiums and benefits would

still be permissible in policies associated with an employment relationship and taken out by an employer. The Ombudsman for Equality considered that the amendment should have applied to these insurance policies, as well. The Ombudsman pointed out that, in different contexts, Parliamentary Committees have also deemed it important to develop the systems such that use of gender as an actuarial factor can be eliminated in time (TyVM 2/2007 vp and StVM 55/2009).

A proposal has been made that earlier statutory provisions on submitting gender-based risk assessments to the Financial Supervision Authority and making the related information public be abolished concerning also such insurance policies in which gender-based differences would still be allowed. In the opinion of the Ombudsman for Equality, this will mean a deterioration of the existing situation in terms of gender equality. (TAS 186/2012 and 283/2012)

Pricing of paid Internet services provided abroad

Two men contacted the Ombudsman for Equality, asking her to take the necessary action and put a stop to different, gender-based pricing of websites called Victoria Milan and Ashley Madison. The men deemed that the pricing

of the websites was in violation of the Act on Equality between Women and Men, because women were allowed to register as members on the websites for free, whereas men needed to pay charge for using the services provided by the websites. On the basis of an explanation obtained by the Ombudsman for Equality, the business idea and key content of services provided at each website was to help married men and women establish a “secret relationship” with another member of the same website by arranging opportunities for the members to meet one another.

In this case, the owners of the websites submitted for assessment by the Ombudsman for Equality were, according to data received from the Trade Register and the Tax Authority, registered such that one company had its domicile and permanent office in Canada and the other one in Malta. Servers used for maintaining both websites were located in the company’s permanent offices in Canada and Malta. Neither company had a permanent office in Finland, so they were not obliged to report their operations to the Trade Register or pay any taxes in Finland.

The statutory duty of the Ombudsman for Equality is to supervise compliance with the prohibition of discrimination on the basis of sex or gender, as referred to in the Equality Act. However, the Ombudsman can

only supervise compliance with the Equality Act in matters under Finnish jurisdiction, so the Ombudsman for Equality, as a general rule, does not have authority over operations carried out outside of Finland’s borders. That is why the Ombudsman for Equality did not comment on the nature or pricing of the services provided by the websites. (TAS 309/2012 and 322/2012)

Men’s night at Hercules Nightclub

The Ombudsman for Equality received a notification according to which a restaurant called Hercules Nightclub has restricted its clientele such that on 1 July 2011 entry was allowed for men only. The Ombudsman for Equality began to investigate the matter at her own initiative.

According to the Act on Equality between Women and Men, direct and indirect discrimination on the basis of sex or gender is prohibited. Any practice whereby women and men are placed in different positions based on gender constitutes gender-based discrimination. Placement in a different position refers mostly to the granting of certain benefits or rights, or that certain obligations, restrictions or burdens are placed only on men or women. Thus discrimination only refers to practice that affects the circumstances of men or women.

However, the purpose of the Act on Equality between Women and Men is not to prevent all different treatment of men and women; instead, the Act only aims to prevent different treatment that is clearly unfavourable or unfair on the basis of gender. There may be an acceptable reason for different treatment, which in such case is not regarded as discriminatory. The supply of goods and services solely or primarily to representatives of one gender is permissible if it is justified in pursuit of a legitimate objective, and appropriate and necessary means are used in order to achieve that goal. Legislative materials concerning the Act on Equality between Women and Men show such different treatment only to be permissible in certain, restricted situations.

The purpose of the *Helsinki Pride* event is to support the rights of gender and sexual minorities, and the men’s party at Hercules Nightclub was part of the *Helsinki Pride* week’s activities at restaurants and elsewhere. On the night following the men’s party, Hercules Nightclub has held an event open for everyone, with the same performer as on the night intended for men. The Ombudsman for Equality considers that the men’s night arranged at Hercules Nightclub did not place women into an unequal position that would constitute gender-based discrimination, as prohibited in the Equality Act. (TAS 264/2012)

Shopping money marketed only for women at a Naisdays event arranged by a car dealership

In this case, the Ombudsman for Equality was contacted by a woman who regarded a four-day event called *Naisdays*, arranged at a certain car dealership, as discriminatory against men because the dealership marketed a discount of EUR 1,500 on the purchase price of a car only to women who would buy one of the *Naisday* cars specifically designated by the dealership.

Discrimination prohibited by the Act on Equality between Women and Men comprises, among other things, any practice where a person is treated unfavourably on the basis of sex or gender in the provision of goods or services that are generally available. Any trader engaging in such practice is obligated to pay monetary compensation for discrimination to a customer discriminated against in such a manner.

In a report submitted to the Ombudsman for Equality, the company stated that it was aware of said prohibition of discrimination and that, in its opinion, it had paid due attention to it in the planning and implementation of the *Naisdays* campaign. The company said that even though only women were offered shopping money in advertisements marketing

the campaign, in actual fact men also had the right to exactly the same discount targeted at women only in the ads.

The Ombudsman for Equality, acting on explanations received, stated that if the situation for men has, in fact, been as described in the dealership’s report, the company’s *Naisdays* event cannot be regarded as a violation of the prohibition of discrimination according to the Equality Act. On the other hand, if the actual situation had been such that only female customers had been entitled to buy such cars, sold at a rather large discount of EUR 1,500, the dealership’s practice would have violated the prohibition of discrimination according to the Equality Act.

The authority of the Ombudsman for Equality does not extend to supervision of the appropriateness of actual advertising. As for the event’s marketing, however, the Ombudsman stated that according to explanations received, the assessed event was clearly targeted exclusively at women. The marketing materials did not contain any mention of men also having the opportunity to buy a car from the *Naisdays* range and take advantage of the benefit offered in the advertisement had they wished to do so. The Ombudsman for Equality considered that, in actual fact, men did not have equal opportunities with women to avail themselves of the financial benefits associated

with the event. Thus, in this respect, the car dealership's practice constituted a violation of the general prohibition of discrimination under the Equality Act. Any trader who violates this ban on discrimination is liable to compensate the violated party for any damage caused as a consequence of such discrimination, as stipulated in the Finnish Tort Liability Act (412/1974). (TAS 397/2011)

No violation of the Equality Act at the filming of a TV show only open for women

A man asked the Ombudsman for Equality to comment on whether different treatment of men and women at the filming of a TV show constituted direct discrimination on the basis of sex or gender, as prohibited in the Finnish Act on Equality between Women and Men. Only women were allowed as audience members at a comedy show called *Make Up*, which was shot at the Apollo Live Club event restaurant and later shown on a TV channel of Yleisradio (the Finnish Broadcasting Company).

According to a written report received from Yleisradio, the case involved an entertainment show where an audience with only female members constituted a significant part of the concept of the show. Male actors subjected



their own humour, which was strongly linked to gender roles, for testing by the female audience. The choice of audience was made on the script's terms and observing the spirit of the concept: men had been reserved the role of performer, women that of the audience. In

the company's opinion, the script, concept or practical implementation of the show did not discriminate against male viewers in the manner prohibited in the Equality Act. Instead, this case involved an ambitious project the script, performers and style of which were intended

to prompt a debate on gender equality and to break down prejudices.

Gender-based discrimination as prohibited under the Equality Act refers to, among other things, placement of women and men in a different position directly on the basis of gender. However, the purpose of the Act is not to prevent all different treatment of men and women as such, only different treatment on the basis of gender that is clearly unfavourable or unfair.

The Ombudsman for Equality stated that the Constitution of Finland provides everyone the fundamental right to earn his or her livelihood by the employment, occupation or commercial activity of his or her choice. This freedom to engage in commercial activity also covers the right to choose the form and method by which people wish to earn their livelihood. In the opinion of the Ombudsman for Equality, Yleisradio Oy, acting on the freedom to engage in commercial activity and without being prevented by the prohibition of gender-based discrimination, was allowed to package the services it provides such that the entertainment show in question was produced and carried out with a programme concept where women and men were reserved different roles. According to a report received, the fundamental idea behind making the entertainment show in question and partic-

ipating in it was to divide men and women into different roles, whereby the men were reserved the role of performer (male actors) and the women the role of the audience (female viewers). In her overall assessment, the Ombudsman for Equality was of the opinion that the nature of such different treatment of men and women did not constitute gender-based discrimination, as prohibited by the Equality Act, and that therefore the actions by Yleisradio Oy were not in conflict with the provisions of the Act. Finally, the Ombudsman pointed out that equally permissible from the perspective of the Equality Act would be any practice whereby, in similar circumstances, only women would be chosen as performers and only men as audience members. (TAS 60/2010)

Sports and equality

The Ombudsman is often contacted in questions involving physical exercise activities and sports. Those taking contact ponder many kinds of issues, such as women's and men's different possibilities to exercise, division of turns at different exercise and sports facilities, rewarding practices at sports contests and the visibility of women's sports in the media.

The Ombudsman for Equality considers it important that the society supports equally sports and exercise activities of both girls and women and boys and men. Gender equality should be viewed as the provision of equal opportunities and resources, emphasising equitable treatment, attitudes and everyday acts.

What is important is that women and men have equal opportunities to engage in sports and exercise activities, to receive competent coaching, to participate in competitions and to receive equal recognition for their performances. The requirement of equal possibilities should be taken into account in all decision-making related to sports and physical exercise activities. The equality principle should also be observed in rewarding practices at sports contests, and the valuation of a performance or the prize awarded for it should not depend on the participant's gender.

Rewarding practice at tennis tournaments

The Ombudsman for Equality was requested to investigate whether the rewarding practice of a tournament called *Finnish Tennis Tour*, organised by the Finnish Tennis Association, was in conflict with the Act on Equality between Women and Men, since larger financial prizes were awarded in the men's series than in the women's.

In a report submitted to the Ombudsman for Equality, the Finnish Tennis Association states that one of the reasons why it would not be possible to pay men and women equal financial prizes is that the men's event has more participants than the women's. Therefore, the winner of the men's series has to work harder than the winner of the women's series. Another reason for smaller financial prizes for women, according to the Tennis Association, is that the prize money consists of participation fees paid by the players. Since the women's competition has fewer participants, there are fewer participation fees and thus less prize money.

An established opinion of the Ombudsman for Equality is that if the performance expected from women is easier or less demanding physically, this does not necessarily place women in a better or easier position than men; it only levels off the difference in physical performance arising from the physiological differences between women and men. The fact that the winner of the men's series at a tennis tournament may have to win more opponents than the winner of the women's series, which has fewer participants, or possibly play longer matches, does not as such provide an acceptable reason to pay a smaller prize to those taking part in the women's event.

According to a statement by the Ombudsman for Equality, a practice whereby prizes are

funded by means of men's participation fees in the men's series and by means of women's participation fees in the women's series does not constitute a violation of the Act on Equality between Women and Men. However, this practice cannot be considered to promote equality between women and men. In her statement, the Ombudsman for Equality presented her wish to the Tennis Association that it would consider implementing a more progressive rewarding practice in terms of equality between women and men, with athletes being provided with equal recognition for their performances, regardless of their gender.

The Ombudsman for Equality also reminds the Finnish Tennis Association that if financial prizes of differing amounts were awarded at a tournament where the women's and men's competitions had the same number of participants, the rewarding practice would treat women players more unfavourably on the basis of gender. Since it would not be possible to justify the difference in prizes with the income received from the participation fees, the tournament organiser would be responsible for arranging an event that would be in conflict with the Act on Equality between Women and Men.

According to information received by the Ombudsman on 2 February 2012, the board of the Finnish Tennis Association convened and

decided that, from 2012 onwards, women and men would be paid equal prize money at the tournament of the *Finnish Tennis Tour* series. (TAS 399/2011)

Conditions of the field at women's football matches

The Ombudsman for Equality was requested to investigate whether the practice concerning turns for football matches is in line with the provisions of the Act on Equality between Women and Men. According to the complaint made to the Ombudsman, playing conditions in women's matches were systematically worse than in men's matches. Women's matches are often played on a sand pitch, even when there is an empty grass or artificial turf pitch next to it.

The Ombudsman for Equality requested reports on the matter from the Uusimaa district and the Helsinki district of the Football Association of Finland, the Sports Department of the City of Helsinki and the Sports Services of the City of Vantaa. The question was also discussed during a joint meeting. At the meetings and from written reports received by the Ombudsman it turned out that the party maintaining the fields gives clubs turns to use the fields, but it is often the club that decides the pitch on which the club's teams play.

The men's and women's divisions mentioned in the request for a statement are not mutually comparable, and quality requirements concerning fields depend on the league levels in question. The smaller number of women's divisions affects the comparison between the league levels. The fact that girls, unlike boys, do not have an A-junior division but move directly to the women's division when they turn 18, also adds to the difficulty in comparing the men's and women's divisions with each other.

Harmonising the women's and men's divisions could lead to a substantial increase in the fees of player licences for women. As a consequence, the number of female players might decrease. At the moment, approximately 20 per cent of all registered football players are girls/women.

The Ombudsman for Equality finds it a positive aspect that several different organisations have consistently encouraged girls and women to start playing football, which has traditionally been regarded as a men's game. For example, in 2001–2007 the Football Association of Finland implemented a project that led to a distinct increase in the number of girl and woman players and teams. Lowering the threshold for girls and women to start playing by, e.g., charging less for their player licences, is a positive effort that promotes actual gender

equality. The Ombudsman for Equality finds it important that measures supporting girls' and women's football are part of the core activities of the Football Association of Finland.

It is often the club that determines the fields on which the club's teams play. The Ombudsman for Equality pointed out that, in addition to the Football Association of Finland and its district organisations, sports clubs must also observe responsibility in all their activities. It is essential that clubs, too, support the realisation of equal possibilities in their own activities so that everyone, regardless of gender, would have equal opportunities to play football. (TAS 238/2011)



Promoting equality

The aim of the Act on Equality between Women and Men is, not only to prevent discrimination on the basis of sex or gender, but to promote equality between women and men, and thus to improve the status of women, particularly in working life. The obligation to promote equality applies to all employers. Schools and educational institutions also have the obligation to promote equality between men and women.



Gender equality planning at workplaces

The Act on Equality between Women and Men obliges workplaces with a minimum of 30 permanent employees to draft an annual personnel policy equality plan. The equality plan must be prepared in co-operation with the employees and shall include an account of the equality situation in the workplace, including details of the employment of women and men in different jobs. A compulsory section of the equality plan is a survey of the grade of jobs performed by women and men, the pay for those jobs and the differences in pay. The plan must also indicate the measures that have been decided on to promote pay equality and other types of equality at the workplace and an estimate of how successful those measures have been.

The Ombudsman for Equality continued to obtain workplace equality plans for review via many different routes. The Ombudsman requested workplaces in whose case an issue was under processing at the Office of the Ombudsman for Equality to provide an equality plan for inspection. An equality plan was also requested in cases in which a member of personnel re-

ported that no plan had been drafted, or that it did not fulfil the requirements of the Act.

Unfortunately, many of the equality plans reviewed by the Ombudsman for Equality still failed to fulfil the requirements of the Act on Equality between Women and Men. Many lacked concrete instructions, and the Office of the Ombudsman for Equality was forced to instruct the organisations involved on how to improve their plans. Insofar as pay surveys were concerned, the Office had to remind many workplaces that pay surveys must cover the entire personnel, including people employed on a fixed-term or part-time basis. A comparison of job-specific or average pay does not provide a truthful picture of differences in pay, either. If pay surveys examine pay by looking at the individual elements that make up the whole salary, remuneration becomes more transparent and assessment of the grounds for pay differences becomes easier.

Workplace visits by the Ombudsman for Equality

In 2012, the Ombudsman for Equality visited four workplaces: the City of Iisalmi, Halpa-Halli in Kokkola, Olvi Oyj and Ikea. The purpose of the visits was to promote equality planning and work on gender equality. All the workplaces had an existing equality plan. The companies

discussed the significance of gender equality in creating a positive corporate image and the importance of making a pay survey. The Ombudsman for Equality recommended that the companies utilise a ready-made survey toolbox at www.tasa-arvokysely.fi, which provides a concrete picture of how employees feel about equality at workplaces. Promotion of equality is most successful when it is an integral part of everyday personnel policy. Olvi Oyj, for example, has made work on equality largely a part of the company's personnel strategy and aims to integrate practical equality measures into the company's standard HR policy. Ikea has been rewarded as the Best Workplace in Finland in 2011 and 2012. Responses to the Best Workplaces in Finland survey, like the results of the global staff survey VOICE used at Ikea, are obtained separately for each gender. Ikea has also successfully included an equality plan as an instrument for improving the work community.

Promoting equality at educational institutions

The Act on Equality between Women and Men obliges educational institutions to draw



Range of sports offered by sports-oriented upper secondary schools enables equal conditions.

up an equality plan aimed at improving the educational institution's operations. According to the relevant provision, the equality plan must always be drafted in co-operation with representatives of the personnel and students, and the plan must include a survey of how well the students feel equality is realised at their educational institution.

The purpose of drafting an equality plan is to promote equality and prevent discrimination. The obligation included in the Act applies to all institutions providing educational services, including upper secondary schools, vocational education institutions, universities of applied

sciences, universities and educational institutions engaging in liberal adult education. Private providers of educational services are also covered by the provision. Only providers of pre-school and basic education are excluded.

In 2012, the Ombudsman for Equality continued to review the standard of equality plans drawn up by educational institutions and aimed at improving their operations. The Ombudsman asked all the 13 sports-oriented upper secondary schools operating in Finland to submit their plan to the Ombudsman for Equality. The schools were also asked to submit a report of the sports they provide and the gender distribution of the pupils playing those sports.

In the year under review, the Ombudsman for Equality also started inspecting equality plans at all Swedish-speaking second-degree vocational education institutions and those of 30 upper secondary schools operating in the Uusimaa region. The Ombudsman also continued to review the standard of equality plans drawn up by universities and second-degree vocational education institutions.

Room for improvement in equality plans

Equality plans drawn up at sports-oriented upper secondary schools revealed substantial deficiencies. Of the 13 sports-oriented upper

secondary schools, only three had an equality plan that fulfilled the minimum requirements set in the Act on Equality between Women and Men.

In particular, insufficiencies were found in relation to the provision according to which equality plans must always include a survey of the real equality situation at the educational institution in question, i.e. how well the students feel gender equality is realised at their educational institution. Also, equality plans were not necessarily prepared in collaboration with student representatives, as the Act requires. These deficiencies were commonplace in equality plans at second-degree educational institutions.

The Ombudsman for Equality urged those sports-oriented upper secondary schools whose equality plan did not fulfil the minimum requirements of the Equality Act to pay attention to the Ombudsman's guidelines on the preparation of an equality plan, and to submit a new equality plan by the end of 2012. (TAS 45-57/2012)

Range of sports offered by sports-oriented upper secondary schools enables equal conditions

Previously, in a statement concerning the admission of pupils at a sports-oriented upper



secondary school, the Ombudsman for Equality pointed out that equality between genders should be taken into account upon, e.g., the selection of focus sports at such sports-oriented schools. The range of sports should correlate with the number of people playing the sport, with gender distribution and with the appropriate level. When choosing focus sports, the range should be matched with that of other organisations providing education and coaching in the community, so young athletes'

opportunities to play the sport during their upper secondary school studies would be realised in the most equal manner possible.

At the national level, there should be enough sports training in team sports for girls, too. When we make sure that enough attention is paid to the gender perspective at the national level, the requirement for equal treatment of girls and boys, taking resource issues into consideration, does not mean that girls and boys should always be coached in the same sports at every school.

A survey conducted by the Ombudsman for Equality during the year under review would seem to indicate that the broad range of sports offered by sports-oriented upper secondary schools enables girls and boys to play sports in an equal fashion. Statistics compiled by the Finnish Olympic Committee shows that 48 per cent of those playing focus sports at sports-oriented upper secondary schools are girls and 52 per cent are boys, which supports this interpretation. These students account for

approximately four-fifths of all pupils studying at sports-oriented upper secondary schools.

Certain team sports, such as ice hockey and football, still show strong gender bias. However, as women have gained international success and the number of girls and women playing these sports has increased, it is evident that sports-oriented upper secondary schools are creating opportunities for girls to play these traditionally male-dominated sports at the national level. Furthermore, sports-oriented

upper secondary schools make it possible to study sports where all the athletes are women.

Extending the planning obligation to comprehensive schools

According to Government policy, the requirement related to the equality planning aimed at the development of educational institutions' operations will be extended to cover comprehensive schools.

In the year under review, the Ombudsman for Equality issued a statement on the draft for a Government Bill to amend the Act on Equality between Women and Men.

On the basis of deficiencies revealed in the supervision of equality plans, the Ombudsman for Equality has estimated that, at the moment, the obligation on equality planning is observed poorly. For example, of the equality plans at second-degree educational institutions inspected by the Ombudsman, approximately 75



per cent did not fulfil the minimum requirements set in the Equality Act.

The Ombudsman for Equality has been unable, at least thus far, to prove that the planning obligation would have yielded significant results in the promotion of equality. Extending the obligation to comprehensive schools is an ambitious goal and, in its current formulation, would not necessarily produce the results desired.

The Ombudsman for Equality stated that the draft proposal does not sufficiently consider how equality planning would be implemented in practice with comprehensive school pupils, when even the young people studying at second-degree vocational education institutions, upper secondary schools or universities of applied science seem to have alarmingly poor knowledge and awareness of gender equality issues. (TAS 245/2012)

More men to study in education and social work sectors

In the year under review, the Ombudsman for Equality issued a statement on proposed measures in an action plan on educational equality by a working group appointed by the Ministry of Education and Culture.

The Ombudsman's statement applied particularly to suggested measures according

to which men in sectors of training in education and social work, currently dominated by women, would either be given additional points upon university admission or a separate admission quota to increase the share of men. The Ombudsman for Equality considered this proposal to be problematic with regard to the Act on Equality between Women and Men.

The Equality Act does allow for such temporary, special measures that are based on a plan and that aim to promote effective gender equality and implement the objectives of the Act, although they may as individual measures constitute discrimination prohibited by the said Act. Underrepresentation of members of one gender among university students or applicants does not entitle special treatment, however; instead, the difference must relate to a weaker position and there must be earlier discrimination in the background. Therefore, the special measures are an attempt to prevent and eliminate disadvantages *arising from discrimination*.

The Ombudsman for Equality is of the opinion that one gender cannot be favoured upon the admission of students to universities in the manner proposed by the working group, without violating the prohibition of discrimination under the Act on Equality between Women and Men. (TAS 311/2012)

Quotas

Section 4a (1) of the Act on Equality between Women and Men requires that all Government committees, advisory boards and other similar administrative bodies have at least 40 per cent of both women and men, unless otherwise dictated by exceptional circumstances. In established use, the quota provision has also been deemed to apply to bodies appointed by ministries, such as working groups. Likewise, municipal and inter-municipal co-operation bodies, municipal councils excluded, must have at least 40 per cent of both women and men, unless otherwise dictated by exceptional reasons.

According to the same section of law, the executive or administrative organs of bodies and institutions exercising public authority and companies in which the Government or a municipality is the majority shareholder must include an equitable proportion of women and men, unless otherwise dictated by exceptional circumstances. This provision obligates all parties proposing members to the bodies mentioned above to put forward the nomination of both a man and a woman for every membership position. The concept of special reason shall be interpreted restrictively. This kind of reason may be, for example, that a body will

be working in a very specialized area where the experts are only either women or men. A special reason always requires justification, and such a reason must exist by the time the body is being appointed.

Composition of a working group preparing the Paternity Act

At her own initiative, the Ombudsman for Equality investigated whether the composition of a working group preparing a reform of the Paternity Act, appointed by the Ministry of Justice, is in compliance with the quota provision of the Act on Equality between Women and Men. With the exception of the male chairman, all the other five members were women. The Ministry of Justice justified the composition of the working group with, e.g., the members' expertise and commitment. The Ministry had also paid attention to the costs of the working group.

A broad-based monitoring group had been designated to monitor and assess the working group's preparatory process. The composition of the monitoring group fulfilled the requirements of the quota provision, and the group included members with special expertise on issues concerning equality. The Ministry of Justice deemed that this would lead to better consideration of gender equality

issues than if the preparations had been made by a working group that solely met the quota requirements.

The Ombudsman for Equality considered that the quota provision did apply to the working group's composition, and the working group should have comprised at least 40 per cent of women or men. In her statement, the Ombudsman for Equality pointed out that underlying the preparation of the quota obligation was not expertise in equality matters – instead, the purpose of the quota provision is to give women and men equal opportunity to take part in public planning and decision-making. Another goal of the quota provision is to guarantee the best possible, multi-faceted expertise in administrative bodies. However, the Ombudsman for Equality commended the fact that the Ministry of Justice had paid attention to competence on equality matters when composing the monitoring group. The Ombudsman also stated that travel costs, for example, are not a special reason for deviating from the quota provision under the Act on Equality between Women and Men. (TAS 226/2012)

Application of the equitability provision to the board of a company in which a municipality is the majority shareholder

At her own initiative, the Ombudsman for Equality investigated whether a city board had violated the quota provision of the Act on Equality between Women and Men upon electing its representatives to the boards of directors of four companies owned by the city. These boards either had no female members at all or had clearly fewer women than men.

The city board issued a report, stating that the quota provision in the Equality Act does not apply to boards of directors of municipally owned companies but, according to the formulation of said Act, only to administrative boards and directorates. The city board also deemed that the purpose of the quota provision has not been to extend public decision-making to business life. Also, companies do not exercise public authority, so the quota provision is not binding on the composition of corporate boards.

The Ombudsman for Equality stated that, according to Section 4a(2) of the Act on Equality between Women and Men, women and men must be equitably represented on the elected executive or administrative bodies, consisting of elected representatives, of companies in

which a municipality is the majority shareholder, unless otherwise dictated by exceptional reasons. The general meeting elects the board members of limited companies, unless it is determined in the articles of association that board members are elected by the directorate. According to Section 23(2) of the Local Government Act, the municipal board or some municipal authority determined under the rules of procedure provides the general meeting representative with instructions on how to operate. The Equality Act's requirement for equitable representation of men and women must be observed in operating instructions concerning the election of administrative bodies. A municipal complaint could have been lodged on a decision concerning the provision of operating instructions.

The same provision also provides for administrative bodies exercising public authority. These are bodies to which public authority has been transferred by way of a law or decree. The equitability provision applies to companies in which the Government or a municipality is the majority shareholder, regardless of whether they exercise public authority or not. Section 4a(2) of the Act on Equality between Women and Men also applies to boards of directors of companies in which the Government or a municipality is the majority shareholder, even though the Act does not specifically mention

it. The Equitability provision is binding on the composition of corporate boards of directors, insofar as the case involves elected representatives. If the persons in question have been elected to the board on the basis of their official rank, the equitability provision is not applied.

The Ombudsman for Equality considered that all the four relevant enterprises were companies in which the municipality was the majority shareholder, so the equitability provision of Section 4a(2) of the Act on Equality between Women and Men is binding on the composition of the boards of directors, insofar as the board members are elected representatives. (TAS 200/2011)

REPORTS COMMISSIONED BY THE OMBUDSMAN FOR EQUALITY

Legal practice concerning gender discrimination

In spring 2012, a report commissioned by the Ombudsman for Equality and prepared by the Finnish League for Human Rights on the application in legal practice of the Act on Equality between Women and Men and the Criminal Code's provision prohibiting discrimination at work was published. This report applies to legal practice in 2008–2011. The Finnish League for Human Rights previously made a similar report on legal practice concerning the years 2005–2008.

The material used in the report comprised court decisions relating to gender equality issued by district courts, courts of appeal and the Supreme Court and administrative courts' cases involving equality between genders.

100 civil cases involving the Act on Equality between Women and Men were tried by district courts during the period under review. Most of the plaintiffs in these cases were women. Most often the opposite side was a party operating

in the public sector (in 71 cases). In 30 cases the suspected case of discrimination related to hiring, in 12 cases to remuneration and in 10 cases to termination of an employment relationship or dismissal. In 16 cases defendants were ordered to pay compensation in accordance with the Equality Act, the smallest sum being EUR 300 and the largest EUR 15,000. Furthermore, in 18 cases the parties reached a settlement upon which EUR 2,000–12,000 was paid in compensation.

In 2008–2011, district courts settled a total of 19 such cases of discrimination at work where the suspected discrimination related to gender. The majority of these cases concerned redundancy or termination of an employment relationship. A conviction was handed out in most of these cases.

Many legal cases involve suspicion of discrimination on the basis of pregnancy. Pregnancy was involved in 17 civil cases based on the Equality Act and in 13 cases heard on the basis of the Criminal Code's prohibition of discrimination in the workplace. In the period

under review, 2011, the first court ruling on discrimination of a transgender employee was also issued.

Administrative courts heard a total of 144 cases involving gender equality in 2008–2011; 120 cases on the filling of a vacancy and 12 cases on election of members in municipal administrative bodies or the composition of an administrative body. The majority of the complainants were women (82 women, 59 men). According to the administrative courts, the Equality Act had been violated in 20 cases, and 12 complaints were not handled or were dismissed.

In the period under review, the Supreme Court issued decisions in three cases involving equality between men and women. The cases related to ordination of women, reform of the remuneration system of judges, and sexual harassment and abuse. The Supreme Administrative Court has dealt with cases where an applicant for an office or an officeholder has refused to carry out religious service with a woman minister.

Report on the position of gender minorities in Finland

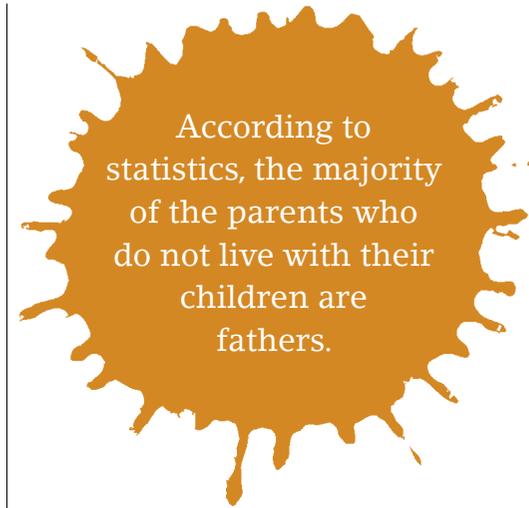
In the spring, the Ombudsman for Equality published a report on the status of gender minorities. Various officials and organisations representing gender minorities were interviewed for the report. According to the report commissioned by the Ombudsman, gender minorities are an invisible quantity in Finnish society, legislation and official practices. In addition, professionals in the health care, social services and education sectors seem to have poor knowledge of gender diversity.

The report highlights not only the general lack of awareness and factual information but also several problems faced by gender minorities, including discrimination; injustices in the Act on Legal Recognition of the Gender of Transsexuals such as the sterility requirement; population register and name matters; health insurance compensation practices; outdated disease classifications; and care practices for intersex children. The report incorporates the recommendations of the Council of Europe's Committee of Ministers and Commissioner for Human Rights on measures to combat discrimination on grounds of gender identity. (also see p. 16)

Report on information practices of day care centres and schools in relation to parents who do not live with their children

In 2012, the Ombudsman for Equality commissioned a report on how parents who do not live permanently with their children are informed about matters relating to a child's day care and school attendance. The report concerned the parent who, as a general rule, does not live in the same household with the child after divorce. The majority of these parents are fathers according to statistics. *The Government Report on Gender Equality (Publications of the Ministry of Social Affairs and Health 2010:8)* emphasises that the position of divorced fathers must be taken into account both in legislation and in practices involving public authorities and services.

The purpose of the reported project was to ask education and social services departments in Helsinki, Espoo and Vantaa what kinds of customer information systems day care centres and schools have, whether there are general guidelines on providing information to parents who do not permanently live with their children and whether a common definition of family has been specified for all day care centres and schools. For the report, one day care centre, pre-school, primary school and lower



and upper secondary school in Helsinki, Espoo and Vantaa were interviewed on how they inform parents on matters relating to the child and his/her day care centre or school after the parents have divorced. The report looked at a situation where the parents have divorced but have joint custody of the child.

The dissemination of information from day care centres to the parents who do not permanently live with their children seems to largely rely on whether the live-in parent provides the other parent's contact information in an application form for day care and

on how active this other parent is. Information systems do not support day care centres in this issue. They support the "refrigerator principle" as a concept of a family: members of the same household are informed about various matters. The mother's new partner is included in a child's family contact data; however, the father, who is the other custodial parent, is not included in the data at all, unless this piece of information is added to a separate page. Each city expressed willingness to also handle matters with the parent who does not permanently live with their children, but this requires the parent's own initiative. Decisions and other bulletins are not automatically sent to both custodial parents, unless this is specifically requested or agreed upon. The premise is an assumption that the custodians inform each other of matters relating to the child. One problem is that at day care centres communication is primarily verbal and takes place when the child is picked up at the end of the day.

Still, respondents from day care centres felt they did not have many problems with the distribution of information. Even though some of the cities had prepared their own instructions, they hoped for general guidelines at the national level. The problem is that guidelines and policies prepared by a city are not binding for outsourced day care centres and these guidelines are not even submitted to the outsourced

centres. Indeed, outsourced day care centres have had more problems with reporting information to parents who do not permanently live with their children, and this may be due to the lack of sufficient data.

In educational services all cities use information systems called Primus and Wilma which communicate with each other. These systems do not support any particular family model. If a child has two custodial parents, each parent's information is entered in the system from the population register. These information systems have facilitated communication between the home and school to a great extent and improved equality between parents in matters relating to the distribution of information. In addition, all the cities have recently adopted or are about to adopt "custodian-specific Wilma codes". This means that each custodial parent has equal opportunities to read messages and bulletins sent by the school. Furthermore, schools are trying to transfer more and more of their communication with homes to Wilma and do away with paper bulletins. However, schools do not seem to have adopted a policy whereby both custodial parents would automatically be sent their own Wilma codes.

With paper-format bulletins there still seems to be a presumption that parents inform each other about matters relating to their child's school. Often paper bulletins are deliv-

ered with the pupil or to the pupil's address, meaning that they are usually received by the live-in parent. Thus the other parent who does not live with their child permanently may not be informed about them. Some cities require both custodial parents to sign important bulletins and permit slips. The problem is that schools seem to have different procedures with regard to both paper-format communication and communication taking place in the Wilma system. Different schools may have divergent practices inside the cities, too.

Even though the report was brief, it clearly showed that parents who do not reside with their children permanently are in an inferior position compared to live-in parents as far as the distribution of information to parents by a day care centre or a school is concerned. The majority of these parents, who are in an inferior position, are fathers. If a father does not have a connection with the child's day care centre or school, the fear is that he loses his opportunity to fulfil his fatherhood in the best way possible after divorce. For practical reasons it may be impossible to implement perfect reporting of information in the daily context to both the live-in parent and the one living elsewhere. Still, information systems and guidelines should be improved in a manner that pays attention to parents who do not reside with their children permanently.

INTERNATIONAL ACTIVITIES

Nordic co-operation

The Ombudsman for Equality engages in regular co-operation with Nordic and European actors. In August, the Ombudsman for Equality participated in a meeting of Nordic ombudsmen in Copenhagen. At this annual meeting, the participants discussed the preconditions and methods for promoting equality. The ombudsmen stated that, in spite of legislation, discrimination is still a problem in the Nordic countries and that the current methods to combat discrimination are not enough. Indeed, many Nordic countries have launched projects to assess and develop their legislation.

During the discussion, the attendees agreed that mentoring and working groups at workplaces have proved to be the most effective measures in promoting workplace gender equality. The Finnish Ombudsman for Equality has long visited different kinds of workplaces to discuss their equality plans. This practice attracted plenty of interest in the other Nordic countries.

Collaboration between European discrimination authorities

As in previous years, in 2012 representatives of the Office of the Ombudsman for Equality also participated in training events and working group activities of Equinet, the European Network of Equality Bodies. Equinet's *Equality Law in Practice* working group handled a Scottish case called Kulikauskas, which involved gender equality matters in particular, as it concerned pregnancy discrimination by association. The national court of law asked the European Court of Justice for a preliminary ruling (C-44/12) in the case. However, the case was settled before the Court had a chance to handle it.

The Information Officer of the Ombudsman for Equality took part in training arranged by Equinet and in work of the *Communications Strategies and Practices* working group. The theme in 2012 was *under-reporting* – how to identify situations where those who have been subjected to discrimination do not contact public authorities, to find out why this is the case and consider how the people who have

experienced discrimination could be reached. The objective is to find efficient methods to communicate on discrimination matters and people's rights, so that discrimination authorities and clients would be able to find each other more easily than today.

A representative of the Office of the Ombudsman for Equality attended a meeting of Equinet and the European Union Agency for Fundamental Rights (FRA) and the Equinet annual meeting in December 2012.

Visits by the Commissioner for Human Rights of the Council of Europe and the European Ombudsman

Niels Muižnieks, the Commissioner for Human Rights of the Council of Europe, and his delegation visited Finland in June 2012. He discussed questions involving human rights and non-discrimination with authorities and representatives of various organisations. He also met with representatives of the Office of the Ombudsman for Equality. Issues discussed at the meeting included, e.g., differences in pay between the genders, discrimination based on

pregnancy and parenthood, and the position of people who belong to gender minorities and the discrimination they face.

In October 2012 the Office was visited by Eija Salonen, a lawyer from the Office of the European Ombudsman. She presented to the Office of the Ombudsman for Equality the practices of the European Ombudsman and topical questions on equality which the European Ombudsman had recently processed.

The Finnish Act on Equality between Women and Men and the activities of Finland's Ombudsman for Equality aroused the interest of many international actors and organisations.

In May, the Ombudsman for Equality gave a talk at the *Copenhagen Equal Pay* seminar on pay discrimination in Finland. In September, the Ombudsman addressed a seminar called *Trans and Intersex Issues – Challenges for EU Law* of the LGBT working committee of the European Parliament in Brussels on challenges concerning the position of gender minorities and needs for development in legislation.

During last year, the Ombudsman for Equality also met with Tanzanian and Nepalese politicians, among others. Supervision of the Equality Act and the role of the Ombudsman for Equality were discussed at these meetings. The

quota provision in the Equality Act aroused particular interest. A representative of the LGBT centre in Norway and representatives of the National Cohesion & Integration Commission, which works for equality in Kenya, also visited the Ombudsman for Equality. The Ombudsman also met with the Ambassador of Morocco and the Finnish Ambassador to Ukraine.

In late 2012, the Ombudsman for Equality attended in Amman the first global meeting on human rights for women and girls, arranged by the United Nations human rights centres, and a seminar on corporate responsibility in the implementation of human rights.

APPROPRIATIONS AND STAFF

■ In 2012, the Office of the Ombudsman for Equality had 10.5 man-years at its disposal. In addition to the Ombudsman for Equality, the staff comprises the Head of Division, five Senior Officers, the Information Officer and three secretaries. One university trainee worked at the Office during the summer.

The operational appropriation of the Office of the Ombudsman for Equality was EUR 110,000. This was not inclusive of remuneration and rental costs, which are paid by the Ministry of Social Affairs and Health in a centralised manner.

STATISTICS

■ In 2012, a total of 451 new cases were recorded in the Ombudsman for Equality's register. A total of 429 written cases were handled during the year under review. Additionally, 332 requests for advice by phone were received by the Ombudsman for Equality in 2012.

Cases handled in writing and decided upon in terms of content

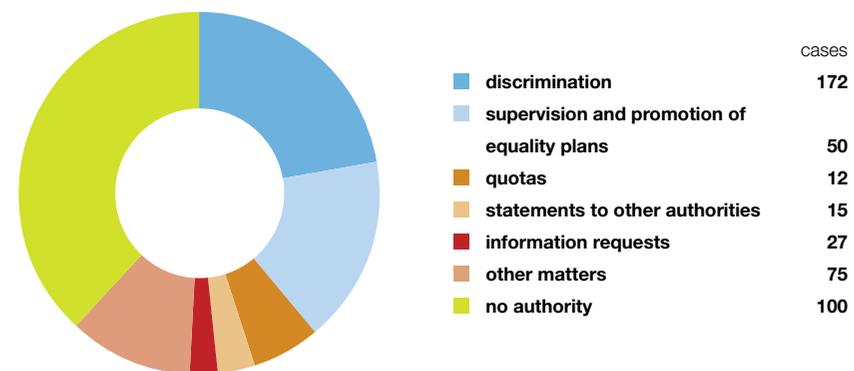
Slightly fewer than one half, or 172, of the cases processed in writing were related to matters of discrimination (please see below for details). In the year under review, 50 cases were related to the supervision and promotion of equality plans and 12 cases pertaining to quotas were processed. The Ombudsman for Equality issued 15 statements to other authorities. The Ombudsman for Equality provided 27 replies to information requests and other such matters. Approximately 100 requests were such where the Ombudsman had no authority. The other matters were assorted issues related to areas such as communications and administration.

Requests in matters of discrimination

Slightly fewer than one half (48 %; 82 requests) of all requests processed in writing and just over one half (51 %; 170 requests) of all calls received by phone, concerning legal counselling, related to discrimination in working life. Most of these requests related to remuneration, hiring and discrimination based on pregnancy and parenthood. Approximately 30

per cent of all written requests and 50 per cent of phone calls concerning working life involved pregnancy and parenthood.

In the year under review, 55 cases included in the sphere of the general prohibition of discrimination were resolved. Suspected cases of discrimination related to the availability of goods and services were also rather common; a total of 33 decisions concerning them were made.



MEETINGS

Visitors and visits

The Office of the Ombudsman for Equality invited representatives from the National Council on Disability VANE, Vammaisfoorumi (Forum of disabled persons) and Finnish Central Association for Mental Health as guests to survey what kinds of situations, based on gender or relating to intersectional discrimination, disabled people encounter and how equality between genders is fulfilled in various spheres of life for disabled women and men.

The Ombudsman for Equality also met with representatives from Trade Union Pro; Talentia, the trade union confederation for employees with high-level education in the social sector; and the Central Organisation of Finnish Trade Unions SAK. Key equality issues and equality planning at these organisations were discussed. The Ombudsman for Equality also met with representatives of The Union of Insurance Employees in Finland, and Milja Saari gave a presentation on the equality guide of the insurance sector.

In February 2012, the Ombudsman for Equality participated in a panel of experts

at an LGBTI seminar called *Mikä ihmeen LHBTI? Lesbojen, homojen, biseksuaalien sekä transihmisten ja intersukupuolisten oikeudet ja viranomaisten vastuu niiden edistämisessä ("Lesbian, gay, bisexual and trans and intersex persons' rights and authorities' responsibility in promoting them")*, arranged by the Ministry for Foreign Affairs. In September 2012, the Ombudsman for Equality addressed a seminar called *Trans and Intersex Issues – Challenges for EU Law* of the LGBT working committee of the European Parliament in Brussels on challenges concerning the position of gender minorities and needs for development in legislation.

The DreamwearClub, an organisation for transvestites, invited the Ombudsman for Equality as its guest to Hauho, where the Ombudsman met with members of the organisation in May 2012.

The Ombudsman for Equality gave a guest lecture on equality issues at universities at the national university equality event in Kuopio in April 2012, and in May 2012 addressed the *Copenhagen Equal Pay* seminar arranged in connection with Denmark's EU presidency

on pay discrimination in Finland. In November 2012, the Ombudsman gave a speech on recommendations by the Council of Europe's Commissioner for Human Rights at a seminar arranged by the Human Rights Centre.

The Ombudsman for Equality is represented in the following bodies:

- Delegation of the Human Rights Centre
- The human rights panel of the National Human Rights Action Plan
- Ministry of Justice working group on reform of the Non-Discrimination Act
- Ministry of Social Affairs and Health working group on equality plans
- Ministry of the Interior's Discrimination Monitoring Group
- Statistics Finland's working group Equality and Statistics
- The Ministry for Foreign Affairs' LGBTI working group
- Advisory Board for Minority Issues

PUBLICATIONS

Selvitys sukupuolivähemmistöjen asemasta 2012.
Tasa-arvoaltuutetun vuosikertomus 2011.
Jämställhetsombudsmannens årsberättelse 2011.
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