

ANNUAL REPORT 2018

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BY THE OMBUDSMAN
FOR EQUALITY

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DUTIES OF THE OMBUDSMAN FOR EQUALITY

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

The duties of the Ombudsman for Equality:

- *Monitoring compliance with 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.*
- *Taking measures to pursue reconciliation in matters concerning discrimination referred to in the Equality Act*

The Equality Act prohibits discrimination based on gender, gender identity and gender expression. If someone suspects that he or she has been discriminated against in a manner referred to in the Equality Act, he or she may appeal 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 suspected cases of discrimination through a written procedure. If the Ombudsman finds that a violation of the Equality Act has been committed, he will issue instructions and guidance on discontinuing the unlawful practice. In certain cases, the Ombudsman may refer the case to the National Non-Discrimination and Equality Tribunal of Finland, which has the power to impose a conditional fine to prevent discrimination.

Statements issued by the Ombudsman for Equality are not legally binding. Anyone who suspects that he or she has been a victim of discrimination can take the case to a district court and claim compensation.

Jukka Maarianvaara, Master of Laws, serves as Ombudsman for Equality for the term 2017–2022.

WHAT ARE THE IMPACTS OF THE STATEMENTS BY THE OMBUDSMAN FOR EQUALITY?

The Ombudsman for Equality often makes a request for an employer to change its actions or recommends the employer to re-evaluate its policies from the perspective of equality. In some cases, the statement has led to negotiations at the workplace, resulting in a solution equally satisfying to both parties. Similarly, after receiving the statement from the Ombudsman for Equality, for example suppliers of goods or services have reported having changed their pricing in compliance with the Equality Act.

A WORD FROM THE OMBUDSMAN FOR EQUALITY

A REPORT ON THE REALISATION OF EQUALITY WAS DELIVERED TO PARLIAMENT

In the Office of the Ombudsman for Equality, the operational year 2018 was strongly characterised by preparing a report to Parliament. Since the beginning of 2015, one of the Ombudsman for Equality's tasks has been to deliver a report on the realisation of equality to Parliament once every four years. The report delivered to Parliament in 2018 was thus the first of its kind. The Ombudsman for Children and the Non-Discrimination Ombudsman also delivered their reports to Parliament earlier the same year.

Preparations on the report to Parliament were started at the very beginning of 2018 by evaluating the themes to be included, and acquiring background information. The scope of the Equality Act and thus the Ombudsman's field of activity is broad: it only excludes private life and religious practice. The report did not, however, enable all gender equality phenomena and issues of discrimination to be addressed, and so we selected a few central themes for the report.

The main task of the Ombudsman for Equality is to supervise compliance with

the Equality Act (Act on Equality between Women and Men, 609/1986), and especially with its prohibition of discrimination. Additionally, the Ombudsman for Equality promotes compliance with the intention of the Equality Act, provides information about gender equality legislation and monitors the realisation of equality in different areas of society. The contents of our report were not limited to observations made in law enforcement, but we also dealt with gender equality phenomena in a broader societal context.

Recommendations issued on the themes we dealt with and shortcomings we observed form a major part of our report to Parliament. These recommendations are addressed to Parliament, in particular, as the body exercising legislative and budgetary power.

We placed special emphasis on the following themes in our report:

EQUALITY IN WORKING LIFE

The pay gap between women and men has been somewhat reduced, albeit slowly, and it still remains at approximately 16%. This pay gap is reflected on pensions, and the difference between women's and men's pensions is 21%. Segregation in working life,

or division into women's and men's fields, is exceptionally strong in Finland: as few as approx. 10% of wage and salary earners work in industries where the proportions of women are men are both at least 40%. Fathers only take about 10% of family leaves, which is reflected in women's status in the labour market.

THE GENDER PAY GAP
BETWEEN WOMEN AND MEN IS
APPROXIMATELY 16%.
THE DIFFERENCE BETWEEN PENSIONS
IS 21%. AT THE CURRENT RATE,
IT WILL TAKE 50 YEARS
TO ELIMINATE THE PAY GAP.

Discrimination based on pregnancy and family leaves is emphasised in the cases reported to the Ombudsman for Equality. Its practical manifestations include restricting the duration of fixed-term employment relationships due to pregnancy and family leaves, difficulties encountered when returning to work after family leave, and inappropriate questions in job interviews. Discrimination based on pregnancy occurs

in all industries and sectors. To some extent, also men experience discrimination due to family leaves.

Structural solutions and, in particular, a family leave reform, will also be needed to eradicate pregnancy-related discrimination in the labour market. This is why a reform of family leaves should be carried out as soon as possible, considerably increasing the share of family leaves earmarked for fathers. Additionally, the family leave system should be made more flexible, and the diversity of families should be taken into account.

Furthermore, legislation regarding discrimination based on pregnancy and family leaves should be clarified, and the theme should be given special emphasis in gender equality policy.



FATHERS ONLY TAKE ABOUT 10% OF FAMILY LEAVES, WHICH IS REFLECTED ON WOMEN'S STATUS IN THE LABOUR MARKET. A FAMILY LEAVE REFORM SHOULD BE CARRIED OUT AS PROMPTLY AS POSSIBLE.

Women are overrepresented in atypical employment relationships (part-time work, fixed-term contracts, zero-hour contracts) partly due to the “risk related to children” and care responsibilities. Atypical employment relationships also expose women to discrimination based on pregnancy and family leaves.

In 2018, the Ombudsman for Equality launched a *Forerunner* campaign to promote practices related to family leave, and to highlight pioneering family-friendly employers. In the world of work today, being family-friendly is a significant competitive advantage for an employer. When a satisfied employee returns from family leave, everyone is a winner. Family-friendly employers can already be found in all sectors, and all employers can learn something from good family-friendly practices.

Gender equality plans and pay surveys at workplaces have been charged with great expectations. According to the Ombudsman for Equality, the gender equality plan of very few workplaces meets the minimum requirements laid down in law. There is thus a need to develop regulations in the Equality Act to ensure that gender equality plans and pay surveys better serve their purpose. Resources used in monitoring should also be increased, as it is possible to enhance the quality of gender equality plans by monitoring and providing guidance.

Assigned by the Minister of Family Affairs and Social Services, the Ombudsman for Equality compiled a report on increasing pay openness in the labour market (Reports and Memorandums of the Ministry of Social Affairs and Health 41/2018).

According to the report, pay openness and transparency should be increased for various reasons. The Ministry of Social Affairs and Health is in the process of setting up a working group to consider appropriate follow-up measures based on the report.

EQUALITY IN EDUCATIONAL INSTITUTIONS

Workplaces can do a lot to promote gender equality in society. However, equality work carried out at schools and other educational institutions plays an equally important role, particularly in dismantling gender roles and stereotypes, although currently this potential is not yet fully understood or taken advantage of. The segregation in Finnish working life is underpinned by a division of fields of study into women's and men's fields. There is also disparity in academic success: learning differences between girls and boys are unusually large in Finland, and they are showing signs of growing further. We need to monitor, analyse and reduce learning gaps in order to safeguard everyone's possibilities of pursuing further studies and to prevent social exclusion.

Sexual harassment is also present in the lives of children and young people. Harassment is most often experienced outside schools, but educational institutions play a significant role in preventing it, as schools and educational institutions provide a suitable setting for processing harassment and discussing the importance of respect for personal boundaries. The Ombudsman for Equality has campaigned to prevent and intervene in sexual harassment experienced by young people, and contributed tools that help schools deal with harassment.

Schools have an obligation to draw up an equality plan aimed at improving the educational institution's operations. It must include institution-specific needs for the promotion of equality. The purpose of the equality plan is to introduce the gender perspective to all school operations, including the prevention of discrimination. The promotion of equality should also be taken more strongly into consideration in teacher training.

GENDER MINORITIES FACE DISCRIMINATION

Gender minorities continue to encounter many types of discrimination in Finland, in the world of work and education, as well as in different services. Setting infertility as a precondition for legally recognising a person's gender under the Act on Legal Recognition of the Gender of Transsexuals (563/2002) is a blatant violation of human rights. The Euro-

pean Court of Human Rights has found this requirement a breach of the European Convention on Human Rights, and Finland has been criticised by a number of international human rights bodies, including the United Nations Human Rights Council and the Commissioner for Human Rights of the Council of Europe. The Act on Legal Recognition of the Gender of Transsexuals should thus urgently be reformed to fulfil Finland's international human rights obligations. In addition to removing the requirement of infertility, the legal recognition of gender must be separated from medical evaluations and treatments.

The right to respect for physical integrity must be taken into consideration in care practices when dealing with intersex children, and medically unnecessary genital surgery should be discontinued.

The new Government Programme now contains entries on the requirement to remove the requirement of infertility, the separation of legal recognition of gender from medical treatment, and the discontinuation of cosmetic, non-medical surgery on intersex children.

VIOLENCE AND HATE SPEECH AGAINST WOMEN MUST BE TAKEN SERIOUSLY

According to a report published by the European Union Agency for Fundamental Rights

(FRA) in 2014, Finland is the second most dangerous country for women in the EU. Of Finnish women, 47% reported having experienced physical or sexual violence after turning 15. A Finnish study of male victims (2010), on the other hand, found that more than one half of both men and women had experienced threats or physical or sexual violence when aged 15 or over. Men usually fall victim to unknown perpetrators of violence, whereas women's experiences are defined by the possibility of sexual violence and a close relationship between the perpetrator and the victim. Being subjected to violence by an ex-partner, in particular, is considerably more common for women than men. Women also suffer from the consequences of violence, both physical and psychological, more often and more severely than men.

Finland has ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention). While a national Action plan for the Istanbul Convention exists, no dedicated funding or other resources have previously been set aside for implementing it, despite the seriousness of the problems related to violence. The new Government Programme is committed to drafting a programme for the prevention of violence against women, which includes more support services for victims and more available spaces in Mother and Child Homes

and Shelters, and an increase in the allocated resources to reach the level required by the Council of Europe. The Government Programme also contains an entry on the decision to appoint an independent and unaffiliated rapporteur to report on violence against women. Furthermore, it promises to ensure that the Istanbul Convention is implemented.

Hate speech is also a form of violence. As defined by the Committee of Ministers of the Council of Europe, hate speech includes all forms of expression that spread, incite, promote or justify hatred and are intimidating or abusive. Determined efforts should be made to combat hate speech, as it reduces the space for societal discussion and exercising the freedom of speech, thus hampering the realisation of democracy. Hate speech may also lower the threshold of physical



VIOLENCE AGAINST
WOMEN IS A SIGNIFICANT
HUMAN RIGHTS PROBLEM
IN FINLAND.

violence. The gendered character of hate speech cannot yet be sufficiently identified. It may be necessary to develop the Criminal Code in order to combat hate speech in an easier and more systematic manner.

Sexual harassment is not a new phenomenon. Its scope has been well known, thanks to studies such as the Gender Equality Barometer and the School Health Promotion Survey. Sexual harassment is unequivocally forbidden by the Equality Act. What plays a crucial role, however, is practical work against sexual harassment in the workplace, at educational institutions and elsewhere. Everyone should have a possibility of living their life without the fear of sexual or other type of harassment.

EQUALITY SHOULD BE PROMOTED IN SOCIETAL DECISION-MAKING

Attached to the report to Parliament is an independent analysis of the status and trends of gender equality in Finnish policy-making. Its authors are researchers of gender equality Johanna Kantola, Anna Elomäki, Paula Koskinen Sandberg and Hanna Ylöstalo. According to the authors, there are still inadequacies in gender mainstreaming and gender impact assessment, although these have been the objectives of Finland's gender equality policy for a long time already. At best, as few as roughly one legislative



HATE SPEECH AND
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proposal out of five has contained an assessment of gender impacts in recent years, and only one out of three of these assessments has identified any gender impacts. Even in this case, the assessment usually made no difference to the decisions on the final content of the statute in question. The Ombudsman for Equality has made similar observations in his reports on legislative proposals.

We recommended that Finland would specify clear and measurable gender equality objectives at the national level. The new Government Programme has raised the level of ambition for the gender equality policy. The programme contains clear gender equality objectives, which can be used by different administrative branches as a basis for their own, branch-specific objectives. This will facilitate gender mainstreaming.



THE RESOURCES OF THE OMBUDSMAN FOR EQUALITY DO NOT SUFFICIENTLY COVER THE BROAD FIELD OF ACTION

The Ombudsman for Equality has an important role as a low-threshold legal protection authority. Every year, the Ombudsman for Equality is contacted by hundreds of clients who need instructions and advice, or have experienced discrimination that needs to be investigated. These enquiries have a wider significance: they provide information on equality and discrimination phenomena prevailing in society at any given time.

Active cooperation between different authorities, social partners' organisations and non-governmental organisations also plays an important role in terms of data acquisition and the promotion of equality.

In regards to the promotion of equality, it would be important if the Ombudsman for Equality could allocate more resources to activities promoting equality and preventing discrimination. This means not only raising public awareness of gender equality issues and legislation but also supervising the existence of equality plans, and affecting societal attitudes and discriminatory practices.

The Ombudsman for Equality's resources fall far short of being adequate for the tasks. There has been no increase in the resources of the Office of the Ombudsman for Equality following the extensive reforms of the Act on Equality between Women and Men carried out in the 2000s. Among other things, legislative reforms have expanded the group of educational institutions to which the equality planning obligation applies, imposed more specific equality planning obligations on employers, and placed gender identity and gender expression within the scope of the Equality Act.

THE DISCOURSE ON SEXUAL HARASSMENT CONTINUED

Growing in intensity as a result of the #Me-Too movement in 2017, the discourse on sexual harassment continued throughout 2018. The Ombudsman for Equality participated in the discussion on sexual harassment in the media, and held lectures and presentations on the subject upon the request of different

operators. Various employers', professional and other types of organisations published studies and surveys on the prevalence of sexual harassment in their own sector, including recommendations for measures on how to intervene in the problem. Alongside the Working Life 2020 project, a guide was published to prevent and intervene in sexual harassment. In September 2018, Jaana Paanetoja, LLD, delivered a report to the Minister of Science and Culture on harassment and inappropriate treatment in the film and theatre industry. Her report also included various recommendations for improving the situation. The Finnish National Agency for Education, in turn, published a guide for educational institutions on how to prevent and intervene in sexual harassment.

The different reports, studies and guides indicate that, at least generally speaking, sexual harassment is taken seriously, and efforts are made to intervene in it. It is, however, vitally important to deal with the matter at grassroots level: the possibility of sexual harassment should be recognised at work places, in educational institutions, recreational activities, public events and other contexts, and attempts should be made to prevent and intervene in it. The possibility of sexual harassment should also be taken into consideration in working places' and educational institutions' gender equality plans, and in the promotion of gender equality work as conducted by authorities.

REPORTS WERE DRAFTED ON THE PROMOTION OF EQUAL PAY

A tripartite Equal Pay Programme has been operational in Finland from 2006. Nevertheless, the pay gap has been reduced very slowly. This is affected by factors related to labour market structures, in particular, segregation and the unequal sharing of family leaves, but also pay discrimination occurring between different fields and at individual working places. The level of pay in female-dominated fields remains significantly lower than in male-dominated fields. In December 2018, the Ministry of Social Affairs and Health published an Overall Evaluation of the Equal Pay Programme drafted by Leo Suomaa, MSc (Tech). According to the evaluation, the measures are not implemented particularly successfully, or not implemented at all. Despite the fact that the Equal Pay Programme is generally regarded as necessary, it cannot be deemed successful in reducing the pay gap between men and women. Furthermore, the programme has not sufficiently taken into consideration changes in the operational environment, that is, the removal of central labour market solutions from the range of possible methods, and the implementation of the new model of collective bargaining.

In his report, Suomaa recommends that the Equal Pay Programme should be continued, and emphasis should be placed on the most effective actions. These actions should be

divided into different measures (such as implementing the family leave reform and developing pay openness), research, development and pilot projects (such as the inexplicable pay gap and assessment of work of equal value), as well as party political and labour market deliberations (such as removing the structural pay gap and consolidating the so-called Finnish Model).

It is easy to concur with these views expressed by Suomaa. It is definitely necessary to continue the Equal Pay Programme, but it should be made more ambitious while focusing on the most essential measures. In addition to central labour market organisations, the trade union level should be involved in the programme, as, in practice, the decisions and agreements on pay are made by operators at union level. It is also advisable to remember that, when it comes to equal pay, Finland is bound by international obligations and European legislation, and therefore this responsibility cannot be entirely outsourced from social partners.

The report on pay openness I drafted under an order from the Minister of Family Affairs and Social Services is also related to the promotion of equal pay. This is discussed in more detail elsewhere in this report (page 42).

A MESSAGE TO POLITICAL DECISION-MAKERS

The new Government Programme Inclusive and competent Finland is generally satis-

factory from the point of view of gender equality. It includes gender equality as an overarching theme: the programme assures that it will be taken into account in budgeting, gender impact assessment of legislative proposals and projects, and, for instance, in development cooperation and European policies. The Government's goal is to raise Finland into a leading country in equality. This process is facilitated by an extensive action plan for gender equality and a comprehensive monitoring system. In addition to these general objectives, the Government Programme promises to promote gender equality, for instance, by amending the criminal law system and reforming family leaves, and through dedicated efforts to reduce learning differences and social exclusion. The Government Programme also includes various entries regarding gender minorities either directly or indirectly.

However, it would be dangerous to become complacent and harbour any illusions of alleged gender equality. Although Finland performs well in international comparisons, we still have a long way to go before we achieve an equal society. By implementing the Government Programme and the recommendations made in our report to Parliament, we are already taking big steps forward.

*Helsinki 07/06/2019
Ombudsman for Equality
Jukka Maarianvaara*

RECOMMENDATIONS OF THE OMBUDSMAN FOR THE PARLIAMENT OF FINLAND 2018

EQUALITY IN WORKING LIFE

- A family leave reform that significantly increases the leave allocated to fathers and the flexibility of leave use is needed.
- The subjective right to day-care should be reinstated as a right for every child.
- Finnish society should make sure that an unemployed jobseeker does not lose their unemployment benefits due to being unable to accept work offered to them as they have no day-care for their child. The possibility of organising evening and weekend care for young schoolchildren should also be taken into account when assessing such matters as a jobseeker's possibilities of accepting work.
- The provision on compensation in the Equality Act should also be made applicable to discrimination taking place during the recruitment process which precedes the selection of the successful candidate.
- An employee who suspects pay discrimination violating the Equality Act should have the right to obtain information on a reference person's pay from the employer.

DISCRIMINATION BASED ON PREGNANCY AND FAMILY LEAVES

- The legislation on employment contracts should contain a prohibition of failing to renew a fixed-term contract due to pregnancy or family leaves and a prohibition of limiting the duration of a fixed-term contract to the start date of a maternity, paternity or parental leave.
- In temporary agency work, the division of responsibilities between an employment agency and a company using its employees should be clarified where the discriminatory action of the company has a bearing on the continuation of the employee's employment, and in these cases, the liability to pay compensation should be extended to the company using the employee.
- Preventing discrimination based on pregnancy and family leaves should be part of the following Government Action Plan for Gender Equality

GENDER EQUALITY PLANNING AND PAY SURVEYS

- The Equality Act should contain a single schedule for preparing gender

equality plans.

- A reference to combining the personnel policy equality plan and personnel policy non-discrimination plan should be added to the Equality Act. The possibility of removing the reference to incorporating the gender equality plan into a personnel and training plan or an occupational safety and health action plan should be considered.
- The objective of the pay survey is to ensure that there are no unjustified pay differences between women and men who are working for the same employer and engaged in either the same work or work of equal value. The provision on pay surveys should be clarified to ensure that the objective of the pay survey is taken into consideration better in the selection of comparison groups and the pay data to be processed.
- It should be possible for representatives selected by the employees to participate in all stages of the pay survey. They should have access to data required to draw up the pay survey on all personnel and employee groups and, if necessary, the pay data of individual employees.
- Each employer should have instructions for intervening in harassment. They should be included in the gen-

der equality plan, or the plan should refer to the existence of the instructions and explain where the employees can find them. This obligation should also be included in the provisions on gender equality plans in the Equality Act

EQUALITY AT EDUCATIONAL INSTITUTIONS

- The effectiveness of gender equality planning in comprehensive schools should be evaluated. This evaluation should also address compliance with the obligation to promote gender equality laid down in the National core curriculum for basic education.
- Issues related to promoting gender equality should have a more prominent role in teacher education and teachers' in-service training.
- Educational institutions and education and training providers should have a duty to monitor the incidence of sexual harassment and the effectiveness of the measures taken at schools and educational institutions, among other things based on the school-specific data obtained in the School Health Promotion Survey.
- Learning differences and their reasons should be researched and analysed further. Attention should

be paid to reducing learning differences to safeguard pupils' access to further studies and to prevent social exclusion.

STATUS OF TRANSGENDER AND INTERSEX PEOPLE

- The requirement of infertility must be removed as a precondition for legal recognition of gender in the Act on Legal Recognition of the Gender of Transsexuals.
- Legal recognition of gender must be separated from medical evaluations, diagnoses of gender incongruence and medical treatments, while the right to medical treatment of gender incongruence as part of public health services should be safeguarded for those who need it.
- Unnecessary genital surgery on intersex children should be discontinued.

SEXUAL HARASSMENT, HATE SPEECH AND GENDER-BASED VIOLENCE

- The legislation should be developed to ensure that gendered hate speech and hate crimes and violence against women are recognised. For example,

the possibilities of including gender, gender identity and gender expression in the criteria for the offence of ethnic agitation should be investigated.

- The Criminal Code and the criminal justice system should be evaluated and developed comprehensively with the aim of reducing hate speech and violence against women. For example, Chapter 20 of the Criminal Code, which deals with sexual offences, should be reviewed from the gender perspective.
- Lack of consent should be instituted as the criterion for rape.

RESOURCES OF THE OMBUDSMAN FOR EQUALITY

- In terms of implementing the obligations under the Equality Act and citizens' legal protection as well as the promotion of gender equality, it is vital that the Ombudsman for Equality as the authority supervising the Act has sufficient resources for performing this task. Currently, the Ombudsman for Equality's resources fall far short of being adequate for the tasks.

MONITORING THE PROHIBITIONS OF DISCRIMINATION

The Equality Act prohibits discrimination based on gender, gender identity and gender expression. The Equality Act generally applies to all societal activities and all areas of life. The Act does not apply to relationships between family members, other private relationships or activities relating to religious practice.

There are three types of regulations in the Equality Act: regulations promoting equality, prohibitions on discrimination and regulations on legal protection and monitoring. The Act defines and prohibits gender-based discrimination. This prohibition applies to the entire field covered by the Act, meaning as a general rule all areas of social life and all situations in which discrimination may arise.

Special prohibitions define discriminative actions in working life, at educational institutions, in organisations representing labour market interests, and regarding provision of goods and services. The employer and educational institution are under the obligation to provide a written report on their actions to anyone suspecting that such discrimination has taken place.

Investigating cases of work-related discrimination is a central part of the Ombudsman for Equality's activities. This is

demonstrated, among other things, by the fact that almost 50% of written enquiries and 80% of telephone enquiries directed to the Ombudsman for Equality in 2018 were connected to discrimination in employment (see statistics on p. 50-54).

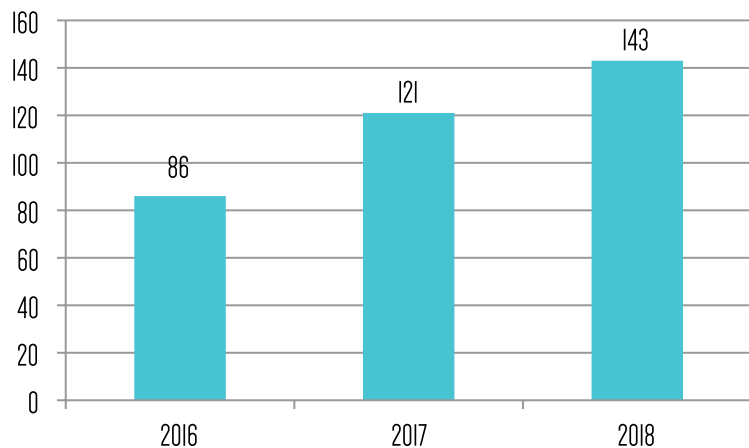
DISCRIMINATION ON THE BASIS OF PREGNANCY AND FAMILY LEAVE

Gender equality legislation prohibits discrimination related to pregnancy and parenthood in no uncertain terms. Prohibited discrimination includes treating someone differently for reasons of pregnancy or childbirth, or on the basis of parenthood or family responsibilities.

Workplace discrimination based on pregnancy and parenthood, including taking family leaves, has continued for decades in Finnish society. It affects the position of

women, in particular, in many different ways. Women in fertile age who have no children may also experience discrimination related to maternity in working life, as employers may presume that they will go on a family leave. Up to one half of the clients contacting the Ombudsman about working life issues report discrimination due to pregnancy or family leave.

ENQUIRIES FOR THE OMBUDSMAN FOR EQUALITY REGARDING DISCRIMINATION BASED ON PREGNANCY OR FAMILY LEAVE HAVE INCREASED CONSIDERABLY IN THE PAST TWO YEARS.



Reports of discrimination due to pregnancy and family leaves received by the Ombudsman in 2011–2018

Typical situations associated with discrimination include inappropriate questions related to family status or family-related plans during the recruitment process, discontinuation of a fixed-term contract after learning about the employee's pregnancy or plan to go on family leave, and an employee's return to work after family leave (an employee returning to work after family leave may have been replaced by a substitute, or the employee's work tasks have "disappeared"). In the past two years, enquiries related to discrimination based on pregnancy or family leave have increased considerably (almost 60%).

The following cases are examples of suspected discrimination based on pregnancy

or family leave and brought to the attention of the Ombudsman for Equality.

Questions regarding family leave in recruitment situations

During 2018, the Ombudsman for Equality received a few enquiries about job application forms containing questions on the applicant's marital status, number of children, or whether the applicant was on family leave at the time of the recruitment.

Job applicants may not be assigned different status on the basis of parenthood or

family obligations. As parenthood or family obligations are not to be taken into account when selecting employees, questions related to factors such as family relations or family leave cannot be considered to be in line with the Equality Act. Asking questions on family relations may lead into a suspicion of discrimination based on gender, and in such cases, the employer has to demonstrate that such factors did not affect the recruitment decision. Since women continue to use the notable majority of family leaves, questions related to family relationships place women in a clearly different position in the labour market than men. As a general rule, asking questions on family relations is forbidden.

Suspected discrimination: fixed-term employment relationship not continued due to pregnancy

Person A has requested the Ombudsman for Equality to assess whether they have been treated in violation to the Equality Act when their employment contract was not continued after going on maternity leave, even though the work would have continued. The employer recruited new employees in the same year for the same tasks.

The starting point is that, during recruitment, a person should be treated in the

same way as they would be if they were not pregnant. In practice, these regulations are particularly important for fixed-term employment relationships. For example, when choosing an applicant for a fixed-term employment relationship, an employer may not pass over an applicant because they are pregnant. In addition, a temporary employment relationship cannot be limited so that it only lasts until the beginning of a maternal, paternal or parental leave period, nor can a decision be made to not extend the fixed-term employment relationship due to a pregnancy or family leave if the work itself is set to continue.

If the employer knew of the applicant's pregnancy before making their hiring decision, the employer may have to prove that the pregnancy did not affect their decision or the duration of the fixed-term period, and that these had some other justifiable reason that is in accordance with the Equality Act. The burden of proof is shifted to the employer when a person suspecting discrimination has indicated that they are pregnant or that they have statutory family care obligations.

The additional costs to the employer that are caused by the maternal leave or hiring a substitute do not constitute an acceptable justification that is in accordance with the Equality Act for passing over a person due to their pregnancy in a hiring situation. A sub-

stitute must usually be selected to replace the fixed-term employee for the duration of their family leave, and only in very exceptional cases can it be considered necessary for the same person to complete their work from start to finish.

Based on the account provided by the employer, the sector in question uses fixed-term employment relationships due to the project-oriented nature of the work and the significant changes in the number of required employees, as well as the professional skills required for project employees. According to A, the other employees at the company who did the same work were employed on a permanent basis. The employer also stated that A did not have the required experience in computer modelling that was required for the task. According to A, they have a grade and good experience with the type of computer modelling in question.

The Ombudsman for Equality considered it peculiar that the employer claimed that A was not competent enough in computer modelling when one takes into account the fact that they have a grade in it and that the skill in question is significant for performing the task. The skills of an employee are usually fully known to the employer by the time the employee is hired for the job. Conducting a thorough assessment of the merits and skills of an employee is to the benefit of both the employer and the employee.

A skill comparison between two qualified persons does not constitute a justified reason that is in accordance with the Equality Act for limiting the fixed-term employment relationship of a pregnant employee. This type of comparison must be conducted in a situation where the person suspecting discrimination would not have become pregnant. When the employment relationship of a person who is pregnant or on family leave is to be continued, they must not be compared with other applicants if they are qualified for the job and if the workplace's policy has otherwise been to renew the employment relationships of qualified employees without an application process.

The parties provided accounts that contradicted in the aforementioned manner especially when it came to the use of fixed-term employment relationships in the company.

The Ombudsman for Equality issues his statement on the basis of the written accounts, and the Ombudsman for Equality did not have the opportunity to arrange e.g. an oral hearing or receive any other types of extended testimonials. It is usually not possible to evaluate evidence-based questions on the basis of written statements when the parties disagree with one another.

Based on the account provided on the matter, it seems that A was the only person with whom the company had signed a fixed-term

employment contract in the spring and summer of 2017. Their other recruitments were made with non-fixed-term employment contracts. In addition, A's fixed-term contract was set to end a little before she was to go on maternal leave.

The Ombudsman for Equality came to the conclusion that the matter includes the presumption of discrimination. If A's fixed-term employment relationship was not continued due to their pregnancy, the employer has violated section 8(1)(2) of the Equality Act that prohibits discrimination. If, on the other hand, it was done due to some other justifiable reason, the discrimination prohibition will not have been violated.

However, the review of evidence and the final resolution of the discrimination matter will usually take place in the district court in a possible compensation claim case against the employer, if the parties are unable to settle the matter by other means. (TAS 215/2017)

An employee's lay-off, pregnancy and use of parental leave

Woman A requested the Ombudsman for Equality to investigate whether she had been discriminated against in violation of the Equality Act, when she had been laid off

before the start of her maternity leave, and the lay-off had been continued after the end of her parental leave.

Woman A had started her employment in the employer's service at the end of 2012. In spring 2013, she announced that she would go on maternity leave in June 2013. Woman A was laid off two weeks before the start of her maternity leave.

In February 2016, woman A contacted her employer for the first time regarding her return to work and announced that she would return to work in September that year. After this, she contacted the employer several times by e-mail and by telephone until the employer announced two days before the planned date of return to work that the lay-off will be continued, because there still were no suitable work duties available for A. Since then, the lay-off of woman A has continued at least until spring 2018, when she requested the Ombudsman for Equality to investigate her case. According to A, there would have been several vacancies open at the company, which she would have been suited for, but the employer had not offered these jobs to her.

The first question regarding the case was whether A had been laid off on discriminating grounds, and the second whether the employer had neglected its obligation to offer work to woman A.

WOMAN A'S LAY-OFF

The indisputable fact in the case is that the employer had been aware of woman A's pregnancy before laying her off. Furthermore, the investigation revealed that A had been laid off for a longer time than other employees – although, the employer's statement did not reveal whether the other persons who had been laid off in the summer of 2013 were still in the employer's service.

Therefore, the burden of proof for whether A had been discriminated against in connection with her lay-off had been transferred to the employer. The employer was to prove that it had had a real reason based on the company's needs to assign the lay-offs as they had been assigned and that the reason for continuing the lay-off of A for a longer time than that of other employees had not been her pregnancy or family leave.

According to the employer, woman A was laid off because the duties she had been performing had ended. A, on the other hand, pointed out that the duties in question had ended already at the end of 2012 and that she had been performing other duties since then for six months before being laid off. According to the employer, the lay-off was continued in the summer of 2016, because the company still did not have any jobs to offer to A that would match her qualifications and experience.

Therefore, the case was about assessing the proof regarding at least what kind of duties A had been performing before the lay-off and whether the amount of the work duties performed by her had reduced as referred to in the Employment Contracts Act.

The Ombudsman for Equality has no authority to assess the compliance of the lay-off with the Employment Contracts Act. However, the Ombudsman for Equality drew attention to the fact that lay-offs should be a temporary measure. Therefore, in this case, it was also to be assessed whether A's lay-off had been implemented in compliance with the Employment Contracts Act, considering that the lay-off had continued from June 2013 to the year 2018.

OPEN VACANCIES AT THE EMPLOYER COMPANY

The Ombudsman for Equality noted that A had contacted the employer the first time in February 2016 and announced that she would return to work at the beginning of September. Therefore, the employer had six months time to search replacing work duties for her. Still, woman A had been informed about the continuance of the lay-off only two days before she was supposed to return to work.

Woman A submitted to the Ombudsman for Equality a copy of a job advertisement, where the employer was seeking a perma-

nent employee to a position to which A believed she would have been suitable for after appropriate orientation. The job in question was open in the turn of April-May 2016, when the employer was aware of A's intentions to return to work as of September 2016.

This job was not offered to A. According to the employer, the job in question had been a temporary three-month substitution of a person on sick leave, and the person hired to the position had been a trainee who had already been performing the same duties without pay. According to the employer, woman A would not have been suited for the position without additional training.

The employer's statement did not reveal whether there had possibly been more similar positions open or who had been chosen to the permanent vacancy that had been open. Therefore, in this case, it was to be assessed whether, when filling the position in the spring of 2016, the situation had constituted the kind of obligation to offer work as referred to in the Employment Contracts Act.

SUMMARY

Primarily, this is a case requiring interpretation of the Employment Contracts Act and assessment of the relevant proof. The competence of the Ombudsman for Equality is restricted to monitoring of the Equality Act,

and they are not a competent authority with regard to monitoring of other acts such as the Employment Contracts Act.

Since the grounds for lay-offs are defined in the Employment Contracts Act, within the scope of its competence the Ombudsman for Equality could not investigate the case with reference to whether there had been grounds for the lay-off or to whether the employer had been under an obligation to train woman A to the open position in accordance with the Employment Contracts Act.

Furthermore, based on the written material, the Ombudsman for Equality was unable to take a closer stand on evidential issues. The review of evidence and the final resolution of the discrimination matter will take place in the district court in a possible compensation claim case against the employer, if the parties are unable to settle the matter by other means. (TAS 101/2018)

Dismissal of an employee after return from family leave

Woman A requested the Ombudsman for Equality to investigate whether she had been discriminated against in violation of the Act on Equality between Women and Men, when she had been dismissed from X Oy's service.

Woman A returned to her former position from family leave on 2 January 2018. However, soon after her return to work she was dismissed, whereas person B, who had been substituting her during the family leave, was hired to perform the same duties on a permanent basis.

Based on the Equality Act, in principle, employees have the right to return to their former or similar duties after the end of the family leave. In accordance with the Equality Act, in dismissal situations employees should be treated in the same way as if they were treated if they had not been on family leave. They must not be placed in a disadvantaged position compared to where they would have been without having taken family leave or in a disadvantaged position compared to other employees.

When a person suspecting discrimination has indicated that she is pregnant or that she has family care obligations, the burden of proof is transferred to the employer if the employer has been aware of the employee's pregnancy or family obligations. It is the employer's duty to prove that the employee has not been discriminated against. This also applies to other situations than termination of employment or an employee's transfer or lay-off.

When assessing whether being selected for dismissal has been discriminatory, the

starting point is that the same criteria and practices have been applied to the employee that would have been applied without the family leave. The employee's situation must be compared to what grounds the company usually uses in dismissal situations and when selecting employees for dismissal. These grounds must not be in conflict with the employment legislation or the prohibitions of discrimination laid down in the Act on Equality between Women and Men. If the employer has deviated from these principles followed by the company in case of the employee who has been on family leave, the employer must prove that there has been another acceptable reason for the dismissal than, for example, the employee's family leave.

Comparing the qualifications of the person dismissed and those continuing at work is one method for investigating whether the person has been discriminated against in a dismissal situation for reasons of gender or family care obligations. In comparison of qualifications, 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 as additional merits.

The use of the comparison of qualifications requires that the work duties and the nature of employment relationships being com-

pared are sufficiently similar to make the persons equal alternatives for dismissal. If the work duties of the person dismissed from the organisation continue or similar duties are performed otherwise at the workplace by persons less qualified for the duties than the person dismissed, it can be considered a case of discrimination for reasons of family care obligations.

ASSESSMENT OF THE CASE

The Ombudsman for Equality stated that even though, within the scope of their competence, the Ombudsman cannot take a stand on whether the Employment Contracts Act has been complied with in the situation, it is necessary to take certain provisions of the Employment Contracts Act into account to assess whether woman A was discriminated against in violation of the Equality Act for reasons of family leave.

Provisions to be taken into account in the case include chapter 7, section 3 of the Employment Contracts Act on financial and production-related grounds for termination and the regulation of chapter 4, section 9 on protection of employee's return to work.

Pursuant to the Employment Contracts Act, the employer is entitled to terminate the employment contract of employees on family leave on financial and production-related

grounds only after they have returned to work from their leave. In such a case, one must also take account of the employees' right to return from family leave to their former duties or equivalent work in accordance with their employment contract, and if this is not possible either, other work in accordance with their employment contract. If the employer's operations have changed during an employee's absence from work in such a way that after the family leave the employer is unable to offer work as referred to in the Employment Contracts Act or any other work that the employee could manage based on personal professional skills or experience, the employment contract can be terminated on financial and production-related grounds in such a way that the period of notice begins from the date when the leave ends.

In case law, it has been concluded that employees on family leave do not have an absolute right to return to work, but, when reorganising jobs and work duties, the employer shall at least to some extent anticipate the situation with a view to employees returning to work in the near future as well. Jobs and work duties must not be reorganised in an effort to avoid the employer's obligation to take back an employee returning from family leave.

In accordance with the Employment Contracts Act it shall not constitute grounds for termination if the employer has either

before termination or thereafter employed a new employee for similar duties even though the employer's operating conditions have not changed during the equivalent period. The hiring of a new employee is illegal if no sufficient change in the employer's operating conditions can be established between the hiring of the new employee employed before termination or thereafter and the termination of the employment contract of the old employee.

Making the employment contract of person B permanent can be considered comparable to employing a new employee, because B initially worked as substitute for A, and B's fixed-term contract would have ended when A returns to work, had B's employment contract not been made permanent. Therefore, the employer should prove that its operating conditions have changed so much between making the job of B permanent and the termination of one product assistant position that termination was justified. After this, by comparing the qualifications, it can be investigated whether the person has been discriminated against in the termination situation for reasons of family care obligations.

The employer has also justified the termination by stating that A did not have as long experience of using the new ERP system as other persons working in an identical or equivalent role. The Ombudsman for Equality states that according to case law the pro-

vision of the Employment Contracts Act concerning protection of the return to work prevents bypassing an employee returning from maternity or parental leave on the grounds that, according to the employer's estimate, the person employed as her substitute manages the partly changed work duties better than the employee returning from leave (Supreme Court 1995:152).

The Ombudsman for Equality came to the conclusion that a suspicion of discrimination thus arises in the matter. Even though woman A was allowed to return to her former job after her family leave, she had been made redundant so soon after her return to work that the right of return to work had not been realised as intended by law.

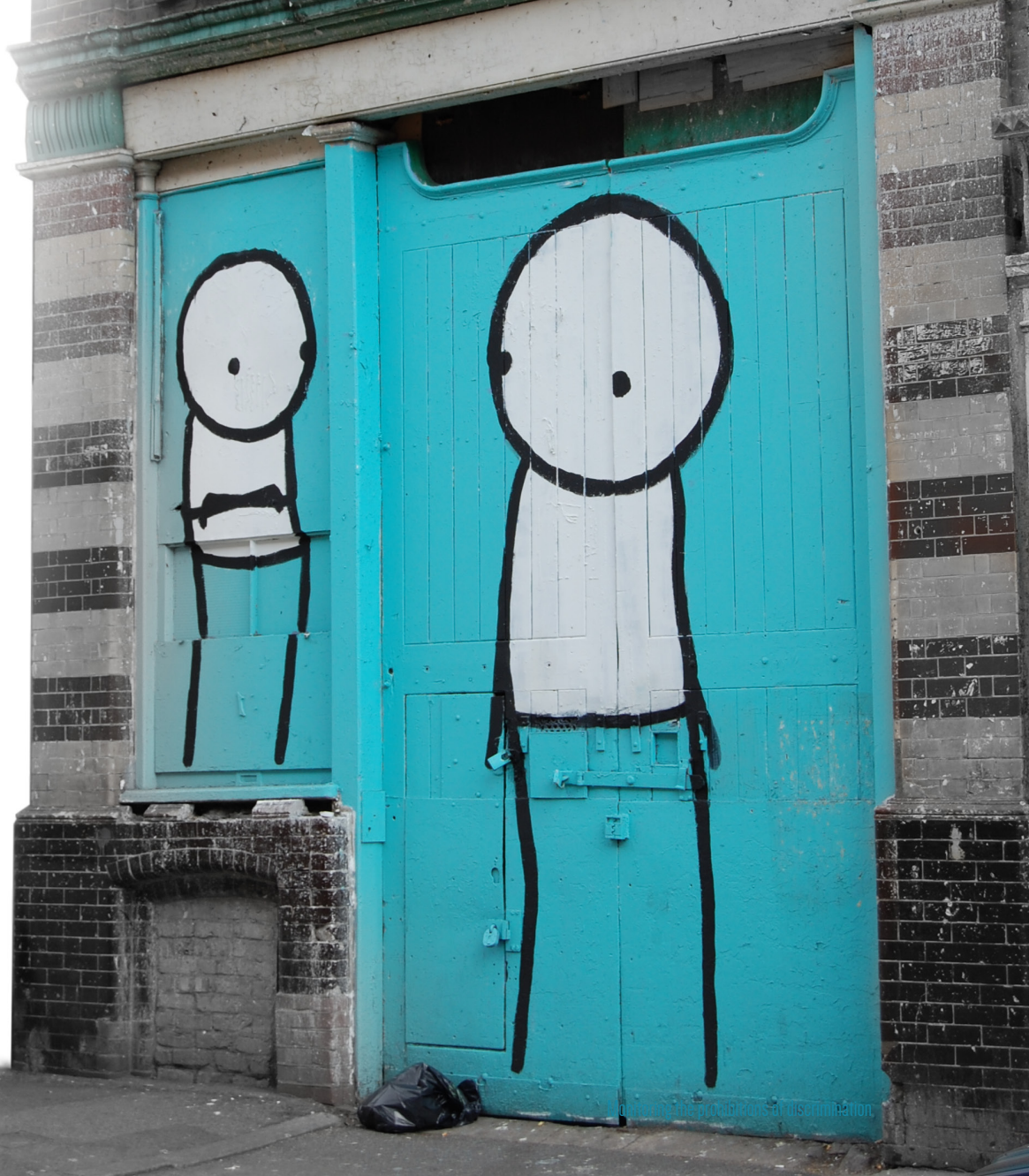
Unless the employer can prove that A's work duties have ended and that there have been grounds in compliance with the Employment Contracts Act for her dismissal, the situation constitutes a case of discrimination for reasons of family leave referred to in the Equality Act. In such a case, woman A would have been dismissed on financial and production-related grounds even though her work duties have continued to exist or she could have been trained to the changed duties. (TAS 223/2018)

DISCRIMINATION IN RECRUITMENT

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 gender when another candidate would have been more qualified. This also applies to situations where employees are selected from within the workplace for training programmes or new roles. Applicants must not be discriminated against on the grounds of pregnancy, childbirth, parenthood or family responsibilities.

Further, the employer must not act in a way that results in a person being in an unfavourable position in these situations due to gender identity or gender expression. A finding of discrimination does not require intentionality or negligence by the employer.

A high proportion of suspected cases of discrimination in employment referred to the Ombudsman for Equality concern recruitment. To establish discrimination relating to recruitment, there needs to be a comparison made of the education/training, work experience and other merits of a job-seeker who suspects discrimination and of the person who is actually selected for the job. A presumption of discrimination arises if the person suspecting discrimination can prove that they were more qualified for the



job than the person of the opposite gender who was selected. In order to disprove the presumption, the employer must demonstrate that their actions were due to another acceptable reason, and not the applicant's gender. Acceptable reasons include issues such as personal suitability for the job. Ultimately it is the district court that rules on cases of suspected discrimination relating to recruitment.

The nature of the job or task may be an acceptable reason to select a person for the position on the basis of their gender. According to the legislative materials of the Equality Act, the personal nature of the employment relationship can be regarded as a weighty reason that justifies selection on the basis of gender when selecting a personal assistant.

The following case is an example of suspected discrimination relating to recruitment and brought to the attention of the Ombudsman for Equality.

Suspected discrimination in recruitment

Woman A asked the Ombudsman for Equality to investigate whether she had been discriminated against on the basis of gender in a manner forbidden in the Equality Act, as she had not been selected for an open position. A less qualified man B was appointed

for the position.

A had a professional degree suited for the position and 11 years of experience in the service of the employer in question. In her view, she also fulfilled the other selection criteria published in the job posting. However, A was not invited for an interview. A suspected she had been discriminated against on the basis of gender.

According to a statement given by the employer, A had not been invited to an interview, as she had been interviewed for the same position a year earlier. Moreover, the employer was aware of her employment history, as A had been working for the employer for a total of 11 years, up until year 2016. For this reason, the employer felt that an interview would not have contributed any new information to the company about A as an applicant.

During the selection process, the applicants were rated so that a scoring table was created on the basis of the applications, their attachments, and an interview or information on the applicant otherwise available for the company. According to the table, B scored the best points, and was selected for the position. He was considered to be the most qualified for the position based on his education and work experience. A shared third place in the scoring table with another applicant.

ASSESSMENT OF THE CASE

According to the Equality Act, the action of an employer shall be deemed to constitute discrimination prohibited under the Equality Act if the employer, upon employing a person or selecting someone for a particular task or training, bypasses a more qualified person of the opposite sex in favour of the person chosen, unless the employer's action was for an acceptable reason and not due to gender, or unless the action was based on weighty and acceptable grounds related to the nature of the job or the task (section 8, subsection 1, paragraph 1). An infringement of the prohibition of discrimination results when a person has been appointed for a position, that is, when the employer has made a final, formal decision to employ an applicant. The procedure does not need to be deliberate or negligent in order to be discriminatory and it does not need to have been motivated by discriminatory intent.

The Ombudsman for Equality felt that, although the employer had made a scoring table comparing the applicants' qualifications and displaying the points each applicant scored for the different sections, it was not possible to estimate how the score was formed on the basis of the table. Moreover, the employers' statement did not specify why A had scored less points for her education and work experience than B for his education and work experience. After all,

A had a professional degree suited for the position, and over ten years of experience in similar tasks. B's work experience in similar tasks dated back over 20 years.

The Ombudsman for Equality felt that, on the basis of their education and work experience, A and B should be regarded as at least equally qualified for the position. Particularly on the basis of her work experience, A could be regarded as more qualified to the extent that it was advisable to investigate whether the employer had some other acceptable reason than gender for selecting B.

The Equality Act's objective is not to restrict the employers' right to choose the candidate they consider the best for a particular job, but to ensure that the choice is not based on gender. In other words, employers have a right to make the choice they regard as most appropriate. They should, however, be able to justify that the decision is based on the requirements of a successful completion of the task. The assessment of aptitude does not necessarily have to be based on an interview, but the employer can use information on the applicants' suitability for the position obtained by other means. This can be, for example, information received on how the applicants have fulfilled their previous tasks. Furthermore, the employer must prove that the aptitude assessment has been done carefully and that the assessment criteria and the assessment procedures have

not been discriminatory based on gender.

The indisputable fact in the case was that A had not been interviewed for the position. However, the Ombudsman for Equality felt that, based on the criteria it presented, the employer had a sufficient understanding of A's aptitude for the position. As a result, the employer may have had an acceptable reason to select B for the open position based on the aptitude assessment. However, the Ombudsman for Equality could not make a final decision on this matter on the basis of written evidence. In this case, the decision was to be made in court on the basis of evidence presented. (TAS 377/2018)

DISCRIMINATORY JOB ADVERTISEMENTS

The Ombudsman for Equality is also regularly contacted with regard to job advertisements, where either only men or only women are able to apply. Under the Equality Act, a job may not be advertised just for women or men unless there is a pressing and acceptable reason for doing so given the nature of the work or task. The prohibition of discriminatory vacancy announcements is an attempt to promote equal opportunities for women and men in working life. Advertisements contrary to the Equality Act are often based on stereotypical notions of what jobs are suitable for women and for men.

Focusing especially on women during recruitment

Several persons have requested the Ombudsman for Equality to investigate whether Valmet Automotive Oy's recruitment activities that focus especially on women are in accordance with the Act on Equality between Women and Men. Based on the information that has been passed on to the Ombudsman for Equality, Valmet Automotive Oy has stated in some newspaper interviews that their new campaign has been designed to target women.

THE PROVISIONS IN THE EQUALITY ACT

According to the Equality Act, each employer must promote gender equality in a purposeful and systematic manner. For example, employers must act in such a way that job vacancies attract applications from both women and men. In addition, employers must promote the equitable recruitment of women and men in the various jobs and create equal opportunities for them for career advancement.

The Equality Act prohibits gender-based discrimination. However, any planned specific actions that are temporary in nature and intended to promote actual gender equality and implement the goal of the Equality Act are not considered gender-based discrimination. This type of proce-

ture is, at times, necessary within a specific scope for the achievement of actual equality. Positive special treatment in employment is used to promote the inclusion of an equal ratio of women and men in different tasks and create equal opportunities for career advancement.

ASSESSMENT OF THE CASE

The Ombudsman for Equality requested a statement from Valmet Automotive Oy on the recruitment measures that were targeted towards women. In its statement, Valmet Automotive noted that the company aims to use different measures to increase female interest towards car manufacturing by e.g. participating in the Osaava Nainen (“Skilled Woman”) trade fair. The company hopes to use these measures to increase the share of female applicants to different car factory tasks. Valmet does not intend to advertise these jobs as being only available to women, and only its recruitment activities are being targeted especially towards women. The company stated that male applicants will be taken into account in the same way as female applicants during the employee selection process, and that the gender of the applicant does not play a role during the employee selection process.

The Ombudsman for Equality noted that employers may use their job advertisements to encourage applicants who represent an

underrepresented gender in a workplace to apply for a job without the need of a specific plan. A job advertisement can also be used to encourage applications from representatives of all genders when an employer wants to encourage people of all genders to apply for a position.

Finnish working life is strongly segregated, i.e. the job market is divided into fields that feature a majority of men or women. The car manufacturing industry is traditionally seen as a male-dominated field, which is evident in the gender division present in both Valmet’s staff and the applications that Valmet receives. According to a survey conducted by Valmet, 70 % of the company’s employees are male. Men also typically account for 80 % of all job applicants. The Ombudsman for Equality concluded that, according to the Equality Act, employers should promote equality by dismantling the segregation present in working life and by promoting the equal placement of women and men in different tasks.

The Ombudsman for Equality concluded that by advertising the jobs at the car factory especially towards women, Valmet aims to promote gender equality in working life in accordance with the purposes of the Equality Act. Since female employees represent a minority group in Valmet Automotive’s car factory, the employer is allowed to hope for more female applicants without violating the Equality Act. (TAS 474/2018)

PAY DISCRIMINATION

The Equality Act prohibits gender-based discrimination regarding pay. In general the Equality Act concerns differences in pay between employees of the same employer.

Applying pay terms in a way that places an employee or employees in a less favourable position because of their gender than one or several other employees doing the same or same level of work for the same employer constitutes discrimination, unless there is an acceptable reason for this.

Some cases concerning pay discrimination involve a suspicion that a person is paid a lower role-specific pay (basic pay) than another person working in an identical or equivalent role. Some others concern possible discrimination in the form of different bonuses. The following cases are examples of enquiries related to pay discrimination.

Suspected pay discrimination in the case of equal work duties

Man A asked the Ombudsman of Equality to find out whether he had been discriminated against in accordance with the Equality Act. For three years, the employer had paid a lower salary to him than to woman B, who was performing the same or equal work duties. In his referral to the Ombudsman for

Equality, A described, for instance, that A and B work in the same team and perform equivalent duties, although their job titles are different. The manager had justified the pay difference to A by saying that a higher salary had been originally agreed to B than what their duties require.

THE PROVISIONS IN THE EQUALITY ACT

In Section 8, subsection 1, paragraph 3 of the Equality Act, the action of an employer shall be deemed to constitute discrimination prohibited under the Equality Act if the employer applies the pay or other terms of employment in such a way that one or more employees find themselves in a less favourable position based on their gender than one or more other employees in the employer's service performing the same work or work of equal value.

ASSESSMENT OF THE CASE

When assessing pay discrimination in accordance with the Equality Act, it is necessary to find out whether the employee suspecting pay discrimination and the employee representing the other gender and receiving a higher salary, performed the same work or work of equal value. If the work duties were the same or of equal value, a presumption of gender-based discrimination is raised. When assessing whether the work is the same or

of equal value, the decisive factor is not, for instance, the job title, but what kind of work the employers actually perform.

According to A, he and B perform largely identical work tasks, although their titles are different. The employer did not dispute the equality between the work tasks performed by A and B in a report submitted to the Ombudsman for Equality. In principle, the Ombudsman for Equality does not assess how demanding the work tasks are in a pay discrimination case, as evidence on the work tasks and how demanding they are is usually presented in the district court in connection with the action for compensation against the employer. In this case, however, the Ombudsman for Equality stated that, despite the different job titles and some differences in the work duties, the work performed by A and B seemed to be at least of equal value.

Even if an employer applies the pay terms in a way that places an employee or employees in a less favourable position because of their gender than one or several other employees doing the same or same level of work for the same employer, this may not necessarily constitute discrimination. The employer will not be considered as having violated the prohibition against discrimination if they can prove that there is an acceptable reason for the difference in pay. The draft of the Equality Act states that acceptable reasons for difference in pay may include a person's

education, professional skills, initiative and suitability for more demanding duties.

In the report submitted to the Ombudsman for Equality, the employer justified the pay difference between A and B firstly by the fact that different collective agreements apply. In accordance with his previous statements, the Ombudsman for Equality stated that the different collective agreements applied for A and B do not constitute an acceptable reason for the differences in pay.

Secondly, the employer justified the pay difference between A and B by the fact that B's role had originally been noticeably more extensive than what it currently is. Her work duties had thus become less demanding, but her pay had remained at the level corresponding to her previous duties. A government proposal (HE 19/2014) concerning the Equality Act, states that pay differences may, for special reasons, temporarily and for a limited amount of time, depend on the introduction of a new wage system or changes in the work duties. As changes in the work duties constitute an acceptable reason only for a limited amount of time, the employer is obliged to eliminate the pay differences caused by the special reasons, i.e. to harmonise the salaries, within a reasonable time frame.

The Ombudsman for Equality stated that, in order to rebut the presumption of discrimination, the employer should be able to prove that s/he has not been able to im-

mediately remove the pay differences based on changes in work duties, but the removal of pay differences has required a transitional period. The Ombudsman for Equality also took the view that, on the basis of the information provided, the transitional period had already passed in this case, as the pay differences between A and B had continued for already three years. The Ombudsman called for immediate measures to be taken by the employer to eradicate the pay difference. (TAS 102/2018)

Suspected pay discrimination in the position of a local social director

Woman A asked the Ombudsman for Equality to investigate whether the local authority had discriminated against her in a manner forbidden in the Equality Act in regards to her pay and terms of employment. A reported that, for years, the local authority had paid her a considerably smaller salary for the task of a social director than for a man employed as a cultural director.

According to A, both employees had, in practice, similar responsibilities and duties. They were both university trained. They both had an equal number of subordinates. A had a larger budgetary responsibility. A had substituted for the local chief executive without any additional compensation, and she had access to the local authority's bank account

with the related responsibility. Her role was very extensive and required a strong understanding of legislation.

The local executive had rejected her claim for a pay rise. According to the local authority, the cultural director's and social director's salaries cannot be equalised without entirely reforming the system of municipal remuneration. The cultural director's salary was based on the General collective agreement for municipal teaching personnel (OVTES), whereas the social director's pay was based on the General collective agreement for municipal personnel (KVTES). According to the local executive, the social director's salary should be compared to the technical director's pay.

A report drafted by the local authority stated that B's pay was almost entirely formed in accordance with the collective agreement for teachers. B's work mainly consisted of duties of a teacher or head of school. The position of a cultural director was only a small part of his entire work input. Similarly, the administrative duties related to the actual position of a social director were only a small part of the social director's work input. Most of her duties included the tasks of a social worker or child supervisor.

ASSESSMENT OF THE CASE

The principle on equal pay for women and

men can be applied when the work tasks are so similar that they can be regarded as equal, or the tasks are so similar in terms of the level of complexity that they are of equal value. Very different work tasks are also mutually comparable. The employer will not be considered as having violated the prohibition against discrimination if they can prove that there is an acceptable reason for the difference in pay.

The Ombudsman for Equality concluded that municipal employees can compare their pay to the pay of other employees working in the same or equal tasks even if the employees are covered by different collective agreements. In other words, different collective agreements as such are not an acceptable reason for differences in pay.

In this case, it was necessary to compare the work tasks of B and A, and their level of difficulty. When comparing the level of difficulty, the work tasks of a teacher/headmaster and social worker/child supervisor were emphasised, as most of the cultural director's and social director's tasks consisted of such duties.

As mentioned by A, factors affecting the assessment of level of difficulty include education, budgetary responsibility and number of subordinates. The position of both A and B required a university degree. According to A, they had both had a similar number of

subordinates, and A's budgetary responsibility had been higher than B's.

In principle, the Ombudsman for Equality does not assess how demanding the work tasks are in a pay discrimination case. Evidence on the work tasks and how demanding they are is usually presented in the district court in connection with the action for compensation against the employer. In this case, however, the Ombudsman for Equality stated that, based on the information he had been given, he could not draw the conclusion that A's tasks had been less demanding than B's. The total monthly salary of social director A had been 1445 euros less than the total monthly salary of cultural director B. In addition, A's holiday entitlement had not been as good as B's.

The proportion of pay based on the level of difficulty should be equal for all employees engaged in work of equal value. However, the total salaries do not have to be equal, if there is an acceptable reason for the differences in pay. Different collective agreements made it difficult to compare A's and B's salaries and their components. The comparison was further complicated by the fact that A's salary did not include a separate component for completing the duties of a social worker, whereas B had received a separate pay component titled 'salary of Director of Education'.

The Ombudsman for Equality took the view that the pay components related to the level

of difficulty were, in the case of A, her basic salary, and, in the case of B, his basic salary, as well as his salary as Head of School and Director of Education. A's salary component based on the level of difficulty was not any smaller than B's salary components based on the level of difficulty, and in this respect, there was no reason to suspect discrimination.

B's additional pay for the length of service was higher than A's additional payment for experience. The Ombudsman for Equality did not have access to information regarding the length of service of A and B respectively, and so it was not possible to compare these pay components.

Unlike B, A had not been paid a personal salary component. In order to revoke the presumption of discrimination in this regard, the local authority should explain why A had not been paid a personal salary component such as B. B had worked as a teacher and a headmaster, which had formed the basis for his holiday allowance and subsidised meals. These reflected the special nature of being employed as a teacher: teachers' holidays are coordinated with pupils' holidays and teachers also eat together with the pupils. B's weekly overtime pay was based on compensation for exceeding the required working time. In regards to the aforementioned benefits, A's situation did not appear to be comparable with B's.

If the different parties are unable to reach an agreement on pay, the employee suspecting discrimination on the basis of pay may bring legal action at the district court. If the district court concludes that A's duties have been similar or more demanding than B's, the local authority will have to demonstrate that there has been an acceptable reason for the difference in pay. There have been differences, for instance, in A's and B's personal pay component. (TAS 60/2017)

DISCRIMINATION IN PRICING AND IN THE AVAILABILITY OF SERVICES

The Equality Act prohibits discrimination on the basis of gender, gender identity or gender expression in the availability and offering of goods and services available to the public. The pricing system used by a trader cannot thus be based on the customer's gender.

The purpose of the Equality Act is not to prevent all different treatment of men and women. It aims to prevent any different treatment based on gender that is clearly unfair. For example, offers related to Mother's Day, Father's Day or the International Women's Day and aimed exclusively at one gender are possible if they are available only very seldom and their financial value is relatively low.

The Equality Act also does not prohibit offering goods or services exclusively or mainly to one gender on the grounds of a legitimate objective. In addition, the restrictions must be appropriate and necessary in terms of the objective.

In 2018, the Ombudsman for Equality received a total of over 50 enquiries related to the availability and pricing of goods and services. The enquiries received by the Ombudsman for Equality in 2018 were mostly related to the same themes as in previous years. Among other things, they considered discounts given exclusively to one gender, the pricing of barber's and hairdresser's services, the realisation of gender equality in gym services, and offering flats for rental exclusively to women. The following cases are examples of enquiries related to the availability and pricing of goods and services and brought to the attention of the Ombudsman for Equality in 2018.

Gender equality in barber shop and hairdressing services

Majority of enquiries related to services and pricing involved barber shops and hairdressing services and their pricing. In his statements regarding barbers and hairdressing services, the Ombudsman for Equality has pointed out that the pricing has to be

based on the actual service delivered, not on the customer's gender.

In principle, the company has to offer its services equally to everyone despite of the customer's gender. However, the Equality Act does not prohibit the provision of separate barbers' and hairdressers' services. Entrepreneurs can provide services according to their business concept, professional skills and available tools. An entrepreneur in the hairstyling industry can therefore only provide barber's services. Customers interested in barbers' services cannot, however, be selected on the basis of their gender.

Due to the large number of enquiries related to barbers' and hairdressing services, the Ombudsman for Equality took the initiative in 2017 to draft a leaflet for operators in the hairdressing industry. Produced in collaboration with the association of Finnish barbers and hairdressing entrepreneurs Suomen Hiusyrittäjät ry, and the Finnish Competition and Consumer Authority, the leaflet explains how to ensure equality in the hairdressing services for customers. Since its completion in 2018, the leaflet has been distributed especially to educational institutions offering training in hairdressing.

SuperShe Island's women-only well-being and accommodation services do not violate the Equality Act

The Ombudsman for Equality was asked to assess whether SuperShe Island discriminates against men in a manner that violates the Equality Act because its well-being and accommodation services are available only for women.

The purpose of the Equality Act is to prevent discrimination based on gender and to promote equality between the genders. According to the Equality Act, the action of a provider of goods or services shall be deemed to constitute discrimination prohibited under the Equality Act if a person is treated less favourably than others on the basis of gender in the provision of goods and services available to the public in the public or private sector.

As a rule, a company cannot choose its customers on the basis of their gender, and companies must offer their services to everyone in an equal manner. According to the Equality Act, unlike companies, associations are allowed to restrict their membership to only women or men if this is based on a specific provision in the rules of said association (e.g. Helsinki Bourse Club, Naisasialiitto Unioni).

However, based on specific preconditions, a company may offer its goods and services

exclusively to women or men. 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.

The legislative materials of the Equality Act state that in the availability and provision of goods and services, considerations based on privacy and decency or the promotion of gender equality can be used to represent a justifiable objective for different treatment.

An established opinion of the Ombudsman for Equality is that, for example, health and fitness centres can refer to the consideration of modesty as a legitimate objective for which they can restrict men's access to the gym during a women-only session. Separate women-only sessions are a suitable and appropriate solution to this. Similarly, a women-only gym or an area of a public gym which is reserved only for women does not contradict the Equality Act.

STATEMENT BY THE OMBUDSMAN FOR EQUALITY

The Ombudsman for Equality requested that the owner of SuperShe Island provide an account on the matter. According to the account provided to the Ombudsman for Equality, the objective of SuperShe Island is to promote the status of women in corporate

activities also at an international level and create a setting that is conducive for networking and entrepreneurship, business and other career-related brainstorming activities between women.

The facilities on SuperShe Island are very limited, and for example its sauna and dressing room spaces are shared. In addition, the account specifies that the island is used to arrange recreational activities, due to which the guests occasionally wear less clothing and also change their clothes. To make all of these activities on the island available to all people of different religions and cultures, having both female and male guests at the same time is not possible according to the owner of the island.

Based on the account, a significant share of the island's customers come from such cultures and religious groups that no recreational activities on the island would be possible if any men were present. In addition, the account states that the operating model of the island is to first and foremost encourage people to get to know one another and create a free atmosphere. According to the account, this is why it is so important to create an atmosphere where women can feel relaxed.

The Ombudsman for Equality concluded that, on the basis of the justifications based on privacy and decency as well as the pro-

motion of equality, the activities of SuperShe Island do not contradict the Equality Act's prohibition of discrimination in the provision of services. In the case of SuperShe Island, the act of providing well-being and accommodation services only to women is justified on the basis of reaching a justified objective, and this objective is being pursued with the appropriate and necessary measures while taking into account the presented justifications for the promotion of equality, privacy and decency, as well as the limitations of the facilities present on the island. Thus, in this case, the provision of a service that is available only to women does not constitute a discriminatory act as is meant by the Equality Act. (TAS 75/2018)

Finlayson's campaign Kerta kiellon päälle [Once more for good measure]

The Ombudsman for Equality received several enquiries asking him to assess whether the campaign Kerta kiellon päälle [Once more for good measure], organised by Finlayson Oy in celebration of the International Women's Day, complied with the Equality Act. According to the enquiries received by the Ombudsman for Equality, women had paid 83 cents per each euro of the normal purchasing price during the three-day campaign organised on the occasion of the International Women's Day. If they so wished,

they could also pay the full price, in which case 17% of the purchase price was donated to the promotion of equality.

In August 2017, the Ombudsman for Equality took a stand on a similar campaign Finlayson was planning at the time (statement TAS 225/2017). Then, the Ombudsman for Equality advised Finlayson to clarify its campaign marketing to make it clear that actually also men have an equal access to the campaign discount without the need to request it separately. Otherwise, the campaign would treat men and women differently on the basis of gender, which is a violation of the Act on Equality between Women and Men.

According to a statement made by Finlayson in 2018, the campaign's objective was to raise the issue of unequal pay and offer a discount for the customers in celebration of International Women's Day. The campaign was aimed at recalling the theme of gender pay gap (women's euro). Compared to the earlier campaign of 2017 which eventually did not materialise, the new campaign structured around International Women's Day was shorter in duration. The company took inspiration from a line of thought that promotes equality through offering different positive perks. The campaign's objective was to launch a debate on the issue in order to find new ways to reduce the pay gap. The company donated 17% of full-price purchases to gender equality work.

Moreover, the customers were not asked about their gender. This way, each customer could select the most appropriate way to pay.

The marketing images sent to the Ombudsman for Equality in March 2018 specifically express that the campaign discount is available for women. Finlayson had not changed the marketing of its campaign implemented in 2018 in accordance with the instructions given by the Ombudsman for Equality in August 2017 to make it clear that everyone had an equal opportunity to receive the same discount.

According to the clarification received by the Ombudsman for Equality, the size of the discount for Finlayson's intended campaign could also not be considered small in value. Furthermore, the campaign was not limited to the International Women's Day, but covered a total of three days starting from the Women's Day. The manner in which the campaign was implemented – as a discount for the price of textiles – was not related to the purpose Finlayson gave for the campaign, which was to promote equal salaries for men and women, to the extent that it could be grounds for the legality of the campaign. The Ombudsman for Equality also made this point in his statement delivered in 2017.

For the aforementioned reasons the Ombudsman for Equality concluded that, in its

campaign implemented in March 2018, Finlayson placed male and female customers in an unequal position based on their gender, which is a violation of the Equality Act.

Furthermore, the Ombudsman for Equality stated that he had, for the second time already, addressed the way in which Finlayson implemented its campaign. According to the Ombudsman, the statements written by the Ombudsman for Equality have sufficiently explained the requirements of the Equality Act. If Finlayson continues its campaign in violation of the Equality Act, the Ombudsman for Equality considers bringing the matter before the National Non-Discrimination and Equality Tribunal for hearing (TAS 130–134/2018).

Women's swimming and gym trial in Jyväskylä

The Ombudsman for Equality was asked to assess whether the City of Jyväskylä had acted in accordance with the Equality Act when organising a swimming and gym trial for women in one of its swimming pools.

According to a statement provided by the City Sports Services of Jyväskylä, its goal is to promote physical exercise activities amongst its residents in accordance with the Local Government Act. The purpose of

a separate session for women only was to offer an opportunity to swim for women who cannot swim simultaneously with men for reasons of modesty/decency. In other words, the purpose of the trial was to encourage women who had not previously attended a gym or a swimming pool for reasons of modesty/decency to engage in physical exercise.

In principle, the city offers swimming sessions equally for women and men. The swimming session for women only takes place on a Friday once a month, and lasts for 2.5 hours in total. During this time, the city's other swimming pool is open for everyone. In addition, the report stated that the city has also offered sports services for men only.

The Ombudsman for Equality concluded that the objective to ensure actual opportunities for specific groups of women to use the sports facilities can be regarded as a justified reason in accordance with the Equality Act. The City of Jyväskylä has two swimming pools. The fact that a 2.5-hour session is organised once a month for women only in one of these swimming pools does not mean that men are in an unequal position based on their gender in breach of the Equality Act. The arrangements concerning a swimming session for women only can be considered both as necessary, as well as acceptable and proportional to the objective. In other words, the arrangements also meet the relevance requirement. On these grounds, the separate

swimming session for women organised by the City of Joensuu can be viewed to comply with the Equality Act. Should the need arise to organise a similar swimming session for men only, the City of Jyväskylä should arrange for one to be organised. (TAS 35/2018)

GENERAL PROHIBITION ON DISCRIMINATION

Special prohibitions of discrimination, which include a possibility for compensation, cover the majority of discrimination cases. However, all discrimination is still not within the scope of the special prohibitions. Discrimination is in some cases only prohibited on the basis of the general prohibition in the Equality Act. The following are examples of matters within the scope of the general prohibition that were brought to the attention of the Ombudsman in 2018.

The new waiting period for the labour market subsidy after family leave

The Ombudsman for Equality was contacted regarding the reinstatement of the waiting period for the labour market subsidy after parental leave.

A woman had applied for the labour market subsidy for the first time, and she was issued with a 21-week waiting period, after which

she received her labour market subsidy. The woman became pregnant while she received her labour market subsidy and went on family leave. After her parental leave, she registered as unemployed. The Social Insurance Institution of Finland (Kela) decided on a new 21-week waiting period, about which the woman has now submitted a complaint.

Based on the account received from Kelalta, the reception of unemployment benefits requires that the applicant be ready to accept full-time employment. According to chapter 7, section 2 of the Unemployment Security Act, labour market subsidy is paid after a 21-week waiting period. This waiting period is not set for a person who has completed a post-comprehensive school or upper-secondary school educational programme that leads to a degree and professional competence.

This waiting period usually begins after the applicant has registered as an unemployed jobseeker. An unemployed jobseeker who is seeking full-time employment is entitled to the unemployment benefit. If the person who has been on family leave has remained registered as an unemployed jobseeker, this waiting period does not need to be examined when the family leave ends.

The waiting period can be set multiple times for the same person if the person does not possess the proper educational qualification.



tions. This means that the waiting period is not a matter that a person can be subjected to only once. In practice, it is fairly common to have benefit recipients discontinue their job search for one reason or another, and when they reregister as jobseekers, their waiting period is examined again.

Family leave should be taken into account in regulations concerning the waiting period

The Ombudsman for Equality monitors compliance with the Act on Equality between Women and Men (Equality Act). Treating a person differently on the basis of their parenthood or family care obligations constitutes discrimination that violates the Equality Act. This means for example treating a person differently on the basis of their parental leave.

The tasks of the Ombudsman for Equality do not include monitoring the use of legislative power and the administration of justice. The Ombudsman for Equality thus does not have jurisdiction to issue a statement on an individual decision by Kela on the setting of a waiting period. The application of the Unemployment Security Act in the setting of a waiting period is part of Kela's jurisdiction, and its decision included the right to file a complaint first to the Social Security Appeal Board and then to the Insurance Court. Changing the provisions in the Unemployment Security Act belongs to the jurisdiction of the Parliament of Finland.

However, the Ombudsman for Equality noted that it would be important to assess how the provisions concerning the waiting period in the Unemployment Security Act could better take into account the status of people who are using their family leave rights. Women use the notable majority of family leaves. Reinstating the waiting period in situations where the absence from the labour market was the result of using one's family leave rights is a surprising consequence that causes financial difficulties.

Usually legislation considers family leaves to have no effects for their duration in a way that their use does not cause any negative consequences for receiving different benefits. It is also not appropriate that a person who is on family leave should register as

unemployed jobseekers only to avoid a new waiting period when they have no intention of participating in the labour market but instead intend to care for their child during their family leave.

According to the Equality Act, public authorities must promote the equality between women and men in all their activities. This means for example that the drafting process for new laws and other rules should also evaluate their gender-based effects. Any amendments to the Unemployment Security Act are prepared in the Ministry of Social Affairs and Health. The Ombudsman for Equality provided this statement to the Ministry of Social Affairs and Health for any possible further actions. (TAS 438/2017)

Grants awarded to top athletes by the Ministry of Education and Culture

The Ombudsman for Equality was asked to assess whether a female athlete had been discriminated against in a manner that violates the Equality Act when grants were awarded to top athletes. According to the enquiry, the Ministry of Education and Culture had awarded a smaller grant to the female athlete than to male athletes engaged in the same sports, despite the fact that the male athletes' results had been considerably weaker.

In its statement, the Ministry of Education and Culture stated that the grant was based on predetermined criteria, not on gender. Grants awarded to top athletes are discretionary, and a grant is not a reward for success. When awarding grants, attention is paid to the athletes' international performance and the development of their results and success in relation to the international level and development of the sport in question. The assessment also considers the special characteristics of each sport, and its international status and level.

In its report, the ministry stated that the female athlete's results and performance in important competitions had not improved sufficiently in previous years in comparison to the international development of the sport and in light of the athlete's predicted success. Regarding the male athletes, in turn, there were grounds to believe that, if they succeeded, they had a possibility to improve their score from the previous season. On the basis of this, the male athletes were awarded a larger grant than the person contacting the Ombudsman.

In his statement, the Ombudsman for Equality pointed out that the greatest possible degree of openness and transparency are important for the realisation of gender equality when it comes to principles observed in the awarding of funding or grants. The principle of gender equality should also be observed

when making decisions on grants to be awarded to top athletes for the purposes of coaching or training, and a performance or the prize awarded for it should not depend on the participant's gender. The requirement for the realisation of actually non-discriminatory and equal conditions should be taken into account in all decision-making related to sports and physical exercise activities.

The Ombudsman for Equality felt that the Ministry of Education and Culture was not guilty of discrimination under the Equality Act by awarding a smaller grant to the female athlete in question than to male athletes engaging in the same sport. (TAS 123/2018)



STATEMENTS ISSUED TO THE PARLIAMENT OF FINLAND

THE OMBUDSMAN FOR EQUALITY AND THE NON-DISCRIMINATION OMBUDSMAN PROPOSED CHANGES TO MATERNITY ALLOWANCE PRACTICES

The new Maternity Act was approved by the Parliament on 28 February 2018. In their joint statement presented on 12 February 2018, the Ombudsman for Equality and the Non-Discrimination Ombudsman pointed out that there are still shortcomings in maternity legislation from the perspective of equality. The Ombudsman for Equality and the Non-Discrimination Ombudsman proposed that the Ministry of Social Affairs and Health would adopt measures to change the entitlement to maternity allowance in cases involving late termination of pregnancy or intra-uterine foetal death.

The Ombudsman for Equality and the Non-Discrimination Ombudsman felt that, in certain cases, the application of the Health Insurance Act leads to contradictory and disparate treatment from the perspective of the Non-Discrimination Act. In accordance with

law, maternity allowance is payable in cases of intra-uterine foetal death when the pregnancy terminates spontaneously after lasting for 154 days. If, however, the pregnancy has to be terminated due to problems with foetal health after 154 days of pregnancy, the right to maternity allowance does not exist.

The Social Insurance Institution of Finland (Kela) provided a report on the matter. In its report, Kela referred to the Health Insurance Act (chapter 9, section 2), according to which the right to maternity allowance does not exist if the pregnancy has lasted for no less than 154 days, and it has been terminated under the Act on Induced Abortion (239/1970). Kela was of the opinion that the wording in the Act is unambiguous.

According to Kela, however, it is not justified that a woman who has been forced to terminate her pregnancy and who has given birth to a stillborn baby has a different right to maternity allowance than the others. Kela stated that it had brought the issue to the attention of the Ministry of Social Affairs and Health and proposed a reconsideration of the Health Insurance Act.

The Ombudsmen pointed out that, in such situations, the mothers have a need for maternity leave, and it is unreasonable to deny their right, particularly when maternity allowance is paid in other similar situations. The possibility to have maternity allowance would improve the position of these women. The Ombudsmen stated that legislation often unintentionally creates discriminatory structures, and there should be a way to revoke such structures.

The Ombudsman for Equality and the Non-Discrimination Ombudsman proposed that the Ministry of Social Affairs and Health would take measures to change chapter 9, section 2 of the Health Insurance Act in order to make the right to maternity allowance equal. (TAS 78/2018; VVT-Dno-2015-518)

STATEMENT BY THE OMBUDSMAN FOR EQUALITY ON THE MEMORANDUM CONCERNING CHILD REGULATIONS CONCERNING CHILD MARRIAGES

The Ministry of Justice has requested that the Ombudsman for Equality provide a statement

on the memorandum concerning the need for regulations concerning child marriages.

According to section 4(1) of the Marriage Act (234/1929), a person under 18 years of age is not allowed to marry. Section 4(2) of the Act decrees that the Ministry of Justice may for special reasons grant a person who is under 18 years of age a dispensation to marry. The Act does not specify an age limit for the applicant of the dispensation.

Section 115 of the Marriage Act contains regulations on the recognition of marriages that have been concluded abroad. According to section 115(1), a marriage that has been concluded in a foreign state in a valid manner is, in principle, also valid in Finland. However, according to section 139 of the Act, a marriage can be left unrecognised if recognising its validity would have an outcome contrary to Finnish public policy (*ordre public*).

In his statement, the Ombudsman for Equality supported the long-term international effort to prevent all child marriages. The Ombudsman for Equality stated that a marriage that is concluded when a person is underage and especially adolescent pregnancies can be harmful for the health of girls and have a negative impact on the higher education opportunities of both girls and boys. Raising the unconditional age limit to 18 years of age is justified also due to the fact that marriage is a legal act that is related not only to family

law but also property law, and each party can become fully legally competent in both areas only after they have turned 18 years of age. The UN's Committee on the Rights of the Child has recommended that the lower age limit for marriages be raised to 18 years of age for both girls and boys regardless of whether their parents have provided their consent for the marriage.

According to the Marriage Act, a person who is under 18 years of age cannot be married without a special permit. In this case, this principal rule in the Act expresses the legal position that can be considered the objective of family law. Marriage includes significant and challenging legal effects, and being responsible for these can be considered to be above the maturity level of a person who is underage. It is for this reason that marriage should be an agreement that is concluded only between two adults.

In Sweden and Denmark, the unconditional lower age limit is 18 years of age. Norway is also preparing a similar type of legislative change. The principles and recommendations expressed in international agreements concerning the rights of children as well as Nordic legislative developments for confirming the age of maturity as the lower age limit should be taken into account.

If the special permit procedure is left in the Act, the unconditional lower age limit should


be set at 16 years of age (cf. the age of consent set in the Criminal Code of Finland). The special permit procedure should include consulting the child orally without the presence of any other persons related to the matter (parents, future spouse), so that they can express their own will without possibly being coerced.

On the matter of recognising marriages that have been concluded abroad, the Ombudsman for Equality noted that the policy adopted by Sweden and Denmark is justified. In this case, a child marriage that includes at least one party who is underage when they arrive in Finland should only be recognised if the consequences of not recognising the marriage would lead to unreasonable consequences.

The memorandum did not assess the alternative that is being considered in Sweden of no longer recognising any child marriages under any circumstances. The Ombudsman for Equality noted that Finland should also assess and consider this option. This would entitle all children in Finland, regardless of their nationality or domicile, to the same level of protection. (TAS 291/2018)

A STATEMENT TO THE MINISTRY OF JUSTICE ON THE PROPORTIONALITY OF PUNISHMENTS

The Ministry of Justice asked the Ombudsman for Equality to provide a statement on

An aerial photograph of a blue asphalt road with white lane markings, viewed from a high angle. The road curves and the markings are clearly visible. The background is a light blue sky.

an assessment memorandum concerning the Criminal Code and punishments for certain sexual, violent or financial offences and drink-driving (Reports and statements 7/2018). According to the strategic Programme of Prime Minister Sipilä's Government, it was important to ensure in terms of justice policy that the punishments for different offences were fair and in line with the culpability of the deed. In his statement, the Ombudsman for Equality studied the memorandum in terms of sexual and violent crimes from the perspective of gender equality and prohibited discrimination.

Insufficient perspective on human and fundamental rights

When assessing the proportionality of punishments, the memorandum mainly addresses human and fundamental rights from the offender's perspective and in the light of how to restrict them. According to current understanding, however, human and fundamental rights do not only set limitations on national criminal law, but the safeguarding of victims' human and fundamental rights may require an active criminal policy and changes in the criminal justice system.

In regards to gender equality, the Ombudsman for Equality wanted to draw attention to the fact that, as a country following interna-

tional conventions on human rights, Finland has a duty to protect victims, and effectively prevent and appropriately punish violence against women. In this respect, the Ombudsman for Equality referred particularly to the Council of Europe's Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) and the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), as well as the related general recommendations No. 19 and 35.

International law defines violence against women on the basis of gender as violence targeted at women on the basis of their gender and/or violence in which the victims are typically women. Such violence consists of various forms of sexual crime and intimate partner violence. In international case-law, a state has been found guilty of violating human rights and discriminating against women if it has failed to effectively prevent gender-based violence.

Monitoring the implementation of the United Nations' CEDAW agreement, the CEDAW Committee stated in its response to an individual complaint *J.I. v Finland* (No. 103/2016) delivered on 5 March 2018 that Finland had neglected its obligations under the CEDAW Convention. As a result of these violations, the CEDAW Committee has urged Finland to adopt the following measures:

- Strengthen the application of the legal framework to ensure that the competent authorities may respond with due diligence to situations of domestic violence;
- Develop and implement an effective institutional mechanism to coordinate, monitor and assess measures to prevent and address violence against women; and implement monitoring mechanisms to ensure that evidentiary rules, investigations and other legal and quasi-judicial procedures are impartial and not influenced by gender stereotypes or prejudice.

Finland is under the obligation to deliver a report to the CEDAW Committee within six months, describing the measures taken in accordance with the recommendations.

The Ombudsman for Equality pointed out that the CEDAW Committee's statements concerning Finland and domestic violence and violence against women should be taken into consideration when assessing the future development needs of the criminal justice system.

Violence against women based on gender should be recognised and prevented effectively

According to the assessment memorandum, the Finnish criminal justice system is based

on promoting the development of a safe and just society, which guarantees well-being to all its members. Punishments are implemented in order to increase safety by reducing recidivism. Recidivism, in turn, is reduced by preventing the type of social exclusion which maintains criminal behaviour (Assessment memorandum, page 12).

According to the Gender Equality Index published by EIGE (European Institute for Gender Equality), Finland scores below the average of all EU countries in the prevention of gender-based violence. Sexual and/or physical violence against women is more common and more serious than in EU countries on average. Women have been subjected to violence most commonly in their relationships with their intimate partner.

The assessment memorandum states that, according to national surveys on crime victims, the amount of violence has remained at the same level for a long time. The only reference to gender-specific information is made in relation to homicides, stating that the reduction in the number of homicides is mainly due to changes in alcohol-induced acts of violence committed by socially excluded men (Assessment memorandum p. 38). It appears as though the number of the second most frequent form of homicide in Finland, intimate partner violence leading to death in which the victim is a woman and the perpetrator is a man, has remained relatively stable.

STATEMENT ON GOVERNMENT PROPOSALS CONCERNING REGIONAL GOVERNMENT, HEALTHCARE AND SOCIAL WELFARE, AND FREEDOM OF CHOICE (HE 15/2017 VP; HE 16/2018 VP)

The Government continued the preparations for the healthcare and social welfare (Sote) reform in 2018. The Ombudsman for Equality issued statements on the proposals from the perspective of gender equality.

On 6 April 2018, the Ombudsman for Equality Jukka Maarianvaara spoke at a hearing of the Employment and Equality Committee on the government proposals for reforms concerning regional government, healthcare and social welfare, and freedom of choice. In his statement, the Ombudsman for Equality noted that the reforms concerning regional government and healthcare and social welfare as well as the related increase in the freedom of choice for customers will have significant effects on the equality between genders.

Referring to his earlier statement (TAS 158/2017), the Ombudsman drew particular attention to the position of personnel employed in healthcare and social welfare in municipalities and joint municipal authorities. Public healthcare and social welfare

with the society's willingness to pay (Assessment memorandum p. 37). The Ombudsman for Equality pointed out that gender equality cannot be compromised on financial grounds, particularly when it comes to deeds that constitute a breach of the right to life or right to physical integrity.

An assessment of developmental needs should include an assessment of gender impacts

The Ombudsman for Equality regretted that the memorandum did not contain information on sexual and violent crimes broken down by gender. Furthermore, punishment practices relating to violent crimes in connection with intimate relationships had not been separately discussed.

In particular, the Ombudsman for Equality regretted the fact that the memorandum did not include an assessment of the current situation at all, or a separate assessment of the recommended development needs in terms of gender equality between women and men. A thorough project preparation requires the assessment of the project's impact broken down by gender. The Ombudsman for Equality proposed that the follow-up preparations should include an assessment of gender impacts. (TAS 139/2018)

Intimate partner violence is only briefly discussed in the memorandum in a section on alternative forms of crime prevention where the programmes developed for perpetrators are described. The memorandum states that these programmes are diverse and their effectiveness has not been studied in Finland (Assessment memorandum p. 44–45). Regulations in the Istanbul Convention on national substantive law have not been considered at all. For instance, the Istanbul Convention requires that violence between family members or intimate partner violence should be taken into consideration in the punishment for a crime, for example, as an aggravating factor according to general principles.

According to the Ombudsman for Equality, in order to reduce gender-based violence against women, it is necessary to recognise the typical cases and characteristics of such violence, such as its repetitive nature, and the threat of serious violence in connection with a separation from an intimate partner. Effective prevention also requires an assessment of the victims' risk.

A thorough risk/benefit assessment had been completed in terms of evaluating the effects of punishments by using financial arguments and rape as an example, which is a typical form of violence against women. In this respect, the memorandum states that the risk/benefit assessment ultimately deals

employ approximately 215,000 people, and 90% of them are women. The reforms are of great importance to the continuation of their contracts, their relevant collective agreements and other terms of employment.

The Ombudsman for Equality pointed out that it is important to take into account the differences in health and life expectancy between women and men and the special needs of genders and gender minorities when planning and providing healthcare and social welfare services, such as regional service strategies. The Ombudsman also paid attention to ensuring an equal participation of both women and men in regional decision-making, as well as the gender impacts related to the production of services and the freedom of choice in health and social services. (TAS 169/2018)



PROMOTING EQUALITY

The Equality Act obliges every employer to promote gender equality purposefully and systematically. This affects both public- and private-sector employers, regardless of the number of employees involved. Schools and educational institutions also have the obligation to promote gender equality. The Equality Act contains provisions on the equality planning obligation which applies to employers employing more than 30 people and educational institutions.

The Equality Act also obliges authorities to promote gender equality in all their activities and contains provisions on the composition of public administration bodies and bodies exercising public authority.

EQUALITY PLANNING

Gender equality planning in personnel policy

In 2016 to 2017, the Ombudsman for Equality evaluated the implementation of gender equality planning in municipalities by asking all local authorities of three regions to submit their equality plans to the Ombudsman. The plans were requested from the regions of Uusimaa, Pirkanmaa and North Karelia, which have 60 municipalities in total. The purpose of this exercise was to supervise compliance with the obligation to prepare equality plans and to find out about the quality of equality planning in municipalities. At the same time, information was collected on how the reformed provisions on equality planning and pay surveys, which entered into force at the beginning of 2015, have been implemented in municipalities and what challenges are associated with their implementation.

Many municipalities did not have an up-to-date equality plan, and various local authorities requested additional time for drafting and submitting an equality plan. The last municipalities only submitted their equality plans to the Ombudsman for Equality in autumn 2017, and feedback on these plans to the municipalities was given in early 2018.

At the end of this assessment, the Ombudsman for Equality produced a summary of

equality planning in municipalities. The summary has been published as an attachment to the report of the Ombudsman for Equality to Parliament at the end of 2018.

The supervision of personnel policy equality plans continued in 2017–2018 by targeting the IT sector, the transport and logistics industry and banking. The Ombudsman for Equality asked ten IT sector companies, six transport/logistics companies and four banks to submit their equality plans. With a few exceptions, the companies selected for inclusion in the assessment were well-known major enterprises in their sector (with more than 250 employees). In terms of companies, a positive trend was that almost all companies had an up-to-date equality plan. Equality planning appeared to have been relatively regular in companies, and the plan was usually drawn up within the time frame required under the Equality Act. However, what remained unclear was to what extent the companies rewrite all the sections of the equality plan, and to what extent they only copy the measures already contained in previous plans to the new document.

An assessment of the status of gender equality in the workplace and the related measures

The gender equality plan must be based on a survey of the gender equality situation

in the workplace. The survey must include an assessment of the gender equality situation in the workplace, including details of the employment of women and men in different jobs, and a pay survey on the whole personnel. On the basis of the assessment of gender equality, the equality plan should include necessary measures planned for introduction or implementation with the purpose of promoting gender equality and achieving equality in pay.

In many companies' plans, the itemisation of employment of women and men in different jobs was inadequate or missing. Employment in different jobs may, for example, only have been examined by department, area of activity or collective agreement. This level of itemisation is not always sufficient to facilitate the use of the information in gender equality planning. In companies' gender equality plans, also other examinations of the gender equality situation were often relatively superficial.

The most important stages of equality planning are going through the assessment of the equality situation in the workplace and agreeing on measures. To ensure that the measures included in the plan actually promote gender equality, they should be concrete and realistic. The possibility of monitoring the implementation of the measures is also important.

Many of the plans prepared by local authorities contained no measures whatsoever. Moreover, the plans often showed no connection between the measures and the issues which had come to light in the assessment.

All companies had instructions in place for investigating situations involving harassment. None of the companies' plans had considered the employer's duty to prevent discrimination based on gender expression or gender identity in the workplace.

Pay surveys

Under the Equality Act, the gender equality plan must include a pay survey covering the whole personnel, which means a classification of jobs performed by women and men, the pay for those jobs and the differences in pay.

A pay survey was included in the gender equality plans of almost all companies. The feedback of the Ombudsman for Equality to companies concerned particularly the forming of employee comparison groups and which type of pay the comparison concerned.

Companies used varying methods of forming comparison groups. Some companies based their comparisons on competence or duties, whereas others compared female

and male employees within the framework of such large entities as sectors of activity, personnel groups or collective agreements. Based on the plans submitted by companies, it was not always possible to assess to what extent the pay survey covered the whole personnel and whether part-time and fixed-term employees were included in it. In pay comparisons based on competence or duties, the threshold for groups determined to be too small and excluded from the comparison varied. Based on the plans scrutinised by the Ombudsman for Equality, groups that had at least three to six of both female and male workers had been included.

While the comparison groups were large as such in companies from which gender equality plans were requested, in some of them the homogeneous gender division also hampered the forming of the comparison groups. While the pay surveys of companies did not always indicate which type of pay the comparison concerned, a typical object of comparison was total salaries.

A REPORT ON PAY OPENNESS

In April 2018, the Ombudsman for Equality Jukka Maarianvaara was assigned by Minister of Family Affairs and Social Services Annika Saarikko to assess the development of pay openness in Finland. The assessment

was based on the need to consider new ways of promoting equal pay, as despite the tripartite Equal Pay Programmes, the gender pay gap has only been reduced very slowly in Finland. The European Parliament and Commission have also repeatedly pressed for more ambitious measures to promote equal pay.

The objective of the assessment was to describe and assess the pay assessment system in Finland in the light of international agreements, as well as EU and national legislation. In addition, the assessor's task was to shed some light on international examples (such as Iceland, Germany and Great Britain) in order to increase pay openness. On the basis of this information, the assessor was to draw conclusions on the development needs of the legal frame of reference, put forward other ways to promote pay openness (company examples and raising awareness on pay issues), and make recommendations for developing the Finnish system. The assessor was to consult the social partners and other key specialists in pay openness. The assessment work included an extensive round of hearings.

The assessment was delivered to the Minister of Family Affairs and Social Services on 16 October 2018. The sections concerning international examples and legal preconditions for pay openness were drafted by Kevät Nousiainen, Professor Emerita

of Comparative Law and Legal Theory. The assessment also described the current status of pay openness in the Finnish labour market and the pay openness practices of two enterprises (Vincit and Handelsbanken).

A central part of the assessment consisted of recommendations given in order to develop the legislation, collective agreements and workplace-specific practices. First, the recommended legal amendments were connected to developing regulations on pay surveys. In the course of his supervisory work, the Ombudsman for Equality has observed that the regulations on pay surveys have shortcomings in terms of forming comparison groups, processing pay data, and personnel representatives' access to data. Some of these shortcomings also came to light during the hearings related to the assessment. The assessment also proposed an obligation on employers to publish their equality plans and pay surveys, for example, on their website.

Other development proposals concerned an individual's right to obtain information on a reference person's pay; at the moment, the Equality Act enables access to information on a reference person's pay only via a personnel representative. It was recommended that the right of access to data should be improved so that information on a reference person's pay would always be given to an individual employee, covered by the obliga-

tion of official secrecy where appropriate.

The recommendations given to social partners concerned the openness of remuneration systems and the related training, as well as pay data provided to personnel representatives. It was recommended that the employers would educate employees on the remuneration system in use at the workplace, and process pay surveys related to equality plans in an open manner, as well as encourage the employees to discuss their salaries at the workplace.

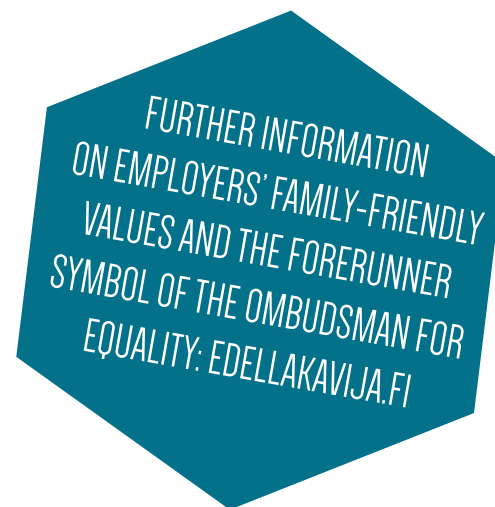
The Minister of Family Affairs and Social Services announced that she would invite a tripartite working group to draft a proposal on legislative amendments and policies related to other procedures required to strengthen pay openness. The working group began its work at the beginning of 2019.

PROMOTING FAMILY-FRIENDLY VALUES AT WORKPLACES

On 19 March, the Day of Equality, the Ombudsman for Equality launched a Forerunner campaign encouraging employers to develop good practices associated with family leave. The Ombudsman for Equality stated that equality in working life moves forward more effectively if it is promoted systematically at workplaces rather than investigat-

ing suspected discrimination afterwards. An equal workplace benefits the employer, too, as the employees are committed and motivated. Family-friendly values have a strong positive influence on employer image and are a significant competitive advantage for an employer.

In connection with the campaign, the Ombudsman for Equality launched a website for employers (www.edellakaviija.fi). The website contains a collection of good family-friendly practices, family-friendly organisations' experiences and a test helping employers to identify their strengths and areas of development related to family leave practices. The test was designed in collaboration with Human Resources Group Henryry. The test includes questions on practices



that strengthen equality, for instance, in recruitment situations, fixed-term employment relationships, or the start of family leave and returning back to work. Organisations scoring the highest points in the test are awarded a Forerunner symbol by the Ombudsman for Equality.

The Ombudsman for Equality also emphasised that it is advisable to include family-friendly goals and practices in the equality plan of the workplace, which makes it easy to monitor the development of such practices.

QUOTAS

Section 4a 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 there are special reasons to the contrary. 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 circumstances.

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 there are special reasons to the contrary. 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.

Quota rule and transsexual people

The Ministry of Social Affairs and Health requested that the Ombudsman for Equality provide a statement on the placement of transsexual people in the gender quotas of central government bodies.

In relation to a committee set up by the Government, the ministry had been inquired about how transsexual people are placed in gender quotas. The inquiry asked whether the placement is based on gender registered at birth, the legal gender or gender identity, or

are transsexual people, as an under-represented minority, always counted as part of the group with a smaller percentage of the seats.

The Ombudsman for Equality monitors compliance with the Equality Act, but the Chancellor of Justice is the authority with final responsibility for the application and interpretation of the quota rule of the Equality Act in committees set up by the Government.

According to the quota rule of section 4a of the Equality Act, the proportion of both women and men in Government committees, advisory boards and other corresponding bodies, and in municipal bodies and bodies established for the purpose of inter-municipal cooperation, but excluding municipal councils, must be at least 40 per cent, unless there are special reasons to the contrary. One of the basic objectives of the quota rule of the Equality Act is to ensure that women and men can participate equally in societal planning and decision-making.

When the quota rule was first introduced into the Equality Act, the Committee for Labour Affairs stated in its memorandum (TyVM 10/1994) that the quota rule may only be deviated from under special circumstances. Such special circumstances could include that meeting the specific requirement would lead to discrimination against an individual or a conflict with one of the basic or human rights.

Under section 6c of the Equality Act, state and municipal authorities are obliged to prevent all discrimination based on gender identity or gender expression. In accordance with the Government Bill (HE 19/2014), the rule complements the obligations under sections 4 and 4a that have been laid down for the promotion of equality between women and men. According to the Government Bill, the concrete obligations of the Equality Act are designed and justified specifically for the purpose of promoting equality between women and men. This also applies to the quota rule.

The Ombudsman for Equality is of the view that transsexual people are also placed in the gender quotas according to their legal gender. However, one exception could be a situation where the legal gender recognition process of a transsexual individual is incomplete; in such a situation, the individual can be taken into account in the quota for women or men in accordance with his or her gender identity, even if his or her personal identity code were not yet changed. Since information on a person's transsexual identity is a matter of personal privacy, it is important to note that the initiative in such a case must come from the transsexual person him- or herself.

The current quota rule does not recognise a 'third gender', androgyny or non-binary gender identity. Persons with such gender identity are placed in the gender quotas in accordance with their legal gender.

When supervising compliance with the gender rule, those assigning committee members are entitled to ask people about their legal gender to check into which quota they belong. In this context, inquiring about the legal gender does not infringe personal privacy. (TAS 331/2018)

EQUALITY IN SCHOOLS AND EDUCATIONAL INSTITUTIONS

The Equality Act prohibits discrimination in educational institutions based on gender, gender identity or gender expression. The prohibition of discrimination also applies to the education providers and schools as referred to in the Basic Education Act.

In 2018, the enquiries made to the Ombudsman for Equality concerning schools and educational institutions were related to the awarding of scholarships, organising a course for girls only, entrance requirements, asking questions on gender in connection with enrolment to an educational institution, and receiving a degree certificate with a new personal identification code after gender reassignment.

In addition to prohibiting discrimination, the Equality Act obliges that instruction and education providers must ensure that educational institutions carry out institution-specific, systematic and structured work to promote

gender equality. In connection with gender equality work, educational institutions have to compose an equality plan. Aimed at developing the educational institution's operations, the equality plan is a tool for supporting the promotion of gender equality in all school activities. Special attention must be given to pupil or student selections, the organisation of teaching, learning differences and the evaluation of study performance, to measures ensuring the prevention and elimination of sexual harassment and gender-based harassment, and measures preventing discrimination based on gender identity or expression of gender.

The tasks of the Ombudsman for Equality include supervising compliance with the obligation to promote gender equality plans at educational institutions, and the Ombudsman participates actively in developing the contents of this requirement. This has been one of the priorities of the Ombudsman's activities in recent years. During the year under review, the Ministry of Education and Culture set up a working group to compose an up-to-date guide for secondary level educational institutions. The working group, in which also the Ombudsman for Equality is represented, begun its work in February 2018. The guide implements the objective of the Government's action plan for gender equality to produce an up-to-date guide that supports gender equality planning at secondary level educational institutions.

The Ombudsman for Equality put in an active effort to ensure that the Ministry of Education and Culture agreed with the Finnish National Agency for Education on the production of the guide. In addition to provisions of the Equality Act, the guide acknowledges the requirement to promote non-discrimination as expressed in the Non-Discrimination Act. The guide will be completed in 2019, and related training events will be organised throughout 2019.

In 2018, the Ombudsman for Equality continued visiting educational institutions and met education and training providers. The Ombudsman for Equality expressed his view to education and training providers according to which an effective implementation of the obligation to promote gender equality requires that the education or training provider actively ensures that the gender equality work taking place at educational institutions under its administration is encouraged, monitored and guided.

Admission points awarded on the basis of gender are dropped in vocational training

Admission points awarded on the basis of gender were dropped under the decree (699/2017) issued by virtue of the new Act on Vocational Education and Training (531/2017) which entered into force at the beginning of 2018.

In its memorandum concerning the decree, the Ministry of Education and Culture notes that this amendment was motivated by a statement issued by the Ombudsman for Equality in 2013 addressing the question. Previously in certain programmes determined by the education provider, applicants to vocational education and training have been awarded additional points for their gender when applying to a programme where their gender accounts for less than 30% of first-choice applicants.

Above all, the segregation of occupations and fields of education is about women's and men's unwillingness to pursue education and careers in certain fields.

In his statements, the Ombudsman for Equality has pointed out that this is not a justified reason for using temporary, special actions based on a plan referred to in the Equality Act. The mere under-representation of one gender among students or applicants in a certain field does not justify special treatment referred to in this provision. In other words, any difference at all between women and men thus does not justify special treatment of this type; the difference should be associated with a more vulnerable position and have a backdrop of earlier discrimination. In other words, the purpose of special measures is to prevent and eliminate harms caused by discrimination. The Ombudsman for Equality has stressed that

action should be taken in order to improve the attraction of the most strongly segregated fields of education and increase the interest of the underrepresented gender to apply for the field.

Development of work aiming to prevent sexual harassment continues

Under the provision on measures to promote gender equality in educational institutions in the Equality Act, educational institutions must give special attention to measures ensuring the prevention and elimination of sexual harassment and gender-based harassment.

Developing work aiming to prevent sexual harassment in educational institutions has emerged as an important part of the Ombudsman for Equality's work. The Finnish National Agency for Education's guide published in 2018, which is titled *Opas seksuaalisen häirinnän ennaltaehkäisemiseksi ja siihen puuttumiseksi kouluissa ja oppilaitoksissa* ['Guide to preventing and intervening in sexual harassment at schools and educational institutions'] contains instructions and procedures for preventing harassment and intervening in it. More detailed guidelines on sexual harassment were found necessary as the harassment cases that had come to public attention and

the results of the School Health Promotion Survey indicated that the incidence rate of sexual harassment in schools is too high and that interventions in these situations have not always been appropriate. The Ombudsman for Equality took part in composing the guide.

EQUALITY IN SPORTS AND PHYSICAL EXERCISE

As in the previous year, gender equality in sports and physical exercise was a frequent topic of discussion in 2018. The status of female athletes and the respect or lack of respect they were given received the media coverage it deserves both nationally and internationally. The Ombudsman for Equality follows with interest the national discussion sparked by more gender equality aware sports journalism and also personally intervenes in some shortcomings that come up. During the year of the report, the Ombudsman for Equality received enquiries concerning, for instance, the awarding of a grant to an athlete, football club's fees, Finnish Ski Association's operations, wrestling competitions, funding granted by Veikkaus to Finnish football, and the right of a transgender person to participate in the women's division.

The Ombudsman has considered it important that the participation in sports and

physical exercise of all genders is supported equally. Gender equality in sports and physical exercise should be viewed, first and foremost, as the provision of equal opportunities and resources, emphasising equitable treatment, attitudes and everyday acts. The requirement for the realisation of actually non-discriminatory and equal conditions should be observed in all decision-making related to sports and physical exercise. In order to achieve gender equality, systematic work to promote equality is important at all operational levels. This requires a change in practices and attitudes, as well as courage to intervene in shortcomings that come up, such as sexual harassment taking place in sports and physical exercise.

Sexual harassment taking place in sports and physical exercise made the headlines in 2018. During the year under review, the Football Association of Finland, Finnish Ice Hockey Association and Finnish Tennis Association all had to investigate cases of sexual harassment targeted particularly against women and young people. Requested by the associations in question, the Finnish Center for Integrity in Sports FINCIS drew up a report of each of these cases.

After investigations and guidelines, the next step is creating a safe atmosphere for participation, among other things, by incorporating the prevention of harassment in the training of coaches and, by develop-

ing guidelines and structures, making the threshold for reporting harassment experienced in sports and physical activity as low as possible.

The Ministry of Education and Culture also made notice of this topical issue when allocating three-year funding to the Faculty of Sport and Health Sciences of the University of Jyväskylä for a research project focusing on issues such as sexual harassment and other discrimination taking place in sports and physical education.

GENDER IDENTITY AND GENDER EXPRESSION

During the year under review, the Ombudsman for Equality was contacted a number of times regarding a variety of cases related to gender identity and gender expression. These enquiries concerned, for instance, the revision of certificates and access to services in connection with gender reassignment. The issuance of new certificates or gaining access to a service had taken too long, or people had been asked to produce unnecessary additional information to verify their identity. The problems in the world of work were connected to situations such as using shower and dressing rooms, recruitment or changing personal information.

For instance, the enquiries received by the Ombudsman for Equality indicated that practices related to the shower and dressing rooms of swimming pools were unclear, and did not always take transgender people sufficiently into consideration. In sports, a transgender woman's right to compete in a team representing her own gender was questioned. In public health care, the right of transgender people to be treated for gender incongruence was uncertain and sometimes

interrupted. The Ombudsman for Equality also addressed the position of transgender people in gender quotas.

On a positive note, parties suspected of gender discrimination usually admitted to their faulty actions and wanted to make amends. Furthermore, the Ombudsman for Equality received unsolicited enquiries from employers, educational institutions, authorities, service providers, local authorities and interior designers asking how to perform correctly in different situations and take into account gender identity and gender expression.

According to the enquiries received by the Ombudsman for Equality, there was a willingness to better consider the diversity of gender in different questionnaires and forms. In this respect, however, it is important to remember that belonging to a gender minority is a matter of personal privacy. The promotion of gender identity does not mean that workplaces or educational institutions should make efforts to determine people's gender identity or gender expression, even if the intention was not to discriminate against anyone. On the contrary, they should take

better account of the diversity of gender in their operations.

In April, the Ombudsman for Equality participated in an event organised by the HLBTI network, Human Right Centre, Trasek ry and Seta ry, on improving the rights and well-being of transgender people. On the International Day Against Homophobia, Transphobia and Biphobia on 17 May 2018, a joint statement of the Ombudsman for Equality, Ombudsman for Children and Non-Discrimination Ombudsman demanded a reform of the Act on Legal Recognition of the Gender of Transsexuals.

In the beginning of June, the Ombudsman for Equality took part in the Intersexualism and human rights seminar. The seminar was organised by Seta ry's TIKa project [Support for intersexual people, methods for professionals].

During the Pride week at the end of June, the Ombudsman for Equality drew attention to the fact that the status of gender minorities is not as high on the political agenda as it should be. The Ombudsman for Equality

stated that, for this reason, it is important that the different parties – organisations, authorities and other operators – combine their forces in order to increase awareness and visibility, and to improve legislation. A representative of the Office of the Ombudsman for Equality participated in a panel discussion on the theme of multi-coloured voices in research organised by the University of Helsinki. As in previous years, the Ombudsman for Equality took part in the Pride parade together with other authorities.

The Ombudsman for Equality delivered his report on the realisation of equality to Parliament. The report also included the perspective of gender diversity and related recommendations for the Parliament to consider. In his report, the Ombudsman for Equality made the following recommendations:

- The requirement of infertility must be removed as a precondition for legal recognition of gender in the Act on Legal Recognition of the Gender of Transsexuals.
- Legal recognition of gender must be separated from medical evaluations, diagnoses of gender incongruence and medical treatments, while the right to medical treatment of gender incongruence as part of public health services should be safeguarded for those who need it.
- Unnecessary genital surgery on intersex children should be discontinued.

The Ombudsman for Equality stated that it is important that schools and educational institutions provide more information and build up competence related to gender diversity, take a child's and a young person's experience of their gender seriously, and recognise and intervene in situations involving harassment.



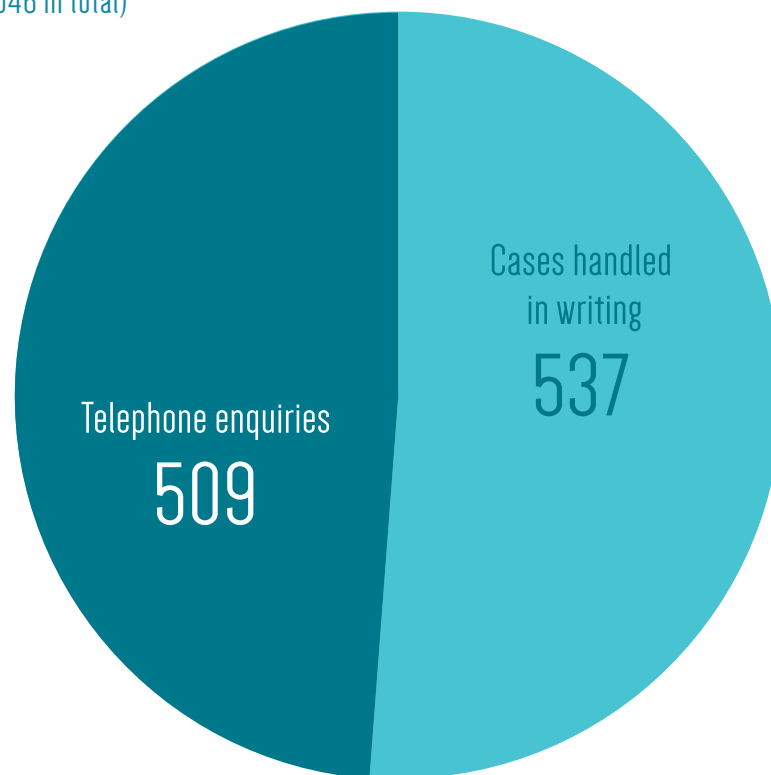
STATISTICS

For the most part, enquiries received by the Ombudsman for Equality are submitted by individual clients, and they consist of cases of suspected discrimination and different requests for information on the content of the Equality Act, or the operations of the Ombudsman for Equality. The issues discussed also concern the monitoring of equality plans, or consist, for instance, of statements made by the Ombudsman for Equality to other authorities. In addition to the statistics described here, the Ombudsman for Equality deals with matters relating to communications, the economy and administration.

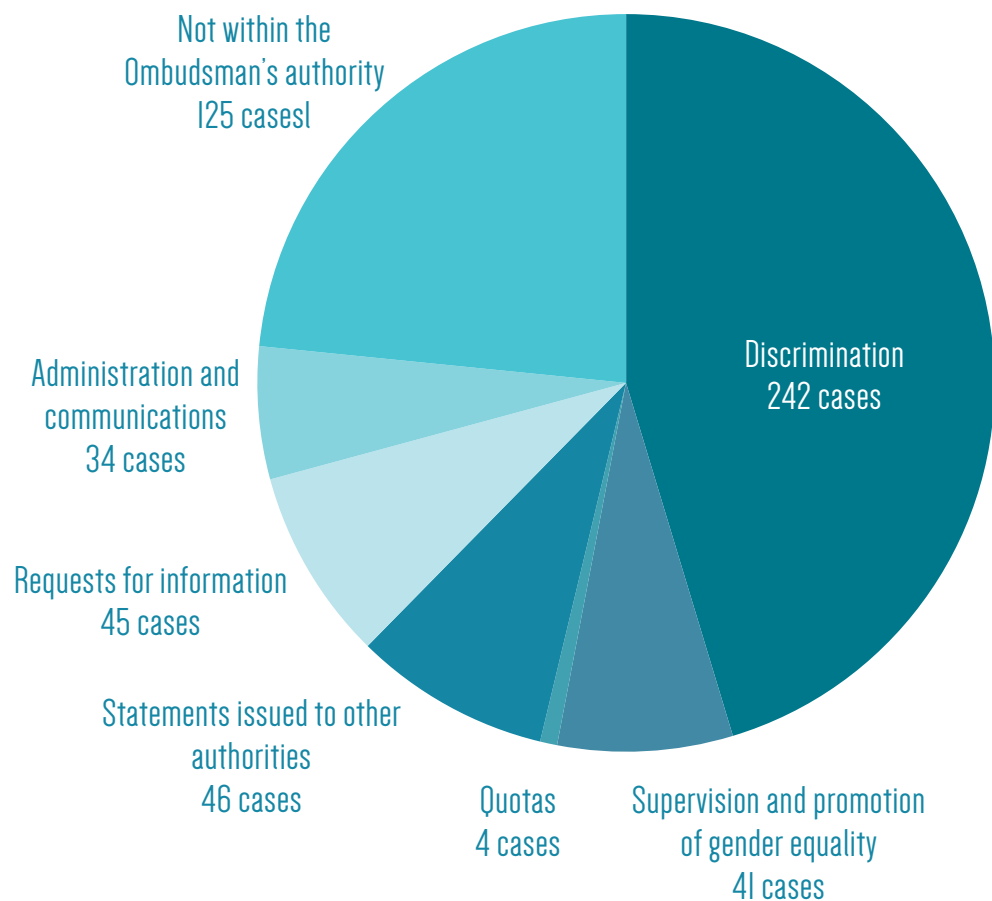
In 2018, the details of 545 new cases were logged in the Ombudsman's register, and decisions were reached on a total of 537 cases. The majority of cases entered into the register were related to performing the statutory duties of the Ombudsman for Equality.

In 2018, the Ombudsman for Equality received a total of 1046 enquiries. Of these, 51% (537) were submitted in writing and 49% (509) were telephone enquiries. Half of the written enquiries (242) concerned questions of discrimination, and half of these cases were related to discrimination in employment. More than half (54%; 276) of the over 500 telephone enquiries concerned discrimination. 80% of telephone enquiries concerning discrimination were related to employment. Other phone calls related to the powers of the Ombudsman for Equality concerned discrimination in fields other than the world of work or gender equality planning.

CASES HANDLED IN WRITING AND TELEPHONE ENQUIRIES 2018
(1046 in total)



CASES HANDLED IN WRITING IN 2018 (537 CASES)



CASES HANDLED IN WRITING IN 2018

During the year under review, 44% (242) cases handled in writing concerned the prohibition of discrimination under the Equality Act. Almost half of these cases concerned gender-based discrimination in employment. The monitoring of equality plans and promotion of gender equality, such as municipal equality plans, were under discussion in 41 cases, and 4 cases were related to the composition of institutional bodies. The Ombudsman provided 45 replies to different requests for information on the Equality Act and the Ombudsman's operations. The Ombudsman for Equality delivered 46 statements to other authorities and international actors.

In addition, the Ombudsman for Equality received a total of 125 enquiries not concerning the Equality Act, where the Ombudsman for Equality has no authority. If necessary, the client was redirected to a competent authority. The remainder of the cases handled in writing during the year were related to administration and communications.

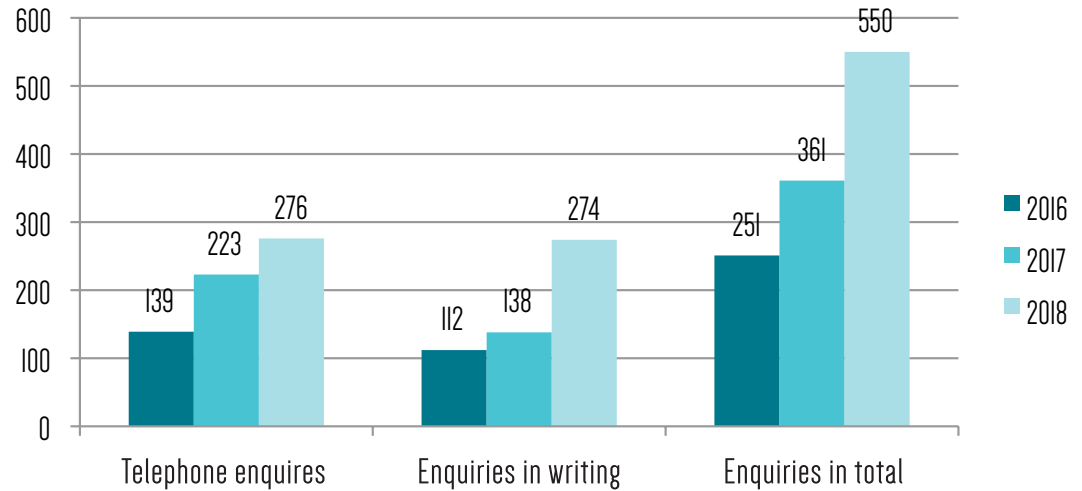
THE NUMBER OF CLIENT ENQUIRIES CONCERNING DISCRIMINATION HAS DOUBLED IN TWO YEARS

In 2018, the Ombudsman for Equality received significantly more client enquiries related to discrimination than in 2017. In 2018, there were a total of 550 written and telephone enquiries, whereas in 2017 there were 361 enquiries in total. And so, during the year under review, the Ombudsman for Equality received almost 200 enquiries more than in 2017, when the number of enquiries had also increased from the year 2016 by over one hundred. The number of enquiries related to discrimination has doubled in two years.

The number of telephone enquiries also increased in comparison to previous years: in 2018, the Ombudsman for Equality received 276 telephone enquiries concerning discrimination, while in 2016 there were 223 enquiries, and in 2016, 139 enquiries in total.

54% of telephone enquiries concerned discrimination in employment. More than 20% of telephone enquiries concerning discrimination were related to pregnancy or parenthood.

The number of written enquiries concerning discrimination increased considerably

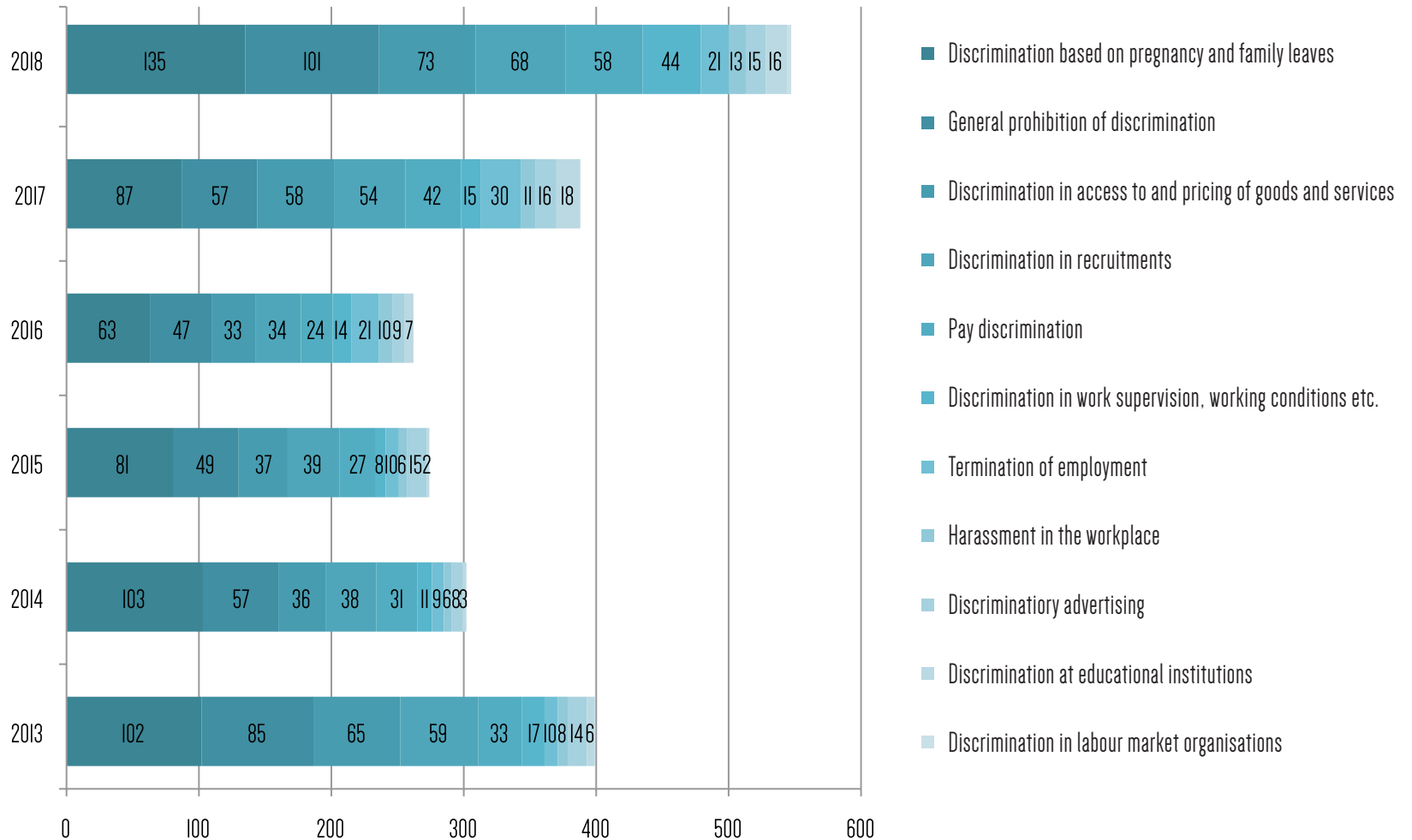


CLIENT CONTACTS RELATED TO DISCRIMINATION 2016-2018

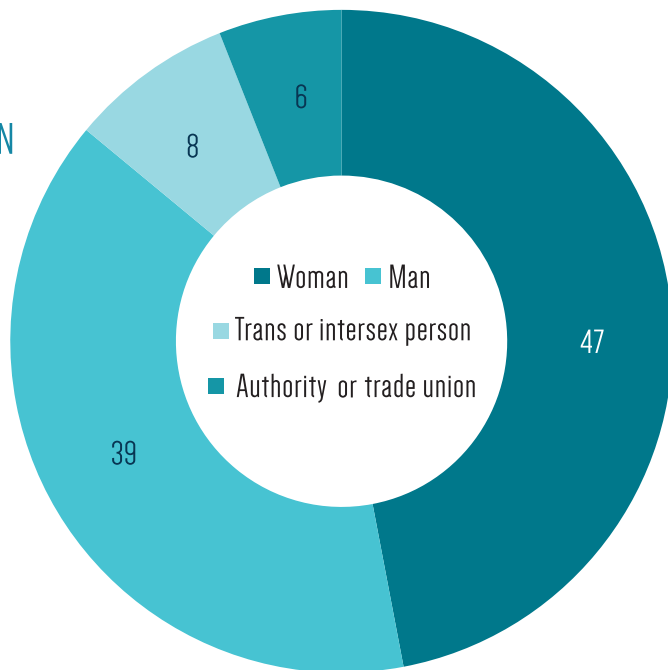
(64%) from the preceding year: in 2018, the Ombudsman for Equality received a total of 274 written enquiries concerning discrimination, while in 2017, there were 138 and in 2016, 112 in total. Almost half of the written enquiries concerned gender-based discrimination in employment. The enquiries were mostly related to suspected discrimination on the basis of pregnancy or parenthood, or in recruitment or pay.

The rest of the enquiries were related to discrimination outside the world of work: 11 cases concerned suspected discrimination in educational institutions, and 53 enquiries dealt with discriminatory pricing and availability of services and goods. Of all the cases dealing with discrimination, 72 were covered by the general prohibition of discrimination. They dealt with issues not covered by the special prohibitions on working life, educational institutions or goods and services.

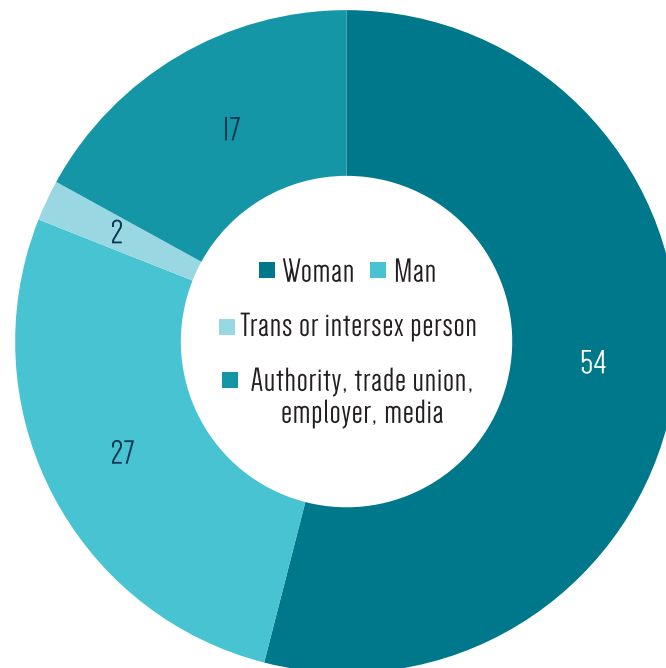
CLIENT CONTACTS RELATED TO DISCRIMINATION MADE IN WRITING AND ON TELEPHONE IN 2013–2018



CONCLUDED WRITTEN CASES RELATED TO DISCRIMINATION IN 2018 BY THE CLIENT (EST. %)



TELEPHONE ENQUIRIES IN 2018 BY THE CLIENT (%)



PERSONNEL AND APPROPRIATIONS

In 2018, the Office of the Ombudsman for Equality had on average 10 man-years at its disposal. In addition to the Ombudsman for Equality, a temporary Senior Officer and a university trainee also worked at the Office.

During the year of the review, the appropriation for the Ombudsman for Equality was EUR 960,000. In addition to an operational appropriation, this amount includes the employees' salary costs and other administrative expenditures. Almost 90% of the appropriation is used for employees' salary costs and office facilities.

INTERNATIONAL COOPERATION

The Ombudsman for Equality is a member of the European Network of Equality Bodies (Equinet). As in previous years, representatives of the Office of the Ombudsman for Equality participated in activities of Equinet's Communication Strategies and Practices and Gender Equality working groups. The Communications Officer of the Ombudsman for Equality participated in a seminar on hate speech organised by Equinet in Rome from 19 to 21 November, 2018. The seminar focused on the work of European Ombudsmen in a hostile societal atmosphere. As a result of the seminar, Equinet produced a publication *Extending the Agenda. Equality Bodies Addressing Hate Speech*, and a summary of the discussions: *Developing Strategies to Combat Hate Speech*.

The Nordic Ombudsmen for Equality and Discrimination meet on an annual basis. In 2018, the Nordic meeting took place in Oslo from 13 to 14 September 2018. The discussion covered topics such as the increasing hate speech, freedom of religion and age-related discrimination.

As in previous years, Finland's Equality Act and the work of the Ombudsman for Equality generated considerable interest among the international guests. The Ombudsman for Equality welcomed delegations from countries such as Lithuania, Taiwan, Japan and Korea. Furthermore, in connection with the Rainbow Rights project, the Ombudsman for Equality met non-discrimination experts from Latvia, Lithuania and Georgia together with the Non-Discrimination Ombudsman.

PRESENTATION OF THE OMBUDSMAN FOR EQUALITY IN DIFFERENT BODIES

- *Against Hate project / Ministry of Justice*
- *Discrimination Monitoring group / Ministry of Justice*
- *Gender Equality network of the Centre for Gender Equality Information / Human Rights Delegation / Human Rights Centre*
- *National Institute for Health and Welfare Rainbow Rights project steering group / Ministry of Justice*
- *School Health Promotion Survey development team / National Institute for Health and Welfare*
- *SEGLI development project for the promotion of gender equality and alleviation of segregation in education and working life*
- *Statistics Finland's working group Equality and Statistics / Statistics Finland*

PUBLICATIONS

- *Tasa-arvoaltuutetun vuosikertomus 2017*
- *Jämställdhetsombudsmannens årsberättelse 2017*
- *Tasa-arvoaltuutetun kertomus eduskunnalle 2018*
- *Jämställdhetsombudsmannens berättelse till riksdagen 2018*



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