



# ANNUAL REPORT 2013

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BY THE OMBUDSMAN  
FOR EQUALITY

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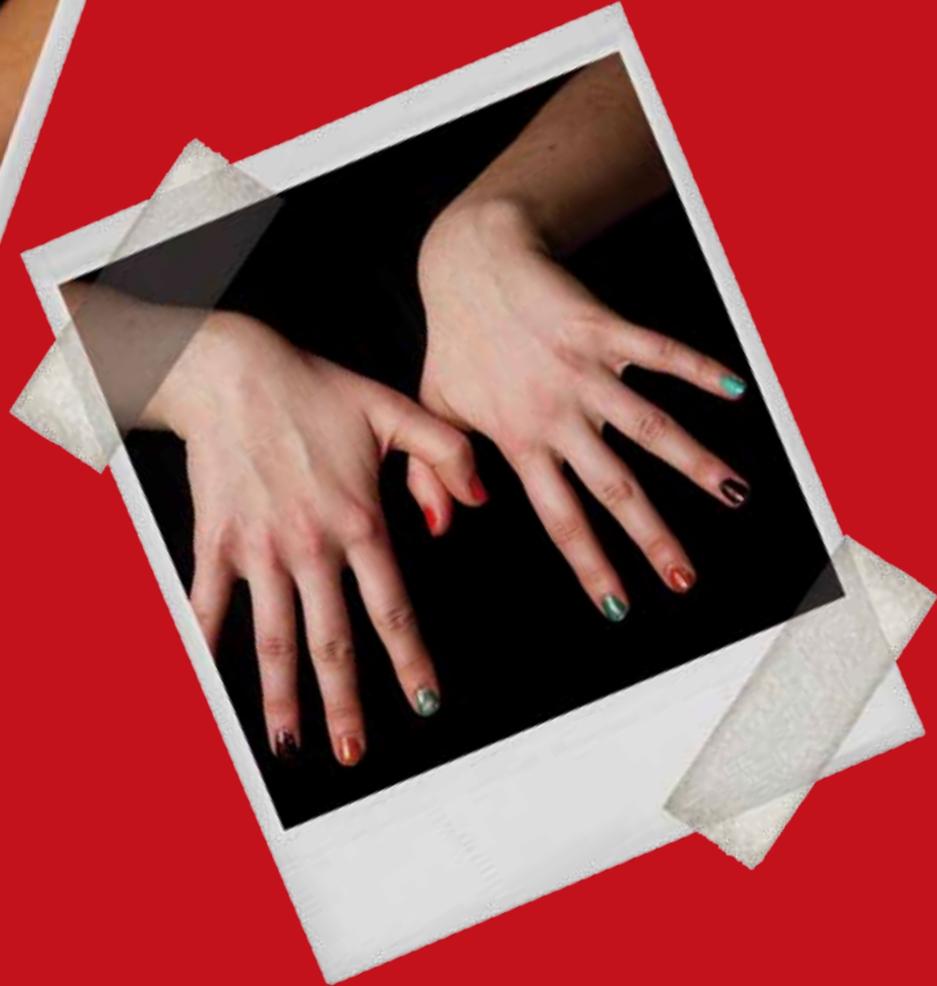
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# THE OMBUDSMAN FOR EQUALITY IN BRIEF

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

## **The Ombudsman's responsibilities include:**

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

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

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

The current Ombudsman for Equality is Ms Pirkko Mäkinen.



# A WORD FROM THE OMBUDSMAN FOR EQUALITY

**S**uspected cases of discrimination in working life have been one of the priorities in monitoring the compliance with the Equality Act. In our experience, there has been no fall in the incidence of pay discrimination, and acts of discrimination relating to recruitment, pregnancy and family leave: they need to be assessed from one year to the next. In 2012 we ran a campaign against discrimination due to pregnancy entitled *Justice for those Expecting*, because we wanted to have a public national debate on this serious problem in working life. The campaign increased the number of contacts regarding suspected cases of discrimination due to pregnancy in 2013.

We also continue to be contacted regarding issues which do not fall within the competence of the Ombudsman for Equality, where very often the grounds of discrimination relate to age, place of residence or family relationships. Issues concerned with advertising are referred to the Consumer Agency and those relating to working life to the Regional State Administrative Agency OSH

(Occupational Safety and Health) Divisions, if they are with regard to anything other than gender-based discrimination. We pass suspected cases of ethnic discrimination to the Office of the Ombudsman for Minorities, if they do not relate to working life. Following the reform of the Non-Discrimination Act, the situation will change slightly, and the new Ombudsman for Equal Treatment will be responsible for investigating grounds for discrimination in a number of cases.

The monitoring of gender equality planning saw us focus on the equality plans of companies under state ownership steering. We also monitored work communities from which there had come reports of suspected discrimination. Among educational institutions, the upper secondary schools of Uusimaa were under surveillance. A Senior Officer from the Office of the Ombudsman for Equality visited schools under observation in the largest municipalities in Uusimaa and talked to the responsible authorities on the subject of the obligation to promote equality at these institutions. During the

course of the year, a campaign against sexual harassment intended for young people and schools to start in 2014 was drawn up.

In the year under review, the Ministry of Social Affairs and Health had two separate amendments to the Equality Act forthcoming, one of which dealt with gender minorities and equality planning in comprehensive schools, and the other on clarification of the legal provisions on pay surveys. Both proposals are to come before Parliament when the Non-Discrimination Act is reformed in spring 2014. When the Government's structural reform package was introduced at the end of the year, it was also decided to start to explore the possibility of transferring responsibility for the Ombudsman for Children in Finland, Ombudsman for Minorities and the Ombudsman for Equality to the Ministry of Justice. The exploratory work will also involve issuing an opinion on the location of the Equality Board and Non-Discrimination Board.

International cooperation with the authorities responsible for discrimination and gen-



der equality in the Nordic countries and Europe generally is a crucial part of the work of the Office of the Ombudsman for Equality. Issues of human rights are very much the focus of anti-discrimination work both internationally and in Finland.

I am a member of the Human Rights Panel organised jointly by NGOs and the authorities, a body which in 2013 produced its own assessment of the preparation and implementation of Finland's Human Rights Action Programme. In 2013, the Finnish League for Human Rights published a re-

port entitled *Riiteleminen on pienelle ihmiselle raskasta* ('Arguing is Tough for a Little Person') The report examined the availability and impact of legal remedies for victims of discrimination, and clients of the Office of the Ombudsman for Equality were also asked to report their experiences. The League also looked more closely at case law on the regulation of discrimination in the workplace under the Equality Act and the Criminal Code.

The survey suggests that, as far as clients who had experienced discrimination were

concerned, the law on discrimination is far from clear and litigation is expensive. Furthermore, it is frequently difficult to discover which authority or other agency to provide assistance is the relevant one. We ourselves will do our best to utilise the results of the survey by providing information on legal remedies and to help our clients in situations in which they suspect that they were being discriminated against.

*Pirkko Mäkinen*  
Ombudsman for Equality

A close-up photograph of a person's face, focusing on their eyes and forehead. The person has light-colored hair and blue eyes. The background is a solid, bright yellow color. The text is overlaid on the right side of the image.

# LEGISLATIVE REFORMS UNDER WAY

*The Equality Acts concerns equality between women and men. The Act forbids discrimination on the grounds that someone is female or male and discrimination on the grounds of pregnancy and parenthood. The Equality Act also applies to discrimination against transgender people. The Act also obliges several agencies and actors to promote equality actively. The Act, which first entered into force in 1987, has been reformed several times. The latest major reform was in 2005. The Act is once again to be revised in part.*

*The Non-Discrimination Act concerns discrimination on grounds other than those prohibited under the Equality Act. These include age, ethnic or national origin, religion, disability and sexual orientation. The Act entered into force in 2004. A complete reform of legislation on non-discrimination has been under discussion since 2007.*

## Legislation on equality and non-discrimination under examination

**D**raft reforms to the Equality Act continued in 2013. The intention is to add provisions on gender minorities to the Equality Act, extend the gender equality planning obligation that educational institutions are under to include comprehensive schools, and to review the legal provisions both on gender equality planning at workplaces and pay surveys. Moreover, the reform of the Non-Discrimination Act involved the drafting of a new law on the Ombudsman for Equality and one which would merge the current Equality Board with the National Non-Discrimination Board to form a non-discrimination tribunal.

In the year under review, the Ombudsman for Equality took part in consultations on the drafting of provisions on gender minorities and gender equality planning at educational institutions. A representative of the Office was a member of the committee preparing the reform of the equality planning obligation, and the Ombudsman for Equality issued a statement on the report. The Ombudsman for Equality has also been a member of the committee reforming the Non-Discrimination Act and has issued a statement on the draft legislative proposal drawn up by that committee.

## Statement on the proposal to review the legal provisions on equality plans in the workplace

The Ombudsman for Equality presented the Ministry of Social Affairs and Health with a statement on the proposal to review the provisions in the Equality Act on equality plans in the workplace (Reports of the Ministry of Social Affairs and Health 2013:21).

The Ombudsman for Equality regards it as necessary to review the legal provisions on equality plans in the workplace and pay surveys. The aim of the proposal is to clarify and define more closely these provisions so that they effectively promote gender equality and safeguard the principle of equal pay at workplaces. The Ombudsman for Equality is of the view that some of the committee's proposals would help achieve these objectives. However, the proposal would not mean that the Act would be made clearer and improved as intended in all respects.

The Ombudsman is not in favour of amending the provisions of the Equality Act so that an equality plan would have to be drawn up at least once every two years. The Ombudsman is of the opinion that the plan should be drawn up annually in the future. This would help to address equality issues on a more regular and continuous basis and

to integrate them with other aspects of the workplace operation.

A provision is being proposed for the Act that staff representatives must have opportunities to take part and have a say in the drafting of equality plans. The Ombudsman for Equality considers this proposal to be very imprecise. An essential consideration in pondering the opportunities for participation and influence on the part of staff representatives is, for example, the extent to which they have the right of access to information. Nevertheless, the Committee is making no concrete proposals for extending rights of access to information or proposing the wording of a provision on specific right of access to information in the Act.

If staff representatives are actually to have a role in pay surveys, they will need to have the pay details of all staff groups in the service of the employer. To examine the reasons for differences in pay identified in pay surveys may also require the pay details relating to individual employees to be processed while an equality plan is being drawn up, even if they cannot be included in the final equality plan. In the public sector, where pay details are public knowledge, it is already possible to proceed in this way within the scope of the current regulations. The Ombudsman for Equality concludes that the legislative proposal should clearly state, as a manifestation of the legislator's intention,

that this should also be the way to proceed in practice, if necessary. The private sector will also have to extend the rights of access to information of individual employees who suspect pay discrimination and of staff representatives involved in pay surveys.

It is the task of the Ombudsman for Equality to inspect equality plans and compliance with obligations relating to pay surveys. In its statement, the Office of the Ombudsman for Equality once again mentions the fact that equality plans can only be inspected to a very limited extent with current levels of resources. It is encouraging that the work group's proposal should focus attention on the fact that the Ombudsman's resources are meagre and state that effective monitoring would require more robust resourcing. (TAS 239/2013)

## Statement on the draft Government Bill on the reform of legislation on non-discrimination

The Ombudsman for Equality presented the Ministry of Justice with a statement on the proposal for a Government Bill on the reform of legislation on non-discrimination. The draft proposes that a new law on non-discrimination should be enacted that would have a wider scope of application than the

present one. A new post of Ombudsman for Equal Treatment would be established to oversee compliance with the act. The Equality Board and National Non-Discrimination Board would be merged, and for this reason a separate law would also be enacted on the Ombudsman for Equality.

The Ombudsman for Equality believes that it is important to reform the legislation on non-discrimination, and is of the opinion that the act would strengthen protection against discrimination. In its statement, however, the Office of the Ombudsman for Equality focused attention on factors regarding which the draft act might still be improved. The Ombudsman's observations relate to various considerations, including the regulation of multiple discrimination, the prohibition of discrimination, legal protection, sanctions and the system for monitoring compliance with the act.

It is being proposed that the current post of Ombudsman for Minorities should become that of Ombudsman for Equal Treatment. The competence of the Ombudsman for Equal Treatment would be broadened to apply to any kind of discrimination under the Non-Discrimination Act. However, it would not apply to the monitoring of individual cases in working life under the Act, and this would be the task of the occupational safety and health authorities. The Ombudsman for Equality is of the view that the Ombudsman for Equal

Treatment should have more scope to act in working life than what has been proposed. The Ombudsman for Equal Treatment will inevitably evolve a set of strong, special skills to deal with various issues relating to discrimination and the grounds for it, and for individuals it is only natural that they should be able to seek help from an authority that has competence in matters of non-discrimination. If non-discrimination is to be promoted effectively, it is essential that the supervisory authorities have wide-ranging powers.

The Bill includes a proposal to merge the Equality Board with the National Non-Discrimination Board. As far as working life is concerned, a merged board could only deal with matters under the Equality Act but not at all matters under the Non-Discrimination Act. It is the opinion of the Ombudsman for Equality that if such a body were set up, it would not help make the system of monitoring comprehensible or rational. For this reason, among others, the boards should not be merged.

The Ombudsman for Equality backs the proposed Act on the Ombudsman for Equality. The Act would strengthen the Ombudsman's independent and sovereign status, as this would be stated in the Act. The draft also proposes that the Ombudsman for Equality should be given the right to appoint and employ its own staff apart from the Head of Division. (TAS 146/2013)





# PROMOTING EQUALITY

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

## GENDER EQUALITY PLANNING AT WORKPLACES

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

The Ombudsman for Equality continued to obtain workplace equality plans for review via many different routes. The Ombudsman requested workplaces in whose case was under processing at the Office of the Ombudsman for Equality to provide an equality plan for inspection. An equality plan was also requested in cases in which a member of staff reported that no plan had been drafted, or that it did not fulfil the requirements of the Act.

### Inspection of equality plans in state-owned companies

Where possible, the Ombudsman for Equality endeavours to conduct targeted inspections of equality plans. In 2013, the Ombudsman inspected the personnel policy equality plans of 21 companies under ownership steering by the Prime Minister's Office. All of them had

some sort of equality plan in place. The plan in four companies was only their first. The plans in some companies were so old that a request was made to have them drawn up again. These outdated plans might have contained a lot of excellent studies and ambitious measures, but, for some reason, no progress had been made. The Ombudsman for Equality gave recognition in particular to companies where the management had been made responsible for the promotion of equality at the workplace and attention had been paid to the training of supervisors in the area of gender equality.

Cooperation with employees had been accomplished in the majority of companies and the company's organ of cooperation in each case had gone over the plan. In four companies, a separate equality work group had been involved in drawing up the quality plan, and in a few cases it had been the occupational safety and health committee or well-being-

at-work group. It was clearly obvious that the equality plans were better quality in those companies where an equality working group had been involved in producing them. Six equality plans lacked a pay survey, though on request one was submitted later. Insofar as pay surveys were concerned, the Ombudsman had to remind many workplaces that pay surveys must cover the entire staff, including people employed on a temporary or part-time basis. A comparison of job-specific or average pay does not provide a truthful picture of differences in pay, either. If pay surveys examine pay by looking at the individual elements that make up the whole salary, the remuneration becomes more transparent and assessment of the grounds for pay differences becomes easier. The studies and pay surveys carried out had not been analysed in the majority of companies, and for this reason the measures and plan's monitoring were often of a very general nature. The Ombudsman for Equality also intends in future to examine and monitor the equality plans of state-owned companies.

### [www.tasa-arvokysely.fi](http://www.tasa-arvokysely.fi) as an aid for equality planning

The Ombudsman for Equality recommends workplaces to use the query tool on its website ([www.tasa-arvokysely.fi](http://www.tasa-arvokysely.fi)) for an opinion of the staff on the situation regarding equality at the workplace. It was developed as part of an ESF project at the University of Tampere Work Research Centre, and the Ombudsman

for Equality is at present providing funding for its maintenance. The query function automatically produces a report on a given workplace, where the range of responses can be examined always by gender but also, optionally, age or personnel group. A workplace may conduct a survey as a one-off exercise or repeatedly. A workplace's anonymous replies are collected for each sector to compile reference material that the survey administrators can print out. The query function is a useful tool, especially for fairly small enterprises, where personnel administration is minimal and there are no opportunities for carrying out large-scale surveys.

### Workplace visits by the Ombudsman for Equality

The Ombudsman for Equality carried out three workplace visits in 2013: to Finnvera, the city of Rauma and Oras Oy. The purpose of the visits was to promote equality planning and work on gender equality. All the workplaces had an existing equality plan. At the meetings, the Ombudsman for Equality focused special attention on the content of pay surveys. The Ombudsman urged inspectors to check pay by looking at its individual elements. If, for example, there is an incentive pay scheme in place at a workplace, it would be worth investigating how the incentives are distributed between women and men. A pay survey will also rely on an analysis of pay differentials and conclusions as to whether they are compliant with the Equality Act.

## QUOTAS

Section 4a (1) of the Act on Equality between Women and Men requires that all Government committees, advisory boards and other similar administrative bodies have at least 40 per cent of both women and men, unless otherwise dictated by exceptional circumstances. In established use, the quota provision has also been deemed to apply to bodies appointed by ministries, such as working groups. Likewise, municipal and inter-municipal co-operation bodies, municipal councils excluded, must have at least 40 per cent of both women and men, unless otherwise dictated by exceptional 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 otherwise dictated by exceptional circumstances. This provision obligates all parties proposing members to the bodies mentioned above to put forward the nomination of both a man and a woman for every membership position. The concept of special reason shall be interpreted restrictively. This kind of reason may be, for example, that a body will be working in a very specialized area where the experts are only either women or men. A

special reason always requires justification, and such a reason must exist by the time the body is being appointed.

The Ombudsman for Equality was asked if there were ways to intervene in a situation where a woman elected as a permanent member had stated that she would only be attending meetings when a man elected as a deputy member was prevented from attending. In this case, the city had acted in compliance with the Equality Act and a number of women and men had been elected to the company's Board of Directors of a company in which a municipality is the majority shareholder, as provided in the Act. In practical terms, however, this had obviously not been the case. In its reply, the Ombudsman for Equality said that the Equality Act contains no provisions for deputy members acting as permanent members in actual practice. Nor does the Limited Liability Companies Act have a provision that would oblige someone to attend meetings of the Board of Directors.

The Ombudsman for Equality stated that the number of women on company Boards will only increase through determined action. The fact that a woman elected as a permanent member does not exercise her right to act as one, but instead in practice allows a man to take her place, does nothing to promote this objective and is contrary to the spirit of the Equality Act. (TAS 235/2013)

Other matters of quotas reaching the attention of the Ombudsman for Equality concerned, for example, the representation of tenants on the Boards of housing companies owned by a municipality and the composition of the Board of Directors of limited companies in which a municipality is the majority shareholder.

## EQUALITY AT EDUCATIONAL INSTITUTIONS

Schools and educational institutions have an obligation to promote equality between men and women. Communities that provide education, training and tuition must ensure that equal opportunities exist between girls and boys and women and men for education and professional development. Promoting equality at educational institutions and the inspection of equality plans is a vital part of the work of the Ombudsman for Equality.

The Act on Equality between Women and Men obliges educational institutions to draw up an equality plan aimed at improving the educational institution's operations. The equality plan should always be drafted in co-operation with representatives of the staff and students, and the plan must include a survey of how successfully the pupils and students feel equality is achieved at their educational institution.

The purpose of the systematic promotion of equality is not just to encourage equality between women and men but also to prevent discrimination. The legal obligation applies to all institutions that provide education and training. Only providers of pre-school and basic education are excluded. According to Government policy, however, the intention is for the requirement relating to equality planning to be extended to apply to comprehensive schools.

With respect to the monitoring of the legal obligations to promote equality, in 2013 the Ombudsman for Equality continued to review the standard of equality plans drawn up by educational institutions and aimed at improving their operations.

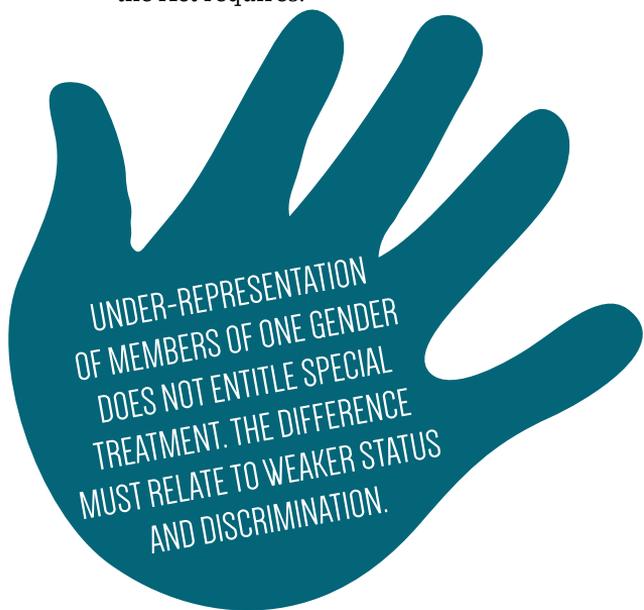
### Room for improvement in the equality plans of upper secondary schools in Uusimaa

In the year under review, 2013, the Ombudsman for Equality continued to inspect the quality of the equality plans of 30 upper secondary schools in Uusimaa.

Equality plans drawn up at the upper secondary schools revealed substantial flaws. Of the 30 upper secondary schools surveyed, just 10 had an equality plan that met the minimum requirements under the Equality Act. Twenty were asked to submit

a new plan to the Ombudsman by a certain deadline.

Several of the plans lacked an account of how well students felt that equality between women and men had been achieved in their own educational institution. Furthermore equality plans were not always drawn up in collaboration with student representatives, as the Act requires.



A survey of the equality plans of institutions that were geographically close to one another showed that they work closely together, something the Ombudsman for Equality encourages. Nevertheless, the survey revealed evidence of the downside of cooperation - copying.

The Ombudsman reminded several upper secondary schools that an equality plan aimed at improving an institution's operations should be drawn up for each school individually in order to meet the institution's own needs and deliver the measures regarded as important. When an equality plan reflects the individual nature of an educational institution, the commitment to the promotion of equality also strengthens. The Ombudsman for Equality expressed the wish too that institutions would in future consider a more appropriate approach to working on equality plans. Because their purpose is to ensure that there are systematic efforts made in education and training to promote equality at the level of the educational institution, merely copying the plans of other schools and colleges will not achieve this objective.

### Upper secondary schools also receive praise

The survey showed that the upper secondary schools are also capable of doing first rate work to promote gender equality. The Ombudsman for Equality would mention in particular the systematic approach to promoting gender equality at Myllyharju Upper Secondary School, the Normal Lyceum of Helsinki, and Kallio Upper Secondary School.

With guidance from the Ombudsman, Lepävaara Upper Secondary School also distinguished itself favourably. The school's

first equality plan submitted to the Ombudsman had not met the minimum requirements under the Equality Act, but now the school uses a multi-purpose questionnaire to help assess how well students feel that equality has been achieved there. Students have furthermore been given a genuine opportunity to discuss the results of the survey and the improvement measures that are needed.

The systematic work done in an educational institution to promote gender equality at its best can form a lucid component in equality planning there. Work that is properly understood and undertaken at each educational institution individually to promote equality benefits everyone.

### The role of the education provider in the promotion of systematic work on equality

As part of the survey work carried out in the year under review, the Office of the Ombudsman for Equality also visited the City of Helsinki Education Department, the City of Espoo Education Services and the City of Vantaa Education Department.

It is a task of a provider of education to ensure that an equality plan has been produced for each educational establishment that it administers. Accordingly, at meetings called by the Ombudsman for Equality, the

discussions focused on the systematic support for equality work given to educational institutions administered by the education provider. The intention on the visits was also to establish a viable discussion link to education providers to develop systematic work to promote equality.

## Proposal for gendered educational sectors problematic

In the year under review, the Ombudsman for Equality gave the Ministry of Education and Culture a statement on an action programme for educational equality in response to the Ministry's request.

In the statement, the Ombudsman focused on the proposal in the action programme to discover how higher education institutions could increase the share of men - the under-represented gender - in sectors relating to education and social work among students by being given additional points or having an admission quota for them. In October 2012, the Ombudsman had issued a statement on the background memo produced by the working group preparing the action programme (TAS 311/2012).

In the statement, the Ombudsman for Equality says that the Equality Act does allow for such temporary, planned special measures

to promote effective gender equality and to endeavour to implement the objectives of the Act, although they may as individual measures constitute discrimination prohibited by the said Act. Under-representation of members of one gender among university students or applicants does not entitle special treatment, however; instead, the difference must relate to weaker status, and there must be earlier discrimination in the background. Therefore, the special measures are an attempt to prevent and eliminate setbacks arising from discrimination.

The Ombudsman for Equality believes that measures that dramatically boost the appeal of gendered educational and training sectors - and not merely the appeal of receiving a place of study - are important. It must be possible to influence the bias underlying the trend that people make gender-based choices regarding education, training and profession. Women should be encouraged more to make applications in sectors that are traditionally dominated by men, and men should be encouraged more to make applications in traditionally female-dominant sectors, if it is in their interests to do so.

The Ombudsman for Equality believes that when decisions are being taken about student admission to universities of applied sciences and state universities, it is also natural to adhere to the principles of European Community law on working life and

vocational education. Like the Equality Act, Community law imposes certain restrictions on affirmative action. In its case-law on working life and vocational education, the Court of Justice of the European Union has never accepted the principle that belonging to an under-represented gender could automatically be a basis for selection for a job.

Given all this, the Ombudsman for Equality feels that this proposal is problematic from the perspective of the Equality Act, and that one gender may be favoured in student admissions to universities and colleges as proposed, with no contravention of the prohibition of discrimination under the Equality Act. (TAS 431/2012)

The Ombudsman for Equality also adopted a position on the matter when she and the Ombudsman for Minorities were being consulted by a Ministry of Education and Culture working group on 6 November 2013.

## The effect of family leave on the right to study

The Ombudsman for Equality was contacted by a student who had been on maternal and parental leave for two years and who wanted to spend an additional year taking childcare leave. She had received a notice from her university of applied sciences stating that she would forfeit her right to study unless she went back to her studies. The

Ombudsman was asked to clarify whether the university's notice and the provision on the duration of studies in the Polytechnics Act were inconsistent with the Equality Act.

The Equality Act prohibits the different treatment of someone on the grounds of pregnancy or childbirth. The university could not, without contravening the prohibition of discrimination in the Equality Act, act in such a way that a student would be treated unfavourably on the grounds of pregnancy, maternity or paternity leave or other family commitments, when taking a decision on the right to study or the duration of studies, for example.

Under the provision in the Polytechnics Act on duration of studies, a student may be absent for two academic years in total. The law also states that a student who fails to complete his or her studies within the period of time laid down shall forfeit his or her right to study, unless the university grants him or her an extension to finish the studies.

The Ombudsman asked for statements from the university of applied sciences in question and from the Ministry of Education and Culture. The University stated that maternity and parental leave had always been deemed by the college an acceptable reason for granting an extension to finish studies. It had evidently been impossible to state sufficiently clearly to the enquirer, that, although under the Polytechnics Act

an extension to a period of absence could not be applied for, an extension to complete studies could. The Ombudsman stated that in this case the student was not being treated unfairly for the present and that there was no barrier to childcare leave lasting a year in accordance with her wishes.

According to the statement by the Ministry of Education and Culture, the purpose of the provision on absence in the Polytechnics Act is to give students the flexibility they need to complete their studies. The Act does not mention maternity, paternity or parental leave as acceptable grounds for absence, because it was not considered appropriate to list all the acceptable grounds for absence.

In her statement, the Ombudsman for Equality requests the Ministry of Education and Culture to consider standardising the provisions on absence in the Polytechnics Act, as has been the case with the Equality Act. It is categorically and clearly stated in the Universities Act that the duration of studies does not include leave due to maternity, paternity or parental leave. The provision guarantees the equal treatment of students. The Ombudsman is of the view that the same sort of clear statement in the Polytechnics Act would guarantee that students at universities of applied sciences would also be treated equally in matters relating to absence due to maternity, paternity or parental leave. (TAS 271/2013)

## Student admission

The Ombudsman for Equality was asked to investigate whether a certain vocational college had acted in compliance with the Equality Act when a male applicant had been rejected for a course for seamstresses. The applicant had been told that, because he was a man, he ought to have applied for the course for tailors, and not that for seamstresses.

The statement given by the educational institution on the matter mentioned that the reason for rejecting the applicant was his lack of qualifications for being enrolled on the course. It suggested that gender is not a relevant issue when selections are being made.

In her statement, the Ombudsman for Equality points out that it is not the Ombudsman's task to judge the criteria underlying student admissions unless it relates to the prohibition of discrimination under the Equality Act. It was nonetheless evident from the statement made by the college that the applicant's application had not been dealt with in accordance with the regulations on procedure notified by that educational institution. The Ombudsman's statement mentions that if it could be shown that the applicant had been treated unfavourably on the grounds of his gender when he applied to take the course for seamstresses run by the college, the institution in question would have been guilty of discrimination prohibited under section 8(b) of the Equality Act.

The Ombudsman was also asked at the same time to clarify whether a certain other vocational college had acted in accordance with the Equality Act. The male applicant concerned had not applied for a course leading to a qualification in textiles and clothing because the teachers at the educational institution had apparently been unwilling to deal with any application he might make and had avoided the issue.

According to the statement submitted by the college to the Ombudsman, the person involved would have been well qualified for selection for the course. However, he had not clearly expressed his desire to apply for the course and, as a result, the college had been unable to get him to fill out an application form.

In her statement, the Ombudsman for Equality takes the view that if staff involved in a college's student admission procedure try to prevent someone from applying for a place of study or try to persuade someone, for example, to withdraw his or her application, this does not necessarily relate to student selection within the meaning of section 8(b) of the Equality Act. The rule of thumb must be that only someone who has submitted an application can rely on the notion of discrimination as far as Act 8(b) of the Equality Act is concerned. Nevertheless, the procedure might be contrary to the general prohibition of discrimination under section 7 of the Equality Act. (TAS 135/2013)





# DISCRIMINATION IN WORKING LIFE

*The Act on Equality between Women and Men prohibits discrimination on the basis of sex or gender.*

*Discrimination on the basis of gender in working life manifests itself in recruitment, pay and the extension of contracts of employment as well as discrimination due to pregnancy or family leave. The Equality Act also prohibits the discriminatory use of supervisory powers and the termination of employment or laying-off of an employee on the basis of gender.*

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

## DISCRIMINATION DUE TO PREGNANCY

**D**iscrimination due to pregnancy has long been a major problem in the area of discrimination in working life in Finland. A large number of work-related cases brought to the attention of the Ombudsman for Equality concern suspicions of discrimination in connection with pregnancy or family leave. Typical situations of pregnancy discrimination involve recruitment, the extension of fixed-term contracts and returning to work from family leave. The tasks of an employee returning to work have often 'disappeared' during the time she took family leave or are being dealt with by someone who has been taken on to replace her or by another employee. Employees are also frequently ignored in job applications, owing to pregnancy, or their fixed-term employment contracts are not renewed when pregnancy is in evidence, even if an extension has already been agreed upon.

Discrimination due to pregnancy has been hushed up a bit in Finland, so in 2012 the Ombudsman for Equality launched the campaign entitled *Justice for those Expecting* to counter discrimination on the grounds of pregnancy. The aim of the campaign was to inform pregnant women of their rights and of their legal protection under national employment law and the Equality Act and to remind employers of their legal obligations. The campaign's impact was also reflected in the Ombudsman's

work in 2013: a very large number of enquiries relating to discrimination in working life were to do with pregnancy.

### Suspected discrimination due to pregnancy in the extension of the temporary post of Senior Constable

A female Senior Constable asked the Ombudsman for Equality for an opinion on whether she had been discriminated against in a manner prohibited in the Equality Act when her temporary post at a police station was not extended, even though the post she had filled had not been discontinued. The Constable suspected that the reason why her temporary contract had been terminated was that she took maternity leave.

Being treated differently on the grounds of pregnancy or childbirth is direct discrimination, which is prohibited in the Equality Act. Under the provisions on working life in the Equality Act, it is prohibited to limit the duration of an employee's contract of employment on the grounds of pregnancy or family leave. The prohibition means that a temporary employment contract may not be limited in such a way that it only lasts until the start of maternity, paternity or parental leave. Nor may an employment contract be restricted, due to family leave, to start from the commencement of service only when that

family leave has ended, if someone selected for a job is on family leave when the employment contract starts. The prohibition applies to both temporary and indefinite employment contracts, and new and senior employees.

Failure to renew a contract of employment in the case of a temporary employee who is pregnant or on family leave is also to be regarded as discrimination prohibited under the Equality Act, if the employment relation would have continued if the person had not become pregnant or taken family leave. When judging whether failure to renew a contract of employment constitutes discrimination, the basic consideration is whether the same criteria and recruitment practices have applied to someone who is pregnant or on family leave as they have the rest of the staff. For there to be a presumption of discrimination, the employee needs to show that the contract of employment would probably have been renewed if she had not become pregnant or taken family leave. To refute any presumption of discrimination, the employer, on the other hand, must show that the non-renewal of the contract was for an acceptable reason other than the pregnancy of the employee or the fact that she had taken family leave.

The Finnish Police said in their statement that it is their policy always to appoint a replacement in the case of an officer on leave of absence, if the person is genuinely able

to fill the position. They also stated that the female constable who had asked the Ombudsman for an opinion had proved to be an excellent employee.

In her statement, the Ombudsman for Equality said that the termination of the Senior Constable's employment relationship had in fact been due to the fact that she was pregnant and took maternity leave. The prohibition on limiting the duration of the employment contract means that an employer is, where necessary, obliged to hire a replacement for the temporary employee. But it was essential that the job with the Police was still available. Furthermore, the constable who had asked for an opinion should be in the same position as other applicants in future recruitment, despite the fact that she took family leave.

There is a presumption of discrimination here, and to refute it, the Police have to show that the non-renewal of a temporary employment relationship was due to some acceptable factor other than pregnancy. The fact that someone cannot in practice discharge her duties, owing to pregnancy or family leave, and a replacement is required for her, cannot be regarded as an acceptable reason for not renewing a contract of employment. This principle has been upheld in case-law at both EU and national level. (TAS 430/2012)

### Teacher's employment relationship not extended due to pregnancy and the taking of family leave

A female teacher asked the Ombudsman for Equality to clarify whether she had been discriminated against contrary to the Equality Act when she had not had an extension to her temporary position as a part-time teacher of English and Swedish at a certain coeducational school.

The teacher's temporary post as a teacher of English and Swedish at the coeducational school had been renewed for a year at a time for three years in succession from 2009 onwards. She had been on maternity leave during the academic year 2010–2011. In 2012, she became pregnant again. Her period of maternity leave began on 18 July 2012 and her last temporary post ended on 31 July 2012. After that her temporary contract of employment was not renewed.

The statement provided by the school says that the reason why the teacher's position had been on a fixed-term basis was that it was only a temporary job. It stated that the teacher's contract had not been extended because an entirely new position had been created, and this was filled by advertising it publicly, in line with the school's normal practice. According to the employer, the hours for the new position covered the lessons given by the teacher who had asked for an opinion and by a certain other teach-

er previously. The teacher asking for an opinion applied for the job, but someone, according to the school, more experienced and qualified than her was selected. The employer's statement mentioned, however, that the teacher in question had been considered to be excellent.

It is not the purpose of the Equality Act to restrict the rights of an employer to scale down, expand or otherwise organise the scope of operations. In a situation where reorganisation results in personnel changes, the employees that are to leave may not be selected on the grounds of pregnancy, childbirth or anything else relating to gender.

According to the statement received, the new temporary position of part-time English teacher does not differ from the job of the teacher asking for an opinion, in terms of its demands, number of hours or group, other than that it does not include an obligation to teach Swedish. Consequently, the position is narrower in content than the teacher's previous position, and so the change in the job description cannot justify the fact that she had to compete with the other applicants. The new position is not indefinite, but is temporary in nature, just like that of the teacher asking for advice, so the duration of her employment relationship is no argument for the fact that she had to compete with others. The teacher concerned would have been qualified and

obviously also suitable for the job, because her contract had been renewed several times before.

The Ombudsman took the view that pregnancy and the taking of family leave had influenced the decision not to renew the teacher's contract. There is no acceptable reason in this case for the actions of the employer, which are thus contrary to the prohibition of discrimination under the Equality Act. (TAS 215/2012)

### Suspected discrimination due to pregnancy when an employee was laid off

A woman who answered the telephone in a taxi company asked the Ombudsman for Equality to clarify whether the fact that she had become pregnant had influenced her dismissal in a manner prohibited under the Equality Act.

In its statement, the taxi company said that the lay-off was due purely and simply to the fact that the woman did not fit in. According to the company, there have been and will be pregnancies in a female-dominant work community, and no one had been laid off because of pregnancy.

Both the Equality Act and the Employment Contracts Act prohibit dismissal on

the grounds of pregnancy or family leave. Under section 8(1)(5) of the Equality Act, notice to terminate an employment relationship on the basis of gender constitutes prohibited discrimination. If the reason for acting so is pregnancy or family leave, that is also regarded as discrimination on the basis of gender.

Under Chapter 7, section 9, of the Employment Contracts Act, an employer shall not terminate an employment contract on the basis of the employee's pregnancy or because the employee is exercising his or her right to family leave. If an employer terminates the employment contract of a pregnant employee or an employee on family leave, the termination shall be deemed to have taken place on the basis of the employee's pregnancy or family leave unless the employer can prove there was some other reason.

The woman seeking advice had also asked the occupational safety and health authorities to look into the situation, as their responsibilities extend to the monitoring of the Employment Contracts Act.

The provision in the Employment Contracts Act does not prevent the laying off of an employee who is pregnant or wants to take family leave when there is a good and pressing reason for it that has nothing whatsoever to do with pregnancy or fam-

ily leave. An example is grounds for laying someone off for personal reasons, such as serious breach or failure with respect to their obligations under their contract of employment or the law, and which have a fundamental impact on their employment relationship. The employer must show that the reason in this case has nothing at all to do with the employee's pregnancy or use of family leave.

If the employer ends the employment relationship on the grounds of the employee's pregnancy, that is also usually contrary to section 8(1)(5) of the Equality Act. If the employment relationship of a pregnant employee is terminated contrary to the Employment Contracts Act, the employer is at the same time generally in breach of the Equality Act, which prohibits the unfair treatment of an employee on the basis of pregnancy. Thus, the interpretation of labour law to some extent also guides the interpretation of the Equality Act.

The occupational safety and health inspection revealed that the reasons for dismissal on the part of the employer cannot be considered to be justified by any serious breaches of obligations under the employment relationship within the meaning of the Employment Contracts Act. Accordingly, the inspection report stated that the employer had not mentioned factors in his statement that would show that his dismiss-

al decision had been due to anything other than pregnancy. As the interpretation of the Employment Contracts Act guides that of the Equality Act, as stated, the Ombudsman for Equality took the view that there was also a presumption of discrimination in the case pursuant to the Equality Act. If the action violates the provisions of both the Employment Contracts Act and the Equality Act, penalties may ensue on the basis of both Acts.

Ultimately, cases of illegal dismissal are decided by the District Court, where they can be examined from the perspective of both the Employment Contracts Act and the Equality Act and a decision can be taken too on any right to compensation under these Acts. Gender-based discrimination may, under certain conditions, also meet the definition of the offence of work discrimination under Chapter 47, section 3, of the Criminal Code. (TAS 377/2012)

### Government employee's return to work after family leave

A government employee who had been on family leave asked the Ombudsman for Equality whether she had the right as a civil servant to return to her previous tasks after going back to work following family leave.

The Employment Contracts Act safeguards the return to work of an employee following family leave, laying down that an employee has a right to return to his or her former job. If this is not possible, the employee must be offered work under a contract of employment that corresponds to his or her former job, and if this is not possible either, some other employment under a contract.

There is no equivalent provision in the State Civil Service Act and this is not regulated in the public sector collective agreement either. The difference between the employment relationship of a government employee and that of anyone else is that the determination of tasks with the former is a matter for the employer and cannot be negotiated; whereas, other employment relationships are based on a contract where one key section is an agreement on the tasks to be performed. With public sector employment relationships, the employer has a fair amount of scope for altering the tasks of someone he employs, having first consulted the government employee in question. In practice, however, a person frequently returns to the same tasks or same type of tasks after a period of family leave or other official leave of absence, especially if there have been no changes to the tasks while the employee was away. Nevertheless, the longer the period of leave, the more the job may have altered. Salaries, however, cannot be reduced due to family leave.

The Equality Act prohibits discrimination due to pregnancy or childbirth or on the basis of parenthood or family commitments such as family leave. If an employer manages the work, distributes tasks or otherwise arranges the working conditions in such a way that employees find themselves in a less favourable position than other employees on the basis of gender, that shall also be construed as discrimination under the Equality Act. Thus, although neither the State Civil Service Act nor the public sector collective agreement provides regulation on the return to work after a period of family leave, family leave cannot lead to the treatment of a government employee that is less favourable than how they would have been treated had they not taken family leave. (TAS 13/2013)

### Termination of a trial period and pregnancy

The occupational safety and health authorities referred a case of suspected discrimination due to pregnancy to the Office of the Ombudsman for Equality to the extent it fell within its competence, where an employment relationship had been terminated during a trial period.

According to the employer, employment was terminated on account of improper behaviour on the part of the person concerned and unsatisfactory performance at work. Accordingly, the termination of the trial

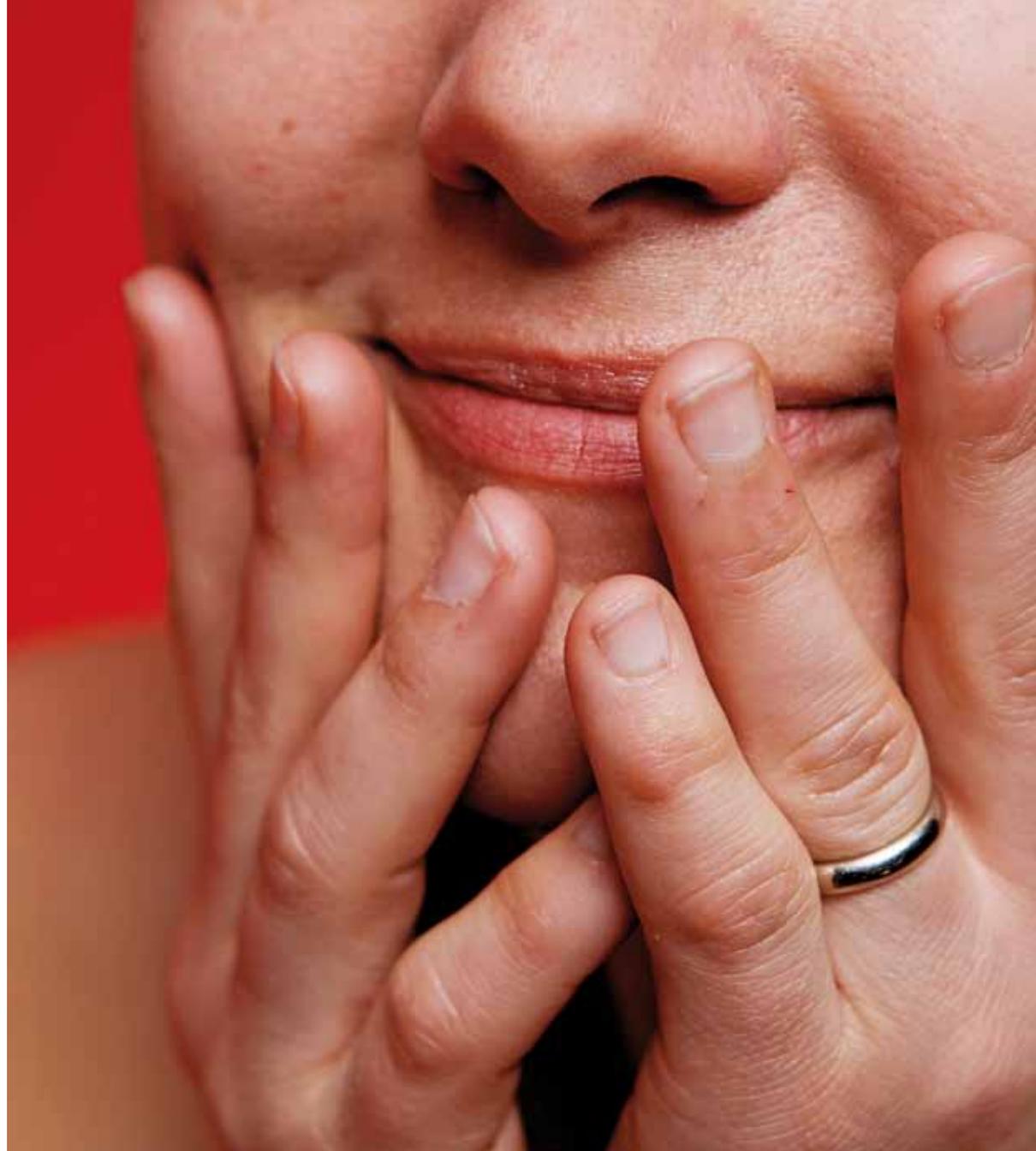
period could not be regarded as contrary to the Employment Contracts Act.

Both the Equality Act and the Employment Contracts Act prohibit dismissal and termination on the grounds of pregnancy or family leave. The employer must give a reason for dismissal or termination that is acceptable under the Employment Contracts Act.

Under Chapter 1, section 4, of the Employment Contracts Act, a contract of employment may include an agreement on a trial period of a maximum of four months in normal cases. During the trial period, the contract may be cancelled by either party with immediate effect. It may not, however, be cancelled on discriminatory grounds or on grounds which are inappropriate with regard to the purpose of the trial period.

Under section 8(1)(5) of the Equality Act, dismissal or termination of an employment relationship constitutes prohibited discrimination. If the reason for acting so is pregnancy or family leave, that is also regarded as discrimination on the basis of gender. The rule of thumb under the Equality Act is that an employee cannot be treated worse on account of pregnancy or family leave than would be the case if that employee had not been pregnant or taken family leave.

The employee having shown that the employer had been aware of the fact of preg-



nancy or the use of family leave at the time of the termination of the trial period would readily give rise to a presumption of discrimination. The presumption of discrimination having been established, the employer must show that the prohibition of discrimination has not been violated. If the employer terminates the contract of employment of an employee who is pregnant or is taking family leave during a trial period, the employer must show that termination was for an acceptable reason regarding the purpose of the trial period. There may be discrimination contrary to the Equality Act on the grounds of pregnancy if the termination of a trial period was contrary to the Employment Contracts Act, i.e. the employer cannot show that he had good reason to terminate the trial period in view of its purpose. (TAS 72/2012)

## DISCRIMINATION RELATING TO RECRUITMENT AND DISCRIMINATORY VACANCY ANNOUNCEMENTS

A large number of suspected cases of discrimination relating to working life are connected with 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 jobseeker who suspects discrimination and of the person who is actually selected for the job. If the jobseeker shows that he or she is more qualified for a position than the one chosen for it, there is a presumption of discrimination. The employer must show afterwards that there was an acceptable reason for the choice other than gender. The Ombudsman for Equality does not currently carry out a comparison of the merits of candidates in suspected cases of discrimination relating to recruitment, but instead provides legal guidelines and advice for the interpretation of the Equality Act. Especially where it concerns scientific or scholarly research and education, the Ombudsman does not even have the adequate competence to make such a comparison. Ultimately, it is the District Court that rules on cases of suspected discrimination relating to recruitment and possible compensation.

The Ombudsman for Equality is also regularly contacted with regard to job advertisements, where either only men or only women are able to apply. Men are sought often when the work involved is physically demanding. Women, on the other hand, are invited to apply, for example, for positions that call for dexterity or a lightness of touch - cleaners, strawberry vendors or presenters at fairs and exhibitions.

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.

The main rule for exemption from this practice and the use of gender-based recruitment must be that there is a good reason for acting so based on the nature of the work or job. For example, a person may be chosen for the role of a dancer or actor if he or she is of the gender that character calls for. General reasons of modesty or prudishness or, for example, the customs of the country might also mean that someone of one or the other gender is accepted for specified tasks, even if the performance of the task does not depend on this. Furthermore, the personal nature of an employment relationship would suggest, for example, that either a woman or man might be hired as a personal assistant.

### Suspected case of discrimination in hiring procedures at a strawberry farm

The Ombudsman for Equality itself undertook to investigate hiring practices at a certain strawberry farm. A boy who had applied



to the farm for a summer job had received a text message in reply stating that they mainly hired girls, as experience showed that they picked the fruit more quickly.

In a statement it gave to the Ombudsman, the strawberry farm said that it did not treat boys and girls differently as jobseekers and listed the gender-neutral criteria on which choices are based. Such criteria include age, the ability to get to work at the time stated by the employer, enthusiasm, the willingness to commit to an employment relationship lasting around three weeks and the general impression the young person makes at an interview. However, the text message

from the farm stated that they mainly employed girls and this was so because girls picked the fruit faster than boys. It was evident from the statement to the Ombudsman that, in practice, girls were being hired to do the work. According to the statement from the strawberry farm, over the years the girls had proven to be more adept and reliable than the boys. As for the boys, they said they had been more interested in harassing the girls picking strawberries and that they got far less work done than the girls.

The Ombudsman for Equality said in her statement that the Equality Act did not restrict an employer's right to select someone he regarded as being best for a job. The Act requires that the hiring procedure is based on a proper, impartial assessment of the applicants and an employer cannot choose anyone on the grounds of gender for no good reason.

It is acceptable during the recruitment process to give attention to the applicants' personal qualities. However, assessments made about their personal qualities cannot be based on generalisations about a certain gender. Such a generalisation would be, for example, that persons of one gender are thought to do a job well. If someone's unfavourable treatment in a job application is based on the fact that he or she represents a gender which those who make the selection decision associate with undesirable qualities, the procedure may be seen as being

due to gender, and that is direct discrimination prohibited in the Equality Act.

The statement received by the Ombudsman suggested that the strawberry farm seemed, in its choice of strawberry pickers, to be prone to the sort of generalisations referred to above, regarding girls and boys and their abilities and qualities. The Ombudsman urged the farm to evaluate its hiring practices and ensure in future that girls and boys are treated as individuals when they apply for work, and not as representatives of a gender. (TAS 250/2013)

### Company sought people to distribute leaflets for a car fair

The Ombudsman for Equality was asked to clarify whether a certain company's job advertisement complied with the Equality Act. In the advertisement, the company was looking for people to distribute leaflets while a certain car fair was on. The employer was providing a uniform: a small top, a short skirt and pants in a certain pattern. There was no mention of the gender of the applicants in the advertisement.

The Ombudsman had issued a statement on a similar job advertisement the company had placed in 2010 (TAS 161/2010). Then the Ombudsman took the view that, although

the advertisement did not specifically state that it was girls/women that were being sought, it was the employer's clear purpose to have young women apply for the job. The company was urged in future to take account of the prohibition of discriminatory vacancy announcements under the Equality Act when designing job advertisements.

As a result of the contact made in the year under review, the Ombudsman reprimanded the company and urged it to stop acting contrary to the Equality Act. In addition, the Ombudsman informed the company that if it acted contrary to the Equality Act in the future, the Ombudsman would consider referring the matter to the Equality Board in order to impose a ban. (TAS 117/2013)

## Tasks of a researcher at the University of Tampere

A woman who had applied for university researcher posts asked the Ombudsman for Equality for a statement on whether she had been discriminated against in a manner prohibited in the Equality Act, when she was not selected for three research positions that had been vacant at the University of Tampere. One woman and two men were selected.

In her statement, the Ombudsman for Equality said that she primarily commented on

legal questions relating to the interpretation of the Equality Act. Comparing the qualifications of candidates within the meaning of section 8 of the Equality Act does not generally call for any special legal expertise and the Ombudsman does not as a rule carry out actual comparisons of the merits of candidates in cases involving recruitment. It is to be noted that in the case of scholarly tasks in particular, the Ombudsman for Equality would not have the competence to compare the merits of candidates either.

A jobseeker who suspects discrimination prohibited under the Equality Act can bring an action for compensation against the employer in a District Court and show during these proceedings that he or she had been more qualified than the person selected for the job. Bringing an action for compensation does not require an opinion of the Ombudsman for Equality or any other sort of endorsement.

Consequently, presenting actual evidence of the suitability of the academic qualifications of candidates for vacant university researcher positions would take place in a District Court in connection with any action for compensation brought against the employer. It is worth realising when considering the possibility of bringing an action that such procedures incur costs, which in general have to be borne by the party that loses the case in court.

The person requesting advice proposed that the comparison of qualifications undertaken by the University of Tampere was not in line with the requirements under the Equality Act, because the qualifications of the candidates were not compared with respect to all the aspects of eligibility and that this person's qualifications were partly ignored as a result. According to the person concerned, the criteria for making the selections were not evenly matched, and different things were focused on with different applicants.

According to the statement provided by the University of Tampere, a study group was appointed for the filling of the positions; it met three times and issued an opinion on the matter. The governing body of the relevant unit was also consulted, there were discussions with reference to the study group's opinion, and finally the head of the unit made a proposal to the rector on who should fill the positions.

The Ombudsman for Equality stated that the normal selection criteria in different fields and industries are of crucial importance when the qualifications of two candidates are being compared in an appointment to an official position or post or when someone is being hired. It is not the purpose of the Equality Act to alter accepted and universal customs and practices in connection with comparisons of qualifications as long as they do not discriminate

against anyone on the basis of gender. Nor does the Act require any particular formalities to be followed in the recruitment process, even though the applicant has a right to receive a written report on the grounds for selection, in accordance with section 10(1) of the Equality Act.

To ensure the transparency of the selection process, it is important to state the criteria to be used in making the selections in the vacancy notice beforehand, so that there can be no later suspicion of gender-based discrimination.

The Ombudsman recommended that, if a study group was being used in preparation for positions to be filled, it should have a balanced representation of the genders. In this case, the study group had consisted of four men and just one woman. A selection procedure that entails an examination of candidates' qualifications at several meetings may in itself allow for a proper and impartial handling of the matter, as long as the candidates are compared on the basis of non-discriminatory and impartial criteria. (TAS 174/2012)

### Gender-suggestive job titles

The Ombudsman for Equality is contacted on the matter of job or professional titles that allude to one gender and that are still

generally in use in the labour market. These titles might give rise to or confirm the impression that a certain gender is associated with the job in question.

The Government Bill for the Equality Act states that the use of a professional title in a job advertisement that refers to one gender and is universally applied does not make that advertisement discriminatory. The Ombudsman for Equality has applied this interpretation in its statements, provided that the advertisements did mention separately the fact that it was a person of a certain gender that was being sought for the position.

The Ombudsman regards it as important that attention is paid in the labour market to an improvement in job titles, so that they do not help sustain a practice where jobs and professions are associated with gender. (TAS 12/2013)

## PAY DISCRIMINATION AND OTHER DISCRIMINATION AT WORK

Prohibitions of discrimination relating to working life under the Equality Act cover not just the announcement of vacancies and recruitment, but also the actions of an employer and the treatment of employees during employment relationships and when

they are terminated. Pay discrimination has for years now been a common cause of suspected discrimination in notifications to the Ombudsman for Equality. In 2013 too, the Ombudsman received numerous requests for comments from employees who suspected that they were being discriminated against in matters of pay on account of their gender. Suspected cases of discrimination related, for example, to discrimination in pay for a particular job (basic pay) and missing out on pay rises because of parental leave. Furthermore, the Ombudsman has heard suspicions of discrimination connected with cooperation between local authorities and the harmonisation of pay when local authorities have merged. The following two examples relate to suspected cases of discrimination dealt with by the Ombudsman that related to the treatment of employees during their employment relationship.

### Suspected discrimination in the pay of two psychologists at a family centre in the city of X

Two female psychologists working at a family centre in the city of X asked the Ombudsman for Equality to comment as to whether the city was acting contrary to the Equality Act (609/1986) by paying them less for a specific job than a male occupational health psychologist working in an occupa-

tional health care (municipal) commercial enterprise cited for use as a comparison.

The employer in his statements argued that the difference in pay was due to the fierce competition connected with the recruitment of occupational health psychologists and the differences in the demands of the jobs. The employer also referred to the fact that the commercial enterprise had an independent decision-making right in the recruitment and pay of staff, and so there could be no comparison between the pay of staff at a city family centre and of staff in a commercial enterprise. According to the employer, there was no case of pay discrimination either because a male psychologist working at a family centre was not paid more for the job than the female psychologists. A presumption of discrimination under the Equality Act, however, may arise, even if the women have a male colleague who receives the same pay as them and thus less than the pay of the man used as a comparison. (See statements of the Equality Board 1/01, 2/01 and 4/06)

A comparison of pay under the Equality Act is possible to make between employees doing the same work or work that is equal in value who work for the same employer. The draft of the Equality Act states that employees may also compare their salaries with those of employees working in another unit and for the same employer (Government Bill 57/1985). Under the law, the job-

specific pay for employees doing the same work or work of equal value for the same employer must therefore be basically the same, regardless of the work unit in which they work, i.e. not just within one unit.

The Ombudsman for Equality stated that a municipal commercial enterprise is part of the municipality's organisation and an occupational health care commercial enterprise cannot be regarded as an independent legal person. Accordingly, the interpretation may ensue that the staff of the commercial enterprise and that of the service centre are working for the same employer in the sense that their pay can be compared within the meaning of the Equality Act.

According to the statement issued by the city, it is the availability of labour and the situation with respect to competition that resulted partly in the higher salary paid in the commercial enterprise. Public sector occupational health care has to compete for employees in the same market as the private sector. According to the employer, there is as yet no equivalent situation regarding competition at the family centre.

Safeguarding the availability of labour and the situation with regard to competition for labour might be grounds for the payment of a higher salary to psychologists in a certain field than to psychologists in another field, even if the work

they do might be regarded as equally demanding. When the remuneration includes a portion of the salary justified by a situation with respect to competition that is due to a shortage of labour, it is important that in each case this happens on the basis of separately examined and demonstrable facts. It remains for the employer to show to what extent the difference in pay can be explained by market factors.

When assessing whether jobs are the same or of the same value, the focus should basically be on the tasks the employees carry out and the demands on the person that performs the tasks. According to the statement provided, the tasks of the psychologists were not compared using the same evaluation criteria with regard to how demanding the work was, as the requirement concerning the openness and transparency of the pay system would call for. The performance of demanding tasks can be grounds for a higher job-specific salary. However, a difference in how demanding a job is cannot be rewarded excessively: it must always be in relation to the difference in how demanding it is in fact. (TAS 67/2012 and TAS 79/2012)

### Suspicion of the discriminatory nature of a job title

The Ombudsman for Equality was contacted by a woman who suspected that she had

been discriminated against in a job title on account of her gender. In her opinion, the job title did not correspond to how demanding the job was, unlike it did with male clerks in the company. Although she was not a victim of pay discrimination, she feared her lowly title would weaken her chances of promotion and pay rises in the long term.

The woman's job title was Technical Support. She was a qualified engineer. Previously, the title of a man in the company who had done virtually the same job had been Engineer, according to the woman. There was also a male engineer employed by the company with the title of Design Engineer.

The woman's job was the design and creation of manuals and service/maintenance and installation instructions. The job of the Design Engineer was product design, which was a more demanding job than designing manuals for products. However, both jobs were being done by someone with an engineering background, so the woman was of the view that her education level should have been reflected in her job title in the same way as for the other job. In her opinion, a suitable title for her would have been, for example, Product Engineer.

According to the employer, job titles were decided on the basis of what the positions entailed and the objective to try and describe the nature of the work as clearly as

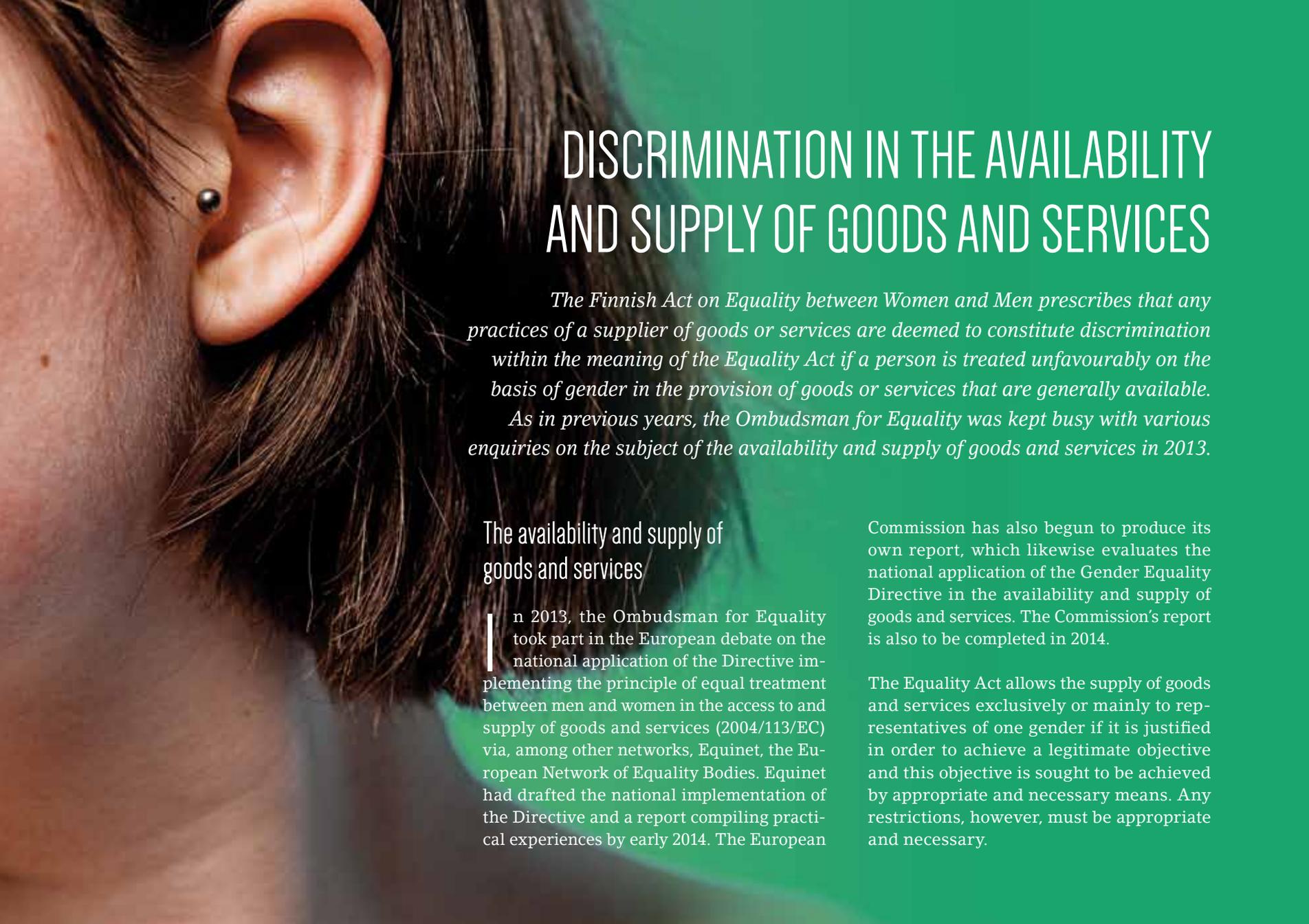
possible to outsiders. In the view of the employer, the woman's title relevant to the job description might also have been Documenter. That had been the job title of another female employee doing virtually the same job years before. The employer did not think that the woman's tasks had altered in a way that would require the job title to be reviewed. Her future salary rises did not depend on her title.

The Ombudsman stated that the employer, given his managerial prerogative, had the right during an employment relationship to decide, for example, on an employee's job title, as long as that employee was not in this way put at a disadvantage on the grounds of gender and contrary to the Equality Act as compared to one or more other employees in the service of the employer.

If a title suggests tasks that are less demanding or lowlier compared to the titles of employees of the other gender doing the same jobs, and this causes the person to be accorded a lower status, the different titles could be regarded as discriminatory. If, however, employees who are being compared are not engaged in the same tasks, but in different ones, the different titles do not constitute discrimination if they are based on differences in their demands or other differences in the tasks involved.

The man who had preceded the woman in carrying out similar tasks had been an agency worker whose employer had used the title Engineer in the details provided on him. The company using the employee, however, had the right to decide what title was to be used for the agency worker while he worked there, for example, on business cards. Because the job title of the woman and man had been the same in the company, i.e. Technical Support, they were not accorded unequal status.

The tasks of the Design Engineer had been different from those of the woman who had suspected discrimination. The different job titles were based on the different tasks the employees were engaged in, so in the view of the employer, though not the Ombudsman, no one could say that the woman had been discriminated against in her job title on the basis of gender. Given this view on discrimination, the Ombudsman for Equality did not adopt a position on how well the woman's title otherwise described her current tasks and her education in the field of engineering. (TAS 71/2011)



# DISCRIMINATION IN THE AVAILABILITY AND SUPPLY OF GOODS AND SERVICES

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

*As in previous years, the Ombudsman for Equality was kept busy with various enquiries on the subject of the availability and supply of goods and services in 2013.*

## The availability and supply of goods and services

In 2013, the Ombudsman for Equality took part in the European debate on the national application of the Directive implementing the principle of equal treatment between men and women in the access to and supply of goods and services (2004/113/EC) via, among other networks, Equinet, the European Network of Equality Bodies. Equinet had drafted the national implementation of the Directive and a report compiling practical experiences by early 2014. The European

Commission has also begun to produce its own report, which likewise evaluates the national application of the Gender Equality Directive in the availability and supply of goods and services. The Commission's report is also to be completed in 2014.

The Equality Act allows the supply of goods and services exclusively or mainly to representatives of one gender if it is justified in order to achieve a legitimate objective and this objective is sought to be achieved by appropriate and necessary means. Any restrictions, however, must be appropriate and necessary.

If a trader, for example, decides to supply only certain goods and services for women, that in itself is not contrary to the Equality Act. Equally, and notwithstanding the prohibition of discrimination, a trader may restrict what he supplies to goods and services just for men. If a trader totally refuses to make available a product he supplies to customers of one gender, from the point of view of the principle of the equal treatment of women and men it needs to be examined objectively whether the trader has an acceptable reason for acting in this way.

In 2013, the Ombudsman for Equality received numerous enquiries concerning suspected cases of discrimination in the availability and supply of goods and services. The questions related to different discounts for just women or just men, discrimination in men's and women's hairdressing services, gender-based pricing at various events, and fitness centre services for women only.

## Women-only sessions at fitness centres

The Ombudsman for Equality has been repeatedly asked for an opinion on whether a private fitness centre entrepreneur or a local authority service provider is in breach of the prohibition of discrimination under the Equality Act by organising fitness and exercise sessions for women only.

In the cases brought before the Ombudsman, the general excuse for the different treatment of women and men is ultimately the question of modesty. It is because of fitness centre sessions for women only that it has been possible to lower the threshold at which many women can enjoy fitness centre training and exercise, as women have felt that joint exercise and fitness centre sessions with men have been a barrier to this. Separate women-only sessions are a suitable and appropriate solution to this. Reasons of modesty can equally be the justification for organising men-only fitness sessions.

The enquiries that have come into the Office of the Ombudsman for Equality for consideration have shown that the practice of organising exercise and fitness sessions for women varies in terms of number of days a week and the length of individual sessions.

The Ombudsman is of the opinion that, given the consideration of modesty, separate sessions for women should still be seen as a suitable means of lowering the threshold at which women can start to enjoy exercise and fitness, and that they do not contradict the Equality Act in the provision of services by health and fitness centres.

In the year under review, and in connection with one case brought before the Office, however, the Ombudsman found for the first

time that women-only sessions at a local authority fitness centre restricted access for men to the extent that the local authority in question was asked to assess the arrangements for women-only sessions as a whole in terms of how long they lasted and when they took place. The local authority was asked in particular to judge whether the arrangement was proportional to the objective, i.e. appropriate. As a result of the view taken by the Ombudsman, the local authority in question stated the measures it had taken to have a fair balance of fitness sessions for women and men (TAS 46/2013)

## Women-only rally offer

The Ombudsman for Equality was asked to clarify whether a rally offer for women on International Women's Day made by a certain company was inconsistent with the Equality Act. The offer price to women was EUR 49 per person (normally EUR 214). The benefit was therefore worth EUR 165.

According to the statement submitted by the company to the Ombudsman, the International Women's Day offer was the company's response to a request from its female clientèle to be able to drive in the company of other women. The company stated that the women did not necessarily want to go along to the same event as men, because a rally

was felt to be a man's sport. The idea was to give the women an opportunity to practise rally driving without the presence of men.

The Equality Act allows the supply of goods and services exclusively or mainly to representatives of one gender in certain restricted situations. For example, an offer made to women restricted to International Women's Day is possible. Offers just to people of one gender, however, are only permitted if they have a relatively small monetary value. In this case, the Ombudsman for Equality regarded the offer as being contrary to the Equality Act on account of its monetary value. (TAS 81/2013)

## Letting of a shared apartment

The Ombudsman for Equality was asked to clarify whether a rental advertisement for a flat complied with the Equality Act. The advertisement offered rented shared apartments for women.

Provision of accommodation exclusively or mainly to representatives of one gender is allowed if it is justified in order to achieve a legitimate objective and this objective is sought to be achieved by appropriate and necessary means. The reason for the different treatment of women and men in the letting of accommodation may, for example, be based on considerations of modesty in

a flat share arrangement. In this case, the accommodation to let was a four-bedroom flat with a shared bathroom, etc.

In the position it adopted, the Ombudsman for Equality thought that letting two rooms that were still vacant specifically to women after tenancy agreements had already been signed with two women looking for accommodation with respect to two bedrooms in the flat did not contravene the Equality Act. (TAS 247/2013)

## WC facility provided at festivals

The Ombudsman was asked to clarify whether a festival organiser was guilty of discrimination prohibited in the Equality Act by providing a WC facility for female customers at festivals for which they had to pay.

According to the statement from the festival organiser, the event featured normal free toilet facilities for all customers. In addition to these free facilities, the festival was offering female customers a separate WC facility for which they had to pay, which was the result of a customer survey. The facility included the presence of a toilet assistant and an ongoing cleaning service.

In its remarks, the Ombudsman gives special attention to the fact that it is not the purpose of the Equality Act to prevent all different

treatment of women and men, but just different treatment that is clearly unfair. A situation where men and women have had access to a sufficient number of toilet facilities and where a separate WC facility that had to be paid for was only available to women has not put men at a disadvantage to the extent that the actions of the festival organiser might have been regarded as discrimination prohibited in the Equality Act. Nor did the fact that the women had to pay for the additional service put them at a disadvantage compared with the men. (TAS 232-234/2013)

## Women-only coffee bar

The Ombudsman for Equality was contacted by an entrepreneur who wanted to open a coffee bar just for women. The purpose was for Muslim women to be able to spend time with their children and meet one another somewhere apart from at home without the fear of the presence of men. It was also the entrepreneur's idea to provide, for example, a safe place for women living in shelters, allowing them to go out and try to get used to normal living.

The Ombudsman asked the Ombudsman for Minorities for an opinion on the matter as far as its responsibilities were concerned. The task of the Ombudsman for Minorities is to promote the status of ethnic minorities



and foreigners in Finland, prevent ethnic discrimination, and intervene in cases where it is in evidence.

In her statement, the Ombudsman for Minorities said that there were good arguments in Finnish society for increasing the number of public spaces and facilities where Muslim women could feel safe. However, it thought that opening a coffee bar of the sort proposed would have a negative impact on the integration of Muslim women in Finnish society, where equality between the genders is a key value. At worst, the proposed arrangement could be seen as a provision of services representing gender integration that contradicted the aims of Finnish society - something that would weaken the integration of Muslim women in Finnish society. The Ombudsman for Minorities took the view that opening a coffee bar just for women, and for Muslim women in particular, did not fall within the definition of affirmative action permitted under the law. The Equality Act allows the supply of goods and services exclusively or mainly to repre-

sentatives of one gender if it is justified in order to achieve a legitimate objective and this objective is sought to be achieved by appropriate and necessary means. Under EU Directive 2004/113/EC, a legitimate aim for differences in treatment may, for example, be the protection of victims of sex-related violence (in cases such as the establishment of single-sex shelters), reasons of privacy and decency (in cases such as the provision of accommodation by a person in a part of that person's home), the promotion of gender equality or of the interests of men or women (for example, single-sex voluntary bodies), the freedom of association (in cases of membership of single-sex private clubs), and the organisation of sporting activities (for example, single-sex sports events). Any restrictions, however, must be appropriate and necessary.

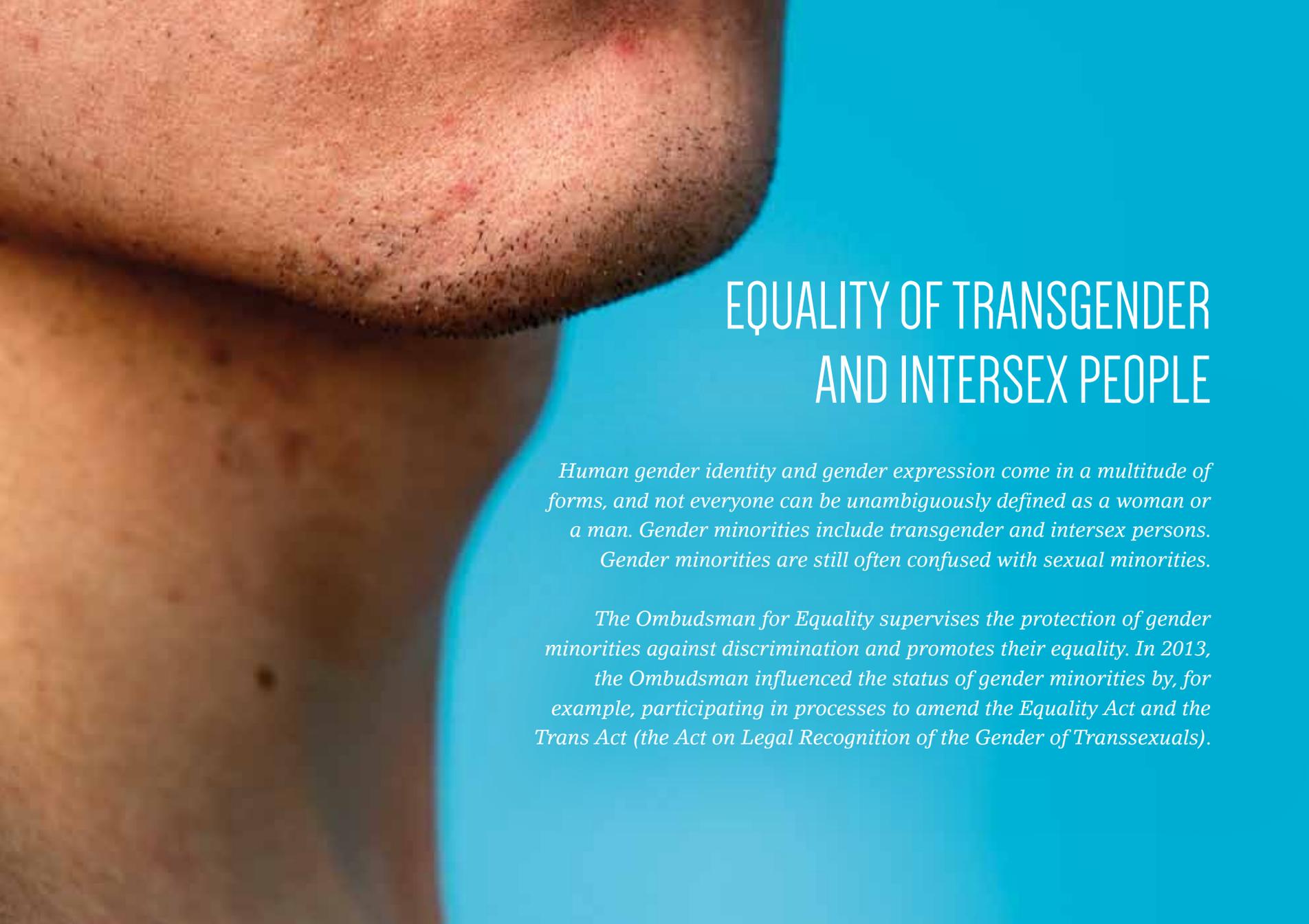
If a trader, for example, decides to supply only certain goods and services for a certain gender, that in itself is not contrary to the Equality Act. If a trader totally refuses to make available a product he supplies to customers of one gender, from the point of view of the principle of the equal treatment of women and men it needs to be examined objectively whether the trader has an acceptable reason for acting in this way.

In her statement, the Ombudsman for Equality mentioned that the aims being pondered by the person making contact could be regarded as legitimate. However, the Ombuds-

man was of the view that the proposed type of coffee bar operation was not the right and proper way to achieve these aims.

Support for, and the protection of, those who have experienced domestic and intimate partner violence, something that the work of shelters also attempts to accomplish, are vitally important and thus also constitute a legitimate aim. In the opinion of the Ombudsman, however, it would be difficult for such a type of coffee bar facility to accomplish the protection of victims in an appropriate manner. At worst, a coffee bar for women who had experienced violence could be a risk to the safety of the target group if the perpetrator of the violence knew that a woman who had left a shelter was likely to be spending time in the coffee bar and considerations of safety and security were not adequately taken into account there.

For example, the work of an association for Muslim women and the victims of violence might well achieve the objectives of the person making contact than the coffee bar facility referred to. Under section 9 of the Equality Act, admittance of either women or men only as members of an association other than an actual labour market organisation shall not be deemed to constitute discrimination based on gender, if this is based on an express provision in the rules of the association. Such an association may organise events and functions, such as coffee mornings, just for people of one gender or the other. (TAS 455/2012)

A close-up photograph of human skin, showing texture and some redness. A bright blue graphic shape, resembling a stylized 'L' or a drop, is overlaid on the right side of the image. The text is positioned within this blue area.

# EQUALITY OF TRANSGENDER AND INTERSEX PEOPLE

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

*The Ombudsman for Equality supervises the protection of gender minorities against discrimination and promotes their equality. In 2013, the Ombudsman influenced the status of gender minorities by, for example, participating in processes to amend the Equality Act and the Trans Act (the Act on Legal Recognition of the Gender of Transsexuals).*

## Amendments being made to the Equality Act and the Trans Act

In the year under review, the Ministry of Social Affairs and Health continued to draft a Government Bill on provisions in the Equality Act that would prohibit discrimination on the grounds of gender identity and gender expression and promote the equality of gender minorities. The Government Bill is expected to come before Parliament in spring 2014.

In autumn, the Ministry of Social Affairs and Health appointed a working group to reform the Trans Act. The Office of the Ombudsman for Equality has a representative in the working group. The conditions on which transgender persons can have their legal gender and personal identity number match their own gender identity are laid down in the Trans Act. Such conditions listed in the Trans Act include, for example, requirements relating to infertility and being unmarried. The Council of Europe's Commissioner for Human Rights has been among those to call for the abolition of these requirements. It is the task of the work group to draft proposed amendments to the requirements relating to infertility and being unmarried in the Trans Act and to evaluate the need for other changes to the Act as a basis for further work. The working group will continue with their work in 2014.

## The Ombudsman for Equality examines the right of transgender people to fertility treatment

According to reports received by the Ombudsman for Equality, a couple, where one of the partners was a transgender person, were not given fertility treatment using the transgender person's own gametes or those of an external donor. It was also somewhat unclear as to whether it was private or public providers of health services that were to administer the treatment.

The view of the Ombudsman for Equality is that refusing a couple fertility treatment because one of the partners is a transgender person accords them an unequal status on the basis of gender in a way that is prohibited in the Equality Act.

The Act on Assisted Fertility Treatments does not state that being a transgender person would be a barrier to the provision of treatment. Whether the balanced development of a child can be guaranteed in the manner prescribed in the Act must be assessed following the same principles for transgender people and their partners as for others who want to become parents through assisted fertility treatment.

It is the view of the Ombudsman that the provision on infertility in the Trans Act

only relates to the requirements for confirming legal gender when that gender is being reassigned, and cannot be interpreted as having any further impact. It therefore cannot justify failure to provide a couple with fertility treatment, where one partner is a transgender person. Nor can the provision be interpreted in a broader sense because that could be seen as being inconsistent with the provisions of the Constitution of Finland, as is the case, for example, with the principle of personal integrity.

Among the grounds for non-urgent treatment is the recommendation not to administer fertility treatment in public health care in situations where the reason for childlessness is sterilisation. The Ombudsman stated that the recommendation would not apply if sterilisation were linked to the status of being a transgender person.

Following the clarification procedure, the Ombudsman sent its statement to the providers of fertility treatments that did not administer the treatment to transgender persons according to the reports that came in. The statement was also sent for information purposes to the Ministry of Social Affairs and Health and to the National Supervisory Authority for Welfare and Health (Valvira). (TAS 297/2013)

## the Ombudsman for Equality make a recommendation on course and qualification certificates with reassigned gender

The Ministry of Education and Culture and the Ombudsman for Equality revised a recommendation that education providers, higher education institutions, examination committees and the Matriculation Examination Board should, on request, issue course and qualification certificates with new personal data for persons with reassigned gender. The certificates can be issued under a new name after the forename has been changed. The party issuing the certificate can ensure that the name and/or personal details are right by checking birth certificates and personal identity cards.

The recommendation is a way to promote the right of persons with reassigned gender to the protection of privacy and non-discrimination. The Ministry of Education and Culture sent the recommendation to all educational institutions for information. The Ombudsman for Equality also announced the recommendation and answered client enquiries relating to it. (OKM/8/591/2013, TAS 132/13)

## Student accommodation and reassigned gender

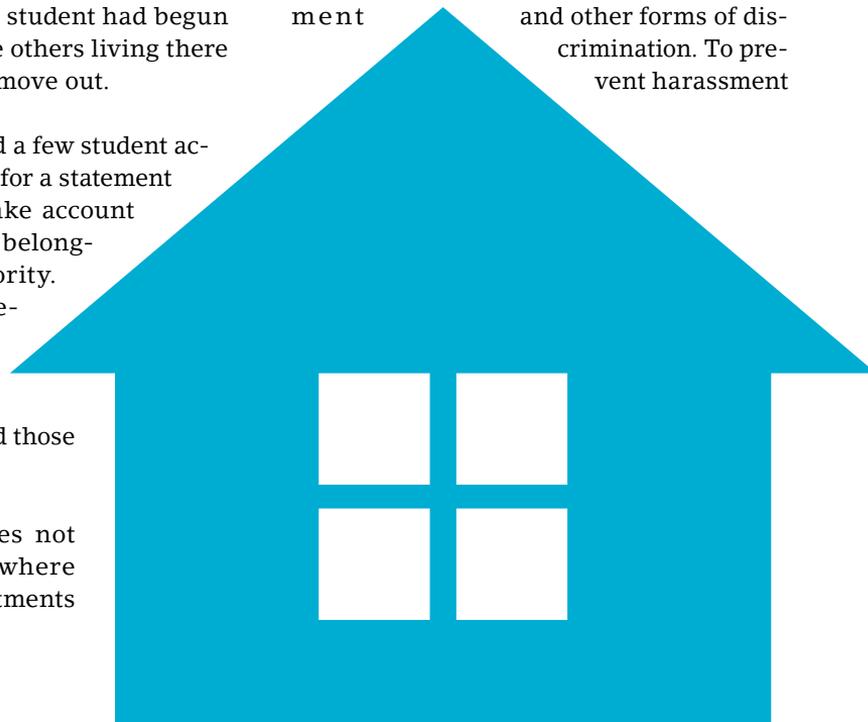
A representative of a students' organisation asked the Ombudsman for Equality for an opinion on how gender minorities, and reassigned gender in particular, should be taken into account in student accommodation agency work. For example, in one case, an agency for student accommodation was not prepared to take account of the need for a student to move from one shared flat to another or have their own accommodation in connection with gender reassignment, or while the process was continuing. In the old shared flat, the student had begun to be harassed, and the others living there wanted the student to move out.

The Ombudsman asked a few student accommodation agencies for a statement on what they did to take account of gender and people belonging to a gender minority. According to the statement, shared flats were mainly divided according to gender into those for males and those for females.

The Equality Act does not prevent a situation where the residents for apartments

shared by several students are selected according to gender, with men and women living in different places. However, human gender identity and gender expression come in a multitude of forms, and not everyone can be unambiguously defined as a woman or a man.

The Ombudsman stated that everyone has the right to be of the gender that feels right for him/her and to express that without being the victim of harassment or some other form of discrimination based on gender as a result. People belonging to gender minorities are often more prone than others to gender-based harassment and other forms of discrimination. To prevent harassment



and discrimination, their special situation should also be taken into account in student housing arrangements.

Gender reassignment, in particular, can be an important consideration in someone's accommodation arrangements. When people have their gender reassigned, a good practice to be followed in housing students is to consider their gender to be what they feel is right for them. Furthermore, in situations where people start to adopt a social role reflecting the gender they feel is right for them while sharing accommodation with other students, it would be a good practice, if they so wish, to make it possible for them to move into a shared flat representing the new gender or into a flat for a single person. It is important too that transgender people have the right to a housing arrangement that reflects their gender identity while they are studying, in the same way as for the other students. (TAS 65/2012, see also p. 34, TAS 247/2013)

## Hate speech targeting transgender people

The Ombudsman for Equality was asked how to intervene in hate speech targeted at transgender people, which appears on the internet, for example. Hate speech is a serious social problem. It creates a threatening and hostile atmosphere in society and is offensive to people and groups that are its victims.

People belonging to gender minorities are especially prone to harassment and other forms of discrimination based on gender prohibited in the Equality Act. Writing something that is improper and insulting about gender minorities online, for example, encourages discriminatory attitudes and deeds and can, in extreme cases, even lead to violence against transgender people.

In Finland, equality and freedom of speech are rights enshrined in the Constitution. The protection of freedom of speech is robust, and it can only be restricted mainly on the grounds of certain provisions in the Criminal Code, such as those relating to defamation, menace and ethnic agitation. In such cases, it is a matter for the police and the prosecution service, and ultimately a court of law will decide if an individual case involves the permitted exercise of the freedom of expression or an act contrary to the Criminal Code. The European Court of Human Rights has stated that hate speech that offends persons and groups does not merit the protection of freedom of speech.

Because of the scope of the internet, in practice it is impossible for the authorities to monitor its content. For that reason, the most effective

way to intervene is by notifying a website's administrator. The Act on the Exercise of Freedom of Expression in Mass Media contains further provisions on freedom

of speech in the mass media and, for example, the responsibility of discussion forum administrators and operators. The main providers of social and communal services in Finland have established codes of conduct, committing them to the provision of user-friendly solutions for reporting activity that violates the rules of a service, conditions of use and Finnish laws.

Hate speech targeted at a group of people is punishable under the Criminal Code, which prohibits ethnic agitation.

Transgender and intersex people can be regarded as those in groups of people protected under this legal provision. The provision does not criminalise certain opinions or material in themselves, but the public dissemination of the opinion or material. The perpetrator of the offence of agitation can therefore be anyone and someone other than the person who originally wrote the message.

Under certain conditions, the responsibility may also lie with the website administrator, who is not responsible for producing the material but technically assisting in its dissemination. There may be criminal liability if the website administrator's attention has been drawn to the presence of illegal material on the site but the administrator all the same consciously allows the material to be kept and takes no steps to remove it. The matter may be reported to the police, especially where hate speech is obscene or ongoing. (TAS 235/2012)

## Wide-ranging cooperation to promote the status of gender minorities

In the year under review, the Office of the Ombudsman for Equality continued to co-operate with organisations representing gender minorities, such as Trasek ry, DreamwearClub ry, Seta ry and Transtuki-

piste. Representatives of the organisations were met at a number of events, by working groups, by the Human Rights Centre's Human Rights delegation, and by the panels that monitor the implementation of the Government action plan on human rights.

A representative of DreamwearClub ry led a training session for staff at the Office of the Ombudsman for Equality on what it is like to be a transvestite. The Office also held an internal training session on gender minorities and their status. In addition, representatives of the Office of the Ombudsman for Equality attended a seminar organised by the Human Rights Centre, the Government Fundamental and Human Rights Liaison Officer Network and Seta ry, at which research conducted by the European Agency for Fundamental Rights on the discrimination and hate crime experiences of LGBT people was presented.

The Ombudsman for Equality was also involved in the Trans-Helsinki Week events in 2013. Experts from the Office attended an Amnesty International seminar on 20 November at which the legal endorsement of gender was examined from the perspectives of the right of self-determination and human rights. The Ombudsman for Equality, Pirkko Mäkinen, spoke at a working life seminar organised by DreamwearClub ry on 22 November of remedies under the Equality Act to improve the status of

transgender people in working life. Furthermore, in November a seminar in Hanaaari was organised on the well-being of LGBT young people, and this was also attended.

A representative from the Office of the Ombudsman for Equality took part in a working group coordinated by the Ministry for Foreign Affairs. One of its tasks was to consider the implementation in Finland of recommendations made by the Council of Europe's Committee of Ministers to prevent discrimination against sexual and gender minorities. The working group contributed to the drafting of a response given the Council of Europe by the Ministry for Foreign Affairs on the situation in Finland.



# STATISTICS

The Office of the Ombudsman for Equality investigates suspected cases of discrimination as a written procedure. The inspection of equality plans, requests for information and other statements are dealt with in writing and entered in the Ombudsman's register.

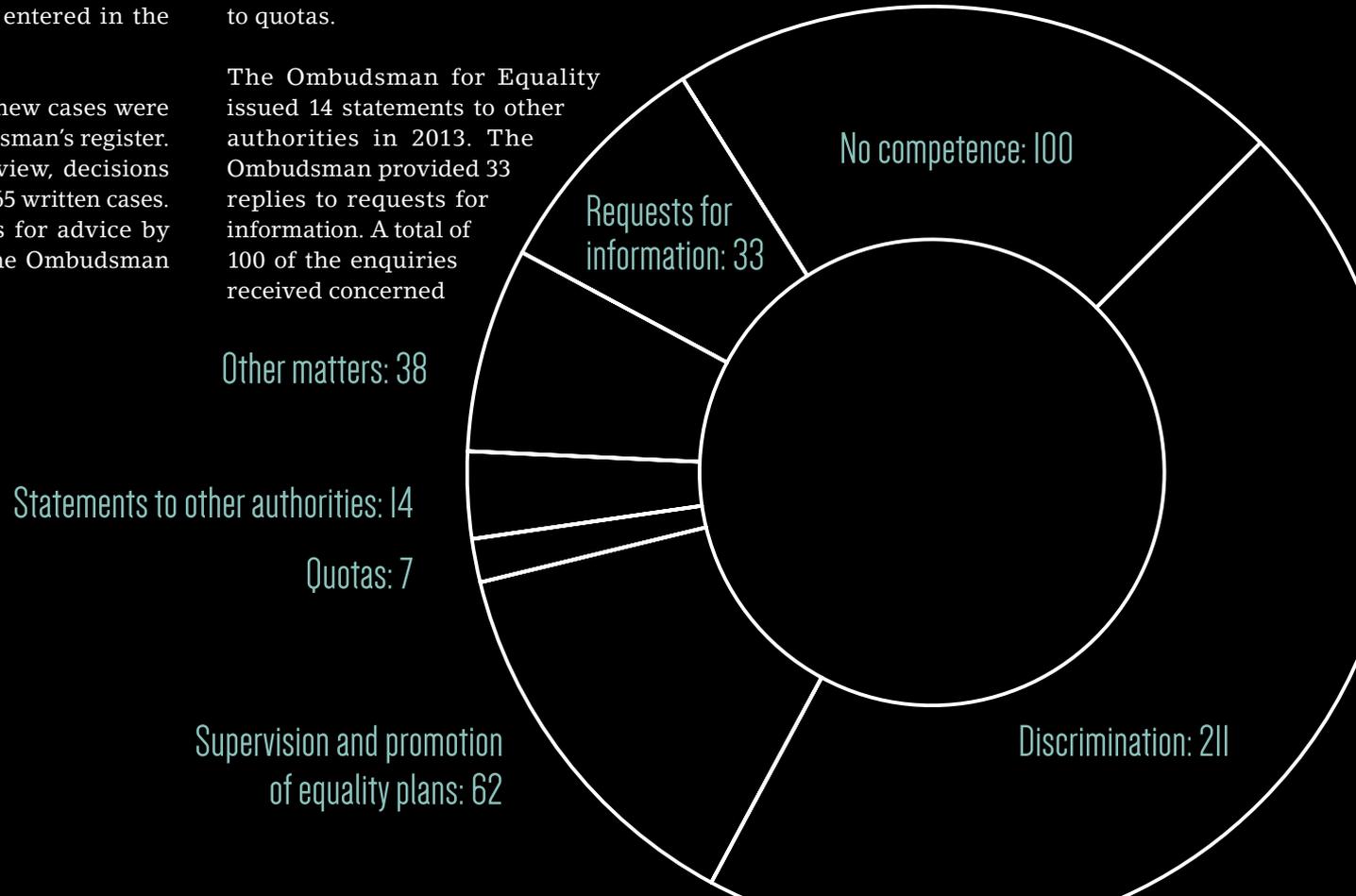
In 2013, the details of 404 new cases were written down in the Ombudsman's register. During the year under review, decisions were reached on a total of 465 written cases. Additionally, 376 requests for advice by phone were received by the Ombudsman for Equality in 2013.

## Cases handled in writing and decided upon in terms of content

A total of 211 of the cases handled in writing concerned issues of discrimination. In 2013, 62 cases relating to the inspection and promotion of equality plans were processed. There were seven cases relating to quotas.

The Ombudsman for Equality issued 14 statements to other authorities in 2013. The Ombudsman provided 33 replies to requests for information. A total of 100 of the enquiries received concerned

cases where the Ombudsman for Equality has no competence. The remainder of the cases dealt with during the year related to communications and administration.



## Enquiries in matters of discrimination

Slightly fewer than one half (45 %; 100 requests) of cases relating to discrimination and processed in writing, and just over one half (54 %; 152 requests) of calls relating to discrimination and received by phone, concerning legal counselling, related to discrimination in working life. Enquiries relating to discrimination mainly concerned pay discrimination, discrimination based on pregnancy and family leave and discrimination in recruitment.

The website of the Office of the Ombudsman for Equality received more than 40,000 visitors in 2013. They were mostly looking for information on discrimination and gender equality planning. The Ombudsman is on Facebook and Twitter, and communications on social media have been successful.

## Appropriations and staff

In 2013, the Office of the Ombudsman for Equality had 10.5 man-years at its disposal. In addition to the Ombudsman for Equality, the staff comprises the Head of Division, five Senior Officers, the Information Officer and three secretaries. One university trainee also worked at the Office.

The operational appropriation for the Ombudsman for Equality was EUR 125,000. This does not include salary or rental costs or certain other items of expenditure that the Ministry of Social Affairs and Health pays in a centralised manner.



# INTERNATIONAL ACTIVITIES

## Nordic co-operation

A meeting of the Ombudsmen for Equality and the equality authorities of the Nordic countries was held in September 2013 in Reykjavik, Iceland. At the meeting were representatives of the Faeroe Islands, Greenland, Iceland, Norway, Sweden, Denmark and Finland. There were also two representatives from the Nordic Gender Institute (NIKK) who presented its work. Three representatives from the Office of the Ombudsman for Equality in Finland attended with the representatives of the Office of the Ombudsman for Minorities in Finland.

One item at the meeting was a discussion on current activities in each country. The Office of the Ombudsman for Equality in Finland spoke of its campaign against discrimination due to pregnancy and of amendments being made to the Equality Act, especially proposals for the regulation of the status of gender minorities.

Special topics at the meeting were the role of NGOs in the work to combat discrimination and hate speech and hate crime. The concern was expressed that the Nordic countries

were witnessing a rise in the incidence of hate speech against ethnic groups, misogyny and anti-feminism. The Norwegians also spoke about published reports on gender equality (NOU 2011:18 and NOU 2012:15) and the reform to Norway's Gender Equality Act.

## Collaboration between European discrimination authorities

The Ombudsman for Equality is actively involved in the work of Equinet, the European Network of Equality Bodies. The year 2013 saw a change that was important for the Office of the Ombudsman for Equality, when a decision was taken in 2012 to terminate the Network of Gender Equality Bodies, which had been administered directly by the European Commission, and combine it with Equinet. At the start of 2013, therefore, a new work group focusing on equality between the genders began at Equinet, and the Ombudsman for Equality is participating in it. In 2013, the work group concentrated on issues of equal pay for equal work.

As in previous years, Information Officer from the Office of the Ombudsman for Equal-

ity also had an active role in the work of the *Communications Strategies and Practices* working group. There was also a representative from the Office in the *Equality Law in Practice* working group.

## Other international meetings and visits

The work of the Ombudsman for Equality and the Finnish Equality Act are subjects of interest internationally, and the Office of the Ombudsman collaborates with the Ministry for Foreign Affairs on the reception of visitors from abroad. During the year under review, the Ombudsman welcomed representatives of the Serbian Parliament, an equality delegation from Kazakhstan, foreign students of journalism and political activists from Tunisia. The Ombudsman also met Minister Fatma ahin from Turkey, the Dutch Ambassador, Henk Swattouw, and Eve Lubin from the French Embassy. The Ombudsman also spoke about the status of women with a representative of the UN Women project and with the President of the Ewha Womans University, Dr. Jur. Sun-Uk Kim.



## The Ombudsman for Equality encourages the Government to take determined action to eliminate violence against women

The Ombudsman for Equality gave a statement to the Ministry for Foreign Affairs on the report of the work group investigating the national ratification measures in connection with the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

The Convention is especially important for the prevention and elimination of violence against women. It gives strength to the conclusion that violence against women is a human rights violation that has serious consequences both for the individual and society. The full national implementation of the Convention would promote the prevention of all forms of discrimination against women and the implementation of genuine equality between the genders.

Violence against women and domestic violence are serious problems in Finland too. In the opinion of the Ombudsman for Equality, the shutting of shelters and the fragmentation of the shelter network are unjustified, given the prevalence of violence against women. The current situation is at odds with the assurances given by the Government that it has taken adequate action to improve the situation.

The Istanbul Convention obliges those party to it to act with determination to reduce and prevent violence against women and domestic violence. The Ombudsman believes that it is important also for the Finnish Government to undertake to act effectively to prevent and eliminate violence against women and family violence.

The Ombudsman agrees with the commonly expressed idea that the full implementa-

tion of the obligations under the Istanbul Convention will require comprehensive, wide-ranging and coordinated cross-administrative effort. This effort will require human and other resources and close attention when the Convention is being ratified.

The Government would show it was sincerely committed to the Convention and adequate national implementation measures for the obligations under it by setting aside the necessary resources for a Government Bill on joining the Convention. (TAS 137/2013)

## Statement by the Ombudsman for Equality to the UN International Covenant on Economic, Social and Cultural Rights Committee

The Ombudsman for Equality issued a statement regarding certain current national concerns to the Committee overseeing the UN International Covenant on Economic, Social and Cultural Rights.

In the statement, the Ombudsman for Equality highlighted the issue of pay discrimination, as well as discrimination based on pregnancy and family leave, which are still major gender equality concerns in working life.



VIOLENCE AGAINST WOMEN  
IS A HUMAN RIGHTS VIOLATION  
THAT HAS SERIOUS CONSEQUENCES  
BOTH FOR THE INDIVIDUAL  
AND SOCIETY.

In November 2014, the Committee will discuss Finland's seventh interim report on the national implementation of the International Covenant on Economic, Social and Cultural Rights. (TAS 285/2013)

## REPRESENTATION OF THE OMBUDSMAN FOR EQUALITY IN DIFFERENT BODIES

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

## PUBLICATIONS

- *Annual Report 2012 by the Ombudsman for Equality*
- *Jämställdhetsombudsmannens årsberättelse 2012.*
- *Tasa-arvovaltuutetun vuosikertomus 2012.*



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