



Annual report 2011

by the Ombudsman for Equality



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Ombudsman for Equality in

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 counselling
- ✓ Monitoring the implementation of equality between women and men in different sectors of society.

brief

If someone suspects that he or she has been discriminated against in a manner referred to in the Equality Act he or she may turn to the Ombudsman for Equality. The Office of the Ombudsman for Equality provides advice and instructions on rights and the application of the Equality Act and, if necessary, investigates a suspected case of discrimination by written procedure. If the Ombudsman finds that a violation of the Equality Act has been committed she will issue instructions and advice aimed at the discontinuation of the unlawful practice in question. 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

2011 was a busy year for discussions concerning equality: gender equality was discussed by the media on a weekly basis from multiple perspectives. Issues prompting discussion included working life equality between men and women, differences in men's and women's pay and gender-based discrimination in the pricing of goods and services. The application of gender quotas on corporate boards also sparked discussion in the economic sector.

The Equality Act's obligation to promote equality on a systematic and goal-driven basis applies to places of work and schools and educational institutions alike. In 2011, the monitoring of educational institutions' equality planning carried out by the Office of the Ombudsman for Equality was aimed at

universities and higher education institutions. Following the reform of university legislation, the composition of the administrative bodies of universities was also investigated in connection with the review of equality plans. The Ombudsman for Equality requested all universities subject to the Universities Act to provide a report on the gender distribution of their executive and administrative bodies and a description of these bodies' selection procedures. On the basis of these reports and descriptions it would seem that the situation with respect to gender equality and the representation of women and men is rather good in the executive and administrative bodies of both public-law and private-law universities. Women make up at least 40 per cent of the Board at the majority of universities while one in three rectors is a woman.

The Equality Act protects against gender-based discrimination everywhere in society: in working life, at educational institutions and in the provision of goods and services. Discrimination on the basis of pregnancy and family leave forms the largest group of cases submitted to the Office of the Ombudsman for Equality. This type of discrimination is usually related to salary, returning to work after family leave or the extension of a fixed-term employment contract once an employer has learned of a person's pregnancy. The situation has remained unchanged for years.

In addition, the Ombudsman for Equality supervises the protection of gender minorities against discrimination. In 2011, the human rights of gender minorities often occupied a prominent role in the work of



the Office of the Ombudsman for Equality; in the spring of 2011 the Office organised a seminar on the position of gender minorities in society and the realisation of their human rights. During the period the Ombudsman for Equality also processed cases of suspected discrimination brought to the fore by people belonging to gender minorities; for instance it issued a statement on a work discrimination case involving a transgender person. In late 2011 this also became the first case involving discrimination at work in which a court obliged an employer to pay compensation for discrimination against a transgender employee. Commissioned by the Ombudsman for Equality a report on the unequal treatment faced by gender minorities was completed in late 2011.

The human rights aspect and the diversity of people are currently prominent topics of international discussion also influencing discussion in Finland. In 2011 the Government of Finland decided to draft a human rights policy action plan; the Ombudsman for Equality participated in the preparation of this National Human Rights Action Plan of Finland. Projects to be proposed for the Action Plan were prepared by the officials' working group and the panel for NGOs

and special law enforcement officials which operated simultaneously.

The Ombudsman for Equality proposed two projects for the Action Plan: Firstly enhancement of the regulation of discrimination based on pregnancy and family leave in the Employment Contracts Act and secondly elimination of the sterility requirement from the Act on Legal Recognition of the Gender of Transsexuals. Even though these issues were not included in the final National Human Rights Action Plan accepted by the Government we will continue to bring them to the fore.

The wider human rights aspect provides us with the opportunity to ponder how important ensuring the prominence of the gender aspect is with regard to various population groups. Until now rather few measures concerning ethnic and other minority groups have been carried out within the scope of Finnish equality policy. In the future Finland's goal will be to promote gender equality from the perspective of human diversity as part of the life of all groups of people.

Pirkko Mäkinen

Equality as part of **human rights**

Human rights have been a highly prominent topic in the national discussion concerning equality. This topic has also been manifested in the work of the Ombudsman for Equality. In addition the Ombudsman for Equality has issued statements regarding the realisation of international human rights treaties and their national reporting.

Human rights, a concern for the Ombudsman for Equality

In the autumn of 2011 preparation of Finland's first National Human Rights Action Plan began. The Ombudsman for Equality participated in the work of the panel set up to support the working group preparing the Plan. The Ombudsman for Equality proposed two projects for the Action Plan. One of these concerned the amendment of the Act on Legal Recognition of the Gender of Transsexuals and the investigation of treatment practices of intersex children and the other one concerned a group of various projects aiming to prevent discrimination based on pregnancy and family leave.

It was proposed that the requirement that a person has been sterilised or is otherwise infertile in order to be confirmed as belonging to the opposite gender to that indicated for him or her in the Population Information System be omitted from the Act on Legal Recognition of the Gender of Transsexuals. The Ombudsman for Equality has considered the infertility requirement highly problematic with regard to human rights. It entails that transpeople do not enjoy their rights to equality, physical integrity and respect for private and family life.

Discrimination on the basis of pregnancy and family leave has been a considerable concern throughout the new millennium. The majority of cases where the Ombudsman for Equality is contacted concerning issues related to working life and the majority of lawsuits concerning gender discrimination are related to discrimination on the basis of pregnancy and family leave. Amendments made in the Act on Equality between Women and Men in the 1990s aimed to clarify the provisions on discrimination based on pregnancy but now the time has come to re-evaluate the efficiency of the legislation insofar as these issues are concerned. The Ombudsman for Equality proposed that

the Human Rights Action Plan include the launch of an investigation into how labour and civil servant legislation could be developed in order to more efficiently prevent inappropriate practices related to pregnancy and family leave. The Ombudsman also proposed the organisation of an extensive PR campaign in order to curb discrimination based on pregnancy and family leave.

The issues proposed by the Ombudsman for Equality were included in the panel's propositions but were not included in the Government working group proposal and are absent from the final Human Rights Action Plan approved in 2012. In her 2011 statement to the UN High Commissioner for Human Rights the Ombudsman for Equality also highlighted her concerns over the infertility requirement included in the Act on Legal Recognition of the Gender of Transsexuals and discrimination based on pregnancy and family leave. The issuing of this statement was connected to the review of the human rights situation in Finland in the context of the Universal Periodic Review of the UN Human Rights Council.

In 2011 the Ombudsman for Equality also issued statements for the reports concerning the application of the following conventions

in Finland: the UN Convention on the Elimination of All Forms of Discrimination against Women, The ILO Equal Remuneration Convention (Convention No. 100) and the ILO Discrimination (Employment and Occupation) Convention (Convention no. 111). In addition to discrimination on the basis of pregnancy and family leave in these statements the Ombudsman for Equality highlighted the differences in pay between men and women and the need to further specify equality planning and the provisions pertaining to pay comparison obligations. Provisions of the Act on Equality between Women and Men such as those pertaining to access to pay data should be revised. The ability of personnel participating in pay comparisons to access their pay data should be expanded to enable them to fully engage in the investigation and analysis of pay differences. Within the private sector the ability to access pay data of individuals who suspect that they are victims of pay discrimination should also be expanded.

Equality of **gender minorities**

This year the status of gender minorities has been discussed in various contexts on the national and international stage alike. The human rights and basic rights perspective has been widely discussed. Gender minorities occupied a central role in the work of the Ombudsman for Equality in 2011.

Gender minorities in the work of the Ombudsman for Equality

The Office of the Ombudsman for Equality has via its own activities strived to drive wedge into the wall of invisibility and discrimination that members of gender minorities still collide with in Finland. In working to improve the position of gender minorities, the Office of the Ombudsman for Equality has employed many methods including providing advice to people suspecting discrimination, requesting reports and accounts and issuing statements and negotiated with the authorities and other operators. In 2011, the Ombudsman for Equality continued her previously launched co-operation with organisations representing gender minorities including Trasek ry, DreamwearClub ry, Seta ry and Transtukipiste.

In May 2011, the Office of the Ombudsman for Equality organised a seminar on the Equality and Human Rights of Gender Minorities. The

particular purpose of this seminar was to increase the awareness of various authorities of gender minorities and their situation. These issues were new to many participants in the seminar and according to the feedback the seminar provided people with more information on what diversity of gender identity and gender representation means and on what life is like for members of gender minorities. During the day the good news that transvestisism had been removed from the disease classification was also published.

On the basis of statements made by members of gender minorities who had contacted her the Ombudsman for Equality stated that it would be important to investigate how members of gender minorities find themselves in a worse position than the rest of the population in terms of provisions pertaining to various sectors of life and their application. The Ombudsman for Equality decided to commission a preliminary analysis regarding this issue. Commissioned by the Ombudsman for Equality, Ulla-Riitta Parikka Master of Laws interviewed representatives from Trasek, DreamwearClub, Seta and

Transtukipiste as well the authorities crucial to the rights of gender minorities. In addition to the interview material the investigation also took account of any cases previously presented to the Office of the Ombudsman for Equality. Special emphasis was placed on what level of provisions and what kind of practices would need to be changed in order to solve these problems. The results of this investigation were released in the spring of 2012.

A representative of the Office of the Ombudsman for Equality participated in the working group of the Ministry for Foreign Affairs that discussed the proposals of the European Commission with respect to discrimination against sexual and gender minorities and the implementation of the conclusions of the Government report on the human rights policy of Finland.

The infertility obligation violates the rights of transpeople

While attending the TransHelsinki event in November 2011 the Ombudsman for Equality stated that transpeople do not enjoy their rights to equality physical integrity and respect for private and family life in Finland since the Act on Legal Recognition of the Gender of Transsexuals includes infertility

as one of its conditions for the confirmation of gender. The Ombudsman for Equality proposed that the infertility obligation to be eliminated from the Act.

The Ombudsman for Equality also investigated infertility treatment practices concerning transpeople in the private and public sectors. According to the Ombudsman for Equality people whose gender is reassigned must have equal access to fertility-enhancing services such as the deposition of reproductive cells and infertility treatment.

Discrimination on the basis of gender reassignment

In December 2011 Finland saw its first court ruling on discrimination against a transgender employee. The Ombudsman for Equality had issued a statement on the matter earlier in June (TAS 323/10).

The case involved events occurring in connection with the reorganisation of a certain governmental bureau in spring 2009. During this reorganisation the Heads of Division were appointed first followed by the relevant experts for each division. The experts who were employed at the time of the reorganisation were given the opportunity to state their preference as to which division and

manager they wished to be assigned to. One of the newly appointed Heads of Division announced to the workplace community that she (earlier he) would be changing her first name from that of a man to that of a woman and adopting the female gender which she perceived as her gender identity. Following this the employer extended the application period for experts for the division in question and some of the experts who had applied withdrew their applications. The Head of Division in question then transferred from that post to an advisor's post. Later in autumn 2009 a new recruitment process for the Head of Division appointment was conducted and the aforementioned employee was not selected.

The employer claims that the employee's decision to change her name and to reassign her gender to match her perceived gender identity bore no relevance to the aforementioned events – instead what was relevant was the timing of her announcement and how she carried it out.

The employer's representatives stated that the Head of Division's actions led to an obvious loss of confidence between her and the majority of employees who had applied for the division in question. In the circumstances the employer's stated intent

was to act as transparently as possible towards the experts involved in a situation where the institution was being reorganised and amalgamated so as to ensure the functionality of the organisation.

The Ombudsman for Equality stated that an employee may not be treated in such way as to place him/her at a disadvantage in the workplace by reason of his/her gender, being transgender or gender reassignment. By extending the application period the employer was essentially offering experts who had already applied the chance to withdraw their applications in response to the Head of Division's gender reassignment or the timing of the announcement thereof.

The employer could have but did not exercise the managerial prerogative to assign the experts to the division in question regardless of said withdrawal on the basis of non-discrimination legislation or the continued functionality of the organisation. According to the Ombudsman for Equality this was a case of discriminatory use of the employer's supervisory power in violation of the Act on Equality between Women and Men. In the present case at the very latest when the applications were withdrawn the employer should have intervened in the aforementioned gender-based harassment

pursuant to the Act on Equality between Women and Men.

In view of the circumstances in which the agreement for the Head of Division, to transfer to advisor duties was concluded and in light of the employee's position as the weaker party in the negotiations and the agreement it is the considered opinion of the Ombudsman for Equality that the employee in question had been forced to transfer from the Head of Division post to advisor duties as a result of the employer's actions motivated by her being transgender.

Concerning the appointment of a new Head of Division, the Ombudsman for Equality notes that a presumption of discrimination arises if an unsuccessful candidate is able to prove that he or she was more qualified for a position than the person of the opposite sex ultimately appointed. In a case of the suspected basis for discrimination being gender identity the person compared may also be of the same sex. The Ombudsman for Equality did not conduct comparisons of merit between the applicants.

The Ombudsman for Equality notes that the unwillingness of co-workers to work under the Head of Division after being informed of her being transgender (which as a basis for discrimination is prohibited under

the Gender Equality Act) is not an acceptable justification for the employer's actions. A lack of confidence may only be considered an acceptable justification as referred to in the Act on the Equality between Men and Women when it has arisen from some other reason than a basis for discrimination prohibited by the Act. The employee had had the opportunity to select the time and method of informing others of her gender reassignment. In her statement the Ombudsman for Equality did not consider the employer's reasons an acceptable justification as referred to in the Act on the Equality between Men and Women for placing the employee in an unequal position.

In December 2011, the Helsinki District Court ruled that the bureau had violated the prohibition of discrimination on the basis of gender identity. The employee in question was compensated EUR 15000 for discrimination. The court ruled that the extension of the application period for experts in connection with reorganisation was wholly in violation of the Act on the Equality between Men and Women. In all other respects a presumption of discrimination was ruled not to have arisen in the case. (TAS 323/10)

Promotion of equality

The aim of the Act on Equality between Women and Men is not only to prevent discrimination on the basis of gender but also to promote equality between women and men and for this purpose 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. This equality plan must be drafted in co-operation with the personnel. It must include an account of the equality situation at the workplace including at least an account of the manner in which men and women are placed in various positions and a pay survey illustrating the grade of jobs performed by women and men the pay for those jobs and the differences in pay. The pay survey is an obligatory part of the equality plan. The equality 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 previously planned measures have been. Negligence in drawing up such a plan is sanctioned.

The Ombudsman for Equality continued to obtain workplace equality plans primarily

via three routes. Firstly workplaces in whose case an issue was under processing at the Office of the Ombudsman for Equality were requested to provide an equality plan for inspection. An equality plan was also requested in cases in which a member of personnel reported that no plan had been drafted or that it did not fulfil the requirements of the Act. At the request of representatives of employers and personnel the Ombudsman for Equality provided a great deal of advice and instructions on equality plans by mail and telephone. Overall the Ombudsman for Equality reviewed 32 equality plans during the year under review.

Unfortunately many of the equality plans reviewed by the Ombudsman for Equality still failed to fulfil the requirements of the Act on Equality between Women and Men. Many lacked concrete instructions and the Office of the Ombudsman for Equality was forced to instruct the workplaces involved on how to complement their plans. Insofar as pay surveys were concerned the Office was forced to remind many workplaces that pay surveys must cover the entire personnel including people employed on a fixed-term or part-time basis. A comparison of job-specific or average pay does not provide a truthful picture of differences in pay either. If

pay is examined broken down by its various elements remuneration becomes more transparent and assessment of the grounds for pay differences becomes easier.

Workplace visits by the Ombudsman for Equality

In 2011, the Ombudsman for Equality visited two workplaces: the Finnish Border Guard and Palmia.

At the Finnish Border Guard the Ombudsman for Equality met with the head of the personnel department, the assistant head of the personnel department and some personnel representatives. The Finnish Border Guard's personnel and equality plan covered the years between 2009 and 2011. In 2010 the Finnish Border Guard had commissioned an equality questionnaire survey. According to this survey, women had experienced more inequality than men especially in terms of pay and career development. The Finnish Border Guard is a male-dominated workplace. Military posts are primarily occupied by men with women only occupying around three per cent of military positions. An early prevention model drawn up in 2011 is part of the Finnish Border Guard action plan for occupational protection. This model can

be used to tackle inappropriate treatment, harassment and discrimination.

The Ombudsman for Equality considered the fact that the remuneration system and pay were both analysed in the survey to be a particularly praiseworthy feature of the Finnish Border Guard's equality plan. Clear-cut responsibilities had also been defined for implementation and monitoring.

Palmia's equality plan is from the year 2011. Since Palmia is part of the City of Helsinki the City's equality principles also apply to Palmia. The equality plan is communicated to personnel via the personnel magazine, district meetings, the City intranet and personnel liaisons.

The Ombudsman for Equality considered the fact that Palmia has employed equality liaisons since 2007 as especially laudable. In the future Palmia will develop its pay survey for instance to cover all of its employee groups.

Equality between genders is realised in the executive and administrative bodies of universities

In the spring of 2011 the Ombudsman for Equality requested all universities subject to the Universities Act to provide a report

on the gender distribution of their executive and administrative bodies and a description of these bodies' selection procedure. The Ombudsman for Equality wanted to investigate how well men and women were represented at these new administrative bodies. As exercisers of public power universities are obliged on the basis of the Act on Equality between Women and Men to employ men and women in equal proportion on their executive and administrative bodies. Since each university group selects its board members from the university community through elections the results of the election must be honoured even though they may not lead to equal representation of women and men on the administrative body in question.

On the basis of these accounts it would seem that the situation with respect to gender equality and representation of men and women is rather good on the executive and administrative bodies of both public-law and private-law universities. Women make up at least 40 per cent of the board at the majority of universities. One in three rectors is a woman. Even though the selection of boards and collegial bodies is a complex process it would seem that the equitability provision of the Act on Equality between Women and Men is fulfilled on the obligatory

administrative bodies of the majority of universities.

Equality planning at educational institutions

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

The purpose of drafting an equality plan is to promote equality and prevent discrimination based on gender. The obligation included in the Act applies to all institutions providing educational services including upper secondary schools, vocational education institutions, universities of applied sciences, universities, higher education institutions and educational institutions engaging in liberal adult education. Private parties providing educational services are also covered by the provision. Only providers

of pre-school and basic education and very short-term education are excluded.

Operational equality plans under review

In the 2011 period, the Ombudsman for Equality continued to review the quality of the equality plans drawn up by educational institutions and aimed at improving their operations. The emphasis was placed on the operational equality plans of universities and higher education institutions.

For the most part the equality plans of universities and higher education institutions had been drafted in accordance with the Act on Equality between Women and Men and in co-operation with student representatives unlike the equality plans of universities of applied sciences and second-degree vocational education institutions reviewed by the Ombudsman for Equality in 2009 and 2010.

The Ombudsman for Equality also considered the common practice of the deployment of equality work at faculties and departments as positive. In the opinion of the Ombudsman for Equality this type of closer attention to issues of equality provides a good starting point for equality

between men and women becoming an encompassing undisputed principle steering activities at universities and higher education institutions. According to the review, universities and higher education institutions have paid sufficient attention to measures required under the Act on Equality between Women and Men and aimed at the prevention and elimination of sexual harassment and gender-related harassment.

However, the review unveiled significant insufficiencies in some equality plans. In particular insufficiencies were found in relation to the provision according to which equality plans must always include a survey of the real equality situation at the educational institution in question i.e. how well the students feel equality is realised at their educational institution. The insufficiencies detected in some equality plans were so glaring that the Ombudsman for Equality did not consider these documents to fulfil the minimum requirements laid down in the Act on Equality between Women and Men. Due to this, the Ombudsman for Equality was forced to request these universities to provide the Ombudsman with a new equality plan complying with the requirements of the Act on Equality between Women and Men.

During the year under review the Ombudsman continued the review

commenced the previous year of the quality of equality plans drawn up by second-degree vocational education institutions. After reviewing the quality of equality plans drawn up at second-degree vocational education institutions in 2010 the Ombudsman requested two thirds of these educational institutions to provide the Ombudsman with a new equality plan complying with the requirements of the Act on Equality between Women and Men.

During the year under review a representative of the Office of the Ombudsman for Equality visited several educational institutions to lecture both students and personnel on the Act on Equality between Women and Men and educational institutions' requirement to draft an operational equality plan.

On extending the equality planning requirement to comprehensive schools

According to Government policy the requirement related to the equality planning aimed at the development of educational institutions' operations will be extended to cover comprehensive schools. The Finnish Parliament concurred with the Government's opinion when discussing the Government's

report on equality between men and women in the spring of 2011.

During the year under review, the Ombudsman for Equality reviewed the quality of the operational equality plans of universities and higher education institutions. The Ombudsman for Equality had previously reviewed the quality of the operational equality plans of second-degree educational institutions and universities of applied sciences. A high number of flaws were found regarding the quality of these plans. No basic surveys concerning the gender equality situation at the given educational institution have been conducted, students have not been able to participate and no concrete measures have been recorded in the plans. Due to this, the Ombudsman for Equality has expressed doubt over whether extending the planning obligation as currently composed to comprehensive schools would be the best way to achieve the desired results. In 2011 the Ombudsman for Equality expressed her opinion on this matter in, for instance a statement to the Parliament's Employment and Equality Committee and a seminar on the early childhood education and comprehensive education organised by the Council for Equality between Women and Men in October.

Quotas

The minimum requirement of 40 per cent of the quota provision included in the Act on Equality between Women and Men will apply to the planning and administrative bodies of the State and municipalities. According to the Act the directorates boards of directors or other executive or administrative bodies composed of elected representatives of Government agencies 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. Delegation of public authority and the performance of public duties by parties other than the authorities have resulted in public duties being increasingly performed and public authority being exercised to a significant degree outside the actual administrative apparatus. The operations of these so-called public administration units are always based on a provision or a regulation based on one. The Act on Equality between Women and Men does not specify the meaning of the term 'equitability' in this context but in established use it has been deemed to mean

the same as in the quota provision i.e. a minimum of 40 per cent of both genders. However due to practical considerations achieving this may be more difficult than on the planning and executive bodies of the State and municipalities.

As exercisers of public power universities are obliged on the basis of the Act on Equality between Women and Men to employ men and women in equal proportion on their administrative bodies. In 2011 the Ombudsman for Equality reviewed the gender distribution of the executive and administrative bodies of all of the 16 universities subject to the Universities Act.

The equitability provision also applies to the administrative bodies of housing companies or municipalities' properties involving a housing loan. The Act on Joint Management of Rental Buildings dictates the membership of residents on the boards of these housing companies. The question of how the equitability provision of the Act on Equality between Women and Men impacts on the gender distribution of resident representatives has often been presented to the Ombudsman for Equality.

Resident representation on the boards of properties owned by the city

The Ombudsman for Equality has been contacted several times regarding the application of the equitability provision of the Act on Equality between Women and Men to the boards of housing companies owned by the City of Helsinki properties involving a house loan. People have been particularly interested in knowing whether the City can require resident representatives to propose a man and woman to be elected onto a board.

In a statement issued in 1996 the Ombudsman for Equality stated that the Act on Equality between Women and Men is not applicable to the election of resident representatives participating in board work since such representatives are elected by private residents among their ranks and whether they be women or men must be allowed to become board members in accordance with the proposal by the residents.

Since then the quota provision of the Act on Equality between Women and Men has been amended. The main principle still holds true. If a company in which a municipality is the majority shareholder has an executive or administrative body women and men must be equitably represented on this body unless

otherwise dictated by exceptional reasons. However the quota provision was amended so that under Section 4a(3) of the Act on Equality between Women and Men authorities and all parties requested to nominate candidates for bodies referred to in Section 4a will whenever possible propose the nomination of a woman and a man for every membership position.

Following the amendment the Ombudsman for Equality issued a statement to Helsingin kaupungin vuokra-asukkaiden yhdistys ry in 2006. It was stated therein that since the Act on Equality between Women and Men requires all parties to propose the nomination of a woman and a man for every membership position it will now also apply to residents' committees. One reason for a residents' committee being unable to propose the nomination of both a man and woman might be that residents' meetings only elect representatives of one gender.

According to the City of Helsinki's democratic tenancy provision residents' committees must propose the nomination of a man and a woman from amongst the candidates determined by the residents' meeting. While this does not specifically equate to compliance with the content of the Act the Ombudsman for Equality considered that the wording could be applied.

In 2011 the Ombudsman for Equality issued a statement with similar content regarding a matter related to the election of resident representatives to the boards of the City's properties involving a house loan. (TAS 2/58/05 TAS 42/59/95 TAS 195/2011)

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

A waste management company is owned by 11 municipalities. The board of the company has 16 actual members one of whom is a woman; one of the 16 deputy members is also a woman. The Ombudsman for Equality requested the city board to provide a report since this city has the most elected members on the board due to it being the majority shareholder. The city's five actual members and their deputy members are all men.

The report reveals that the partners had not negotiated in advance how equality would be realised on the board. Neither had the city addressed this matter in its guidelines for its representative at the general meeting.

In its statement the Ombudsman for Equality stated that the Act on Equality between Women and Men obliges the au-

thorities to determinedly and systematically promote equality between men and women throughout their actions and to create and establish such administrative and operating practices that ensure the promotion of the equality between men and women with regard to the preparation of matters and decision-making.

According to the Act on Equality between Women and Men women and men must be equitably represented on the elected executive or administrative bodies of companies in which a municipality is the majority shareholder unless otherwise dictated by exceptional reasons. The general meeting elects the board members of limited companies unless it is determined in the articles of association that board members are elected by the directorate. According to the Local Government Act the municipal board or some municipal authority determined under the rules of procedure provides the general meeting representative with operating instructions. Included in the Act on Equality between Women and Men the requirement for equitable representation of men and women must be observed in operating instructions concerning the election of administrative bodies. A municipal complaint could have

been lodged on a decision concerning the provision of operating instructions.

The problem with the composition of the boards of companies jointly owned by municipalities lies in the composition of the administrative body of the company being dictated by the independent decisions of various municipalities; insofar as the result is concerned there is no decision for which a complaint could be lodged. As a result the Ombudsman for Equality considers it of the utmost importance that municipalities strive to ensure that the equitability provision is fulfilled by means of advance negotiations. The general obligation of authorities to promote equality included the Act on Equality between Women and Men also requires this.

The Ombudsman for Equality reminded the city board that in the future it must pay particular attention to the requirements of the Act on Equality between Women and Men when providing its general meeting representative with instructions. In addition to this partners must in the future ensure via negotiations that the composition of the board will better fulfil the equitability provision.

All of the partners in the company were informed of the reply of the Ombudsman for Equality. (TAS/50/2011)



Monitoring the prohibitions of discrimination

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

The Ombudsman for Equality monitors compliance with the prohibitions of discrimination and discriminatory advertising. An individual who suspects that he or she has been subjected to discrimination as referred to in the Act on Equality between Women and Men may request instructions and advice from the Ombudsman for Equality (Section 19 of the Act on Equality between Women and Men). This chapter features examples of cases of discrimination processed by the Ombudsman for Equality in 2011.

General prohibition of discrimination

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

to compensation in compliance with the Act on Equality between Women and Men.

As discrimination has become increasingly regulated by means of special prohibitions, the significance of the general prohibition of discrimination has decreased.

However, not all forms of discrimination are yet covered by the special prohibitions; in some cases discrimination is only prohibited on the basis of the general prohibition. Cases of a varying nature come under review on the basis of the general prohibition. In 2011 a new issue was the right of a parent not living with a child to obtain information regarding that child's pre-school education. Some of the other contacts during the year were related to matters concerning exercise and sport which are considered in this annual report (pp. 35).

A guardian of a child living separately from the child is unable to obtain information on the pre-school education of the child

The Ombudsman for Equality was contacted by a father who was living separately from his child and who had been unable to obtain information from a city concerning matters related to his child's pre-schooling and his child starting school. The father enjoyed joint

custody with the child's mother.

An investigation by the Ombudsman for Equality revealed that when a child is enrolled in nursery school or pre-school no record of a remote parent is recorded in the customer information system. Instead, information on the spouse or live-in partner of the live-in parent is recorded in the system and this person is informed of decisions regarding nursery school and pre-school.

The Ombudsman for Equality considered one of the crucial challenges related to equality in our society to be promoting active parenting by fathers. More attention should also be paid to the position of divorced fathers as parents. Computer systems cannot be considered a justifiable cause for blocking access to information of those parents not living with their offspring. Practices must be actively changed so that they provide assistance equally to mothers and fathers – also after a divorce. (TAS/350/2010)

Discrimination in recruitment

According to the Act on Equality between Women and Men, bypassing a more qualified candidate is usually prohibited but may

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

Performance-related requirements for men and women in the Defence Forces

The issue of whether the different grading tables for male and female soldiers' fitness performances (muscle stress and endurance tests) which may be adopted for military posts with the Defence Forces comply with the Act on Equality between Women and Men was submitted to the Ombudsman for Equality for consideration. The table for female soldiers is considerably easier in all aspects than that used for male soldiers. These fitness tests would impact on appointments to positions, career planning, promotions and appointments to international posts.

The Ombudsman for Equality stated that

the different fitness tests for men and women do not place women and men in unequal positions provided that the differences in the results required from the opposite genders match the real average physiological differences that exist between women and men and their effects on physical performance. For instance different muscle stress and endurance tests for men and women apply to enrolment in police training.

Consideration of the average physiological differences between women and men do not place women in an easier or better position in a comparable situation – it only levels out the differences between men and women’s physical performance. The Ombudsman for Equality stated that this does not constitute a violation of the Act on Equality between Women and Men and there is no reason to consider the different fitness test requirements as positive discrimination as determined in Section 9 of the Act on Equality between Women and Men.

According to the information obtained, the Defence Forces plan to take the average physical performance-related differences between men and women into account in the general condition level required for military posts. They also aim to introduce job-specific requirement levels for jobs that

are particularly physically demanding. The requirement level for these jobs would be the same for women and men.

The Ombudsman for Equality stated that if the nature of job or task so requires the same level for physical performance may be set for women and men without it being prohibited by the Act on Equality between Women and Men. For instance in order to secure enrolment those applying to become firemen must pass certain physical tests that women are able to pass more seldom than men on average. This is a situation favouring one gender yet allowed by the Act on Equality between Women and Men. (TAS 445/2010)

Discrimination on the basis of pregnancy and family leave

Especially in the working life pregnancy and family leave result in situations in which the person requesting a statement feels he or she has been discriminated against. Pregnancy and family leave must not affect whether a person is employed or selected for education or impact on the renewal of a fixed-term employment relationship. Employment

relationships may not be scheduled to end at the start of family leave and no one may be terminated due to pregnancy or family leave. Pay discrimination on the basis of pregnancy and family leave is also prohibited.

Alteration of official title was suspended due to maternity leave

In a supervisor-subordinate discussion a female employee was promised that her official title would be altered. However this alteration process was suspended once the employee took maternity leave. The employer announced that it would revisit the matter once the employee returned to work. The female employee contacted the Ombudsman for Equality to enquire about whether she had been treated contrary to the requirements of the Act on Equality between Women and Men.

In her statement the Ombudsman for Equality averred that according to the Act on Equality between Women and Men discrimination on the basis of pregnancy constitutes direct discrimination. If in deciding on the terms of pay and other terms of an employment relationship an employer acts in a manner that places an individual in an unequal position due to pregnancy

or childbirth this creates the grounds for assuming discrimination.

When investigating cases of discrimination on the basis of pregnancy a hypothetical comparison concerning what would have happened in a situation in which the individual in question were not pregnant often suffices. Pregnancy does not justify the placement of individuals in an inferior position compared to others but neither does it justify the placement of individuals in a superior position compared to others.

For instance the European Court of Justice's rulings in the cases of Lewen (C-333/97) and Alabaster (C-147/02) compared the treatment of an individual taking maternity leave to a situation in which the individual had not done so. The European Court of Justice considered that not obtaining the benefit in question constituted discrimination since the individual would have obtained this benefit had she not been pregnant. (TAS 45/2011)

Suspected discrimination on the basis of pregnancy in a managing director's termination

The person requesting a statement was on family leave from her job as managing

director when the parent company was sold to a new owner. After the change in ownership she was requested to cut her childcare leave short. Since she could not agree to this demand due to her child's childcare arrangements her employment relationship was terminated. The person requesting a statement suspected that her termination was due to her being on family leave and being unable to return to work immediately as her employer demanded. In its report the company employing her denied the suspected discrimination and stated that the managing director's work skills were the reason for her termination.

The Act on Equality between Women and Men also applies to managing directors insofar as the discriminatory termination of an employment relationship due to pregnancy childbirth parenthood or family commitments is concerned. In such cases the employer may be forced to pay compensation as referred to in the Act on Equality between Women and Men. This termination occurred during family leave entailing the likelihood that the managing director's termination was caused by her taking family leave. Since the Act on Equality between Women and Men prohibits discrimination on the basis of family leave,

the employer could be considered guilty of discrimination. However the employer has the opportunity to annul the presumption of discrimination by proving that in this case some other acceptable reason existed for the termination of the managing director.

In the written statement process the Ombudsman for Equality cannot address questions of proof that require spoken evidence for instance. The presentation of evidence and determination of whether the person requesting an announcement was discriminated against in a manner prohibited by the Act on Equality between Women and Men is performed in a District Court in connection with the settlement of claim for compensation against the employer. (TAS 1/2011)

Pay discrimination

For years suspected cases of pay discrimination have been one of the most typical issues with respect to requests for a statement submitted to the Ombudsman for Equality. The office of the Ombudsman for Equality regularly receives inquiries from people who suspect that they have been discriminated against because of their gender in terms of pay.

The year 2011 was similar to previous years in that requests for a statement were received from both women and men. Much like the previous year, most requests concerning pay-related issues were received from employees of municipalities and joint municipalities. Suspected cases of discrimination most often concerned discrimination related to job-specific pay (basic pay), various kinds of bonuses, and increasingly, the loss of pay rises or various kinds of bonus remuneration related to taking maternity or paternity leave or other types of family leave.

In several cases involving a municipality or joint municipality, the employer tried to use the following reasons as acceptable justifications for differences in pay: the difficult competitive situation in the labour market meaning problems in recruiting qualified personnel and thus paying the “market rate”, the changes arising as the result of various municipalities merging and a resultant transition period during which unjustifiable differences in pay would be eliminated.

An officeholder taking paid maternity leave denied a pay rise

An officeholder taking paid maternity leave was not given the same pay rise as another

officeholder at work and performing the same job. This case was related to the distribution of the locally bargained share of pay. According to the report obtained, person A suspecting pay discrimination had been on maternity leave when the locally bargained share of pay was distributed on 1 March 2008. Later this pay dispute had progressed to the extent that a decision was taken to grant a similar pay rise to person A as to person B used for comparison; however this pay rise was not retroactive as requested by person A. Before the pay rise granted to person B these persons were receiving the same basic pay.

According to the employer the workplace in question had not previously granted a locally bargained share of pay to people who were not covered by the employer’s salary payment obligation at that moment; instead their pay was adjusted in comparison to a colleague holding a similar job once the person in question returned to work. Over time this locally determined practice had become the established practice. Since person A had been on paid maternity leave when the locally bargained share of pay was distributed and thus covered by the employer’s salary payment obligation person A considered that she should have been treated similarly to person B on this basis alone.

If an employer is obliged to pay salary for a certain period of time during maternity leave on the basis for instance of a collective agreement the main principle is that all overall pay rises implemented before or during the maternity leave apply to the amount of pay received during the maternity leave and these rises must be added to the pay received during the maternity leave immediately after their implementation. This legal rule has been confirmed for instance in the Gillespie case C-342–93 presented to the European Court of Justice and primarily applies to overall pay rises.

The distribution of locally bargained shares of pay is also based on the provisions of collective agreements but the situation is not wholly identical to the granting of overall pay rises. However, the Gillespie judgment is significant with regard to these cases too (also see case C-147/02 Alabaster). The following is stated in the judgment:

The principle of equal pay, confirmed in the European Court of Justice, neither requires that women should continue to receive full pay during maternity leave, nor lays down specific criteria for determining the amount of benefit payable to them during that period, provided that the amount is not set so low as to jeopardise the purpose of maternity leave,

which is the protection of women before and after giving birth. In order to assess the adequacy of that amount, the national court must take account, not only of the length of maternity leave, but also of the other forms of social protection afforded by national law in the case of justified absence from work. However, to the extent that they are calculated on the basis of pay received by a woman before the commencement of maternity leave, the amount of those benefits must include pay rises awarded between the beginning of the period covered by reference pay and the end of maternity leave, as from the date on which they take effect.

In Finland provisions governing daily maternity allowance and other compensation paid during family leave are laid down in the Health Insurance Act. The amount of all of these types of compensation is determined in accordance with the Health Insurance Act and on the basis of pay accumulated during a certain reference pay period preceding the start of family leave and referenced in the Gillespie judgment. This also applies to compensation based on health insurance for instance.

After taking into account the provisions of the Health Insurance Act and the content of the Gillespie judgment the Ombudsman for Equality stated that provided that the amount

of person A's pay during her maternity leave would according to the collective agreement applying to her employment contract have had to be determined on the basis of her work income earned prior to the start of her maternity leave the basic applicable principle is that from 1 March 2008 the employer should have awarded person A similar pay rise applying to pay during her maternity leave to that awarded to person B. The precondition for this was that after 1 March 2008 person B had performed the same or equivalent work as referred to in the Act on Equality between Women and Men as person A did before taking maternity leave. According to the documentation these persons had been performing the same or equivalent work when person A took maternity leave and after she returned to work in 2009. Therefore the actions of the employer could be considered as having violated the prohibition of pay discrimination included in the Act on Equality between Women and Men. (TAS 357/08)

Suspected pay discrimination in the case of four psychologists

In this case the dispute over pay between four female school psychologists and the city in question involved the (actual) amount

of these psychologists' job-specific pay in relation to the job-specific pay of child psychologist A employed by the same city. The women were of the opinion that due to the fact that their job-specific pay was lower than that of psychologist A (a man) they had been discriminated against in terms of pay since 2007 – in violation of the Act on Equality between Women and Men and other regulations. They considered the occurrence of pay discrimination to be verified by the fact that their job-specific pay and that of psychologist A had not even been assessed together – an argument that could on the basis of the documents be considered correct until at least 2010 the time at which the pay gap between the women and psychologist A began to be reduced. Reduction of the pay gap continued in 2011.

According to the employer the differences in pay were originally due to the fact that psychologist A's pay was agreed in connection with his recruitment in 2007 at which time he was awarded a "market-rate component" that was included in his job-specific pay component. In 2008 the city had launched a new comprehensive development project concerning the remuneration and rewarding system one of the objectives of which was to switch from the comprehensive assessment of

demand level to an analytical assessment of the demand level of tasks across administrative boundaries. It had been announced this new system would be completed by the end of 2011 but before this the city was forced to use the old system that according to the city's statement had become partially defective and problematic with regard to the requirement for the transparency of remuneration systems. However the employer was of the opinion that this case did not involve pay discrimination prohibited in the Act on Equality between Women and Men.

The Ombudsman for Equality stated that one of the crucial elements when suspected cases of pay discrimination are investigated is the requirement for the transparency of remuneration systems laid down by the European Court of Justice. In order for a remuneration system to be considered transparent it must allow the assessment in all individual cases of the various factors impacting on the remuneration of employees and the contribution of each factor. In this case the highly problematic issue with regard to the transparency requirement lay in the possible inclusion in the same pay component of remuneration paid due to different criteria. According to the legislative materials of the Act on Equality between Women and Men (HE

195/2004) the case law of the ECJ (e.g. Danfoss C-109/88) indicates that in such situations the employer is solely responsible for proving that the remuneration system is not discriminatory in the event of possible legal proceedings over a claim for compensation.

The primary acceptable justification for the difference in pay proposed by the employer was the tight competitive situation in the labour market resulting from a lack of professionally skilled labour and the transition during which the employer intended to eliminate groundless differences in pay.

With regard to the first justification the Ombudsman for Equality referred to the ECJ's judgment in the Enderby (C-127/92) case which further specifies the principles used in assessing evidence presented by an employer in this type of case. It is stated in the judgment that if a national court is able to ascertain the precise extent to which the difference in pay is attributable to the market situation the employer's reasons can be deemed objectively justified to the same extent. If it is not possible to determine the effect of the market situation accurately the national court must assess whether the market situation can be considered a sufficiently strong factor in remuneration to objectively justify some or all of the differences in pay.

Insofar as the second justification is concerned it has been affirmed in the Ombudsman for Equality's statements and case law that in certain change situations (e.g. the revision of a remuneration system) the transition period may provide an acceptable reason for differences for a certain period of time. However the so-called reasonability precondition has been set for the length of this transition period. Naturally a transition period considered reasonable varies on a case-specific basis the basic principle being that differences in pay violating the Act on Equality between Women and Men must be immediately corrected in the event that no obstacle exists to their elimination. In the majority of cases a maximum of two years can be considered a reasonable transition period. When assessing the transition period account must be taken of the actual circumstances in the city and the possible objective hindrances which the city must be able to prove. Moreover attention must be paid to whether the employer has a scheduled plan for eliminating existing differences in pay. If this type of plan has been drafted it should be recorded in the city's equality plan.

In her overall assessment the Ombudsman for Equality was of the opinion that particularly due to the non-transparency of

the remuneration system legal proceedings involving a potential compensation claim related to this case would likely result in a presumption of pay discrimination which the employer could try to dismiss either by means of the aforementioned reasons or some other reasons deemed acceptable on the basis of the Act on Equality between Women and Men. (TAS 188/08)

Discrimination related to voluntary supplemental pension schemes

In 2011 a somewhat significant decision was made at EU level affecting such matters as the prohibition of pay discrimination when the European Commission decided not to submit Finland's 'Equalising Act' to the ECJ for investigation. In particular men covered by these pension schemes had long been awaiting a decision on the matter. The decision was a disappointment since the Ombudsman for Equality had stated the act to be discriminatory against men and thus contrary to the laws of the European Community in her complaint submitted to the European Commission on 23 August 2002. The Ombudsman for Equality stated her opinion on the act's discriminatory nature against men during its preparation

submitting a dissenting opinion in the report by the working group preparing the matter.

The retirement age is usually lower in voluntary supplemental pension schemes than in statutory employee pension schemes. The 'Equalising Act' has been formulated in such a way that it formally allows men to select the same lower retirement age as women; in reality however if the man selects a lower retirement age the amount of his supplemental pension will be significantly lower than that of a woman in the same situation. This is due to the fact that according to the 'Equalising Act' men's work histories predating 1 April 1994 may be dismissed altogether when determining the amount of their pension. In this regard inequality grows in direct proportion to the duration of the employment relationship before the date in question. Therefore the solution model adopted in the 'Equalising Act' does not in fact provide men with a real choice regarding long employment relationships; instead the system practically leaves all men with long employment relationships within the scope of the higher retirement age as compared to women that was applied prior to the 'Equalising Act'.

On 17 December 2011 the Ombudsman for Equality received the EC's announcement

of this decision for which the Commission offers the following explanations:

Finland implemented provisions on an equal basis for men and women when joining the EEA on 1 April 1994. However different provisions apply to the period preceding accession to the EEA. The ECJ has not yet expressed its opinion on whether this practice complies with EU legislation. The Commission recently stopped processing cases related to pensions against other Member States without requiring them to retroactively correct erroneous implementation of the EU Directive or compensate the gender discriminated against even though these cases of discrimination occurred after joining. For this reason the European Commission believes that halting consideration of this case would be in keeping with the guidelines otherwise followed in this area. (TAS 3/53/02)

Discriminatory management practices

Prohibition of discrimination in working life as included in the Act on Equality between Women and Men also covers discriminatory management practices termination of the

employment relationship and employee lay-offs on the basis of gender. The following is an example of a case of discriminatory management practices processed by the Ombudsman for Equality.

A company's ban on men's long hair not in compliance with the Act on Equality between Women and Men

The Ombudsman for Equality was requested to investigate whether an employer's guidelines regarding its employee's appearance clashed with the provisions of the Act on Equality between Women and Men. In its guidelines this employer banned its male employees from having a beard or long hair.

The report submitted to the Ombudsman for Equality by the company states that the company requires employees providing customer services to look neat and presentable. In the company's guidelines concerning clothing and appearance male employees are advised to shave regularly and keep their hair trimmed neatly. Moustaches are not banned by the guidelines. The company's female employees are not prohibited from having long hair. However the company similarly instructs its female employees to maintain a neat appearance

and wear their long hair pulled up or tied in a ponytail. The company wants all employees to be committed to the company brand and to follow its instructions concerning clothing and appearance but failure to follow the instructions will not result in sanctions.

In addition to clothing the employer's managerial prerogative can be considered to include its right to require its customer service employees to maintain a neat appearance. The culture and practice of clothing at individual workplaces has often been created over a long period of time with specific codes having been formed for female and male employees working in different departments, different positions and jobs at different levels which are tacitly approved by the employer. However, if in doing so the employer places its employees in different positions based on gender this practice may constitute discrimination as prohibited in the Act on Equality between Women and Men unless the employer is able to demonstrate that the practice is based on a reason other than gender.

In her statement the Ombudsman for Equality states that the employer's discretionary power in matters pertaining

to its employees' clothing and appearance enables flexible adaptation to changes in values and expectations in Finnish society. General perceptions pertaining to the appearance of the genders have changed so that for example hair length is no longer related to gender in the same way it previously was. Long hair on a man cannot as a rule therefore be considered untidy or messy.

Since the company was unable to demonstrate that the practice pertaining to its employee guidelines was based on some factor other than an employee's gender, the Ombudsman for Equality considered the company to be placing its male employees in an inferior position to its female employees by banning long hair from male employees providing customer services.

The Ombudsman for Equality's statement on this matter also sparked a discussion concerning the hair length of soldiers and conscripts. The Ombudsman for Equality and the Parliamentary Ombudsman had both previously stated their opinions on this matter where they stated that the different treatment of men and women with regard to regulations concerning hair had not violated equality between the genders. (TAS 126/2011)

Discrimination in the access to goods and services

In 2011, the Ombudsman for Equality was also contacted over matters related to the access to and supply of goods and services. However, she was contacted less in these matters than during the previous year. Insofar as subject matter is concerned these enquiries were highly varied.

The Ombudsman for Equality received enquiries related to a loan for female entrepreneurs, a price discount for women offered by the organiser of a car show and a promotion aimed at women by a furniture store. Some of the prominent recurring topics were the gender-based pricing of hairdressers, telephone discussion lines, discounts aimed only at women during International Women's Day and public swimming pool and gym shifts solely reserved for women.

In 2011, the ECJ gave a preliminary ruling concerning the pricing of insurance which will have an impact on the Act on Equality between Women and Men.

In the future gender may not affect insurance prices

In the future gender may not affect insurance prices. This was stated by the European Court of Justice in its preliminary ruling on the Test-Achats case (C-236/09). It is stated in this ruling that gender-based pricing of insurance must cease by 21 December 2012. The ECJ ruling will have an impact on the Act on Equality between Women and Men which will be amended in this regard.

According to the EU Directive 2004/113/EC passed in 2004, men and women must be treated equally in matters pertaining to the access to and supply of goods and services. However the EU Member States were provided with the opportunity to deviate from this Directive in for instance the pricing of insurance. The condition for this was that the insurance-mathematical information and statistics on which insurance premiums are based must be reliable, regularly updated and generally available. However, the ECJ considered the provision on the basis of which the main principle could be deviated from for an unlimited time to be incompatible with Articles 21 and 23 of the Charter of Fundamental Rights of the European Union.

In the last few years the Ombudsman

for Equality has been contacted numerous times concerning the pricing of insurance. As early as 2005 when the Directive became effective in Finland, the Ombudsman for Equality was of the opinion that the pricing of insurance should be similar for both men and women.

A furniture store's promotion violated the Act on Equality between Women and Men

The Ombudsman for Equality considered that a furniture store's Naisten päivät ("Women's Days") promotion aimed at women placed men in an unequal position based on their gender to such an extent that the promotional campaign of the company in question which took place between September and October 2011 was in violation of the Act on Equality between Women and Men.

The Ombudsman for Equality was contacted several times with requests to investigate whether offers only aimed at women are contradictory to the Act on Equality between Women and Men. During the promotional campaign, the company offered, for instance, women a transport and installation service at half price for

purchases exceeding EUR 600. The Act on Equality between Women and Men allows goods and services to be exclusively offered to members of one of the genders in a limited set of specific circumstances. Offers aimed at one of the genders are possible in relation to, for instance, Mother's or Father's Day if the offer in question is related to a rarely given token of appreciation with a relatively low financial value.

However, the Ombudsman for Equality considered the company's offers to women to be of significant financial value. The promotional campaign which ran for over two weeks was not comparable to a one-day campaign related to Mother's or Father's Day.

The company discontinued its Naisten päivät campaign before its planned end date due to the negative attention it garnered. (TAS 349/2011)

Sports and equality

For years the Ombudsman for Equality has regularly been requested to investigate whether various questions related to sports and fitness activities were in keeping with the Act on Equality between Women and Men.

In previous years the Ombudsman for Equality has paid attention to the visibility of female sports in the media, the different rewarding practices for men and women at athletic contests and the principles under which shifts are allocated at gyms and other sports facilities in male- and female-dominated sports. The Ombudsman for Equality has also investigated whether the building of public sports facilities caters more to boys' and men's sports and fitness activities than to those favoured by girls and women.

The Ombudsman for Equality considers it important to support sports and fitness activities for girls and women, on the one hand, and boys and men, on the other, equitably. Gender equality should be viewed as the provision of equal opportunities and resources emphasising equitable treatment attitudes and everyday acts.

What is important is that women and men have equal opportunities to engage in sports and fitness activities, to receive competent coaching, to participate in competitions and to receive equal recognition for their performances. The requirement for equal opportunities should be taken into account in all decision-making related to sports and fitness activities and the value of and the

rewards granted for a performance should not be dependent on a person's gender.

In 2011, the Ombudsman for Equality stated her opinion on three cases involving the rewarding practices at sports contests and on a case related to the selection of athletes by the Finnish Shooting Sport Federation.

Rewarding practice at an orienteering contest

The Ombudsman for Equality was requested to investigate whether the rewarding practice of an orienteering contest was in keeping with the Act on Equality between Women and Men since larger financial prizes were awarded in the men's relay than in the women's. According to the report obtained, the difference in prize money was due to the value of the prizes being proportioned to the number of participants.

According to the Ombudsman for Equality, a practice whereby prizes are funded by means of men's participation fees in the men's group and by means of women's participation fees in the women's group does not constitute a violation of the Act on Equality between Women and Men. However, this practice cannot be considered to promote equality

between men and women. In her statement the Ombudsman for Equality presented her wish to the organiser of the contest that it would consider implementing a more progressive rewarding practice in terms of equality with athletes being provided with equal recognition for their performances regardless of their gender. (TAS 268/2011)

Men and women competing in the same group in a running race

The Ombudsman for Equality was requested to investigate whether a running race was in keeping with the Act on Equality between Women and Men. In addition to a money prize the winners of this race were promised product prizes. Men and women competed in the same group.

People contacting the Ombudsman for Equality expressed their concern that only men could in actual fact compete for the money prize since women would not have a real chance of competing for the win due to the differences in male and female physical performance owing to the physiological differences between men and women. According to the report obtained from the race organiser, women would have equal

chances to succeed in the race since the race track not only required good physical condition but also agility and flexibility.

In her statement, the Ombudsman for Equality states that if the information provided by the race organiser is accurate the contest does not place women in an inferior position compared to men on the basis of their gender. However, the Ombudsman for Equality stated that if it comes to light that the race does in fact place women in an inferior position compared to men the organiser would be in charge of an event that may violate the Act on Equality between Women and Men. (TAS 165/2011)

Selecting athletes for major international tournaments

The Ombudsman for Equality was requested to investigate whether the Finnish Shooting Sport Federation had placed a female athlete in an inferior position with respect to her gender by selecting men with significantly worse results than the woman to participate in major international tournaments.

According to the report obtained from the Finnish Shooting Sport Federation, the selection of athletes for major international

tournaments and the national team is based on selection criteria that are announced in advance and on sports performance results. On the basis of her performance results the athlete in question have been selected for the national team. Since, however, the female athlete in question has systematically refused to sign the Finnish Shooting Sport Federation's contract for athletes – a precondition of participation in major international tournaments – she could not be selected for the major international tournament specified in the request for a statement.

In her statement, the Ombudsman for Equality states that the Finnish Shooting Sport Federation has not been guilty of discrimination as prohibited in the Act on Equality between Women and Men by not selecting this female athlete for the major international tournament and requiring her to sign its contract for athletes. (TAS 131/2010)

International activities



The Ombudsman for Equality engages in regular co-operation with Nordic and European actors. In August 2011, the Ombudsman for Equality participated in a meeting of Nordic ombudsmen in Oslo. At this annual meeting the independent national authorities on discrimination and equality discuss national equality legislation and share their experiences of current challenges in enforcing the law.

In 2011 representatives of the Office of the Ombudsman for Equality also participated in meetings and working group activities of Equinet, the European Network of Equality Bodies. The Ombudsman for Equality attended a meeting of Equinet and the European Union Agency for Fundamental Rights (FRA) and

the Equinet annual meeting in November. A representative of the Council of Europe Commissioner for Human Rights played an expert role in the seminar on Equality and Human Rights of Gender Minorities organised by the Ombudsman for Equality.

The Ombudsman for Equality provided the Office of the United Nations High Commissioner for Human Rights with a statement on the status of human rights in Finland in connection with the review of the human rights situation in Finland carried out under the Universal Periodic Review of the UN Human Rights Council. In 2011 the Ombudsman for Equality also issued statements for reports on the application of the following conventions in Finland: the UN Convention on the Elimination of All Forms

of Discrimination against Women, The ILO Equal Remuneration Convention (Convention No. 100) and the ILO Discrimination (Employment and Occupation) Convention (Convention no. 111).

Finland's equality legislation aroused the interest of the international guests. The Office of the Ombudsman for Equality entertained a class of French students (students of the European Section of Legta Auch Bealieu), representatives of Polish NGOs, a Dutch group of students, South Korean members of parliament and a professor of legal science from Libya. In addition, the Ombudsman for Equality attended a meeting of the Nordic Council of Ministers held in October in St Petersburg while also meeting journalists from the Ukraine and Poland.



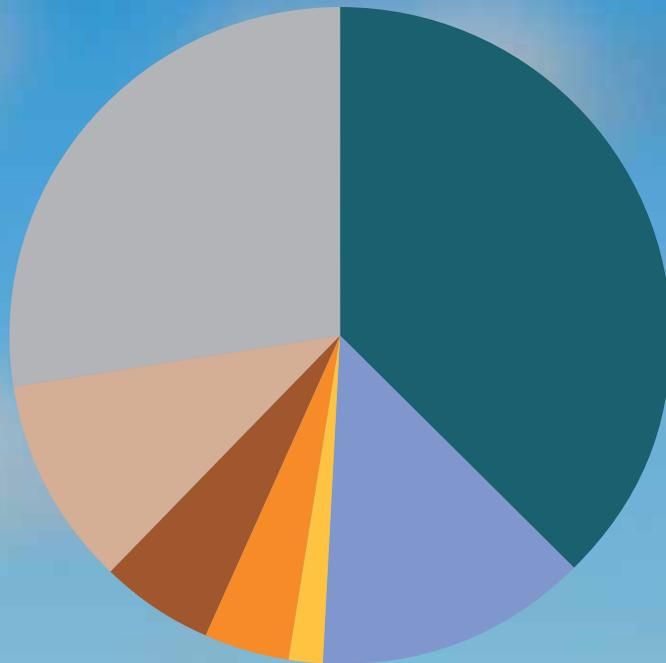
Appropriations and **personnel**



In 2011, the Office of the Ombudsman for Equality had 10.5 man-years at its disposal. Its staff comprised the Ombudsman for Equality, the Head of Division, five Senior Officers and three secretaries. During 2011 a reorganisation of jobs was carried out at the office making the Information Officer's post a full-time position with one of the secretaries beginning to work on a part-time basis. One university trainee worked at the Office during the summer.

The operational appropriation of the Office of the Ombudsman for Equality was EUR 136000. This was not inclusive of remuneration and rental costs which are paid by the Ministry of Social Affairs and Health in a centralised manner.

Statistics



- **Discrimination 182 cases**
- **Supervision and promotion of gender equality plans 64 cases**
- **Quotas 8 cases**
- **Statements issued to other authorities 20 cases**
- **Information requests 27 cases**
- **Other issues 49 cases**
- **No authority over matter 132 cases**

In 2011 a total of 482 cases were recorded in the Ombudsman for Equality's register. Additionally 368 requests for advice by phone were received by the Ombudsman for Equality.

Cases submitted in writing in terms of content

Slightly fewer than half (182) of the cases submitted in writing were related to matters of discrimination. In the year under review 64 cases related to the supervision and promotion of equality plans were processed while 8 cases pertaining to quotas were instituted. The Ombudsman for Equality issued 20 statements to other authorities. The Ombudsman for Equality provided 27 replies to information requests and other such matters. A third of all requests were related to matters beyond the scope of the jurisdiction of the Ombudsman for Equality.

Other matters recorded in the register were assorted issues related to areas such as communications and administration.

Requests in matters of discrimination

The majority of the requests related to discrimination – 112 of written requests and 143 of requests by phone – pertained to working life. Most of these requests were related to recruitment remuneration and discrimination based on pregnancy and parenthood. Requests related to pregnancy and parenthood made up around 30 per cent of all written requests and over 40 per cent of requests by phone pertaining to working life. Suspected cases of discrimination related to the availability of goods and services were also rather common.

Meetings and visits

Visitors ja visits

In August 2011 the Office of the Ombudsman for Equality met with Minister Paavo Arhinmäki and his assistant. Need of change related to the Act on Equality between Women and Men and areas of emphasis with regard to the activities of the Ombudsman for Equality were discussed at this meeting.

The Ombudsman for Equality invited representatives from Trasek, an association representing gender minorities to discuss timely equality issues faced by gender minorities. Representatives from Kela, The Social Insurance Institution in Finland, also visited the Office of the Ombudsman for Equality; discussion of the compensation of gender correction treatments in accordance with the Health Insurance Act was continued at this meeting.

The Office of the Ombudsman for Equality also met with representatives from the Service Union United PAM and The Trade Union for the Public and Welfare Sectors. Key equality issues and equality planning at these organisations were discussed. In May 2011, the Ombudsman for Equality attended a seminar of Pardia, the Federation of Salaried Employees, to present some equality cases related to the sectors represented by the organisation. In September and October 2011 the Ombudsman for Equality gave speeches on equality planning at events of the Office for the Government as Employer. The Finnish Union of Practical Nurses SuPer invited the Ombudsman for Equality to speak on issues related to male equality in December 2011.

Representation of the Ombudsman for Equality in various bodies

- ✓ The human rights panel of the National Human Rights Action Plan
- ✓ Monitoring Group for Discrimination
- ✓ Advisory Body on Minority Issues
- ✓ The Ministry for Foreign Affairs' LGBTI working group
- ✓ The TAPAS (a research and development project concerning equal pay) project for 2009–2011 Aalto University, Helsinki University of Technology.

Publications

Annual Report of the Ombudsman for Equality 2010.

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