



Annual report 2010

by the Ombudsman for Equality



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Ombudsman for Equality in

The Ombudsman for Equality is an independent authority who works to promote gender equality.

The tasks of the Ombudsman for Equality are to:

- ✓ supervise compliance with the Act on Equality between Women and Men (*Laki naisten ja miesten välisestä tasa-arvosta*, no 609 of 1986) and the prohibition of discrimination and discriminatory job advertising, in particular
- ✓ provide information about the Act on Equality between Women and Men and its application
- ✓ promote the purpose of the Act on Equality between Women and Men by means of initiatives, advice, and counselling
- ✓ monitor the realisation of equality between women and men in various sectors of society.

brief

The Ombudsman for Equality may assist individuals who have been discriminated against in court in cases that are related to receiving compensation or remuneration, if the matter is significant in terms of the application of the Act on Equality between Women and Men.

The Ombudsman for Equality has the right to inspect a work place if the employer is suspected of violating the Act on Equality between Women and Men. Other authorities must, if necessary, provide assistance in performing the inspection.

If the Ombudsman for Equality finds that the Act on Equality between Women and Men has been violated, the Ombudsman will issue instructions and guidance towards discontinuing the unlawful practice. In extreme cases, the Ombudsman may refer the case to the Gender Equality Board, which has the power to impose a conditional fine to prevent discrimination.

Statements issued by the Ombudsman for Equality are not legally binding. In most cases a person suspecting discrimination may take his or her case to a District Court and claim for compensation.

The current Ombudsman for Equality is Ms Pirkko Mäkinen.

A word from the Ombudsman for Equality

The year 2010 was a year of analysis and assessment of the Act on Equality between Women and Men and the equality policy. In 2010, the Employment and Equality Committee of the Finnish Parliament received a report on the functionality of the Act on Equality between Women and Men. At the end of the year, the first Government Report on Gender Equality (discussed later in this annual report) was also submitted to the parliament. Furthermore, the reform of the Non-Discrimination Act (*Yhdenvertaisuuslaki*, no 21 of 2004), was, and still is, pending. As a report shows, the committee preparing the reform for presentation did not reach an agreement. The Ombudsman for Equality took active part in the discussion and issued a statement on the matter. However, the government proposal was not submitted to the parliament, and the matter was postponed until after the election.

Whether the idea of combining the Act on Equality between Women and Men and the Non-Discrimination Act will be reassessed, remains yet to be seen.

In 2010, people diligently contacted the Ombudsman for Equality for inquiries. Most of the cases were related to discrimination in working life: suspicions of pay discrimination, family leaves and discrimination based on pregnancy. In comparison with the previous year, the number of cases was slightly lower. As I see it, this change is mainly due to the renewed web site which now offers answers to many frequently asked questions and provides statements issued by the Ombudsman for Equality.

During the year, the promotion of equality was supervised both at work places and at educational institutions. The focus in the supervision of educational institutions was on upper secondary educational institutions. The monitoring of the realisation of

the equality planning obligation at work places was improved by the Ombudsman for Equality auditing the Gender Equality Plans of all Finnish Forestry Centres. In general, work places are already quite diligent at making Equality Plans, but the knowledge about the quality of these plans is still scarce. Often even the pay surveys are done only halfway: the pay differences are described, but the reasons for these differences are not analysed. The pay surveys should be conducted using information based on the individual employees in order to bring out the actual differences.

Enforcing the independent status of the Ombudsman for Equality proceeded only minimally during the year. The office of the Ombudsman for Equality was transferred within the Ministry of Social Affairs and Health to operate directly under the Permanent Secretary as an independent unit. How-



A professional portrait of Pirkko Mäkinen, the Ombudsman for Equality. She is a middle-aged woman with short, light brown hair, wearing black-rimmed glasses and a light purple blazer over a grey top. She is smiling and wearing pearl earrings and a pearl necklace. The background is a soft, light blue gradient. A solid orange vertical bar is on the left side of the image.

Ombudsman for Equality Pirkko Mäkinen

ever, the Act on the Ombudsman for Equality and the Equality Board (*Laki tasa-arvovaltuutetusta ja tasa-arvolautakunnasta*, no. 610 of 1986) was not submitted for preparation. I believe that the composition of the Equality Board should be changed, and the possibilities to present matters to be discussed by the Board should be expanded. The Ombudsman for Equality should be secured the possibility to appoint their staff and to promote reconciliation between the parties. These settlements should be confirmed as binding for both parties by the Equality Board, and the possibility to include a monetary compensation in the settlement should also be made possible. This would reduce the number of cases eventually submitted to court.

Gender minorities should be added to the discrimination provisions and promotion obligation of the Act on Equality between Women and Men. The provisions related to discrimination on multiple grounds should also be included in the Act on Equality between Women and Men, due to the fact that an individual is simultaneously defined by a number of factors, such as gender, ethnic origin, health status, age, sexual orientation, or belonging to a gender minority.

Discrimination suspicions related to pregnancy and parenthood still often come up

in law enforcement, and they are also often grounds for the charge in work place discrimination cases within the scope of the Criminal Code of Finland (*Rikoslaki*, no. 39 of 1889). For this part, amending the Finnish Employment Contracts Act (*Työsopimuslaki*, no 55 of 2001) should be considered in such a way that the provision on fixed-term contracts would specifically prohibit the limiting of the duration of the employment relationship based on pregnancy or family leave. The protection against discrimination in recruitment should be expanded to cover the entire employment process.

In my statement on the report by the Non-Discrimination Act Committee, I have proposed that the Non-Discrimination Act (*Yhdenvertaisuuslaki*, no 21 of 2004) should be developed similarly with the Act on Equality between Women and Men. The report by the Non-Discrimination Act Committee states that provisions related to the discrimination of gender minorities are also to be included in the Act on Equality between Women and Men. In contrast, any decisions on the provisions for promoting non-discrimination in working life remain unfinished, as they did in the Act on Equality between Women and Men in 1995, before the reform. However, better results in promoting non-discrimination could be achieved if the Non-Discrimi-

ination Act was supplemented with more precise provisions on the obligation to plan for measures promoting non-discrimination, on the cooperation with the staff, as well as minimum requirements for equality plans. For the Act on Equality between Women and Men, these steps have already been taken.

The discrimination provisions of the Non-Discrimination Act remain quite difficult to understand. In addition, they conflict with the discrimination provisions in the Act on Equality between Women and Men. Firstly, the compensation sanctions as regards these Acts are very different: According to the Non-Discrimination Act, a compensation sanction ensues from all violations of the discrimination provisions, whereas according to the Act on Equality between Women and Men, a violation of the general prohibition of discrimination may lead to a prohibition decision by the Equality Board, but not necessarily to a compensation sanction. Secondly, the Act on Equality between Women and Men contains viable provisions on the employers' and educational institutions' duty to provide a report on their actions. The purpose of this provision is to ensure the individual suspecting discrimination the possibility to receive information on the grounds of the selection. A similar provision is not pro-

posed to be included in the Non-Discrimination Act. This causes pressure on the law enforcement authorities to acquire information when settling discrimination cases.

I consider the proposed monitoring system for the Non-Discrimination Act obscure, and feel that the status of the Discrimination Ombudsman is particularly difficult. The Discrimination Ombudsman is not proposed to have the authority to investigate employment related discrimination cases, which does not correspond to the principle observed in the Community Law. Rational grounds for uniting the Equality Board and the Discrimination Board do not exist, if the working life cases related to the Non-Discrimination Act were ruled outside the Board's jurisdiction.

During the autumn term 2010, the Government submitted a proposal to the Parliament on establishing a Human Rights Centre. According to the proposal, the operations of the Centre would start in the beginning of 2012. I think that the foundation of the Human Rights Centre is very important. However, when establishing the Centre, the development of the supervision of human rights should have been discussed in an even wider context. Transferring separate authorities to the Human Right Centre would improve the cooperation possibilities and information ex-

change related to human rights issues.

When the Act on Equality between Women and Men was assessed in the course of the year, I expressed my concern on the new interpretation of the pay discrimination provision and the burden of proof provision by the Finnish Supreme Court (Finnish Supreme Court, 2009:78). This judgement has had far-reaching effects, and it has led to an increasing number of pay discrimination claims being dismissed. This is particularly irritating as the grounds provided by the Supreme Court in the case were very brief: they do not extend to discussing the legal question of whether the discrimination in question was direct or indirect. Neither does the interpretation correspond to the policy definition applied in legal literature in general. It appears indeed that the Act must be further specified in order to clarify the legal status.

After the Finnish parliamentary elections, the development of the government's equality policy and the development of the Act on Equality between Women and Men will be assessed again. The status of the gender minorities, development of equality planning, and the provisions related to multiple discrimination will be on the agenda. The government negotiations will lead the way.

Pirkko Mäkinen



On equality and **fundamental rights**

In 2010, issues related to the equality legislation and policy were widely assessed in the Parliament. In spring 2010, the Ministry of Social Affairs and Health issued a report to the Employment and Equality Committee of the Finnish Parliament on the functionality of the Act on Equality between Women and Men, as was required by the Parliament in 2005 upon passing the amendment to the Act. The report discusses the effects of the central reforms of the Act executed in 2005 in particular.

At the end of 2010, the first Government Report on Gender Equality was also submitted to the Parliament. The report evaluates the Finnish equality policy from the end of the 1990s to the present day, and describes the development and current state of equality between women and men in Finland. The report also outlines the future equality policy guidelines which the Parliament concurred with in its statement. The Parliament required the Government to submit the next report on the gender equality policy to the Parliament by the end of 2021, as well as an interim report by the end of 2016.

The Employment and Equality Committee of the Parliament heard the Ombudsman for Equality regarding both the report on the Equality Act as well as the Government Report on Gender Equality (statements: Ombudsman for Equality, no. 84 of 2010, and Ombudsman for Equality, no. 436 of 2010). The Ombudsman for Equality voiced her opinions on the development of the Act on Equality between Women and Men and the activities of the authorities in particular. The Employment and Equality Committee of the Finnish Parliament evaluated that the Act on Equality between Women and Men is, as a whole, a well functioning act, but that certain amendments and specifications will have to be made.

The Committee discussed equality planning extensively but also paid attention to certain other development needs and resource issues pertaining to the equality legislation.

The obligation to draw up a gender equality plan must be further specified

Provisions on the obligation to draft a gender equality plan were significantly reinforced in the 2005 reform of the Act on Equality between Women and Men. This change has had a positive impact on the implementation of gender equality planning, but as the report on the Act on Equality between Women and Men states, there are still certain deficiencies in observing this obligation, particularly in the realisation of the pay survey and the cooperation obligation related to drafting the plan.

The Parliament approved a statement in the proposal of the Employment and Equality Committee, in which the Government is required to prepare a proposal on the amendment of the Act on Equality between Women and Men in such a way that the obligation to perform the pay survey would be specified even further. According to the Committee, the Act on Equality between

Women and Men should be complemented with more precise instructions on how to assess the equivalence of work specifications when making pay surveys. In addition, a provision on making comparisons across collective agreements should be added to the Act.

In addition, the Parliament requires the Act on Equality between Women and Men to be complemented with changes which would increase the opportunities of the personnel to acquire information and affect the work place gender equality plan and pay survey in their drafting phase. The Ombudsman for Equality has emphasised that the employees' representatives must have access to the facts pertaining to salaries in order to be able to meaningfully participate in the pay survey. According to the Ombudsman for Equality, the obligation to communicate these plans to the personnel should be stated in the Act.

In the opinion of the Ombudsman for Equality, an express obligation to analyse the information acquired from the assessment of the gender equality situation should also be added to the Act on Equality between Women and Men. Analysing the pay-related information and the grounds for pay differences will make gender equality planning more tangible and promote the realisation of the objec-

tives of the planning obligation. The Government Report on Gender Equality outlines that one issue to be examined is adding the obligation to analyse pay survey information in the Act on Equality between Women and Men.

According to this outline, the obligation on operational gender equality planning should be extended to apply to comprehensive schools as well. The parliament concurred with the view of the government. The Ombudsman for Equality has had certain doubts as to whether expanding this planning obligation to comprehensive schools, at least in its current form, is the most viable method in making equality a more vital part of the operations of comprehensive schools.

Developing the discrimination provisions provided in the Act on Equality between Women and Men

The Ombudsman for Equality has on several occasions emphasised the need to amend the Act on Equality between Women and Men as soon as possible with provisions on the protection of gender minorities against discrimination and the promotion of their equal treatment in society, working life, education, and services. The lack of provisions expressly on

gender minorities was recognised as a problem already in the total reform of the Act on Equality between Women and Men in 2005. In fact, the Parliament passed a statement related to the Government Report on Gender Equality on adding a provision on the protection of gender minorities in the Act on Equality between Women and Men. In the Committee's view, these amendments to the Act could be prepared so that they could be submitted to the Parliament as soon as possible.

The Government Report on Gender Equality and the statement of the Employment and Equality Committee share the concern of the Ombudsman for Equality regarding the prevalence of discrimination related to pregnancy and family leave in working life. There are also other monitoring and development needs related to the prohibitions of discrimination. These needs are related to the way in which the division of the burden of proof between the claimant and the employer (i.e. the defendant) is interpreted in legal practice in pay discrimination cases (please see the preface), the limiting of all forms of discrimination in the recruitment process preceding the employment decision outside the application of compensation sanction, and the lack of provisions on multiple discrimination in the Act on Equality between Women and Men.

Enhancing the monitoring of the Act on Equality between Women and Men

The amendments to the Act on Equality between Women and Men have hardly affected the supervision system of the Act. The need to give the Ombudsman for Equality the powers to take measures for reconciliation in discrimination matters has been acknowledged for some time. When discussing the Government Report on Gender Equality, the Parliament required the Government to prepare a proposal for the Parliament on adding provisions concerning the reconciliation of discrimination cases in the Act on Equality between Women and Men.

According to the Government Report on Gender Equality, the objective of the Government is to merge the Equality Board and the Discrimination Board. The merger is also proposed in a report by the Equality Committee on the development of the Finnish Non-Discrimination Act. However, this statement also proposes that the new board to be established would not be given powers in matters related to the application of the Non-Discrimination Act in working life. Contrary to this, the current Equality Board has authority over working life issues. The Ombudsman for Equality feels that the merger

of the Equality Board and the Discrimination Board would not promote the formation of an understandable and sensible monitoring system, if the powers of the new board in relation to the Act on Equality between Women and Men and the Non-Discrimination Act were very different.

When discussing the Government Report on Gender Equality, the Parliament approved the statement on increasing the resources allocated to gender equality work so that the Ombudsman for Equality receives an allocation for hiring additional personnel for managing the monitoring and controlling tasks related to the Act on Equality between Women and Men. In addition, the resources for the Centre for Gender Equality Information in Finland, Minna, are increased. The Ombudsman for Equality has for a long time expressed her concern regarding the disparity between the development of the content of the Act on Equality between Women and Men and the resources allocated for monitoring the Act. Despite the sizeable reforms made to the Act on Equality between Women and Men in the 2000s, the resources allocated to the Ombudsman for Equality have only been increased by less than two person-work years.

A Human Right Centre to be established in Finland

In March 2011, the Parliament passed the government proposal on establishing a human rights institution in Finland. The institution, called the Human Rights Centre, is designed to operate according to the Paris Principles approved by the United Nations General Assembly in 1993.

The independent and sovereign Human Rights Centre will be set up at the Office of the Parliamentary Ombudsman. The purpose of the Centre is to widely promote fundamental and human rights as certain promotion tasks related to fundamental and human rights are currently inadequately managed. The Human Rights Centre is to start its operations in the beginning of 2012.

The Ombudsman for Equality issued a statement on the proposition on the national human rights institution, prepared by the committee appointed by the Ministry of Justice. In the statement (Ombudsman for Equality, no. 243 of 2010), the Ombudsman for Equality states that the proposal of the committee does not sufficiently consider – and neither does the government proposal based on the proposal of the committee – the requirements set for the independency and sovereignty of a national human rights insti-

tution established according to the Paris Principles. The Ombudsman of Equality feels that, among other things, the proposal should have unambiguously stated that the proposed Human Rights Centre would, in its tasks and operations, be independent and sovereign also in relation to the Parliamentary Ombudsman, despite the fact that administratively the Centre would be set in connection with the Office of the Parliamentary Ombudsman.

In addition, the Ombudsman for Equality pointed out in her statement that a need for a comprehensive review of the national field of fundamental and human rights still remains. The comprehensive review is called for in particular because a new operator is proposed to be established in the field of fundamental and human rights. This comprehensive review would also enable the discussion on, for instance, whether the current special guardians of law should be brought to operate in connection with the proposed Human Rights Centre. The Ombudsman for Equality feels that bringing the different operators together would be logical: after all, it is precisely the incoherence of the current fundamental and human rights system that has stirred the discussion on the need for a national human rights institution in Finland.

The reform of the Non-Discrimination Act is being prepared

The Non-Discrimination Act prohibits discrimination on other grounds than gender (such as age, ethnic or national origin, religion, disability, or sexual orientation). Already in the beginning of 2007, the Equality Committee was set up to examine the reform of the Non-Discrimination Act. The report of the Committee (Committee Report 2009:4) circulated for comments in the beginning of 2010.

The purpose is to, among other issues, change the tasks prescribed for the position of the Ombudsman for Minorities, which currently deals with ethnic discrimination only, to encompass also other grounds of discrimination prohibited by the Non-Discrimination Act, and to create a new office of the Discrimination Ombudsman. In her statement (Ombudsman for Equality, no. 85 of 2010), the Ombudsman for Equality favoured the proposed stronger position of the Discrimination Ombudsman in the supervision of the Non-Discrimination Act also in the working life. The reform of the Non-Discrimination Act is still pending at the Ministry of Justice.

Promoting equality

The aim of the Act on Equality between Women and Men is not only to prevent discrimination on the basis of gender, but to promote equality between women and men, and, for this purpose, to improve the status of women, particularly in working life. According to the Act on Equality between Women and Men, each employer shall promote gender equality within working life purposefully and systematically. If an employer regularly employs at least 30 people, it shall draw up a gender equality plan annually. The gender equality plan shall be drawn up in collaboration with representatives of the personnel. The minimum content requirements for a gender equality plan are prescribed in the Act. Neglecting to draw up the plan is sanctioned.

Developing the supervision of gender equality plans at work places

In 2010, the Ombudsman for Equality audited the gender equality plans of all Finnish Forestry Centres. A young woman contacted the Ombudsman, saying that it was still difficult for a woman to be recruited at a Forestry Centre, even though an increasing number of students in the field of forestry are women. The Forestry Centres have traditionally been extremely male-dominated work places.

The audit of Forestry Centre gender equality plans revealed that the tasks at the Forestry Centres are clearly divided into women's and men's tasks: women work in administrative tasks, while men work in silvicultural tasks. The Ombudsman for Equality urged the Forestry Centres to examine their recruitment practices in order to discover whether they contain elements that prevent the situation from changing. The Ombudsman for Equality instructed the Forestry Centres to examine the content of job advertisements and their interview practices, for example. It would also be important to examine the gender ratio between male and female applicants and the gender of the individuals recruited. The audit of the Forestry Centre gender equality plans was experienced as a sensible method of operation. Similar gender equality plan audits, focussing on one industry, will also be continued and developed in the future.

The Ombudsman for Equality received gender equality plans for inspection mainly via three routes: Work plac-

es regarding which matters were under examination at the office of Ombudsman for Equality were requested to deliver their gender equality plans for inspection. Secondly, gender equality plans were also requested when a representative of the personnel announced that a plan had not even been made, and thirdly, when the plans were made but did not correspond to the statutory requirements. The Ombudsman for Equality provided plenty of guidance and instructions related to gender equality plans, by mail and by phone, at the request of a representative of the employer or personnel.

Unfortunately, many of the gender equality plans examined by the Ombudsman for Equality still did not fulfil the requirements of the Act on Equality between Women and Men. Several gender equality plans seemed to lack concrete means of reaching the objectives, and the work places had to be given further instructions on how to complement their plans. The Ombudsman for Equality urged the work places to use the gender equality survey tool, available online in Finnish at www.tasa-arvokysely.fi. The survey will help to get an idea on what the most important issues to be developed are, according to the personnel.

Favouring the gender listed as a minority in the gender equality plan in the recruitment process

The Ombudsman for Equality was asked whether a job applicant may refer in court to the fact that the employer has made reference in their gender equality plan to favouring the under-represented gender in the recruitment process.

According to the Act on Equality between Women and Men, temporary special measures based on a gender equality plan that strive towards implementing the objectives of the said Act in practice, cannot be considered discrimination. This provision gives the opportunity, subject to certain conditions and based on a written and concrete gender equality plan, to favour applicants of the gender underrepresented in the task group at the time in the recruitment process.

The Court of Justice of the European Union has in its court praxis restricted the application of special measures in recruitment situations. According to the Court, representing the underrepresented gender cannot automatically be a selection criterion (*Kalanke C-450/93*, on 17 October 1995). According to this ruling, a national legislation according to which of two equally competent applicants of opposite genders, the woman is automatically recruited on fields in which women are under-

represented, without considering the particular conditions of the case, conflicts with the Community Law. Therefore the employer may not, despite the reference in the gender equality plan, automatically favour the underrepresented gender in the recruitment process.

In general, the precondition for applying special measures is that it must in effect promote gender equality in society. Special measures are a viable method in striving to promote equality, especially when the discriminatory mechanisms can be said to truly affect entering into a certain field, or hindering career development. This can be the case for instance when men are recruited in managerial positions on fields otherwise dominated by women.

According to the Ombudsman for Equality, the special measures applied by individual employers are not necessarily a good means of reducing the deep segregation of the labour market into men's and women's jobs currently prevailing in society. Often this segregation is already laid down in the different educational selections made by men and women.

Therefore, the employer has no statutory obligation to favour the underrepresented gender in the recruitment process, even if the gender equality plan would contain a reference to this. For this reason, a compensation claim based on a reference in the gender equal-

ity plan on favouring the underrepresented gender in recruitment is unlikely to succeed. **(Ombudsman for Equality, no. 258 of 2010)**

Ombudsman for Equality's work place visits

In 2010, the Ombudsman for Equality conducted four work place visits. The visits were made to the city of Imatra and three privately owned businesses: Alandia Group and Bank of Åland, both located in Åland, and Clas Ohlson in the Helsinki Metropolitan Area.

The Ombudsman for Equality met with the mayor of Imatra as well as with several representatives of the city administration and personnel. The city of Imatra has had an equality plan in place since 2008, based on both the Act on Equality between Women and Men and the Non-Discrimination Act. This plan has successfully differentiated between the personnel policy and the operational aspects. The objective has been to make equality an integral part of normal personnel policy and promotion of well-being at work, as occupational health and safety issues already are. More attention has been paid particularly to the transparency of the recruitment process, and the recruitment officer has been involved in most

recruitment processes. In addition, all issues related to remuneration are checked in Imatra annually in connection with the local negotiations, in which position-specific salaries as well as personal bonuses per salary group and on a personal level are assessed.

According to the Ombudsman for Equality, the structure of the equality plan in place at Imatra works well. In addition, the Ombudsman considered the instructions on dealing with harassment, approved by the Council for Cooperative Negotiations, very good.

At Clas Ohlson Oy, particular attention has been paid to the recruitment process. The company wishes to ensure that men and women are equally represented across various tasks and positions. The minimum objective is that the share of representatives of both genders in each group is at least 40 per cent. In order to reach this objective, the recruitment group contains both men and women, and the content of job advertisements is carefully considered. At Clas Ohlson, the gender equality plan is supplemented with a family leave guide, and according to the company policy, the employees on family leave are always invited to any company functions and kept informed of all company issues, if they so desire. The Ombudsman for Equality also commended the company's ex-

tremely precise and detailed guidance for dealing with harassment.

During her visits to Alandia Group and Ålandsbanken, the Ombudsman for Equality openly and actively discussed with the representatives of the companies the work the companies undertake in order to promote equality. The Ombudsman for Equality praised, among other things, the companies' efforts in promoting the equal distribution of women and men in the various tasks, the increase of the number of women in the management groups of the two companies, the definition of harassment, and the zero tolerance on gender-based harassment adopted by both companies. In addition, the gender equality plans paid great attention to the possibilities for combining work and family life.

Gender equality planning at educational institutions

The Act on Equality between Women and Men obligates educational institutions to draft a gender equality plan that strives toward developing the operations of the educational institution. According to the provision, this plan is always drawn up in cooperation with the personnel and the representatives

of the students of the institution. In addition, the plan must contain a survey on how the students experience gender equality to be realised in practice in their educational institution. The Act includes provisions on the contents of these plans. Negligence of the obligation is sanctioned.

The purpose of drafting a gender equality plan is to promote gender equality and to prevent gender-based discrimination. The statutory obligation applies to all educational institutions that offer education; upper secondary schools, vocational schools, polytechnics, universities, and liberal adult education organisations, as well as any private organisations offering education. Only institutions offering infant and primary education as well as organisations arranging extremely short-term education are excluded from the provision. In addition to the operational gender equality plan, the educational institutions shall also draft a gender equality plan for the personnel policy, if the educational institution employs at least 30 employees.

During the year under review, the Ombudsman for Equality continued inspecting the quality of operational gender equality plans made in educational institutions. The focus of the monitoring process was the quality of operational gender equality plans in up-

per secondary vocational institutions.

The survey revealed serious deficiencies in the plans. The results were similar with the survey conducted on polytechnics in the previous year under review, and deficiencies were found particularly as regards the provision of the Act on Equality between Women and Men whereby the gender equality plan must be drawn up in cooperation with the representatives of the personnel and students. Also, in many cases the gender equality plan did not include an assessment of the current gender equality situation at the institution, and the operational gender equality plan was sometimes merged with the personnel policy gender equality plan. In only some of the plans, special attention was paid to measures required by the law that aim at preventing and eliminating sexual and gender-based harassment.

In cooperation with the Finnish National Board of Education and the Gender Equality Unit (TASY) of the Ministry Of Social Affairs And Health, the Ombudsman for Equality participated in executing a further education project aimed at upper secondary educational institutions. The purpose of the project was to improve the quality of the operational gender equality plans drafted at the educational institutions, and at the same time, to improve the gen-

eral awareness of gender equality issues at the institutions. A total of five educational events were organised in different parts of the country within the project, and approximately 150 representatives from different educational institutions took part in the one-day educational events. A representative from the office of the Ombudsman for Equality gave a talk at each event. In addition, the Ombudsman for Equality participated in the steering group of the project.

Furthermore, the Ombudsman for Equality published a brochure about the drafting of an operational gender equality plan for educational institutions. The brochure, *Naisten ja miesten välisen tasa-arvon edistäminen oppilaitoksissa* ("Promoting the equality between women and men at educational institutions") was distributed to the educational institutions in the educational events of the project, for instance.

During the year under review, the Ombudsman for Equality also took part in a further education day directed at all Swedish-language upper secondary vocational education institutions, in which a representative from the Ombudsman's office gave a presentation on the Act on Equality between Women and Men and on promoting gender equality in the educational institutions.

Quotas

The quota provision is applied to all planning and decision-making bodies in society. According to the Finnish Local Government Act (Kuntalaki, no 365 of 1995), municipal bodies comprise a council, municipal board, committees and their sub-committees, boards of management and their divisions, and commissions. The quota provision of the Act on Equality between Women and Men does not define a municipal organ in further detail, except for that the municipal council has been excluded from the quota provision. However, the Supreme Administrative Court has concluded that, in certain cases, the municipal bodies referred to in the quota provision may include bodies other than those listed in the Local Government Act, such as working groups.

In addition, there are cooperation bodies operating between the local government and organisations, which represent certain customer groups of the municipality within the local governments. As these bodies do not engage in planning or decision-making in society, the quota provision does not apply to them. However, the Ombudsman for Equality wishes to emphasise that the equal representation of women and men should be

considered in these cooperative organs as well. Of this type of cooperative bodies, the Ombudsman for Equality has in 2010 issued statements on the composition of a *Vanhusneuvosto* (“Council for the Elderly”) and a *Vammaisneuvosto* (“Council for the Disabled”).

Applying the quota on commissions

Commissions are bodies within the scope of the Local Government Act, and as such, the quota provision of the Equality Act applies to them. The restrictions on eligibility of the members of a commission are significantly more limited than those regarding regarding municipal committees. This aims at securing sufficient expertise in the work of the commission.

According to the legal practice, representation of political groups, previous experience of the individuals, or the authority of the commission have not been accepted as special causes for deviating from the quota in a commission consisting mainly of elected officials.

In 2010, the Ombudsman for Equality stated that the quota provision can be applied to for instance housing policy commissions, accessible construction commissions, employment promotion commissions, and city centre development commissions. As these local governments had not presented individualised reasons for diverging from the quotas, the Ombudsman for Equality stated that the compositions of these commissions were contrary to the quota provision. (**Ombudsman for Equality, no. 79 of 2009 and Ombudsman for Equality, no. 100 of 2009**)

Monitoring the prohibitions of discrimination

General prohibition of discrimination

The Act on Equality between Women and Men contains a general prohibition of gender discrimination as well as special prohibitions on discrimination in working life, educational institutions and labour market organisations, as well as provisions regarding the availability and provision of goods and services. The scope of application for the general prohibition of discrimination as well as the Act on Equality between Women and Men is wide: with a few exceptions, the Act encompasses all operations of society and all spheres of life.

In practice, the significance of the general prohibition of discrimination has diminished, as discrimination is regulated with increasingly comprehensive special prohibitions. Violating these may result in compensations according to the Act on Equality between Women and Men. However, all discrimination is still not covered by these special prohibitions, and in some cases, discrimination is only prohibited by the general prohibition. The potential discriminatory aspects of a

procedure will be assessed according to the general prohibition of discrimination for instance in cases when individuals are treated unfavourably regarding social assistance decisions; as members of organisations or clubs, for instance, without the authorisation for such treatment provided by the rules of the organisation; or regarding the practices related to reimbursements of the costs of medical treatment without rational grounds.

A local government wished to urge men to use the municipal supplement of the Child Home Care Allowance

A local government official asked the Ombudsman for Equality whether the Act on Equality between Women and Men sets any obstacles for a municipality paying a higher municipal supplement of the Child Home Care Allowance to the fathers than to the mothers. In addition, the official asked if the Act prohibited such measures, would there be other ways to encourage fathers to use the Child Home Care Allowance more. The municipality in question examined the parents' interest in the municipal supplement of the Child Home Care Allowance and wished to encourage fathers in particular to stay at home with the children.

The Ombudsman for Equality stated that the municipality's objective of increasing the share of fathers in the home care of children is, as such, to be favoured, and that it would promote gender equality. The more equal distribution of family leave between the mother and the father has been a central objective of the equality policy for some time now, but with the exception of the paternity leave, men still only use a small portion of the family leaves.

The family leave system comprises several different types of leaves, each with a different purpose and different application criteria. The purpose and conditions of receiving the Child Home Care Allowance are the same for mothers and fathers. For this reason, there are no grounds for defining the amount of the Child Home Care Allowance or its municipal supplement by the parent's gender. The proposed procedure would set men and women in an unequal position based on their gender, thus fulfilling the criteria set for discrimination on the basis of gender. Another important factor to consider is the position of single parents. The majority of single parents are women, who would not benefit from an increase in a financial subsidy solely targeted at fathers.

The Constitution of Finland, the Act on Equality between Women and Men, and the

EU legislation as well as the UN Convention on the Elimination of All Forms of Discrimination Against Women all allow so-called special measures. According to the Act on Equality between Women and Men, special measures refers to temporary, planned special measures that in effect aim at promoting equality. Not all differences between the position of men and women justify special measures; the difference must be related to the weaker position and its improvement. These measures may not lead to discrimination.

According to the Ombudsman for Equality, the different treatment of men and women related to the amount of the municipal supplement of the Child Home Care Allowance cannot be justified with special measures. As regards the Child Home Care Allowance, fathers are not in a weaker position than mothers, even though they do not exercise their right to the allowance as often as mothers do. Paying a different amount of compensation for men and women for the same task, i.e. caring for the children at home, cannot be regarded a procedure that complies with the Act on Equality between Women and Men.

However, fathers should be encouraged to increasingly use the Child Home Care Allowance. The Ombudsman for Equality states that a part, but no more than half, of the time

period for which the municipal supplement of the Child Home Care Allowance is paid, could be reserved to be used only by the father. However, this could not restrict single parents' right to the municipal supplement of the Child Home Care Allowance, and single parents should be entitled to the entire municipal supplement of the Child Home Care Allowance for the same time period other families are entitled to it. **(Ombudsman for Equality, no. 83 of 2010)**

Women can be paid a higher daily allowance for reservist training than men

The Ombudsman for Equality was asked whether the women's higher daily allowance for the duration of military refresher courses is discriminatory. For women in voluntary military service, the per diem allowance is 0.40 euros. This allowance is meant for acquiring personal equipment which the Defence Forces will not provide. Women and men have the same military clothing.

The Ombudsman for Equality has issued a statement on the matter on 1 April 1997 (26/51/95). At the time, the Defence Command stated that the allowance paid to women is a compensation for any personal equipment that is not arranged by the Finnish Defence Forces. These include sanitary protection, underwear and bras. It is not expedient or economical for the Defence Forces to acquire this type of special equipment in their equipment storage as the number of women entering voluntary military service is so low. In other words, the military daily allowance is not a higher allowance paid to women than men, but rather compensation of the equipment women have to purchase themselves.

In their reply, the Ombudsman for Equality stated that the women's higher military daily allowance is not a question of gender-based discrimination. (**Ombudsman for Equality, no. 275 of 2010**)

A religious blog contains material insulting to women

The Ombudsman for Equality was informed of a blog, written by a member of a religious community that contains material insulting to women. The blog states among other things that women are inferior to men, and that women should be subordinate to men. The Ombudsman for Equality was asked why the Act on Equality between Women and Men makes an exception when it comes to religious communities. The police will receive hints on web sites that contain racist material, but how about sites that instigate inequality between women and men? What kinds of judicial means are available to intervene with these?

The Ombudsman for Equality expressed her concern for the existing writings that insult women and encourage unequal treatment on the basis of gender in Finland. For instance, there are sites on the Internet, which instigate violence against women but the

current legislation does not provide sufficient means to intervene.

Religious practices excluded, the Act on Equality between Women and Men applies to the religious communities as well. The basis for the exclusion of religious practices is in weighing two fundamental rights secured by the Constitution of Finland (Suomen perustuslaki, no. 731 of 1999); the freedom of religion and equality between women and men. The Act on Equality between Women and Men is not intended to be used to restrict the right of religious communities to limit priesthood to only be open for men, for instance.

Another issue affecting the interpretation of the Act on Equality between Women and Men is the freedom of expression. The freedom of expression includes the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. The freedom of expression is strongly secured by the Constitution, and limited only by certain provisions of the Criminal Code, such as those pertaining to defamation, menace, or ethnic agitation. If the freedom of expression conflicts with these, the matter falls within the domain of the police and the prosecuting authority. Ultimately, courts will settle whether individual cases are about applying the free-



dom of expression secured by the Constitution or about unlawful practices as determined by the Criminal Code. It is not known to the Ombudsman for Equality whether men or women in general have ever been considered a group against which agitation would be criminalised. Instead, women or men of a certain ethnic group or religious community could constitute such a group.

According to the Act on Equality between Women and Men, gender-based harassment as well as any instructions or orders to execute such harassment constitute discrimination prohibited by the said Act. Gender-based harassment means unwanted conduct that is based on a person's gender but is not of a sexual nature and has the purpose or effect of violating that person's integrity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

The Act on Equality between Women and Men has in the past been interpreted so that discrimination must be targeted to a certain individual or to a limited group of individuals. The orders or instructions to discriminate have been interpreted as discrimination in breach of the Act on Equality between Women and Men only in situations in which the issuer of the command or instructions can be assessed to possess authority in the matter. The compen-

sation available under the Act on Equality between Women and Men is limited to discrimination in working life, educational institutions, in the activities of labour market organisations and in the provision of goods and services.

In general, the Ombudsman for Equality has not intervened with individual newspaper articles, radio programmes, and web sites, or their content. Due to the perspectives related to the freedom of expression and the restrictions set by her role as a law enforcement authority, the Ombudsman for Equality has brought forth the equality aspects in her work on a more general level. **(Ombudsman for Equality, no. 192 of 2010)**

Recruitment discrimination

There have been equally many suspected cases of discrimination in recruitment from women and men. The Act on Equality between Women and Men aims to prevent situations where a person is appointed to a position unjustly on the basis of their gender when another candidate would have been more qualified. According to the Act on Equality between Women and Men, a comparison of merits must be carried out when-

ever applicants include both men and women. The merits of the applicants must be assessed objectively, considering the selection criteria. In addition, discrimination is prohibited in the phases preceding the employment decision, such as the job interview. For this reason, the interviewees may not be asked about their family matters, for instance.

Questions on pregnancy, child care, or other family matters are not allowed in interviews

A woman applied for the position of a midwife/charge nurse in a central hospital. In the job interview, the employer asked the applicant about her family situation. The applicant contacted the Ombudsman for Equality and requested whether the employer had violated the Act on Equality between Women and Men. According to the employer's report, the applicant's family situation had not been discussed during the actual interview, but only after the interview in an informal discussion with the applicant.

According to the Act on Equality between Women and Men, applicants may not be treated differently on the basis of parenthood or family responsibilities. For this reason, inquiring about any issues related to the applicant's parenthood or family responsibil-

ities, such as family relations or marital status, in the employment process is contrary to the Act on Equality between Women and Men. Prohibited questions in a recruitment situation include questions about pregnancy, plans to have children, number of children, and organising child care. Asking about family relations and marital status during the employment process may arouse a suspicion of gender-based discrimination, and in such cases, the employer must be able to provide evidence on the fact that these issues have not affected the employment decision. This type of actions cannot be justified by merely making answering the questions voluntary.

In her statement, the Ombudsman for Equality stated that it may be difficult for the applicant to know which part of the conversation is meant as the actual job interview, and which part should be construed as informal discussion, particularly in situations in which the participants of the interview and the informal conversation are the same. (**Ombudsman for Equality, no. 370 of 2010**)

A District Court selected men as bailiffs

A woman requested the Ombudsman for Equality for a statement on whether she had

been discriminated against in the manner described in the Act on Equality between Women and Men when she had not been selected to any of the three vacancies at the District Court.

According to the report submitted to the Ombudsman for Equality, 20 bailiffs are employed by the District Court in question. One of the bailiffs is a woman. A gender ratio this uneven rouses suspicions about the recruitment practice favouring male applicants. On the other hand, it is clear that the employer's potential prejudices naturally have an effect on the male and female applicants seeking different positions. The Ombudsman for Equality finds that a bailiff's job description does not require the person selected for the position to be male.

Whenever applicants include both men and women, a comparison of merits must be carried out according to the Act on Equality between Women and Men. In this process, the education and professional competence, previous work experience, and other qualities required for the task at hand of the applicants are compared. Merits are evaluated in the light of the position in question and on the basis of the selection criteria that the employer has established before advertising each position. Ultimately the comparison of

merits is about finding the eligible applicant with the best professional and other qualities required to be able to successfully and appropriately carry out the tasks included in the position.

The recruitment decision must be based on an appropriate and objective evaluation of the applicants' merits. Should the employer wish to weigh any personal qualities of the applicant or applicants, be these negative or positive, this must be sufficiently expressed in the comparison of merits. The burden of proof remains with the employer, and they must be able to prove that they have in fact compared the abilities and qualities of the person chosen and other candidates.

The statements of the Ombudsman for Equality are recommendations by nature, and as such, they do not bind the parties involved or the courts. The task of the Ombudsman for Equality is primarily to comment on the legal questions related to the interpretation of the Act on Equality between Women and Men, and as a main rule, the Ombudsman will not conduct any actual comparisons of merits in suspected cases of discrimination.

In this case, however, based on the report presented on the matter, the Ombudsman for Equality stated that both the applicant requesting the statement and the persons ap-



pointed had been eligible for the positions of a bailiff. The Ombudsman for Equality found that for two of the positions, a presumption of discrimination was established considering the professional expertise and education of the applicants. To rebut a presumption of discrimination, the employer must show that their selection is attributable to a justifiable factor not connected to gender.

The Finnish working life has been strongly segregated into men's and women's professions and fields. Breaking down this segregation is considered essential for the development and wellbeing of society. For this reason, the Ombudsman for Equality finds it absolutely essential that the District Court in question would take measures to encourage both men and women to apply for the vacancies. The job advertisement could explicitly state that the available position is suitable for both women and men. **(Ombudsman for Equality, no. 48 of 2010)**

Evaluation of suspected pay discrimination cases

The office of the Ombudsman for Equality regularly receives inquiries from employees who suspect that they have been discrimi-

nated against as regards their pay. During the year under review, the Ombudsman received most pay-related inquiries from employees of local authorities and intermunicipal federations. The discrimination suspicions were related to the discrimination regarding position-specific salaries (basic salary) and various bonuses. In addition, many of the inquiries concerned the effect of maternity leaves and other family leaves on remuneration.

Pay discrimination in the case of a female director of family services

A director of family services requested comments from the Ombudsman for Equality on whether a joint municipal board had violated the Act on Equality between Women and Men in paying her a lower salary than the director of health services and the principal of a vocational education institution who also operated as the director of the profit area related to vocational education. The director of health services and the principal were men, and the director of family services a woman. The key issue was whether the tasks of the director of family services were as demanding as those of the two men in question, and whether the director of the family services should be paid an equal task-specific pay with the men.

The basic salary of one of the two men was lower than that of the director of family services. However, that person was paid a personal bonus of more than 1,000 euros, based on the expansion of his field of tasks and an increase in the number of the offices to be directed. Because the grounds for paying the bonus were, as a whole, related to issues that defined how demanding the task was, the bonus had to be considered when calculating the salary paid to the control person based on how demanding the task was. This considered, the salary paid to the control person was higher than that paid to the director of family services. Community Law in particular requires openness and transparency from the payroll system in order for the employees to have efficient measures at hand to secure equal pay. For example, in order to achieve a transparent salary system, it should be possible to find out whether a task-specific salary is discriminatory by comparing the employees' task-specific salaries. In this case, this objective was not met.

The joint municipal board presented a job evaluation for the tasks of the director of family services and the two control persons. However, in a later report, the joint municipal board rectified the information that was used as the basis of the evaluation. The

joint municipal board did not present any conclusions on the job evaluation based on the rectified information. Even though the Ombudsman for Equality generally does not perform job evaluations, the written material and the corrections and specifications made to the justifications of the evaluation submitted to the Ombudsman gave cause to assess certain parts of the job evaluation.

The Ombudsman for Equality stated that in the job evaluation between the tasks of the director of health services and the director of family services, the joint municipal board had paid particular attention to the issues affecting the level of competence required by the task of the director of health services, but that similar considerations were not made when evaluating the competence required by the task of the director of family services, and that these should be paid more attention to in the comparison. The director of family services was responsible for an exceptionally large number of services in the field of social welfare and health care, such as social welfare and health care services for children, youth, and families, social welfare services for adults, and disability services. The diversity of the field increases the competence required in the task.

The Ombudsman for Equality made the following comments on the job evaluation

between the tasks of the director of family services and the principal: first of all, when concretely assessing the classification of tasks, it is irrelevant that the classification criteria of the tasks of the principal are stated in the legislation in more detail than those of the director of family services. In the report later submitted to the Ombudsman, the issues affecting the evaluation of the effects of these tasks and the responsibilities prescribed in these tasks differed from the information the joint municipal board had used in the initial job evaluation. For example, the budgetary responsibility of the director of family services turned out to be greater than that of the principal; similarly, the number of staff within the human resources responsibility of the director of family services was greater than the number of staff the principal was responsible for. When evaluating the effects and responsibilities related to the tasks of the three people compared, the diversity of the sphere of authority of the director of family services was also considered and consequently compared with the sphere of authority of the principal. According to the Ombudsman for Equality, the fact that the principal operated as the substitute chief of department does not alone suffice to make the tasks of the principal more demanding

than the task of the director of family services. Rather, in the opinion of the Ombudsman for Equality, the written material submitted to her supported the view that the tasks of the director of family services were more demanding than those of the principal.

As a part of the explanation of the pay difference, the joint municipal board referred to the fact that the salaries of the director of family services and the control persons were based on different collective agreements. In the opinion of the Ombudsman for Equality, however, the employees of a municipality should be able to compare their salaries with other municipal employees performing the same tasks or tasks of equal value even when different collective agreements apply to these employees, and furthermore, that belonging to different collective agreements cannot as such be considered appropriate cause for differences in pay. The legislative history of the Act on Equality between Women and Men expressly states when discussing the pay survey obligation that different collective agreements cannot be considered a just cause for paying different salaries to employees performing the same tasks or tasks of equal value.

Furthermore, the Ombudsman for Equality referred to the interpretation by the Court

of Justice of the European Union. According to the Court, pay differences may be covered by Article 157 on equal pay of the Treaty on the Functioning of the European Union, if the terms of remuneration for employees with the same work or work of equal value, which cause the pay differences, derive from 'a single source'. Otherwise there is no body responsible for unequal treatment that could ensure the implementation of equal treatment. The Local government employers, KT, which represents the local governments as employers, is the contracting party in all municipal collective agreements. Even when salaries are based on union-level collective agreements that define the minimum terms of remuneration, like agreements in the local government sector, the local government employer can, in principle, pay its employees higher salaries than defined in the collective agreement. This means that there juridically speaking is a body that can guarantee equal treatment. **(Ombudsman for Equality, no. 369 of 2009)**

A female substitute was paid less than the permanent male employee

The Ombudsman for Equality was requested to examine whether a university of applied sciences violated the Act on Equality between Women and Men when paying a woman (A) substituting for a male psychologist a lower salary than the male psychologist (B).

According to a report submitted by the university of applied sciences as the employer, the task-specific salary of the psychologists was defined on the basis of the competence required for the position, according to the General Collective Agreement for municipal personnel (KVTES). The job evaluation was made according to the actual duties instead of the title. A tailor-made a

package of tasks was compiled for A from B's duties. Therefore, A's duties did not include organising a well-being survey, participating in the student selections, or training and lecturing duties, for instance. During the brief temporary post, A's tasks did not correspond to the tasks of the permanently employed psychologist B, which is why A's task-specific pay was compared to that of the school welfare officers at the region educational consortium. At first, the difference in the monthly pay of A and B was approximately 400 euros.

According to the evaluations by A as well as the permanent psychologist B, A's duties did not significantly differ from or require less competence than B's duties. According to both A and B, the duties of a psychologist cannot be compared to those of a school welfare officer.

According to the Act on Equality between Women and Men, the employer's conduct constitutes discrimination prohibited by the said Act, if the employer applies the terms of remuneration in such a way that the employees find themselves in a less favourable position than employees of the opposite sex, performing the same work or work of equal value for the same employer. According to the Act on Equality between Women and Men, a substitute of an employee being paid a lower sal-

ary than the permanent employee for duties of equal value may constitute pay discrimination. This procedure could be considered discrimination, unless the pay difference can be explained by education, work experience, or some other appropriate factor.

The university of applied sciences in question justified the pay difference by A's limited work experience. A could not have performed some of the tasks contained within B's job description as well as B, which is why these tasks were excluded from A's job description. A's limited work experience was also evaluated to have an effect on managing the basic tasks of the psychologist, such as the volume of the reception of patients. Therefore, according to the employer, A's duties had not been as demanding as B's. However, according to A, the substitute, and B, the permanent psychologist, the majority of the substitute's work had been similar (performing the basic duties of a psychologist) to the work performed by the permanent psychologist.

As a main rule, the Ombudsman for Equality does not perform job evaluations for a certain task or position. Unless the parties come to an agreement, the effective evidence of the detailed content and competence requirements of the actual duties of the employees being compared are usually pre-

sented in District Court, in connection with a possible claim for compensation against the employer. In the legal action for compensation, A has the burden of proof to demonstrate that her duties have been equally demanding as B's, or that the difference in the competence required by the duties of A and B has not been sufficiently significant to explain the entire pay difference. If the employer justifies the pay difference with the employee's personal qualities that affect her work performance, the burden of proof lies with the employer. **(Ombudsman for Equality, no. 321 of 2008)**

Pregnancy and family leaves a permanent topic

According to the Act on Equality between Women and Men, any practice that results in a person being treated unfavourably on the grounds of pregnancy or a reason related to childbirth, parenthood or family commitments, constitutes discrimination on the basis of gender. Many of the inquiries received by the Ombudsman for Equality during the year under review concerned the impact of pregnancy and family leaves on employment. Many were worried about establishing per-

manent employment and the continuation of temporary employment as well as problems related to temporary agency work after the employer had discovered the pregnancy of the employee. In addition, many of the inquiries suspected that employees taking family leave had been treated unequally in terms of remuneration or other terms of employment.

The right to return to work after family leave

A female teacher requested the Ombudsman for Equality for comments on whether an educational institution had violated the Act on Equality between Women and Men in not offering the teacher work accordant with her employment contract upon her return to work after her child care leave. The person hired as the teacher's substitute continued with the duties the female teacher had undertaken before taking her maternity leave.

According to the Ombudsman for Equality, the case in question must be evaluated from the perspective of whether the teacher would have kept her earlier position if the same criteria had been applied to her as to the other employees – as if there had been no pregnancy or family leave. The Ombudsman

for Equality reminded the educational institution in question of the fact that an employee returning from a family leave has the right to primarily return to their previous post. The Employment Contracts Act (Työsopimuslaki, no 55 of 2001) lays down provisions on the matter. In this case, the duties of the female teacher existed exactly as they were when she took her maternity leave. The Ombudsman for Equality did not know of any circumstances that could have resulted in the employer not being able to offer the teacher her old work back. This being the case, the employer was unable to demonstrate that the temporary arrangement concerning the female teacher had any other cause than her gender.

According to the Act on Equality between Women and Men, the employer shall facilitate the reconciliation of work and family life by paying attention to the work arrangements in particular. In this case, the teacher was not always even aware of her tasks or the duration of each day in the beginning of the work day, due to the employer's actions. In her statement, the Ombudsman for Equality noted that the employer had made the combining of her work and family life difficult for the teacher with this temporary arrangement. (**Ombudsman for Equality, no. 462 of 2009**)

Impact of pregnancy on the continuation of a temporary post

A woman substituting for an employee on parental leave asked the Ombudsman for Equality for advice on how her pregnancy would impact the continuation of her temporary post. The woman said that the person she was substituting for was likely to resign from her post, but could also continue on family leave or return to her post.

According to the Act on Equality between Women and Men, the employer's conduct constitutes discrimination if the employer turns down an applicant on the grounds of pregnancy or family leave. In addition, the employer limiting the duration or continuation of the employee's employment on these grounds also constitutes discrimination.

In the recruitment situation individuals must be treated in the same way they would be treated if they were not pregnant or on family leave. In case of temporary posts, the status of a temporary employee is usually bound to the duration of the employment, regardless of pregnancy. This case might constitute discrimination, if the need for a substitute continues and a new temporary employee is hired for the post, while the fixed-term contract of the previous, now pregnant substitute is discontinued.

A case might also constitute discrimination if exceptions are made to the general recruitment practices of the employer only regarding the pregnant employee. For instance in a case tried in the Court of Appeal of Helsinki, an employee's letter of appointment had been renewed before the family leave without an appointment procedure. When the employee took a maternity leave, her letter of appointment was not renewed, but another person was appointed for a fixed-term period to the employee's post. According to the ruling by the Court of Appeal, the comparison of merits between the applicants could not in this case be considered an appropriate cause for not renewing the employee's letter of appointment according to the Act on Equality between Women and Men, when the person previously appointed for the position was suitable and eligible for the post.

However, if a permanent employee resigns during the time their position is fulfilled by someone else as a temporary post, the employer usually has the right to publicly advertise the vacant post. In this case, however, the employer may not allow the pregnancy or family leave of an applicant to affect the employment decision, but the applicants should be compared only using their merits and suitability for the task. **(Ombudsman for Equality, no. 64 of 2010)**

The impact of maternity and parental leaves on annual holiday

The Ombudsman for Equality was requested comments on whether the practice based on internal instructions in a bureau to subtract the maternity and parental leaves in calculating the so-called "other service entitling annual holiday" is in conflict with the Act on Equality between Women and Men. According to these internal instructions, all interruptions, maternity and parental leaves included, reduce the time calculated as work experience.

In their report, the employer referred to the fact that, according to the collective agreement, the right of employees to credit other services than those performed for the employer is entirely discretionary. However, the Ombudsman for Equality pointed out in her statement that the employer cannot justify the application of measures proven to be discriminatory by them being contained in the collective agreements approved by the contracting organisations representing office holders and employees. The provisions prohibiting discrimination in the Act on Equality between Women and Men are unconditional, and cannot be overruled even by collective agreements.

In order to investigate this presumption of discrimination, the status of the person

requesting the statement must be compared to the status of an employee whose creditable service has not been interrupted by maternity or parental leaves. If the employee is discriminated against because of her maternity leave, the case constitutes direct discrimination. According to the Health Insurance Act (Sairausvakuutuslaki, no 1224 of 2004) and the Employment Contracts Act (Työsopimuslaki, no 55 of 2001), the office holders and employees are entitled to take a leave of absence from work on the grounds of pregnancy and child birth for a time period corresponding to the maternity allowance period. If the office holder or employee would not have been pregnant or taken the maternity leave but continued at work, she would have been credited a longer time period of the so-called other service. This being the case, the gender of the office holder or employee has, in the manner intended by the Act on Equality between Women and Men, affected the way in which the so-called other service entitling annual holiday determined the length of her holiday. As regards the maternity leave, this case constitutes direct discrimination, because the employee being in an unequal position is directly caused by reasons due to her pregnancy or child birth. The potential discrimination due to a parental leave is in-

direct discrimination by nature, as both the father and the mother of the child are entitled to the parental leave.

As regards parental leave, it must be considered whether the employer's procedure can be deemed appropriate. In order for the procedure to be appropriate, its objectives should first be appropriate. Furthermore, the means selected for achieving the objective should be essential in order to achieve the objective, and the means used should, when considering the objective, be suitable and correctly measured in order to implement the principle of proportionality. In evaluating an acceptable reason, the content of the argument should be considered the most essential evaluation criteria, and not for instance formal matters, such as whether the matter regards a provision of a collective agreement or an act.

The purpose of calculating other service entitling annual holiday is perchance to reward employees for increasing their professional expertise. According to the interpretation instructions, only work experience fully comparable to the tasks performed for the employer in question can be considered. The Ombudsman for Equality concurs with the ruling of the Labour Court (1998:34), according to which the system in place in the bu-

reau in question cannot be deemed a system which solely aims at rewarding professional experience that benefits the current duties of the employee, and whose objectives, in order to be reached, would require restricting the maternity or parental leaves outside the credited service time. (**Ombudsman for Equality, no. 227 of 2008**)

Ensuring equal treatment regarding the provision and pricing of goods and services

Inquiries concerning suspected cases of discrimination related to goods and services were numerous also in 2010. During the year, the Ombudsman for Equality received more inquiries related to this particular prohibition of discrimination than ever before.

The topics of the suspected cases of discrimination related to goods and services vary a great deal.

The inquiries received by the Ombudsman for Equality concerned, for instance, the loan granted by Finnvera for female entrepreneurs, a driving school exclusively meant for women, the gender-based pricing of tickets to sports and cultural events, and cases in

which only women were sought as tenants.

Some reoccurring topics could also be discerned: the Ombudsman for Equality was repeatedly enquired about the gender-based pricing of hairdressers, bonus cards marketed exclusively to women, gender-based pricing of certain types of insurance, gender-based pricing of chat lines, women's hours at public swimming baths and gyms, and special reductions only offered to women on Women's Day. These topics were largely the same as in 2009.

Gender-based pricing at hairdressers is unlawful

The Finnish Consumer Agency transferred to the Ombudsman for Equality an announcement according to which a hair salon applies gender-based pricing.

According to the Act on Equality between Women and Men, treating a person unfavourably on the basis of their gender in the provision of goods and services constitutes discrimination. In their report, the hair salon stated that their pricing is based on clarity and an established practice in the field, with which the customer too are familiar. In the price list, different haircuts have been divided into men's and women's haircuts, and not for instance into more detailed and more simple haircuts.

The Ombudsman for Equality pointed out that even if the work done on women's hair is usually professionally more challenging than work done on men's hair, this may not be the case in all individual cases. For this reason, the average differences in cutting and styling men's and women's hair do not entitle gender-based pricing.

Acceptable pricing principles for hair salons would be, for instance, the time used, the professional competence required, or the amount or quality of products used. When using the time spent on the work as the basis of pricing, the actual time used should be considered, not an average time spent on men and women.

The Ombudsman for Equality urged the salon to change their pricing and inform the Ombudsman of the new pricing practice. However, the price list sent by the salon after the Ombudsman's recommendation still included separate pricing for men, children, youth and women, contrary to the Act on Equality between Women and Men. As the price list still did not comply with the requirements of the Act on Equality between Women and Men, the Ombudsman for Equality urged the salon to change their pricing practice for the second time.

After this second recommendation, the pricing in the price list delivered to the Ombudsman for Equality was no longer based on gender, but on the service offered to the customer. The Ombudsman for Equality announced that the matter no longer gave cause to further measures. **(Ombudsman for Equality, no. 70 of 2008)**

A driving school marketed its services exclusively to women

The Ombudsman for Equality was asked to investigate whether a driving school had violated the Act on Equality between Women



and Men by marketing its services exclusively to women. In its report, the driving school said that it had wanted to respond to the wishes of its female clientele about creating a learning environment free of stereotypes strongly related to driving and gender, making discussing issues raised by women and issues of interest to women easier. In addition, the report noted that even though the driving school was marketed for women, male applicants would have been accepted to the classes.

In her statement, the Ombudsman for Equality considers the impact on men of the driving school directed at women to be of little significance. This is mainly because the company has three driving schools in the city in question, and only one of these has undertaken courses directed particularly at women. Consequently, the productisation of the business activities in this manner chosen by the entrepreneur does not set men in an unfavourable position in that extent that the case would constitute discrimination prohibited by the Act on Equality between Women and Men.

According to the Ombudsman for Equality, the situation would have to be re-evaluated if men could not participate in the courses offered by the driving school. This would raise the questions of whether the actions of the entrepreneur could be justified in order

to reach a legitimate objective, and whether this objective would be sought with appropriate and necessary means. (**Ombudsman for Equality, no. 152 of 2010**)

Gender-based pricing of insurances

A man asked the Ombudsman for Equality whether Finnish insurance companies may price their insurances based on gender. The man said that his insurance premiums were higher than those of a woman of the same age. The insurance company had justified the higher price of insurance by young men being a more risky group than young women.

Discrimination prohibited by the Act on Equality between Women and Men includes measures treating an individual less favourably than another individual in a comparable situation on the basis of their gender.

The differences in men's and women's insurance premiums are mainly based on the average difference on risk regarding the insured, on the basis of statistical information. The Ombudsman for Equality considers the insurance premiums and benefits determined in this way problematic. However, such practices have not been considered to constitute discrimination, if the differences for the grounds for determining the premi-



ums or benefits can be objectively and carefully justified with current research information. In addition, the grounds for the differences in the premiums must be proportionate to the verifiable difference in the insurance risks. The Ombudsman for Equality has repeatedly emphasised that the insurance companies must regularly monitor and ensure that the information used for assessing the insurance risks are up-to-date and that they are based on sufficiently comprehensive and thorough research.

A Directive prohibiting gender-based direct and indirect discrimination particularly in offering insurance services was approved in the EU already in 2004. The starting point of the Directive is that using gender as an actuarial factor in determining insurance premiums and benefits for men and women should not lead to differences in the premiums and benefits of individuals. However, certain insurable risk types may vary according to gender, and in some cases, gender is one, although not necessarily the determining, factor in assessing insured risks. Indeed, the Directive does allow the member states to grant exemptions from the previously stated main rule for insurance agreements regarding these risks, if the member states can ensure that the actuarial and statistical information on which the calculations regarding the insurance premiums are based are reliable, up-to-date, and publicly available.

The Finnish Government has made a permissive exemption to the Directive as regards the requirement for the equal treatment of men and women. Finnish legislation concerning the operation of insurance companies has been recently reformed to include the possibility for the insurance companies and associations to use gender as a factor affecting insurance premiums and benefits in both voluntary and statutory insurances also in the future. During the preparation of the said Directive as well as during the reform of the national legislation, the Ombudsman for Equality supported the notion of prohibiting the use of gender as an actuarial factor altogether. Furthermore, the Ombudsman for Equality has proposed that it should be considered to what extent the insurable risk could be evaluated using other criteria than gender, in light of current knowledge, as regards the Constitution of Finland. The Ombudsman for Equality estimates that due to the reforms made and the increased monitoring and transparency, it may be possible to reduce or eliminate the significance of gender as an actuarial factor altogether. **(Ombudsman for Equality, no. 221 of 2010)**

Rates for calling chat lines different for men and women

A man asked the Ombudsman for Equality whether a certain phone service line discriminates against men in pricing calls made by men and women differently. For men, calling the phone service costs 0.74 euros per minute plus the local network charge, while women may call the same number and pay only the local network charge.

The Ombudsman for Equality frequently receives similar inquiries about the lawfulness of pricing of chat lines advertised in different media. In the inquiries, the fact that calling such services is typically cheaper for women than men is without exception considered discriminatory.

According to the Act on Equality between Women and Men, the prohibition of gender-based discrimination also applies to the provision of goods and services. According to the Act, the actions of a service provider must be considered discrimination prohibited in the Act for instance in situations in which an individual is set in an unfavourable position based on their gender as regards the supply of publicly available services. Service providers who violate the prohibition of indiscriminate are liable to pay the violated party a monetary compensation. Such a compensation can be

claimed by a compensation claim in the District Court in the service provider's domicile.

The prohibition of discrimination also applies to generally available, private telephone services. The established interpretation of the Ombudsman for Equality is that different pricing violates the prohibition of discrimination provided in the Act on Equality between Women and Men.

According to the report submitted by the service provider, the majority of people calling the phone line in the case in question are men. When a male customer calls the service, his call is randomly put through to an available, hired chatter of the company. The company employs 45 women as hired chatters, and due to zero demand, none of the chatters are men. According to the report, at times the number of men calling the chat line is so great that the company wishes to extend the opportunity to chat to other women than the hired chatters employed by the company. Technically, the chat line is executed in such a way that when a female client calls the service number intended for women, her call is connected to the men calling the chat line only if the hired female chatters are busy.

According to the service provider, these are two distinct services with a different content, even though they are advertised in the same

announcement. The fundamental difference in the services was that the men would always be connected to a hired chatter when calling the line for men, whereas the female customers calling the number intended for women could never chat with a hired chatter and neither did the women have any guarantees that they would even get to talk to someone.

The Ombudsman for Equality stated that in this case, there seemed to be two different service forms on offer. As the content of the services was different, it would have been discriminatory to women to charge them the same price than from the men calling a different type of service. According to the Ombudsman for Equality, entrepreneurs may define the prices of their services as they see fit, as long as the pricing is not based on the gender of the client but on an estimate of the service offered to the client.

The authority of the Ombudsman for Equality does not extend to monitoring the appropriateness of advertising. However, according to the Ombudsman, the marketing of the services in question can be considered extremely misleading: the advertisements give the idea that the same service is offered with a different price to men and women. The company in question was requested to change their procedures so that the advertisements

clearly state the content of the services, and why different price apply to men and women. **(Ombudsman for Equality, no. 4 of 2009)**

Finnvera allowed to offer female entrepreneurs more favourable loan terms

Finnvera Oyj has requested the Ombudsman for Equality for a statement on the pricing of loans granted to female entrepreneurs. The price of the loan for female entrepreneurs is 0.5 percentage units lower than the price of the micro loans intended for all. In other respects, the terms of the loans are the same. The loans for female entrepreneurs are intended for companies in which women are the majority shareholders and which are managed full-time by a woman.

The Ombudsman for Equality has previously issued statements on the matter (statements 22/59/96 and 1/51/97, among others) and stated that the loans for women entrepreneurs are not in conflict with the provisions provided in the Act on Equality between Women and Men, because the share of women of all entrepreneurs in Finland is very low, and the loan intended for female entrepreneurs complies with the objectives of the UN CEDAW convention regarding improving

the opportunities of women in the economic life. In addition, Finnvera (formerly known as Kera Oy) also offers other micro loans available to all small business entrepreneurs. However, Finnvera has requested that the matter be reopened once the Act on Equality between Women and Men is reformed regarding goods and services.

According to the Act on Equality between Women and Men, the measures of the provider of goods and services constitutes discrimination if an individual is placed in an unfavourable position based on their gender in the provision of goods and services, or otherwise treated in a manner prohibited by the Act on Equality between Women and Men. The Act applies to generally available goods and services on both public and private sectors.

If a procedure sets men and women in an unequal position, but the differences are minor, the procedure does not constitute discrimination. According to the Act on Equality between Women and Men, men and women being set clearly in an unequal position constitutes discrimination. As the maximum amount of Finnvera's loan for woman entrepreneurs is 35,000 euros, the 0.5 percentage unit difference in the interest rate in comparison to the micro loan is 175 euros annually. It is worth considering whether the small interest benefit indeed

sets men in such an unfavourable position in comparison to women that the case could be examined as discrimination prohibited by the Act on Equality between Women and Men.

All in all, according to the Act on Equality between Women and Men and the EU Directive implementing the principle of equal treatment between men and women in the access to and supply of goods and services, special measures aiming at preventing or rectifying disadvantages related to gender cannot be prevented on the grounds of equal treatment. Statistics show that women are still underrepresented in entrepreneurial activities. Supporting women as entrepreneurs has been considered necessary for instance in the committee set by the Ministry of Employment and the Economy to promote women as entrepreneurs as well as in the Government Programmes, since 2004. The objective is that the share of women as entrepreneurs of the total number of entrepreneurs in Finland would be increased from the current one third to 40 per cent.

The Ombudsman for Equality stated that Finnvera's loan for woman entrepreneurs does not conflict with the provisions provided in the Act on Equality between Women and Men. The purpose of Finnvera's loan is to support women as entrepreneurs, which is in ac-

cordance with the objectives of the Act on Equality between Women and Men. In addition, the price advantage offered by Finnvera's loan cannot be considered unreasonable in comparison to the pricing of the micro loan.

However, the Ombudsman for Equality pointed out that once the objectives set for equal opportunities have been reached, the procedures favouring women must be discontinued. When the share of female entrepreneurs of all entrepreneurs reaches the targeted share of 40 per cent, it should be re-evaluated, whether Finnvera's loan for woman entrepreneurs is in accordance with the Act on Equality between Women and Men. **(Ombudsman for Equality, no. 90 of 2010)**

Monitoring the prohibition of discrimination at educational institutions

According to the legislation, any practices of educational institutions where a person is treated unfavourably on the basis of gender in student selection, the organization of teaching, the evaluation of study performance or in any other regular activity of the educational institution in question, are deemed to constitute discrimination under the Equality Act.

In 2010, the Ombudsman for Equality was asked for comments on for example the student selections of a sports-oriented school and on the lawfulness of education directed exclusively at women. In addition, the Ombudsman for Equality received enquiries regarding the entrance requirements of educational institutions. The Ombudsman for Equality issued an announcement on the matter, exactly as in 2009. In the announcement the Ombudsman reminded the educational institutions, among other issues, that in the interview potentially included in the student selection, no questions related to pregnancy, parenthood, or family responsibilities were allowed.

Girls and boys can be treated as separate groups in the student selection of a sports-oriented school

A school offering sports-oriented education asked whether the Act on Equality between Women and Men enables the selection of equally many boys and girls each year to the school programme offering sports-oriented education. The school was particularly interested in knowing whether the part of the selection test containing physical fitness tests

and tests on the control of movement could be different for girls and boys. Furthermore, the school wished to know whether girls and boys can be treated as separate groups in setting them in the order of preference according to the points they had received.

In her statement, the Ombudsman for Equality said that it is very important to support the sports opportunities of girls, women, boys and men equally. Gender equality should be regarded above all as providing equal opportunities and resources: everyone, regardless of gender, must be given 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.

According to the Ombudsman for Equality, the physical differences between girls and boys can be taken into account in giving girls and boys separate scoring systems in the sports and fitness tests, for instance. The evaluation of the results of these tests does not set girls in a more favourable position than the boys: it merely evens out the different physical performance of girls and boys due to their physiological differences. However, the gender-specific differences in the tests should correspond to the average

differences in the physical performance abilities of girls and boys due to physiological reasons. This way, the system will promote equality between men and women. Despite the physical performance of women being on average lower than that of men, girls and boys have equal opportunities of being selected into the sports-oriented school in question.

(Ombudsman for Equality, no. 246 of 2010)

The Ladycode training was marketed primarily to women

By her own initiative, the Ombudsman for Equality examined whether a training period offered by an adult education centre in the field of IT, called the Ladycode training and marketed to women, violated the Act on Equality between Women and Men.

According to the report submitted by the adult education centre, the objective of the Ladycode training was to facilitate the shortage of labour and persuade women that had left the IT branch to come back. The training was marketed as being directed to women, although in the marketing material of one of the two trainings, the course was advertised as “suitable for men as well”. According to the centre, neither gender was favoured in the

student selection, and both men and women were selected as students – even though the number of women selected was significantly higher than that of men selected. This may be due to the fact that the announcement and the name of the training were targeted at women.

The Ombudsman for Equality pointed out that the Act on Equality between Women and Men allows temporary special measures that are based on a plan and that aim at promoting gender equality. For example, training targeted exclusively at men or women can be deemed acceptable, if the training is based on a plan that strives toward implementing the purpose of the Equality Act.

The Ombudsman for Equality stated that educational institutions in particular should increasingly encourage women to seek male-dominated fields of education, and similarly encourage men to enter fields traditionally dominated by women. This would reduce the division of working life into men’s and women’s branches. **(Ombudsman for Equality, no. 184 of 2009)**

Gender minorities a significant part of the Ombudsman for Equality's work

During the year under review, promoting the status of gender minorities and preventing discrimination against them was an important part of the work of the Ombudsman for Equality. The experiences of gender minorities tell a lot about how gender is viewed in our society and give concrete meaning to gender identity and attitudes towards its expression. Gender minorities are clearing the way for a more open and tolerant society for everybody.

In the year under review, transgender people asked the Ombudsman for Equality for advice for example on how to get their work and educational certificates rectified to include their new names and personal identification numbers. The Ombudsman for Equality discussed the matter with the Ministry of Employment and the Economy and the Department for Occupational Safety and Health of the Ministry of Social Affairs and Health. The Ombudsman for Equality and the occupational safety and health authorities issued a joint recommendation to employers to renew the work certificates of transgender people after their gender reassignment to correspond to their new personal information. The Ministry of Education has already issued a similar recommendation regarding education certificates.

There were still some problems related to receiving reimbursement for hormonal treatments used in gender reassignment, for example as regards the duration and starting time of the compensation. In order to solve the problem, the Ombudsman for Equality met with Liisa Hyssälä, the Director General of the Social Insurance Institution of Finland (Kela), and other representatives of Kela. The negotiations mapped the possibilities for affecting the questions that had arisen. After these negotiations, Kela has changed its instructions regarding the reimbursement period related to hormonal treatment. As regards the starting time of the reimbursement period, the negotiations with the Kela representatives are still to be continued.

In the year under review, the Ombudsman for Equality was repeatedly in contact with gender minorities. The representatives of Trasek, a Finnish association for transgender and intersexual individuals, visited the Ombudsman for Equality and provided information on situations in which trans people face discrimination or in which the legislation or the official practices have not taken the situation of gender minorities into account. Trasek is a national association for transgender and intersexual

individuals, advocating both fundamental and human rights and anti-discrimination as well as proper medical care for transgender and intersexual individuals. In order to obtain more information about the position of gender minorities, the Ombudsman for Equality agreed with the representatives of Trasek to continue these meetings regularly. Information about the position of gender minorities is still not readily available in Finland, except for via the personal experiences of gender minorities. The Ombudsman for Equality has already learned a great deal from trans people, and this learning process continues. The Ombudsman for Equality has promised to offer her support in making the report being prepared on the position of gender minorities in legislation and administrative procedures.

In November 2010, the Ombudsman for Equality gave a speech at the TransHelsinki seminar organised by Trasek and Seta's Transtukupiste service for trans people. In her speech, the Ombudsman for Equality noted that the Gender Equality Unit at the Ministry of Social Affairs and Health is preparing provisions for the Act on Equality between Women and Men on the prohibition of discrimination of gender minori-

ties and promoting their equal status, as the Ombudsman has for a long time suggested.

A representative of the Ombudsman for Equality's office participated in the work coordinated by the Ministry for Foreign Affairs for implementing in Finland the recommendations of the Council of Europe on the discrimination of sexual and gender minorities and the conclusions of the government report to the parliament on the human rights policy of Finland. In addition, the Ombudsman for Equality took part in the seminar arranged in the beginning of the year by European Union Agency for Fundamental Rights (FRA) and Equinet, discussing the rights of trans people in various European countries. In July, a representative of the Ombudsman for Equality's office participated in a seminar organised by Equinet on the ways in which the EU legislation can help to secure the rights of trans people. Issues raised in the international discussions include the use of disease classifications, the definition of gender minorities in legislation, requirements for the infertility as a prerequisite for gender reassignment, replacements for official documents, and issues regarding relationships. Harassment, bullying and hate crimes against gender minorities have also been discussed at these meetings.

New employment and education certificates needed after gender reassignment

The Ombudsman for Equality was also requested for advice on how to renew employment and education certificates to include the new personal identity code issued after the gender reassignment.

The Ombudsman for Equality is an authority responsible for monitoring the observance of the Act on Equality between Women and Men. The Act on Equality between Women and Men has been interpreted in such a way that discrimination on the basis of gender as prohibited in the Act covers discrimination on the basis of gender reassignment as well.

According to the Ombudsman for Equality, it is extremely important that an individual can, after their gender reassignment, change their employment and education certificates to contain their new name and personal identity code. If persons who have undergone gender reassignment have to rely on old certificates, they will be subject to unlawful discrimination in applying for jobs or studies, and their privacy will be compromised.

The right to obtain a replacement employment certificate is provided for in the

Employment Contracts Act. For instance, the Act stipulates that if an employment certificate is lost, the employer must provide a copy of it. However, there is nothing to prevent the employer from providing, on request, a new employment certificate with the employee's new name. The employer may confirm the employee's personal data for instance through an extract from the Population Information System.

In addition, the Ministry of Education has issued instructions whereby the matriculation examination certificates and degree and qualification certificates may be re-issued with new personal data to persons who have undergone gender reassignment. According to the Ministry of Education, using the old certificates would be unreasonably difficult and could compromise the interests of these persons.

The Ombudsman for Equality wishes that this reply has helped the person to obtain new employment and education certificates, equipped with the new personal data, from their employers and educational institutions. Later in 2010, the Ombudsman for Equality issued a recommendation with the occupational health and safety authorities on renewing certificates. **(Ombudsman for Equality, no. 81 of 2010)**

International cooperation

The Ombudsman for Equality regularly engages in international cooperation with both Nordic and European operators. In September 2010, the Ombudsman for Equality arranged together with the Ombudsman for Minorities the meeting of Nordic ombudsmen for discrimination and equality in Helsinki. At this meeting, the independent national authorities on discrimination and equality discussed national equality and non-discrimination legislation and shared their experiences on current challenges in enforcing the law. The meeting also touched upon legislation regarding trans people and the discrimination experienced by them, and also cases of discrimination where multiple grounds of discrimination and several fundamental rights must be considered simultaneously.

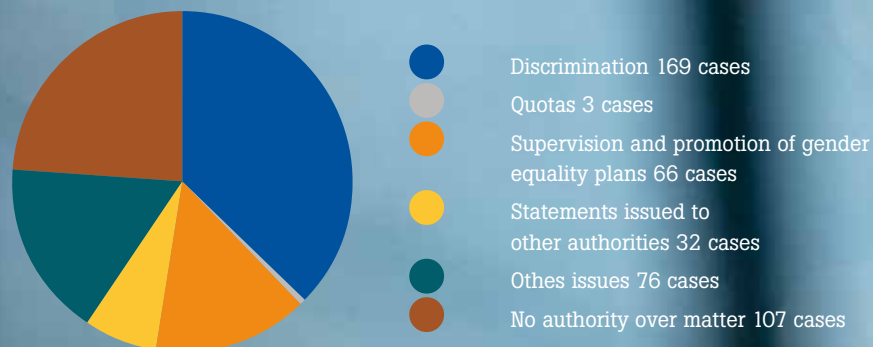
During the year under review, the representatives of the Office of the Ombudsman for Equality took part in events organised by Equinet, the European network of independent national gender equality and equal opportunity authorities, the European Institute for Gender Equality (EIGE), the European Union Agency for Fundamental Rights (FRA), and the Council of Europe Commissioner for Human Rights.

Appropriations and personnel

In 2010, the office of the Ombudsman for Equality had 10.5 person-years at its disposal (the Ombudsman for Equality, head of division, five senior officers, an information officer, and three secretaries). In addition, the office employed a trainee from a university for the summer.

The operating budget of the office of the Ombudsman for Equality was 100,000 euros. This sum does not include salaries or renting expenses, which the Ministry of Social Affairs and Health pays in a centralised manner.

Statistics



In 2010, a total of 453 cases were entered in the register of the Ombudsman for Equality. Of these, 377 represented matters received or instituted by the Ombudsman, in which instructions, a reply, or a statement by the Ombudsman for Equality were issued. In addition, the Ombudsman for Equality received 418 inquiries via the telephone consultation service. Most inquiries related to discrimination were about the working life, recruiting and salaries in particular, as well as discrimination on the basis of pregnancy and parenthood. Discrimination suspicions related to the provision of goods and services were also common.

Cases submitted in writing according to their content

Of the cases instituted in writing, slightly more than one third were related to discrimination (169 cases). The number of instigated cases related to quotas decreased from the previous year: in 2010, only a few cases related to quotas were instituted, whereas in 2009, there were 25 such cases under discussion. A total of 66 cases related to the supervision and promotion of gender equality plans were under discussion during the year. In the year of the review, the Ombudsman for Equality issued 32 statements to other authorities. Of the cases entered into the register, less than one fifth (76 cases) consisted of other issues, such as requests for information. Nearly one fourth (107 inquiries) of all inquiries were related to matters outside the authority of the Ombudsman for Equality.

Meetings and lectures

Visits and visitors

During the year under review, the Ombudsman for Equality continued to participate in the discussion on the equal status of gender minorities. Representatives of Trasek, the Finnish association for gender minorities, visited the office of the Ombudsman for Equality to discuss the status of gender minorities in Finland on a general level. In addition, the Ombudsman for Equality met with Liisa Hyssälä, the Director General of the Social Insurance Institution of Finland (Kela) and two heads of department at Kela to discuss issues related to gender minorities in the operations of Kela and particularly on the reimbursement practices accordant with the Health Insurance Act that concern gender minorities.

Representatives of the Occupational Safety and Health Administration, specialised in the discrimination issues in Regional State Administrative Agencies, visited the office of the Ombudsman for Equality, as did Helena Lamponen, the first Cooperation Ombudsman in Finland. The cooperation with the Council for Equality and the Gender Equality Unit (TASY) of the Ministry Of Social Affairs And Health was continued.

Equality issues stirred interest also on an international level. The Ombudsman for Equality received representatives from a Russian organisation that helps women particularly in pregnancy-related discrimination cases, representatives of a Polish women's organisation, reporters from a South-Korean TV channel, and Moldovan journalists.

In 2010, representatives of the Office of the Ombudsman for Equality visited Monika – Multicultural Women's Association in Finland at the Helsinki Resource Centre Monika. During the visit, the representatives learned about the operation of the association and had the opportunity to discuss the position of immigrant women as well as questions related to social integration.

Speeches

19 February 2010

Samapalkkaisuus ja tasa-arvolaki (“Equal pay and the Act on Equality between Women and Men”)

Luottamusmiesten neuvottelupäivät, JUKO (Convention of employee representatives, JUKO) / ammattijärjestö Talentia (the Union of Professional Social Workers (Talentia ry))

9 March 2010

Muuttuva äitiys- ja vanhemmuuden suoja EU:ssa (“The changing protection of motherhood and parenthood in the EU”)

A special course on European Union’s labour legislation, Svenska handelshögskolan (Hanken)

11 May 2010

Tasa-arvosuunnitelma (“Gender equality plan”)

A training event for the small business network involved in the Tapas R&D project that focuses on equal pay, Aalto University, University of Technology

20 July 2010

YK:n Naisten oikeuksien peruskirja – 30 vuotta Suomen sitoutumisesta (“The UN Charter of Women’s Rights – 30 years since Finland’s ratification”)

The SuomiAreena discussion forum in Pori. The Ministry for Foreign Affairs, Network of Women in Finland’s Parliament, Council for Gender Equality, and the National Council of Women of Finland

23 September 2010

Kiintiöt valtionhallinnossa (“Quotas in state administration”)

Ministry of Transport and Communications

29 September 2010

The Paluu Pekingiin (“Return to Beijing”) **reminiscence panel**

The Paluu Pekingiin. Nyt (“Return to Beijing. Now.”) seminar, the National Council of Women of Finland

28 October 2010

Tasa-arvolain soveltaminen korkeakouluissa ja lainsäädännön tulevaisuuden näkymät (“Applying the Act on Equality between Women and Men in higher education institutes and future prospects on the legislation”)

Arjen käytännöt yliopistojen ja korkeakoulujen tasa-arvo- ja yhdenvertaisuustyössä (“Every day practices in the equality and non-discrimination work of universities and universities of applied sciences”), the University of Turku

20 November 2010

Sukupuolivähemmistöt tasa-arvoaltuutetun työssä (“Gender minorities in the work of the Ombudsman for Equality”)

The TransHelsinki seminar, Transtukupiste and Trasek

Project management and steering groups

- ✓ A research and development project TAPAS: Tasa-arvoa palkkaukseen (“Equal pay”) for years 2009–2011, Aalto University, University of Technology
- ✓ Segregation purkamisen portaat (“The steps to dissolving segregation”), a joint project between the Ministry of Social Affairs and Health, the National Board of Education and the Ombudsman for Equality
- ✓ The Samapalkkaisuus, tasa-arvo ja uudet palkkausjärjestelmät (SATU) research project (“Equal pay, equality and the new pay systems”), 1 September 2008 to 31 December, 2010. The Labour Institute for Economic Research with the Research Institute of the Finnish Economy (ETLA) and Statistics Finland as its partners
- ✓ The development project for support and service functions for the gender equality planning in upper secondary level educational institutions (Tuki- ja palvelutoimintojen kehittämishanke (TUCE))
- ✓ Advisory Body on Minority Issues
- ✓ The LGBT committee at the Ministry for Foreign Affairs
- ✓ The instructions project for equality planning

Publications

Brochure “The Ombudsman for Equality monitors and promotes gender equality”

Brochure Naisten ja miesten välisen tasa-arvon edistäminen oppilaitoksissa (“Promoting the equality between women and men at educational institutions”)

Annual report 2009: Ombudsman for Equality

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