

Case 1/2007 – An employer had not subjected a woman to gender-based differential treatment in connection with her application for a position as bus driver.

A woman applied for a position as bus driver at a municipal activity centre for children and young people. Women were encouraged to apply for the position. She was the only female applicant. She was invited to an interview, but was not offered the position. The woman was ranked number three on the list of recommended candidates.

The requirements specified in the job advertisement included a Class-D driver's licence, experience of driving a bus and the ability to communicate well with children and young people.

The woman was the only one of the three recommended candidates who had any experience of driving a bus.

The Equality Tribunal referred to its statement regarding the general rule of proof in case 26/2006.

The Tribunal's minority (2) considered that there were circumstances giving reason to believe that the woman's sex had contributed to her not being offered the position. They referred to the fact that the job advertisement had specified that experience of driving a bus was a requirement, and considered that the municipality had attached little importance to this criterion in making the appointment. In addition, women were encouraged to apply and the complainant was the only female applicant.

The Tribunal's majority (3) disagreed that there were circumstances that placed the burden of proof on the employer. The majority pointed out that four persons were invited to an interview, and that the complainant was ranked as number three among these candidates. Furthermore, the person who was invited to an interview but was not recommended as a candidate had more extensive experience of bus driving than the complainant. Moreover, there were other applicants with bus driver experience who were not invited to an interview.

A united Tribunal found that the employer had in any event satisfied his burden of proof. The Tribunal stated the following:

The fact that women are encouraged to apply for a position does not mean that a female applicant will necessarily be given the position in question. In order to be eligible for consideration for such special measures and to be ranked above other applicants in such contexts, the female applicant must have qualifications corresponding to those of the best male applicant.

The Tribunal was of the opinion that the municipality had proved on a balance of probabilities that the person appointed was best qualified for the position. An overall assessment was made of the applicants. The person appointed had considerably longer experience as a driver than the complainant. All the recommended candidates were qualified to manage the actual job of bus driving, based on their prior experience. It was therefore more important to emphasise that the position in question was an integral part of a municipal child and youth programme. Less priority was thus given to bus driving experience when the appointment was made. The fact that considerable importance was attached to personal suitability was also affirmed by

both the job advertisement and the type of questions that were asked during the interviews. The municipality considered the person appointed to be better personally suited than the complainant, partly because, to a greater degree than the complainant, he had had a supervisory role in his voluntary work with children and young people. The appointment was therefore not in breach of section 4, second paragraph, cf. section 3, of the Gender Equality Act.

The opinion of the Tribunal was unanimous.

Case 2/2007 – The complainant’s claim that he had been subjected to differential treatment or harassed on the basis of ethnicity did not succeed. Assessment pursuant to sections 4 and 5 of the Anti-Discrimination Act and earlier provisions of the Working Environment Act.

The complainant was not given permanent employment at a school after having been temporarily employed with a wage subsidy from the public authorities. In his opinion, this was due to his ethnic background. The complainant further maintained that he had been subjected to harassment by school employees on account of his ethnicity.

The Equality Tribunal pointed to the fact that the complainant had not documented that he had been promised permanent employment. On the other hand, the school had documented that permanent employment was contingent on the complainant’s expertise and the school’s needs towards the end of the period of temporary employment.

The school emphasised that the complainant had made a considerable effort and functioned well in several areas. In certain key areas, however, the school considered that the complainant had not developed the necessary expertise.

This information was communicated to the complainant by the school.

There were therefore no circumstances related to the appointment that might indicate differential treatment on the basis of ethnicity. Nor did the Tribunal find any other factors that gave reason to believe that the school had attached importance to the complainant’s ethnic background when it decided not to give him permanent employment.

The employer repudiated the allegation that the complainant had been harassed. Nor were there any witnesses to or other proof of harassing utterances or acts. The Tribunal could not see that the allegation of harassment was supported by external circumstances. It was thus a case of one party’s word against the other’s, which was not sufficient to satisfy the complainant’s burden of proof pursuant to the Anti-Discrimination Act.

The circumstances were therefore neither in breach of the Anti-Discrimination Act nor of corresponding provisions in the earlier Working Environment Act.

The administrative decision was unanimous.

Case 3/2007 – A job advertisement containing an age criterion was in breach of the equal treatment chapter of the Working Environment Act

In an advertisement published on 9 October 2006 on finn.no, Kilroy sought a *Travel Specialist* for its office in Trondheim. The advertisement stipulated the following requirements with regard to qualifications and characteristics:

The person we are looking for:

- *Is a passionate globetrotter and knows more geography than the capitals of Europe*
- *Has broad personal travel experience from long trips outside Europe, preferably including a round-the-world trip*
- *Is a good salesperson and enjoys giving good service*
- *Is conscientious and businesslike*
- *Is cheerful, dedicated and enthusiastic*
- *Is 22-30 years old*

The Equality and Anti-Discrimination Ombud assessed the text of the advertisement on her own initiative and found it to be in breach of the prohibition against age-based discrimination that is laid down in section 13-1, first paragraph, of the Working Environment Act.

Kilroy appealed the Ombud's opinion.

Like the Ombud, the Equality Tribunal found that the age limit indicated in the advertisement was unlawful.

The absolute age limit specified in the advertisement was in breach of the prohibition in section 13-1, first paragraph, cf. section 13-2, first paragraph (a), of the Working Environment Act.

The exception in section 13-3 of the Working Environment Act was not applicable. The Tribunal considered the lower age limit to be unnecessary and the upper age limit to be a disproportionate intervention. The consequence of the advertisement was that everyone over 30 years of age was excluded from being considered for the position.

No importance was attached to the employer's argument that it was important that there not be too great a difference between their customers, who are largely aged 18-33, and their sales personnel with regard to frameworks of reference, and that they wanted employees with a degree of maturity, because the employees handle large amounts of money.

Since the company's subsequent advertisements for positions as travel specialists contained no age criterion, no order was issued pursuant to section 7, second paragraph, of the Anti-Discrimination Ombud Act.

The administrative decision of the Tribunal was unanimous.

Case 4/2007 – The appointment of a man to a position as pilot boat driver was not in breach of section 4, second paragraph, cf. section 3, of the Gender Equality Act. However, the female applicant who was passed over should have been ranked as no. 2 among the candidates recommended for the position, not no. 3.

A woman pilot boat driver applied for a job at a pilot station different from the one where she currently works. She was ranked as candidate no. 3 for the position, after two men.

The Equality Tribunal found circumstances that gave reason to believe that the employer had attached importance to the applicant's sex.

The Tribunal pointed to the fact that the woman had about one year's experience as pilot boat driver in another district and as a summer substitute at the pilot station in question. She was also the only person among the recommended candidates with any experience as a pilot boat driver. The Norwegian Coastal Administration also neglected to ascertain how the woman functioned as a pilot boat driver.

Reference was also made to the emphasis on gender-stereotyped conceptions, as reflected in the recommendation's description of the woman *as a calm, dependable girl*. The same applied to the focus on the male applicants' experience of training with small craft when they were young, while the female applicant was not asked about such experience.

Finally, reference was made to statements by the acting Master of the Pilots Guild to the effect that the woman should have been ranked as candidate no. 2 for the position.

The burden of proof thus passed to the employer pursuant to section 16 of the Gender Equality Act.

The Norwegian Coastal Administration was able to prove on a balance of probabilities that the man who was given the position was better qualified. Reference was made to the written recommendation of candidates for the position with a description of the education, work experience and personal suitability of the candidates interviewed, as well as a summarised assessment. It was apparent from the documentation that the man appointed had significantly longer relevant work experience than the female applicant. The appointment was thus not in breach of the prohibition of direct discrimination laid down in section 4, second paragraph, cf. section 3, of the Gender Equality Act.

As regards the recommendation of the woman as candidate no. 3 for the position, the Tribunal concluded that the burden of evidence was not satisfied. The Tribunal referred to the statement made by the acting Master of the Pilots Guild, who considered on objective grounds that the female applicant was better qualified for the position than the man who was recommended as no. 2. The woman also seemed to have more all-round work experience than the no. 2 candidate. It was also difficult to see from the submitted documentation that the no. 2 candidate had significantly more extensive maritime work experience than the woman.

The recommendation of the male applicant as no. 2 for the position instead of the female applicant was therefore in breach of section 4, second paragraph, cf. section 3, of the Gender Equality Act.

The opinion of the Tribunal was unanimous.

Case 5/2007 – The Ministry of Fisheries and Coastal Affairs did not engage in differential treatment based on gender in appointing the Director General of the Norwegian Coastal Administration.

A man considered himself to have been passed over due to his sex in connection with the appointment of the Director General of the Norwegian Coastal Administration. He applied for the position, but was not invited to the first round of interviews.

The advertisement listed criteria such as relevant higher education, senior management experience from large organisations, a good knowledge of public administration, and an understanding of and ability to work in accordance with political processes.

The person appointed to the position was required to reside in the Ålesund region. Women were encouraged to apply.

Originally there were 10 applicants for the position, nine men and one woman. A consultancy firm that assisted in the process approached an additional 17 candidates, nine men and eight women. Three of the male applicants and four of the candidates approached by the consultancy firm, three men and one woman, were invited to a first interview.

Two men and one woman went on to the next step of the process. One of the male candidates withdrew due to the residence requirement. The position was first offered to the other male candidate in the final group of applicants. He declined it because the Ministry could not meet his salary demands. The female candidate in the final round was then offered the position and was appointed Director General.

The complainant had not satisfied his burden of proof, and had submitted information that gave reason to believe that importance had been attached to gender in the complainant's disfavour in connection with the appointment.

The Equality Tribunal pointed to the fact that six of the seven persons invited for the first round of interviews were men, and that a man was offered the position before the woman who was appointed.

The appointment of the Director General of the Norwegian Coastal Administration was not in breach of section 4, second paragraph, cf. section 3, of the Gender Equality Act.

The opinion of the Tribunal was unanimous.

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Case 6/2007 – The municipality attached importance to maternity leave when considering applications for a nurse's position in the home nursing service. This was in breach of section 4, second paragraph, cf. section 3, of the Gender Equality Act.

A woman applied for a position as a nurse in the municipal home nursing service while she was on maternity leave. She was not invited to an interview, even though she had worked as a substitute nurse in the same home nursing service for almost two years immediately prior to the position being advertised.

The municipality stated that the interview candidates were selected on the basis of their personal suitability for the position. In terms of education and work experience, the complainant was considered to be on a par with the three persons who were invited to an interview.

A united Equality Tribunal found that there were circumstances that gave reason to believe that the complainant's being on maternity leave had contributed to her not being invited to an interview.

The Tribunal referred to the fact that the complainant had had several long periods of temporary employment as a nurse in the same district of the municipal home nursing service. She had the same education as the three other candidates interviewed, and she had longer nursing experience than one of the three. She had not received any negative comments on her work as a temporary employee, and her temporary employment contract had been extended on an earlier occasion.

The burden of proof thus passed to the municipality pursuant to section 16 of the Gender Equality Act.

The Tribunal's majority (3) considered that the municipality had not satisfied its burden of proof. The majority pointed, among other things, to the lack of recent documentation of the candidates' personal qualities, for instance in the form of written notes made by the interview group. The only basis for maintaining that the complainant was less personally suited was the municipality's own statement in its appeal to the Tribunal.

In the opinion of the majority, it would hardly be in accordance with the intentions of the burden of proof provision in section 16 of the Gender Equality Act, if a subsequent statement of this nature were to be sufficient to satisfy the employer's burden of proof. The burden of proof provision is intended to ensure the effective implementation of the prohibition of discrimination, which requires that circumstances that are to satisfy the burden of proof are verifiable.

The municipality had thereby breached section 4, second paragraph, cf. section 3, of the Gender Equality Act, in dealing with the complainant's application for a nurse's position in the municipality.

The Tribunal's minority (2) found that the municipality had satisfied its burden of proof. The minority referred, *inter alia*, to section 34 of the Public Administration Act and the appeal body's opportunity to take account of new information that emerges during the appeal hearing.

Case 7/2007 – The sellers did not engage in differential treatment on the basis of ethnicity in connection with the sale of a housing property. * The whole case is translated into English, see *Cases in English*.

A person whose ethnic background differs from that of a Norwegian man considered himself to have been passed over for ethnicity reasons in connection with the sale of a private housing property.

His bid for the house was the highest, but it was not accepted. The difference between the highest and the next highest bid was NOK 50,000, and the couple whose bid for the property was accepted were ethnic Norwegians.

The sellers were not going to live in the housing property themselves after it was sold. Nor did the sellers know the couple whose bid was accepted prior to the purchase. The Act was thus applicable to the sale of the property, and imposed limitations with regard to the principle that persons selling a home have a free rein in terms of which bid they wish to accept.

The Equality Tribunal then assessed whether the complainant's ethnicity was the reason why the sellers refused to accept his bid.

The Tribunal found that there were circumstances that indicated that the sellers attached importance to the bidder's ethnicity as a negative factor when they refused to accept his bid. According to VG, the seller stated that "*some people are more suited to live in a villa than others. People who have probably never mowed a lawn before may not be quite so well suited*". Reference was made to the connection between the above-mentioned statements, and to information to the effect that the journalist in question contacted the complainant again after having confronted the sellers with the complainant's version before the newspaper interview was printed, and the fact that the complainant's ethnic background was not Norwegian and that he bid NOK 50,000 more than the couple whose bid was accepted. The burden of proof had thereby passed to the seller.

However, the seller succeeded in proving on a balance of probabilities that it was for reasons other than the bidder's ethnicity that he did not wish to accept the latter's bid for the house. The Tribunal found that the sellers decided not to sell to the complainant on account of his behaviour. The complainant's bid was only NOK 50,000 higher than the sale price. At the Tribunal sitting, the sellers stated that they were satisfied with a sale price of NOK 4,000,000, while the house was sold for NOK 4,900,000. Furthermore, they wanted a buyer who was happy with the house as it was. Unlike the couple whose bid was accepted, the complainant had stated that he wanted to make changes to the house.

The sellers therefore did not act in breach of section 4 of the Anti-Discrimination Act by not accepting the highest bid from the complainant.

The administrative decision of the Tribunal was unanimous.

Case 8/2007 – The municipality did not engage in differential treatment on the basis of gender in allocating a regular general practitioner's licence.

A man considered himself to have been passed over due to his sex in connection with the allocation of a licence to practice as a regular general practitioner (RGP) in a municipality. The licence was linked to a private medical centre.

The advertisement specified that applicants had to be authorised physicians. It further stated that particular emphasis would be placed on *well developed collaborative skills (typical team player), good communication skills, flexibility and work capacity, and good written and spoken Norwegian*. It stated that for the time being the licence had a limit of 1200 patients, and that the list of patients was currently being established. In the interest of a more balanced gender distribution among the physicians in the municipality, women were encouraged to apply.

There were eight applicants for the RGP licence, five men and three women. Three female and two male applicants were invited to an interview, including the complainant. The complainant was ranked as no. 2 among the recommended candidates.

The Equality Tribunal found that there were circumstances that gave reason to believe that the municipality attached importance to the complainant's sex in his disfavour when he was not allocated the RGP licence. The complainant had 3.5 years of experience as an authorised physician. The woman who was given the licence had no experience as an authorised physician. The complainant was thus better qualified than the woman based on an assessment of relevant work experience only. The municipality had stated in advance that the municipality wished to have more women GPs, and that there was a particular need for a woman physician at the medical centre in question. The burden of proof thus passed to the municipality.

However, the municipality succeeded in proving on a balance of probabilities that factors other than the complainant's sex were the reason why the woman was given the licence instead of the complainant.

The municipality had assessed the woman as being the best qualified on an overall basis. Even though there was no recent written documentation of the different applicants' personal suitability, the Tribunal found, with reservations, that the municipality had carried out an overall assessment, in which decisive importance was attached to purely personal qualities, such as job motivation, flexibility and work capacity, as well as the willingness to fill up the patient list. The focus on these criteria was apparent from the way the interviews were structured, and the self-assessment form provided during the interviews. Furthermore, another female applicant, who had been recommended for the licence by the Liaison Committee, and who had said that she did not wish to have more than 800 patients on her list, was not awarded the licence either.

No decisive importance was attached to length of service. The Tribunal referred to the fact that neither another male candidate who was interviewed and who had worked as a physician for as long as the applicant, nor a female applicant with longer professional experience than the applicant, were recommended for the position.

The allocation of the RGP licence to the woman instead of to the complainant was therefore not in breach of section 3 of the Gender Equality Act.

The opinion of the Tribunal was unanimous.

Case 9/2007 – The municipality did not engage in differential treatment on the basis of gender in connection with the appointment of a nurse.

A man considered himself to have been passed over due to his sex in connection with his application for the appointment of a position as nurse.

The complainant was one of three applicants for the position. The complainant and a female applicant were invited to an interview. The female candidate interviewed was appointed to the position.

The complainant had worked as a nurse in the home nursing service in the urban district concerned for about one year prior to the appointment. He also had longer nursing experience than the woman who was given the position. The Equality Tribunal found that this was not sufficient for the burden of proof to be passed to the employer.

The Tribunal stated that clearer grounds showing that gender has played a role in appointments are required for the burden of proof to pass to the employer. The Tribunal referred to case 4/2007 and 8/2007 as examples of cases where there have been such indications.

It was also proved on a balance of probabilities that an assessment of personal suitability had had decisive effect on the municipality's decision to appoint the female candidate interviewed.

The municipality had drawn up a written recommendation stating the grounds for why the woman who was appointed was personally well suited for the position. The description was relatively detailed with reference to motivation, flexibility, ability to adapt and good collaborative skills. Notes taken at the interview were also presented, in which several aspects of personal suitability were reviewed. Notes had also been made regarding the references obtained. Personal suitability was also emphasised in the requirements listed in the job advertisement.

The appointment of the female candidate who was interviewed instead of the complainant was therefore not in breach of section 4, second paragraph, cf. section 3, of the Gender Equality Act.

The opinion of the Tribunal was unanimous.

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Case 10/2007 – A school did not treat a complainant differently on the grounds of maternity leave in connection with an appointment to a temporary teaching post.

A woman considered herself to have been discriminated against in connection with an appointment as a temporary teacher due to having taken maternity leave.

The first question considered was whether the employer had acted in contravention of the Gender Equality Act in connection with an appointment to a short-term temporary post at the beginning of the school year. Secondly, it was considered whether the employer had acted in contravention of the Gender Equality Act in not considering the complainant as a candidate when extending the original temporary appointment once it had become clear that, as a

consequence of an internal reorganisation, the post would include responsibility for the care of a pupil with special needs for whom the complainant had been responsible before going on maternity leave.

The Equality and Anti-Discrimination Tribunal concluded that the burden of proof was on the employer.

The complainant was on maternity leave both when the appointment to the original temporary post was made and when the appointment was extended following the internal reorganisation.

The complainant was ranked higher on the list of recommended candidates for permanent positions than the person who was appointed. As a result of the internal reorganisation, the person appointed to the original temporary post took over the responsibilities that the complainant had had in relation to the care of the pupil with special needs. At no point was the complainant told clearly that the employer was dissatisfied with the way she had performed her duties in relation to the pupil with special needs.

The Tribunal found that the employer had met its burden of proof in relation to the original temporary appointment.

As regards the extension of the temporary appointment following the internal reorganisation, a minority of the Tribunal's members (two) were of the opinion that the employer had not met its burden of proof. The employer had not documented that the person appointed was better qualified to meet the school's needs than the complainant, including in relation to the task of caring for the pupil with special needs. Reference was made to Case 6/2007 of the Tribunal, and it was stated that an employer also has the burden of proof in cases where it reorganises an employee's work duties and responsibilities after appointing him/her.

The majority of the Tribunal's members (three) were of the opinion that insufficient evidence had been submitted to enable it to make a final decision on whether the fact that the complainant was not taken into consideration following the reorganisation and the subsequent extension of the temporary appointment contravened the Gender Equality Act. The complainant would therefore need to decide whether to refer this aspect of the case for further consideration by the relevant enforcement bodies.

Majority opinion with two dissenting votes.

Case 11/2007 – The decision of a housing cooperative to refuse the complainant permission to mount a satellite dish did not constitute indirect discrimination under the Anti-Discrimination Act.

The complainant came from a non-Norwegian ethnic background, and lacked the necessary language skills to be able to understand news programmes on the channels included in the housing cooperative's standard cable television package. The Equality and Anti-Discrimination Tribunal accepted that the complainant therefore needed a different selection of news sources than those offered through the cable package.

Nevertheless, the Tribunal found that the complainant was not put in a significantly worse position than other people by the housing cooperative's general prohibition on mounting satellite dishes.

The Tribunal gave particular weight to the alternative news sources to which the complainant had access. Public libraries in the municipality offered both free internet access and a special website that made it relatively easy to access relevant news services. Moreover, the channel packages offered by cable companies are under continual development, and the selection of foreign-language channels is growing steadily.

The Tribunal also stated that a prohibition on satellite dishes can be justified on safety grounds, by reference to the maintenance burden imposed and for aesthetic reasons. The Tribunal was of the view that these legitimate considerations had to be taken into account in weighing up the drawbacks of lifting the prohibition against the needs of the complainant.

The housing cooperative had therefore not acted in contravention of the prohibition against indirect discrimination contained in the Anti-Discrimination Act.

In addition, the Tribunal took the view that the housing cooperative's prohibition on satellite dishes did not conflict with the provisions of Article 10 of the European Convention on Human Rights on freedom of expression and freedom to receive information. It did not consider Article 14 of the Convention (dealing with, among other things, discrimination on the grounds of language and national origin), to make a difference to this assessment.

The Tribunal's decision was unanimous.

Case 12/2007 – A complaint regarding the Equality and Anti-Discrimination Ombud's dropping of a case was not upheld. The Ombud had applied section 3, fifth paragraph, third sentence, of the Anti-Discrimination Ombud Act. The case concerned the question of whether the Ministry of Children and Equality's circular number Q 17/07 (containing guidelines for making grants to non-governmental organisations working in the fields of family affairs, women's rights and gender equality in 2007) contravened the Anti-Discrimination Act.

The case was dismissed by the Ombud as the Ombud found no grounds for dealing with it any further (see section 3, fifth paragraph, third sentence, of the Anti-Discrimination Ombud Act).

The Ombud acknowledged that the wording used in the circular was unfortunate, but did not accept that it led to differential treatment of men and women. The fact that the circular did not explicitly state that work on policies related to men could also be eligible for grants was in the Ombud's view insufficient reason to conclude that the circular contravened the Anti-Discrimination Act. The Ombud emphasised that in the aims of the circular it was stated expressly that "*measures concerned with the roles of men... will be central*" as regards the award of grants. Further, the Ombud pointed out that on the website of the Norwegian Directorate for Children, Youth and Family Affairs it is emphasised that "[o]rganisations that work on family policy matters and/or matters concerning equality between women and men [emphasis added by the Ombud] may apply for project support".

The Ministry of Children and Equality stated during the preparations for the hearing before the Tribunal that the wording in next year's circular would be reviewed.

The Tribunal did not consider it necessary to review the Ombud's assessment of the appropriateness of using further resources on the case.

The complaint was therefore dismissed.

The decision of the Tribunal was unanimous.

Case 13/2007 – The complainant did not succeed in her claim of differential treatment and harassment on the grounds of ethnicity. The claim was assessed under sections 4 and 5 of the Anti-Discrimination Act and provisions of an earlier Working Environment Act.

The complainant, who was born and grew up in a country other than Norway, was appointed to a three-year research fellowship at a university.

She claimed that, during the course of her employment, she was subjected to unlawful differential treatment and harassment due to her ethnic background.

The complainant referred to various matters in support of her claims of discrimination and harassment: the office situation, that her input on academic matters was ignored, differential treatment in relation to international academic cooperation, exclusion from research groups and the university's internet directory, and a failure to recognise her foreign academic qualifications.

The employer had appointed the complainant on the understanding that she was to concentrate on her thesis. Accordingly, it was not envisaged that she would develop international cooperation or contribute academic input. This had clearly been poorly communicated to the complainant, who expected to be integrated into the academic community in the same way as Norwegian four-year research fellows. Further, it became very clear during the hearing before the Tribunal that the relevant senior members of staff had not sought to correct this expectation or to discuss it with the complainant.

Overall, the situation was characterised by defective and inconsiderately applied personnel policy. It was also clear that the complainant as an individual had been badly treated.

Nevertheless, no circumstances related to the employer's treatment of the complainant indicated differential treatment on the grounds of ethnicity. Further, the Tribunal found no other reasons to conclude that the manner in which the complainant was treated was related to her ethnic background.

The complainant's allegations regarding negative statements and actions, and her claim that these were related to her ethnic background, were denied by the employer. The case therefore involved conflicting assertions, and as a result the complainant did not meet her burden of proof under the Anti-Discrimination Act. In addition, the Tribunal found no support for the allegation of harassment. No documentation or other evidence of the statements or their contents had been submitted.

Accordingly, the case did not involve contravention of the Anti-Discrimination Act or the corresponding provisions of an earlier Working Environment Act.

The Tribunal's decision was unanimous.

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Case 14/2007 – Refusal of a publicly-funded work experience place did not constitute unlawful differential treatment on the basis of language, ethnicity or religion. Assessment under section 4 of the Anti-Discrimination Act.

The complainant applied for a position as a shop attendant approved as publicly-funded work experience. Her application was refused due to her insufficient knowledge of Norwegian, and because her employer would as a result be unable to provide her with appropriate supervision.

The complainant claimed that the refusal resulted from discrimination on the basis of language, ethnicity, and the use of the hijab.

The Tribunal applied the provisions on direct and indirect discrimination contained in section 4, first to fourth paragraphs, of the Anti-Discrimination Act. Language and ethnicity were assessed under the provisions on direct discrimination. Any differential treatment based on the use of the hijab would constitute indirect discrimination. The hijab is a piece of clothing worn by Muslim women on religious grounds. Imposing restrictions on the basis of such clothing can therefore constitute indirect discrimination on the basis of religion.

It was accepted that the complainant had been treated differently on the grounds of language. Her insufficient knowledge of Norwegian was the reason for the refusal to grant her a work experience place. This differential treatment was unlawful under section 4, first and second paragraphs.

However, the Tribunal concluded that the emphasis on language skills was both legitimate and necessary. Moreover, the differential treatment did not involve a disproportionate intervention in relation to the complainant. The emphasis on language was therefore lawful under the exception set out in section 4, fourth paragraph.

The Tribunal found no grounds for concluding that there had been differential treatment based on ethnicity or the use of the hijab. In this connection, it was pointed out that the complainant had received other relevant offers from the public authorities that could help her to enter the workforce.

The refusal of the application for a work experience place therefore did not contravene section 4 of the Anti-Discrimination Act.

The opinion of the Tribunal was unanimous.

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Case 15/2007 – The failure of a county authority to conclude a new per capita agreement with a woman dentist because she was on maternity leave contravened section 3 of the Gender Equality Act.

As part of fulfilling its obligations under the Act relating to Dental Health Services, the county authority had adopted a scheme that enabled dentists to enter into individual, one-year agreements under which they agreed to take on extra work in the form of patients who were not registered with any particular dentist. During their normal working hours, the dentists treated both these patients and the patients for whom they were responsible under their basic agreements.

The salary of a dentist participating in the scheme consists of three components: a basic salary pursuant to his/her basic agreement, remuneration under the per capita agreement, and a bonus.

The complainant had a per capita agreement with the county authority for the period from 1 January 2003 to 31 December 2003. She was refused a new per capita agreement from 1 January 2004 because she was on maternity leave.

The county authority argued that the matter fell within the exception in section 3, fourth paragraph, of the Gender Equality Act. It argued that remuneration under the per capita agreement was based on the assumption that work would actually be carried out, and that it was comparable to payment for overtime. When the complainant was on maternity leave, she was unable to work as required, and was therefore not entitled to a new agreement.

The Equality and Anti-Discrimination Tribunal decided that the county authority had not proven that there was a sufficiently important objective reason for the differential treatment.

There were strong indications that dentists who had per capita agreements and wanted to continue with the scheme were automatically granted new agreements. The complainant would have been granted a new agreement if she had not been on maternity leave.

The Tribunal considered the remuneration paid pursuant to the per capita agreement to be a fixed annual supplement, which was based on the dentist taking on a predetermined number of patients. The remuneration had become an established part of dentists' normal salary. It was paid monthly together with the basic salary, independently of how many extra patients had actually been treated during the month in question. Moreover, it was included in the earnings basis for calculating pension entitlement and holiday pay.

This view was strengthened by a comparison with the bonus element of salary, which varied in accordance with the work actually carried out by the dentist. The bonus was not included in the earnings basis for calculating pension entitlement and holiday pay.

In view of the inconvenience that the failure to renew the agreement had caused to the complainant, the Tribunal decided that it was not unreasonable for the county authority to shoulder the financial burden of concluding a new agreement with her. It was pointed out that the scheme had brought about greater effectiveness in the dental health service and lowered the county authority's costs.

Accordingly, the exception did not apply.

The decision of the Tribunal was unanimous.

Case 16/2007 - An insurance policy holder was not discriminated against on the basis of ethnicity or national origin when his insurance claim was specially assessed. The case was considered under section 4 of the Anti-Discrimination Act.

The complainant took out an insurance policy with Vesta Insurance in March 2005. In January 2006, the family's apartment was broken into. A number of objects were stolen, including a Rolex watch, jewellery, computers, TV and stereo equipment, and clothing. The

complainant submitted a number of documents as enclosures to his statement of loss. The complainant received an advance payment of NOK 25,000 from Vesta.

The insurance claim was transferred for special internal assessment at Vesta. The complainant and his spouse attended various meetings with the insurance company during the course of the assessment.

Vesta rejected all parts of the claim on the grounds of fraudulent misrepresentation by the complainant when taking out the insurance policy and during the process of settling the claim. After the complainant's lawyer submitted a written statement by the seller of the insurance, Vesta had to withdraw its allegation of fraudulent misrepresentation in connection with the taking out of the insurance policy.

Vesta subsequently paid an additional NOK 150,000 to the complainant in settlement of the claim.

The complainant maintained that his ethnic background or national origin was the main reason for his claim being specially assessed by Vesta.

The Equality and Anti-Discrimination Tribunal considered the case under the provisions on direct discrimination in section 4, first and second paragraphs, of the Anti-Discrimination Act.

In this connection, the Tribunal found circumstances that shifted the burden of proof to the insurance company pursuant to section 10 of the Anti-Discrimination Act. The Tribunal assessed the totality of several different grounds, which separately did not necessarily reverse the burden of proof.

The Tribunal pointed out that Vesta had stated the complainant's nationality to be Pakistani when it sent the claim for assessment, despite the fact that the complainant was born and had grown up in Norway and was a Norwegian national. The Tribunal also attached importance to a conversation between the complainant's lawyer and the claims assessor, and to Vesta's actions after receiving the claim. Among other things, it was pointed out that the assessment process had begun with separate interviews of the complainant and his spouse, which they must necessarily have found very distressing.

However, the insurance company had succeeded in showing it to be more likely than not that grounds other than the complainant's ethnicity and national origin were the reason why the company had chosen to send the claim for special assessment.

When it sent the claim to be assessed, Vesta had indicated that the reason for the assessment was a *major theft of an expensive watch, expensive jewellery and other items*. The Tribunal did not find it extraordinary that a claim arising from the theft of an expensive watch and costly jewellery gave grounds for further internal assessment by the insurance company.

Vesta Insurance had not therefore acted in breach of section 4 of the Anti-Discrimination Act.

The decision of the Tribunal was unanimous.

Case 17/2007 A health enterprise's determination of an non-unionised employee's pay changes and the fixing of different dates for the pay changes to take effect for the

unorganised employee than for his unionised colleagues were not in breach of the prohibition of discrimination in chapter 13 of the Working Environment Act.

The complainant considered himself to have been subjected to differential treatment in connection with pay growth on account of not being a member of a union.

At the time that the employee was hired, he had higher pay than all of his unionised colleagues. Following adjustments in 2007, the complainant had the same annual pay as three of his unionised colleagues, but his pay was no lower than that of any of his unionised colleagues. After the complainant's unionised colleagues were placed in Pay Category III as of 1 July 2006, the complainant's pay was adjusted in accordance with the pay adjustments that applied to that category.

The Tribunal therefore found no grounds to support the claim that the complainant had had lower pay growth because he was not unionised.

The complainant's pay rises took effect on a later date than those of his unionised colleagues.

Pursuant to section 13-2, fourth paragraph, of the Working Environment Act, the provisions of chapter 13 do not apply to *discrimination owing to membership of a trade union in respect of pay and working conditions in collective agreements*. The exemption provision was included in the Act in order to make it clear that protection against discrimination does not provide a basis for non-unionised employees to infer a right to pay and working conditions that *follow from a collective agreement*, see Proposition No. 104 (2002-2003) to the Odelsting, point 8.4.5.2.

The date on which the unionised employees' pay adjustments were to take effect was not explicitly stated in the agreements between the trade union and the health enterprise, but rather recorded in the records of local negotiations between the parties.

After considering the merits of the case, the Tribunal found that the negotiation protocols in question were of a general, normative nature. They applied generally to the complainant's unionised colleagues, and not only to certain employees. The negotiation protocols were therefore deemed to be a collective agreement.

Accordingly, the prohibition of discrimination in chapter 13 was not applicable with regard to the difference in the dates on which the pay changes took effect.

The decision of the Tribunal was unanimous.

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Accordingly, the prohibition of discrimination in chapter 13 was not applicable with regard to the difference in the dates on which the pay changes took effect.

The decision of the Tribunal was unanimous.

Case 19/2007 – The applicant for a position as a German teacher in an upper secondary school was not discriminated against on the basis of language. The case was considered under section 4 of the Anti-Discrimination Act.

The complainant was born in Greece, and moved to Norway in August 2004. In the autumn of 2006, she applied for a vacant 25 % position as a German teacher in an upper secondary school. The position was a temporary post that was vacant until the end of the 2006/2007 school year.

The complainant was invited to an interview, but the invitation was subsequently retracted. None of the applicants were interviewed.

The school also contacted several temping agencies to inquire whether any of them knew of people who might fill the advertised position.

In the end, the school solved its manpower need by reorganising the teachers already employed by the school. No new teacher was appointed to fill the advertised position.

The Equality and Anti-Discrimination Tribunal considered whether the complainant had been discriminated against on the basis of her Norwegian language skills. The matter was considered under the provisions on direct discrimination in section 4, first and second paragraphs, of the Anti-Discrimination Act.

The Tribunal's majority (3) found there to be no circumstances that gave reason to believe that the school had attached importance to the complainant's knowledge of Norwegian. The majority did not find it unusual that the school had considered the possibility of internal reorganisation in parallel with advertising the position externally. Nor was it unnatural that the school should attach importance to the specific needs of the class that was to be taught.

The majority did not consider information contained in an e-mail from a recruitment agency to constitute proof of the reasons for the school's decision not to continue the recruitment process. The information did not come directly from the school, but rather was a statement of what the recruitment agency believed the school's view to be.

The majority also pointed to the fact that the complainant had in fact been invited to an interview. The school therefore seemed to be willing to consider her qualifications more closely.

The majority therefore concluded that the complainant had not been subjected to differential treatment in breach of section 4 of the Anti-Discrimination Act.

The Tribunal's minority (2) found that there were circumstances in the case that shifted the burden of proof to the school. The minority pointed out that the school had not fulfilled its duty to consider the complainant's professional qualifications and Norwegian language skills. The minority also referred to the e-mail from the recruitment agency to the complainant, which stated that the school had attached importance to her knowledge of Norwegian.

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Case 20/2007 – Rejection of an appeal against the Equality and Anti-Discrimination Ombud's summary dismissal of a case concerning possible age-based discrimination in a pension scheme.

The complainant complained to the Equality and Anti-Discrimination Ombud about the fact that he was not entitled to an old-age pension from his former employer. He had been employed by the company for 20 years when he left in 1988. The complainant was at that time under the age of 52, and under the rules of the pension scheme this meant that he was not entitled to an old-age pension.

The Ombud summarily dismissed the case because the possible differential treatment took place before the prohibition of age-based discrimination came into effect. The summary dismissal was appealed to the Equality and Anti-Discrimination Tribunal. The complainant argued that the discrimination would not take place until he became a pensioner.

The Tribunal considered the case under section 3, fifth paragraph, second sentence, of the Anti-Discrimination Ombud Act and the transitional provisions in section 18 of the Act.

The relevant prohibitions against discrimination were the prohibition against age-based discrimination in chapter 13 of the Working Environment Act and similar provisions in *Chapter X A. Equal treatment in working life* of the previous Working Environment Act.

Chapter X A came into force on 1 May 2004. Prior to that date, there had been no general prohibition in Norwegian legislation of age-based discrimination in working life.

The Tribunal referred to the fact that the complainant had no rights under the company's pension scheme after leaving the company in 1988, on account of the age limit imposed by the rules of the pension scheme. Thus, any age-based discrimination took place before the entry into force of the prohibition against age-based discrimination. It followed that the conditions for dealing with the case pursuant to the Anti-Discrimination Ombud Act were not met.

The Tribunal therefore rejected the appeal.

Its decision was unanimous.

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Case 21/2007 – An employer had not fulfilled his duty pursuant to section 13-5 of the Working Environment Act to adapt working conditions to meet the needs of an employee with ADHD.

The complainant, who was diagnosed with ADHD shortly after being employed by the company, felt that he was being blamed for a poor working environment and that he was being pressured to sign a resignation agreement because of the employer's failure to adapt his work situation.

The complainant informed both his employer and his colleagues about his diagnosis. Nonetheless, as the complainant was taking medication, the employer chose to treat him in the same way as other employees with behavioural problems.

The Equality and Anti-Discrimination Tribunal found that the provision in section 13-5 regarding the duty to adapt working conditions was applicable. The applicant was diagnosed with a disability of a permanent nature, and he needed his work situation to be adapted in order to be able to function on a par with his colleagues.

The Tribunal stated:

The duty of adaptation entails that an employer, when informed that an employee has been given a diagnosis that may influence his work performance, must seek to find out what this diagnosis entails. The employer must then, in consultation with the employee, consider what specific measures can be taken to adapt the work situation to the needs of the employee concerned.

[...]

One of the first steps to be taken by an employer will necessarily be to obtain information about ADHD. This should include contacting competent medical professionals with a view to assessing the contribution that the workplace can make. In this case, important aspects of the duty of adaptation were to provide information to the complainant's colleagues and to ensure openness in the department in question regarding the fact that the complainant had been diagnosed with a disability that explained some of his behavioural problems.

The employer had made no effort to learn what an ADHD diagnosis entails and what consequences it might have for the complainant's behaviour, or whether the medication was sufficient to obviate the complainant's need for adaptation. The employer therefore had no

basis on which to assess what measures might be appropriate in the complainant's case. Nor had the employer done anything to inform the complainant's colleagues.

The Tribunal therefore found that the employer had not fulfilled its duty to adapt the complainant's work situation. This was a breach of the prohibition of discrimination against persons with disabilities laid down in the chapter on equal treatment in the Working Environment Act.

The Tribunal did not consider the question of whether adaptation would enable the complainant to keep his job.

The decision of the Tribunal was unanimous.

Case 22/2007 – Sellers were discriminated against on the grounds of ethnicity in connection with the sale of a residential property. * The whole case is translated into English, see *Cases in English*.

A family with an ethnic background from Iran felt they had been passed over on the grounds of ethnicity in connection with the sale of a private property.

The family had tendered the highest bid, but their bid for the property was not accepted. The difference between the highest and the second highest bid was NOK 10,000. The couple who tendered the second highest bid had their bid accepted. The ethnic background of this couple was Norwegian.

The Tribunal considered the case pursuant to section 4 of the Anti-discrimination Act, which prohibits discrimination on the grounds of, among other things, ethnicity.

The Tribunal was of the opinion that there existed circumstances which would indicate that the sellers attached importance to the complainants' ethnicity as a negative element when they refused to accept their bid.

The Tribunal pointed out that it is not normal for the person tendering the highest bid in a round of public bidding to not be allowed to purchase the property. Since the bidder who tendered the highest bid also had an ethnic background from Iran, this gives one a justified suspicion of ethnic discrimination. Even though this in itself is not enough to reverse the burden of proof, this forms a framework around the case which means little else is required before the burden of proof would pass to the seller, *cf.* the Act's requirement concerning *reason to believe*.

The complainant was told by the estate agent that they had tendered the highest bid, and that the property was therefore theirs. The complainant explained to the Tribunal that the estate agent called back ten minutes later and told them that they would nevertheless not be able to purchase the property. This course of events was also supported by the estate agent's bidding form. According to the complainant, the estate agent stated in a conversation that the reason for refusing the bid was that the seller did not want any "trouble". In his conversation with the complainant, the estate agent did not want to go into any greater detail about what the sellers could have meant by this.

The Tribunal found it surprising that during preparation of the case the estate agent was not willing to elaborate on the remark concerning “trouble” in respect of neither the complainant nor the Ombudsman, nor did he manage to refute it. Reference was made instead to the estate agent’s duty of confidentiality, that the seller is entitled to sell to whomsoever he chooses and to the seller’s declaration of 18 September 2006. Nor did the seller comment, or refute, the remark about “trouble” in his declaration of 18 September 2006, which was a response to the complainant’s representation to the estate agent in which a request was made for a more detailed explanation as to why they were not allowed to buy the property. During preparation of this case for the Ombud and the Tribunal, the sellers referred to the fact that they were misquoted when it was stated that they “did not want any trouble”.

The burden of proof passed to the sellers pursuant to section 10 of the Anti-discrimination Act.

The majority of the Tribunal (4) were of the opinion that the sellers had not managed to fulfil their burden of proof. The sellers had therefore acted in breach of section 4 off the Anti-discrimination Act by not accepting the highest bid from the complainant.

The minority (1) was of the opinion, however, that the sellers had not managed to substantiate that their reason for choosing a lower bid was based on another reason than that the highest bid had been tendered by people with an ethnic background from Iran.

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Case 23/2007 – The Supervisory Council for Legal Practice did not include parental leave reserved for one gender when calculating work experience required in order to be granted a licence to practice law. This was in breach of the ban on direct discrimination in section 3 second paragraph no 2 of the Gender Equality Act.

The Supervisory Council for Legal Practice decides applications to practice law. One of the conditions for being granted such a licence is two years of work experience as an assistant lawyer, assistant judge etc. This is laid down in section 220 of the Courts of Justice Act.

Sickness absence and other forms of leave – including parental leave – in excess of one month were deducted when the Supervisory Council for Legal Practice considered whether the requirement of work experience had been fulfilled. All types of absence were treated in the same way, with the exception of ordinary holidays, for which no deductions were made.

The Tribunal restricted itself to considering the lack of inclusion of the woman’s statutory right to maternity leave three weeks before the birth and the first six weeks after the birth (a total of nine weeks), as well as leave reserved for the father, up to eight weeks (two weeks in connection with the birth and six weeks paternal quota).

In the opinion of the Tribunal, the practice of the Supervisory Council for Legal Practice placed women and men who take this type of leave in a poorer position than those who do not do so. Their licence to practice law would be postponed. Thus, the person’s right to operate his/her own practice as a result of a licence being granted will also be postponed, as well as the higher level of pay that often follows with the title of lawyer.

The non-statutory right of exception of direct discrimination could not be used. This right of exception is very narrow and shall be limited to cases where the need for discrimination is obvious.

In the opinion of the Tribunal, there was no obvious need for discrimination in this case. Among other things, it could not have crucial importance for the lawyer's competence that up to nine weeks of parental leave was included in the calculation of work experience. There was also greater reason to include statutory parental leave than other types of absence. Reference was made to the fact that parental leave has been given special protection in Norwegian legislation.

The practice of the Supervisory Council for Legal Practice was therefore in breach of the ban on direct discrimination in section 3 second paragraph no. 3 of the Gender Equality Act.

The opinion of the Tribunal was unanimous.