

Summaries of cases 2006:

Case 1/2006 Action in favour of one of the sexes – recruiting female board directors

Case 1/2006 addressed the issue of discrimination of men according to the Gender Equality Act. A municipality provided a financial mechanism through which whereby a higher contribution was given to private companies that recruited female external board directors. The Gender Equality Act Section 3 allow affirmative action in favour of one of the sexes: “Different treatment that promotes gender equality in conformity with the purpose of this Act is not a contravention of section 3”.

The case concerns a small project, set up as a financial mechanism approved by Kristiansand municipality in the spring of 2005, in which the first ten (10) private, small-scale local companies that recruited an external, professional board director, would be rewarded with a financial benefit. The mechanism was calculated to cover 50 % of the first year cost, with an upward limit of NOK 25.000. However, companies that chose a female board director among the suggested external professional candidates would receive 100 % coverage of the costs, with an upward limit of NOK 50.000. In order to be eligible for financing, select other conditions were also included.

The complainant, the Conservative Youth Party of Kristiansand Municipality and Vest-Agder County (Kristiansand Unge Høyre og Vest-Agder Unge Høyre) asserted that the difference between the financial benefit given for female and male external professional board directors constitutes discrimination according to the Gender Equality Act. The fact that companies will be provided twice as large a benefit by choosing a female candidate will affect the decision both regarding whom will be chosen as well as recruitment towards those posts.

In response, the municipality of Kristiansand explained that the financial mechanism constitutes a small project within its private sector development portfolio, in which the policy aim was an attempt to recruit external professional board directors to address strategic, long-term growth-issues within each of the companies. The municipality affirmed the political ambition to focus on women’s opportunities in private sector development. The mechanism was intended to increase the number of female board directors in private companies, given the previous low number. This policy resonates with national private sector development policies, in which quotas for female board members have been set. The result of the project was that 5 female and 3 male external board members were recruited in 8 different private companies.

The Equality Tribunal reasoned that as the mechanism was intended to promote gender equality, the targets of the different treatment must be the gender with the weakest representation. A principle of proportionality has to be followed, and the differential treatment has to be a temporary special measure. According to figures from Statistics Norway, only 9 % out of 5160 private board directors in Vest-Agder county, were women. Women are therefore poorly represented as board directors. The financial mechanism provided by Kristiansand municipality is a suitable mechanism for providing women increased opportunities to be chosen as board directors, and thus suitable to promote gender equality. The mechanism is not a disproportionate intervention in relation to men. The mechanism does not exclude men from being chosen as board directors, although select companies might chose a woman because of the higher contribution. However, the disparity between male and female representation as board directors is so high, that this motivation to select women is proportional to the incentive offered.

The Tribunal thus found that the financial incentive provided to companies that chose an external, female board director is in accordance with the Gender Equality Act section 3a. The tribunal found this concrete measure to be targeted and adequate.

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Case 2/2006 Different treatment of men and women – routine screening to detect cancer

Case 2/2006 questioned if the failure to provide men with free routine screening to discover prostate cancer, similar to the mass screening provided to women to detect breast cancer, is differential treatment in breach of the Gender Equality Act section 3: “Direct or indirect differential treatment of women and men is not permitted”. The question was assessed in relation to indirect differential treatment.

The Tribunal found that the failure to provide men with free routine screening to discover prostate cancer is not a result of gender discrimination. The Tribunal found that The Norwegian Ministry of Health and Care Services has successfully documented that the different approach to prostate cancer and breast cancer is a result of medical-, socio-economical- and health-policy-assessments. The Tribunal found in general that the Ministry is not less diligent in relation to men’s health than women’s health. The Tribunal therefore found that the case was not a breach of the Gender Equality Act section 3.

The case was unanimous.

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Case 3/2006 - Appeal to the Equality and Anti-Discrimination Tribunal to re-open a case dismissed by the Gender Equality Ombud.

The case before the Tribunal addressed the organizational side of the work of the Gender Equality Ombud, as the complainant appealed to the Tribunal to re-open her case, contesting the decision of the Ombud to dismiss her case.

The Ombud had dismissed her case summarily based on the (now previous) Regulations on the Organization and Functioning of the Gender Equality Ombud and Board of Appeals article 4, in which the Ombud had an option of dismissing a case if the actions that might constitute differential treatment ceased to exist.

The complainant had lodged a case before the Gender Equality Ombud in 2005, claiming that she was a victim of pay-discrimination as stated in the Gender Equality Act article 5, addressing equal pay for work of equal value. The complainant had for many years worked as a secretary in one of the large Norwegian newspapers. She claimed to be subject to pay discrimination, as her salary was much lower than a male employee, working with the same tasks as hers. He had a background as a typographer in the newspaper.

In the course of the case, the complainant accepted an early retirement package from the newspaper and retired. Based on her retirement, the Ombud dismissed the case, as the action that might constitute differential treatment had ceased to exist. The complainant did not agree to this dismissal, as parts of her early retirement package is a voluntary contribution from the employer, which would increase if her salary was upgraded after the Ombud had handled the

case and found that it was in contravention with the Gender Equality Act. The complainant also asserted that she was not informed that the Ombud would dismiss her case upon her retirement.

The Equality Tribunal assessed the case in line with the (current) Act on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal (the Anti-Discrimination Ombud Act) of 10 June 2005 no 40, article 3 (5) 3: “In special cases, the Ombud may drop a case if he or she finds no grounds for dealing with it any further”.

The Tribunal did not re-examine the judgement of the Ombud regarding whether or not it would be useful to allocate resources to this concrete case, in which the Ombud has a wide discretionary mandate. The Tribunal thus found that the dismissal of the case was within the mandate of the Ombud and acceptable according to the law.

The tribunal however noted that the Ombud should have informed the complainant about the possibilities for a dismissal of the case upon the termination of her employment relations.

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Case 4/ 2006 - Equal pay for work of equal value – comparison of mid-level managers in a municipality

Case 4/2006 was referred to the Tribunal by the Norwegian Union of Municipal Employees (KFO), on behalf of one of its female members (A). A is the manager of the health- and rehabilitation-service in a small municipality. Her annual salary is NOK 15 000 lower than the salary of the male manager of the health care service (B) in the same municipality. KFO claimed that this pay difference constituted a breach of the principle of equal pay for work of equal value according to the Gender Equality Act section 5 and section 3.

Both manager positions are organizationally and hierarchically on the same level in the municipality, as both positions are mid-level management positions within the senior management team of the Health Work and Social Affairs Department. According to the municipality, the qualifications required for employment in the positions are similar as well.

The parties disagreed as to whether or not the positions were of the same value, and the applicability of the Gender Equality Act on the case in question. The municipality also argued that if the Tribunal found that the incumbents performed work of same value, and the Gender Equality Act thus were applicable, there existed individual differences in performance that made the pay difference legal.

The Tribunal closely examined whether the work was of equal value or not, based on an overall assessment in which importance was attached to the expertise that is necessary to perform the work and other relevant factors such as effort, responsibility and working conditions. The question was thus if one of the positions requires a larger responsibility or more effort than the other.

The municipality provided a print from their salary system, documenting that the health- and rehabilitation-service has 12 man-work years and 22 employees. The total budget of A's portfolio is NOK 4,897,000. The health care service has 18,6 man-work year and 34 employees, covering a budget portfolio of NOK 9,995,000.

B is thus responsible for a significantly higher number of man-work years and employees than A. B furthermore has an annual budgetary responsibility twice the size of that of A.

The Tribunal assessed the complexity of the services offered within the areas of responsibility of each of the managers, and diligently studied each activity through information provided both from KFO and from the municipality. Also the areas of responsibility and efforts linked to each of the sub-activities were explored.

Both managers are responsible for areas of work composed by a number of different activities. Both managers are furthermore responsible for clients with demanding and extensive needs for care. B is additionally responsible for buying needed services from a private nursing home, which includes an additional budgetary responsibility of around NOK 13,000,000. B is provided with more administrative support than A, as he has a full-time secretary and two deputies to assist him. A does not have a deputy, and is supported by a secretary working part-time (50%). These administrative support functions are linked to the higher budgetary responsibility and the higher number of employees linked to B's area of responsibility.

Based mainly on B's larger budgetary responsibility, as well as his larger responsibility regarding number of supervised employees, the Tribunal found that the salary difference is not in contravention with the Gender Equality Act, as A and B does not carry out work of equal value. It was thus not necessary for the Tribunal to consider the existence of individual circumstances that might justify a higher salary in accordance with the Act.

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Case 5/ 2006 – Employment in a temporary position as senior nurse in a nursing home – pregnant employee passed over?

Case 5/2006 concerned a trained nurse (A) employed as a nurse in a publicly (municipality) owned nursing home in Northern Norway.

A claimed that she was passed over for the position as temporary nursing-responsible in the municipality both in November 2003 and June 2004. She claimed that the fact that she was pregnant and unable to work most of the period in the temporary position was the reason for her not being appointed to the position in November 2003.

The question raised for The Equality Tribunal were firstly if the municipality acted in breach of the Gender Equality Act section 4 second paragraph and section 3 when it omitted to appoint A or anybody else in the temporary position as Nursing-responsible in November 2003, secondly when it appointed C instead of A after the second announcement of the same position in June 2004.

The Tribunal considered the case in relation to the prohibition against indirect discrimination, based on the whole maternity leave, and did not split the assessment into one of direct and indirect discrimination. The basis of the case considered is if A was affected negatively because of her pregnancy and following maternity leave, and thus the basis for the assessment of the Tribunal is how the municipality would have considered A's applications had she not been pregnant or on leave.

Firstly, was there reason to believe that A's pregnancy and maternity leave was a contributing factor to why the municipality chose not to appoint A as nurse-responsible based on the first advert in November 2003?

The tribunal started its examination of this question by assessing whether or not the burden of proof rested on the municipality, which it found was the case. A had until November 2003 worked in the nursing home in that very position, and there were no indications that her employer were not satisfied with her work performance. A's colleague B, appointed in the similar position in section 1, was not pregnant, and was later appointed as Nursing-responsible in section 1. Based on these indications, the Tribunal found that the burden of proof rested with the employer.

The municipality has as a starting point a large degree of freedom to choose which qualifications they wish to emphasize when appointing their employees. The municipality wanted a person with longer work- and life-experience in the position than A had. The Tribunal found that the municipality had not sufficiently proved that it was A's lack of work- and life-experience that made her unsuitable for the job. This had not been communicated to her, and it was also not emphasised when she applied for the previous appointments that she got. The Tribunal found that the omission to appoint A in the temporary position as Nursing-responsible in November 2003 was a breach of the Gender Equality Act.

The opinion of the Tribunal was unanimous.

This opinion was contrary to that of the Gender Equality Ombud, who had found that the case was not a breach of the Gender Equality Act, as the municipality had proved on a balance of probabilities that A was not appointed because the municipality wanted a person with longer work- and life-experience in the position.

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Case 6/2006 - Resolved before handled in the Tribunal

Case 6/2006 concerned a demand for equal pay for work of equal value, pursuant to the Gender Equality Act section 5. The case involved comparing the wages of a predecessor and successor in a key position in the senior management team of a hospital. The predecessor was a medical doctor and a male, and had received a higher salary than the successor who was a nurse and female.

The case was resolved before it was handled by the Tribunal, as the parties agreed on the question of wages.

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Case 7/2006 - Question of possible indirect discrimination of a female product specialist whose position had changed upon her return to work after maternity leave

The case concerned a female product specialist (A) in a private firm (B), whose position had changed during her maternity leave. A was employed in the Norwegian branch of an international firm selling dental fixtures and dental implants to dentists and orthodontologists. She worked in the firm during two periods, from 1 March 1999 until 16 February 2001, and

from 2 June 2002 up till now. She started her maternity leave in February 2004, and re-entered her position in August 2005, after a period of 18 months leave.

Upon her return to work, she found that her tasks had changed, her travelling days had increased, and she was allocated an increased geographical area to cover. Whereas she previously was responsible for sales to specialists, professors and orthodontologists in what the firm had termed region 3, consisting of the counties forming the Middle region of Norway: Hedmark, Oppland, Møre and Romsdal, Sør-Trøndelag and Nord-Trøndelag, she was upon her return asked to work with general dentists, covering all of Norway. Her tasks were thus neither region-specific nor with a focus on specialists. She considered these tasks to be a step down from those she previously had held, as she found the tasks to be less interesting and with less professional responsibilities. She also feared that she would have to travel more extensively than previously, as she now would geographically be responsible for the whole of Norway, compared to her previous regional responsibility.

A claimed that the changes occurred during her leave constituted discriminatory treatment in contravention with the Gender Equality Act section 3. She maintained that these changes would not have been initiated if she was not on maternity leave. The person (D) hired to substitute her was hired in a full-time fixed position, with the same regional responsibilities as A, with an additional responsibility for the three counties in Northern Norway: Nordland, Troms and Finnmark. Upon A's return to work, D became national Key Account Manager, with an additional limited regional responsibility.

B claimed that the changes that had occurred in A's position would have been initiated also if she had not been on maternity leave, as the tasks of all positions had been significantly changed during the period of her maternity leave. The changes were initiated by a demand from their international headquarters that sales in the Norwegian market would need to be increased by 30%, otherwise there was a danger that the Norwegian branch office would be closed down. This demand meant that the responsibilities of all positions were increased, and that areas which previously were not a priority, became more urgent, such as sales to general practitioners. B claimed the changes in A's position did not signify a degrading, as her title and salary were intact.

The Equality Tribunal initially pointed to the right of the employer to re-organize the firm, and to change the features of the tasks of an employee. Re-organizations might affect both employees present at work, and those who are on various forms of leave, including maternity leave. However, these re-organizations must be carried out within the limits posed by the individual contract of employment, and, in case of changes affecting staff on maternity leave, within the ban against discrimination in the Gender Equality Act. The assessment of the case brought forward for the Tribunal is if, and possibly to what extent, A has been subject to a different and unfavourable treatment because of her pregnancy and maternity leave that she would not have been subject to if she was present at work. In accordance with the Gender Equality Act section 16, the burden of proof in this case is on the employer. It is thus the employer who must prove that A was not subject to discrimination.

Concerning the argument related to number of travelling days and area to be covered, the Tribunal found that A was not put in a worse position than the other product specialists. These changes had not occurred because of her pregnancy, but because the higher demands had increased the number of travelling days for all staff, including A. As the responsibilities for all regions have been changed, all product specialists are now responsible for geographical areas

they were not involved with previously. Thus all staff now have different areas they cover compared to previously. This is not particular to A's situation.

In relation to the clients, the changes occurred during the maternity leave imply a challenge for A. She claimed that her new clients were not as interesting as her previous clients, whereas her employer maintained that A was given this new responsibility because they specifically needed her particular qualifications to cover and expand this new marked segment. The Tribunal pointed to the fact that disagreements will often occur as to which tasks will be more or less interesting, but found that these new tasks does not constitute a degradation of A, as they are an area of expansion for the firm. A has furthermore kept her title and salary.

The Tribunal considered the organizational re-structuring and its individual consequences that had taken place in the firm, and concluded that a shift has happened in the whole enterprise that has affected all employees, including A. The Tribunal found that the employer have sufficiently documented that the changes that occurred during As maternity leave were related to the changes taking place in the enterprise as a whole, and thus that A was not subject to discriminatory treatment upon her return from maternity leave.

The decision was unanimous.

The opinion of the Tribunal was contrary to that of the Gender Equality Ombud, who found that A had been subject to discriminatory treatment. The Ombud found that B had not proved sufficiently on a balance of probabilities that it had reasons to treat A differentially. The new Equality and Anti-Discrimination Ombud re-considered the case, but agreed to the conclusion of the Gender Equality Ombud.

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Case 8/2006 - Employee in temporary position as teacher not offered a new temporary position when pregnant

The Equality Tribunal was asked by the Union of Education Norway (Utdanningsforbundet) to assess whether or not their member, a secondary school teacher (A) that had worked for two years in a temporary position as a teacher focusing on special pedagogic in a school in the Oslo region was passed over because of her pregnancy when a new temporary position was announced for the period 1 August 2003 – 12 March 2004. She expected a baby in the beginning of November 2003. Another candidate (B) was chosen for the announced temporary position. A was however hired in another temporary position at the school from 1 August 2003 until her maternity leave was initiated on 17 October 2003.

A had during the previous two years worked with special education at the school, focusing on building a resource team with select teachers for pupils with special needs. She worked both years with pupils with specific, additional reading and writing needs, as well as with select minority pupils with Norwegian as a second language.

When she applied for the new temporary position, A was the leader of the resource team. The advertisement for the position stated that the position could involve being leader of the resource team. The school had been satisfied with A's work-performance and had not communicated to her the need for different qualifications in the new temporary position. B

and A had the same level of education and approximately the same length of work-experience. After being told about A's pregnancy, the headmistress gave a negative remark about having to hire another temporary teacher in the period of A's maternity leave.

On this background the Tribunal found that there were reasons to believe that her pregnancy might have had an impact on the decision made. The burden of proof was in accordance with the Gender Equality Act Section 16 thus on the school.

The school claimed that the candidate B was clearly the best qualified for the position both in terms of education and experience. She had originally applied for another position at the school, but was specifically asked to apply for the position as teacher of special pedagogic based on her previous work experience and studies. The school had during 2002 experienced an increased problem with violence and thefts. There was a small group of pupils with psychological and emotional problems that were forming gangs, attracting other pupils, and creating disciplinary and social problems at the school so far unknown.

The school urgently needed staff with specific qualifications focusing on dealing with students with psychological and emotional deficiencies to assist them in handling these challenges. Among the applicants for the temporary position, B had the necessary educational profile that the school needed, which had an emphasis on social and emotional challenges. She also had relevant experience from fieldwork as well as work experience at another school with similar problems. A did not have these qualifications, as her educational focus was on children with reading and writing disabilities.

During the school years 2003-2004, B was given expanded responsibilities, in order to address and combat the increased violence. The school informed that the instances of violence and theft were handled and reduced during the school year 2003-2004, which they had not managed to do the previous year.

The Tribunal found that the school had sufficiently proved on a balance of probabilities that a differential treatment had not taken place. The Tribunal assessed the qualifications of each of the candidates, both their education and practical experience. Additionally, the school had provided documentation dated before the actual interviews and appointment in the position that qualifications such as described above were needed. The fact that B had qualifications as described were not disputed, nor the fact that the problems with violent gangs were on the increase at the school.

Although the school had fulfilled its burden of proof, the Tribunal criticized the school for its evasive communication to A. The school should have communicated clearly to A that her qualifications were less relevant because of the changing need of the school.

The opinion of the tribunal was unanimous.

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Case 9/2006 – The ban on the donation of eggs in section 2-8 of the Biotechnology Act is not in breach of section 3 of the Gender Equality Act. General assessments concerning the Tribunal's competence and task.

Section 2-18 of the Biotechnology Act prohibits the donation of eggs, while the donation of sperm is permitted under certain conditions. The donation of sperm may be relevant in connection with assisted insemination (artificial insemination) both inside and outside the woman's body.

The Gender Equality and Anti-discrimination Ombud had concluded that the ban on the donation of eggs was in breach of section 3 of the Gender Equality Act.

The Tribunal arrived at the opposite result.

Two general interpretation principles mean that the ban on the donation of eggs in the Biotechnology Act sets aside any claims pursuant to the Gender Equality Act. Firstly, special legislation takes precedence over general legislation. Secondly, later legislation takes precedence over earlier acts of legislation. The Biotechnology Act is both a later piece of legislation and a more special act than the relevant ban on discrimination in section 3 of the Gender Equality Act.

Since, in addition, the Norwegian parliament (Storting) had taken a stand on the issue of gender equality in connection with its discussion of this Act, it was even clearer for the Tribunal that the ban on the donation of eggs was not in breach of the Gender Equality Act.

The Tribunal did not take a stand on the underlying question of whether the ban on the donation of eggs placed one gender in a worse position than the other.

The Tribunal was divided in its view of the statement's conclusion. The majority (4) stated that the ban on the donation of eggs in section 2-18 of the Biotechnology Act is not in breach of section 3 of the Gender Equality Act. The minority (1) wished to limit the statement to the repealing of the Ombud's opinion.

In this case, the Tribunal also made a general assessment of the Tribunal's professional area of scope and its task as law enforcer. The Tribunal shall make a complete interpretation of the legislation it is set to enforce and then apply the legislation to the cases presented to the Tribunal. In the event of any apparent contradiction, the Tribunal will, if necessary, harmonise the provisions on the basis of general principles.

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Case 10/2006 - Announcing a position at the Dry-Cleaner's

A position at Vinderen Dry-Cleaner's in Oslo was announced vacant in the Norwegian national newspaper Aftenposten on 12 February 2006 with the following advertisement: "Mature female aged 30-50 years is encouraged to apply for the vacancy in our Dry-Cleaner's at Røa".

The Gender Equality Ombud concluded that the text was a breach of the Gender Equality Act section 4 first paragraph, and the Working Environment Act section 13-1 first paragraph. The Ombud found that there was no obvious reason that a position at a Dry-Cleaner's should be restricted to females within a certain age-group only, thus excluding males and young and old females. Any job in a Dry-Cleaner's can perfectly well be executed by any male or female, irrespective of age. The Ombud asked Vinderen Dry-Cleaner to confirm within three weeks

that they had received the communication from the Ombud, and that they would act according to the opinion of the Ombud in their future announcements, framing their announcements in accordance with the Gender Equality Act and the Working Environment Act.

When the Ombud after three weeks had not heard from the firm, she passed the case to the Equality Tribunal on 6 April 2006, asking the Tribunal to order the firm to stop the discriminatory advertisements in accordance with the Anti-Discrimination Ombud Act section 7 second paragraph: “Subject to the exceptions that follow from sections 9 and 10, the Tribunal may order an act to be stopped or remedies or other measures that are necessary to ensure that discrimination, harassment, instructions or reprisals cease and to prevent their repetition. The Tribunal may set a time limit for compliance with the order.”

The Tribunal found that the advertisement was a breach of both the Gender Equality Act section 4 first paragraph and the Working Environment Act section 13-1 first paragraph. As similar announcement has been used previously, and the firm is a large, professional employer with 17 branch offices in Oslo and Akershus, the Tribunal ordered that similar advertisements should be stopped. The Tribunal found that an order with a specific time limit for compliance was necessary to ensure that a similar advertisement would not be used again. Thereafter the Tribunal received a notice from the firm confirming that the advertisement would not be used again.

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Case 11/2006 – Discontinuation of night duty was not in breach of section 3 of the Gender Equality Act. A woman on night-duty was not salaried in breach of sections 5 and 3 of the Gender Equality Act.

A woman who worked nights at a home for children and adolescents complained she was treated differently than her male colleagues. She was employed on a part-time basis.

The home for children and adolescents was transferred from the county municipality to the Norwegian state on 1 January 2004. In this connection, her working hours were amended, which led to the complainant losing one of her night-duties. Her part-time percentage was not changed, however. Night-duties were better paid than day-duties.

The complainant’s night-duty was given to one of her male colleagues, who also had his part-time percentage increased. One of the other male colleagues lost one evening duty instead of one night-duty.

The Tribunal found no grounds to indicate that gender had played a role in the different treatment of the complainant and her male colleagues as far as the distribution of duties was concerned. The different treatment does not therefore represent a breach of section 3 of the Gender Equality Act.

Differences in skills requirements and responsibilities meant that the complainant did not perform work of the same value as her male colleague with a higher salary. Among other things, reference was made to the fact that the male colleague had managerial responsibilities, which the complainant did not have. His position also required higher skills than the complainant’s position.

The complainant was therefore not entitled to equal pay pursuant to section 5 of the Gender Equality Act.

The Tribunal's administrative decision was unanimous.

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Case 12/2006 - Resolved before handled in the Tribunal

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Case 13/2006 – Differential remuneration of a male and two woman planning and development consultants by a health authority did not contravene section 5 of the Gender Equality Act.

A male planning and development consultant employed by a health authority claimed the same pay as two woman planning and development consultants.

The parties agreed that the three specialist consultants were employed by the same enterprise, and that they carried out the same work or work of equal value.

The pay difference between the complainant and one of the woman planning and development consultants was approximately NOK 50,000 at the time he took up his post. A difference in pay of approximately NOK 30,000 developed between the complainant and the second woman planning and development consultant due to the woman enjoying a better development in pay than the complainant.

The Tribunal concluded that the salaries had been set on the basis of gender-neutral criteria.

One of the woman planning and development consultants, by contrast to the complainant, had submitted a pay claim at the time she was hired, which had been partially accepted. The Tribunal concluded that it was necessary for the employer to use pay as an instrument when the woman was hired. It was difficult to fill planning and development consultant positions. The woman was the only applicant for the position, and she had been asked to apply. There were three applicants for the position for which the complainant was hired. The woman was highly qualified for the position on the basis of her education and experience. Moreover, she had more higher education, and had greater and more relevant experience, than the complainant. She did not want to accept the position at a lower salary than the one she was offered.

Some elements of the differential pay development between the complainant and the second woman planning and development consultant could be explained by the fact that they were members of different trade unions, which had negotiated different, gender-neutral pay increases linked to length of service. The remaining difference in pay could be explained by the fact that the woman had greater experience as a planning and development consultant, and bore greater responsibility, than the complainant. It also appeared that the various regional

departments of the health authority had not centrally coordinated the setting of pay for managers.

Accordingly, the differential remuneration did not contravene section 5 of the Gender Equality Act.

The decision of the Tribunal was unanimous.

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Case 15/2006 – An application for the reopening of Case 29/2005 of the former Gender Equality Board of Appeals was not allowed.

The issue in the case brought before the Gender Equality Board of Appeals was whether the complainant had been passed over for a position as shift supervisor contrary to section 4, second paragraph, cf. section 3, of the Gender Equality Act. The Board of Appeals concluded that the matter was not in breach of the Gender Equality Act.

Neither the Gender Equality Act nor the Public Administration Act provides a legal basis for reopening the case. A certain right to reopen it may be deduced from section 35 of the Public Administration Act regarding the reversal of administrative decisions. A case may be reopened if there is new and important information that was not known at the time the administrative decision was made, if there are circumstances that indicate that a reversal of the decision should be considered or if the original administrative decision is invalid. In order for procedural errors to cause an administrative decision to be deemed invalid, they must have had a decisive effect on the contents of the decision, cf. section 41 of the Public Administration Act.

The complainant maintained that the administrative decision of the Gender Equality Board of Appeals was invalid due to the fact that procedural errors were committed during the Board of Appeals' preparation and consideration of the case, and that the procedural errors had been decisive for the Board of Appeals' decision.

The Equality Tribunal did not find that the complainant had presented any new and significant information that was not known at the time the administrative decision was made, or that there were any procedural errors that might have had a decisive effect on the contents of the administrative decision made by the Gender Equality Board of Appeals.

The appeal was therefore not allowed.

The administrative decision of the Equality Tribunal was unanimous.

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Case 16/2006 – Relationship between the conditions for a waiting benefit in section 10-2 of the Regulations on Labour Market Measures and the conditions in section 3 of the Gender Equality Act

When a woman applied for a waiting benefit after receiving unemployment benefit for two years, the period she had spent on maternity leave was not included in the time calculation. She therefore did not satisfy the requirement of having worked for at least three years in the four years immediately preceding the period of unemployment benefit, and her application was rejected.

Waiting benefit is a benefit for long-term unemployed persons who have exhausted their right to unemployment benefit and who are not participating in public sector job creation programmes.

The Equality Tribunal found that women may be disadvantaged if all the periods of parental leave and pregnancy-related absence are not included in the calculation of the basis for waiting benefit. The same applies to men in connection with parental leave. In the case of persons who do not give birth or take parental leave, the entire period during which they are employed is included in the calculation, thereby putting them in a more favourable position if they later apply for waiting benefit.

The exception provisions in section 3, fourth paragraph, of the Gender Equality Act, and the non-statutory power to make an exception in the case of direct differential treatment were not applicable.

In the light of this, the Tribunal concluded that section 10-2 of the Regulations on Labour Market Schemes, seen in isolation, seems to conflict with section 3 of the Gender Equality Act, as regards maternity leave and pregnancy-related absence that is related to an employment relationship.

Due to the specific circumstances of the case, the Tribunal did not find it appropriate to make a preliminary ruling on the issue of whether or not the Gender Equality Act sets aside the waiting benefit conditions in question. In any event, the complainant would not have had a sufficiently long employment relationship to satisfy the conditions on account of the employer declaring bankruptcy before the complainant gave birth.

The Tribunal requested that the Ministry of Labour and Inclusion (AID) initiate efforts to ensure that rules relating to unemployment, and relevant benefits and programmes in this connection, do not conflict with the protection afforded by domestic and EU law against discrimination related to pregnancy and childbirth.

The opinion of the Tribunal was unanimous.

Case 17/2006 – The salary of a female senior consultant was not in breach of the Gender Equality Act. Comparison with a male typographer in the same newspaper company pursuant to section 5 and section 3 of the Gender Equality Act.

A female consultant/senior consultant demanded the same pay as a male typographer in the same newspaper company. Their pay was regulated by two different collective agreements.

The woman was employed as a consultant until 1 January 2006, when she was promoted to senior consultant. The woman demanded that her case be considered on the basis of her former salary as consultant.

The Equality Tribunal found that the case had to be considered on the basis of the woman's current salary as senior consultant. Her employer should be given the opportunity to change any conditions that risked being ruled in breach of the law. Moreover, the Tribunal was not competent to deal with claims for compensation. An administrative decision to the effect that the woman was previously entitled to be paid the same amount of krone in salary as the man would have been close to a decision on a claim for compensation.

The Tribunal further pointed out that it is considerably easier to compare the value of positions and related pay, as well as the gender composition, on the basis of the current situation. The degree to which the woman's promotion to senior consultant in itself implied significant changes in her job responsibilities was also somewhat unclear.

The Tribunal found that the woman's work as senior consultant had the same value as that of the typographer. Particular attention was focused on the expertise required for the positions, the effort they entailed, responsibility and working conditions. Among other things, reference was made to the fact that while the expertise required for the positions was different, it was at a corresponding level.

However, the Tribunal concluded that the woman and the man had equal pay, and the situation was therefore not in breach of section 5, cf. section 3, of the Gender Equality Act. From 1 June 2006 the woman had a fixed annual salary of NOK 362,600, in addition to a bonus. The bonus for 2006 was estimated to be approximately NOK 50,000. The man had a fixed annual salary of NOK 414,114 from 1 May 2006. In view of the company's introduction of a better bonus scheme as from 2007, the Tribunal assumed that the woman's future bonuses were more likely to be higher than lower than in 2006.

The Tribunal also stated that historical reasons have previously been accepted as a gender-neutral justification for maintaining wage differences between different groups, based on their differing strengths in collective wage negotiations. However, attaching great importance to advantages previously gained by a male-dominated group might be questionable from a gender equality perspective.

The Tribunal emphasised that the right to equal pay for equal work or work of equal value applies irrespective of whether the persons being compared work in the same profession and receive pay that is determined by different collective wage agreements.

The administrative decision of the Tribunal was unanimous.

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Case 18/2006 – A housing advertisement and the practice of renting only to Norwegian citizens were in breach of the Anti-Discrimination Act. * The whole case is translated into English, see *Cases in english*

A housing advertisement published on FINN.no stated: “*Only Norwegian citizens need apply*”. The advertisement concerned the rental of a two-bedroom apartment with a private entrance in a four-unit building, in which all the apartments were rental units.

The Equality and Anti-Discrimination Ombud took the matter up on her own initiative, and concluded that the housing advertisement was in breach of section 4 of the Anti-Discrimination Act.

The Equality Tribunal reached the same conclusion as the Ombud.

Since citizenship is not explicitly mentioned in the Anti-Discrimination Act as a basis for discrimination, the requirement of Norwegian citizenship is not covered by the statute’s prohibition of direct discrimination.

The Tribunal found that the requirement of Norwegian citizenship will, or may, lead to persons of a descent, national origin or ethnic background other than Norwegian being particularly disadvantaged compared with ethnic Norwegians. Thus the requirement constituted indirect differential treatment based on ethnicity, nationality and descent.

The exception in section 4, fourth paragraph, of the Anti-Discrimination Act was not applicable. The landlord had not proved on a balance of probabilities that the requirement of Norwegian citizenship was based on objective grounds. Nor was the requirement based on correct facts. Nor did the landlord achieve the security he sought by imposing this requirement.

The landlord claimed that Norwegian citizenship, among other things, was a financial guarantee in the event it proved necessary to enforce payment of rent, and of financial claims for compensation. The Tribunal appreciated the landlord’s need for financial security, and stated that this was a legitimate objective. However, the landlord had not provided any elaborative explanation or documentation of the link between Norwegian citizenship and the attainment of this financial security.

Moreover, there are other, less radical, ways of ensuring financial protection than by excluding tenants who are not Norwegian citizens. Among other things, a landlord can require a deposit or guarantee.

Nor was the requirement in any way proportionate to the objective. The consequence of requiring Norwegian citizenship is to preclude everyone who does not have Norwegian citizenship from renting the apartment in question. This can be a great hardship. It would not

entail any major inconvenience of a practical or financial nature for the landlord to remove the requirement.

The landlord was ordered to stop the discriminatory advertising and rental practice, and to see to it that future housing advertisements are formulated in accordance with the provisions of the Rent Act and the Anti-Discrimination Act.

The administrative decision of the Tribunal was unanimous.

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Case 19/2006 – No differential treatment by private school on account of maternity leave in connection with appointment of substitute teacher

A woman applied for a temporary position as a teacher at a private primary school, but was not given the job. The woman attended the first round of interviews. She claimed that in conversations after the interview, the employer offered her the position, but withdrew the offer when she stated that she was pregnant. The employer denied having offered her a job, and claimed that it was the complainant herself who had wanted to withdraw from the appointment process.

The complainant did not come to the second round of interviews.

The entire Tribunal emphasised that the protection against differential treatment on account of pregnancy must be interpreted strictly, and that the prohibition applies to each step of the appointment process. This applies regardless of whether the person concerned would have been appointed to the position.

The Tribunal's majority (4) found that the school had not acted in breach of section 4, second paragraph, and section 3 of the Gender Equality Act. With regard to the content of the conversation between the complainant and the employer, it was her word against the latter's. The content of the conversation could therefore not be a circumstance that reversed the burden of proof under section 16 of the Gender Equality Act.

The complainant's statement was also weakened by the incomplete information in her job application. She had stated that she had Practical Educational Training (PPU), even though she did not complete this part of her teacher training programme until after the date of the job application and appointment. It was also improbable that the complainant was offered a job already after the first round of interviews.

Nor was it proved on a balance of probabilities that the complainant's qualifications were as good as or better than those of the person who was given the temporary position. At the time the appointment was made, the complainant lacked the PPU qualification. Since the school had applicants who had completed the PPU qualification, it would in any event not have been allowed to appoint the complainant to the temporary position.

The Tribunal's minority (1) found that the private school had breached the Gender Equality Act. It was proved on a balance of probabilities that the complainant was not invited to a second interview because she had informed the school that she was pregnant. The minority referred, among other things, to the fact that the school did not present its more detailed description of the actual circumstances until after the Gender Equality Ombud had issued her opinion. The minority also referred to the employer's statement to the Tribunal.

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Case 20/2006 – Partial coverage of course fee for women and a quota of 2/3 female participants in a course on Board work were not in breach of the Gender Equality Act.

Innovation Norway and Møre og Romsdal County issued invitations to a course that would qualify participants to work on governing boards. The course was developed in collaboration with the Norwegian School of Management (BI) and was to consist of three seminars and a 72-hour examination to be taken at home. The course would entitle participants to six credit points, and the course fee was NOK 6,000.

Møre og Romsdal County covered 50 % of the course fee for women whose employer did not cover the fee. The county covered no part of men's course fee.

Furthermore, two-thirds of the places in the course were reserved for women.

The Equality Tribunal found that these conditions were permitted under the provisions regarding affirmative action in section 3 a of the Gender Equality Act.

The Tribunal pointed to the fact that women are less well represented than men in the field in question. Quotas and course fee coverage could offer better opportunities for women who wished to be recruited as Board members.

Nor did the measures constitute a disproportionate intervention in relation to men. Given the actual participation of women of around 20 %, relatively strong differential treatment had to be accepted. Moreover, men were not excluded from the course, and they had the opportunity to obtain similar training through other educational programmes.

Courses in Board work are vocational training or vocational further education. Access to such courses is therefore covered by the EEC Equal Treatment Directive (76/207/EEC), which is part of the Agreement on the European Economic Area (EEA). Although the EU Court of Justice has prohibited quota arrangements whereby women are automatically given priority for positions in the public sector, a possibility has been provided to introduce quotas for women in vocational training.

The administrative decision of the Tribunal was unanimous.

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Case 21/2006 – Differences in pay for the military and civilian executive officers at the Ministry of Defence were not in breach of section 5 of the Gender Equality Act.

An employees' organisation demanded equal pay for civilian and military executive officers at the Ministry of Defence.

The Equality Tribunal found that there were no grounds for claiming that the differences in pay for the two groups were based on gender.

As regards the issue of indirect discrimination, the Tribunal stated:

“...on the one hand, a majority of the group affected by unequal pay (civilian employees) are men, and a majority of the comparison group (military employees) are also men. On the other hand, the percentage of the total number of women at the levels of position that are affected by this pay difference is clearly larger than the corresponding percentage of the total number of men at the same level of position, compare the statement of the European Court of Justice in Case C-167/97.”

The Tribunal nevertheless found no reason to go into this question in greater detail, as the Tribunal in any event found that the difference in pay was based on objective, non-gender-related factors, and that it was necessary and not a disproportionate intervention. The exception in section 3, fourth paragraph, of the Gender Equality Act was therefore applicable.

The differences in the groups' pay was partly due to the transfer of approximately 100 military personnel to the Ministry of Defence, including the Chief of Defence, when the Headquarters Defence Command Norway was closed down. The transfer led to a need for new expertise related to the management of the Defence Forces, crisis management and international collaboration on defence and security policy, which primarily had to be provided by military executive officers. Higher pay was required to recruit qualified military personnel in competition with other attractive positions in the defence establishment.

The difference in pay was therefore not in breach of section 5, cf. section 3, of the Gender Equality Act.

The opinion of the Tribunal was unanimous.

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The opinion of the Tribunal was unanimous.

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Case 22/2006 – Employer acted in breach of the Gender Equality Act when woman was given different work responsibilities upon her return from maternity leave

The parties disagreed on the content of the complainant's work responsibilities before and after her maternity leave. However, the Equality Tribunal found that her responsibilities had been changed after her leave.

The Tribunal found that the changes put the complainant in a less favourable position than prior to her taking maternity leave. The complainant had kept her former salary. However, a large part of the accounting tasks that she had had prior to taking leave had been taken away from her. The parties agreed that the complainant's tasks had been more varied before she went on leave, and that the tasks she had had at that time offered greater potential for developing and maintaining accounting expertise.

The Tribunal found that there were circumstances that gave reason to believe that there had been unlawful indirect differential treatment. The Tribunal referred to the fact that the substitute who was employed when the complainant went on leave, and who had since been

given permanent employment, was now carrying out the tasks that the complainant had been deprived of. The burden of proof had thus passed to the employer.

The employer was unable to satisfy his burden of proof. He did not prove on a balance of probabilities that reorganisation and higher turnover were the reasons for the complainant being given different work responsibilities after her maternity leave. The employer had not proved to a sufficient degree that all the employees in the company had been subjected to similar changes while the complainant was on leave.

The exception in section 3, fourth paragraph, of the Gender Equality Act was not applicable. The employer had argued that the new division of tasks was made on the basis of rational, operational assessments. The Tribunal stated that in principle these were objective grounds. However, the Tribunal considered that the employer had not proved on a balance of probabilities that he had weighty enough objective grounds to change the complainant's work responsibilities on account of her being away on maternity leave.

The changes in the complainant's work responsibilities were therefore in breach of section 3 of the Gender Equality Act.

The administrative decision made by the Tribunal was unanimous.

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Case 23/2006 – Woman applying for appointment to a permanent position as physical therapist subjected to differential treatment by municipality on account of maternity leave

A woman applied for a permanent position as a physical therapist in a municipality. She was ranked in second place among the candidates, and was not given the job. The woman was on maternity leave at the time the appointment was made and would have been unable to take up the position until some time thereafter.

A senior municipal staff member had a conversation with the complainant after the position was filled. In the course of the conversation he had expressed himself in a way that could be understood as meaning that the date on which the person could begin work had been of significance for the choice of who was to be ranked as the no. 1 candidate.

Furthermore, a witness stated that, prior to making the appointment, the municipal authorities had discussed with her how long the complainant planned to be on maternity leave and the fact that hiring the complainant would oblige the municipality to hire a temporary substitute. The witness did not perceive any negative emphasis on the maternity leave on the part of the municipality, but chose nonetheless to point out to the complainant that the length of her maternity leave could become an issue at the interview.

The municipality stated that the appointment was made on the basis of an assessment of personal suitability, and that emphasis was placed, among other things, on interdisciplinary skills. Although the municipality had had a positive impression of both applicants, the person

who was hired seemed to be most positive during the interview. The municipality gave no more specific explanation of why the person who was appointed was more personally suitable. The municipality judged the two applicants to be on a par with regard to relevant education and work experience.

In the light of the above, the Tribunal found that there were circumstances that gave reason to believe that the maternity leave had been a factor in the municipality's decision to choose a person other than the complainant. The burden of proof was thereby transferred to the employer.

The municipality's written recommendation of candidates for the position of physical therapist contained no grounds. Nor were the differences in the applicants' personal suitability documented or specified in any other way. The Tribunal therefore concluded that the municipality had not satisfied its burden of proof pursuant to section 16 of the Gender Equality Act.

Nor had the municipality proved or documented any circumstances that would justify making an exception pursuant to section 3, fourth paragraph, of the Gender Equality Act.

The appointment was therefore 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 24/2006 – Direct differential treatment on account of childbirth. Failure to arrange for an examination seen in the light of the legal effects of the candidate's not sitting for the examination

A woman student at the University of Stavanger failed an examination in spring 2005. She and the other students who failed were offered the opportunity to take a new examination on 9 August. Five days before the examination, she gave birth to a child. Because of the birth, she was still in the hospital on 9 August and therefore unable to sit for the examination. She was not offered the possibility of taking the examination at the hospital.

Because she did not get a passing grade in the examination, she was not admitted to the next year of the study programme, which meant one year's delay in her studies. Nor was she given the same opportunity as five other students who sat for the examination on 9 August and received the grade of "failed". On the initiative of the University, a special arrangement was made for the five students, enabling them to complete their studies with a delay of only six months.

The Equality Tribunal pointed out that differential treatment due to absence on account of childbirth is prohibited under section 3, second paragraph, no. 2. It is not sufficient to treat this type of absence in the same way as absence due to illness. Absence due to childbirth has special protection under both Norwegian legislation and EEA law.

The Gender Equality Act also covers omissions, cf. Proposition No. 77 to the Odelsting (2002-2001), pp. 27-28. The Tribunal therefore found that the question whether the woman specifically requested that the examination be held at the hospital could not be of decisive importance. The university was aware of her situation and should on its own initiative have considered making specially adapted arrangements. Had it done so, the university would have shown the same degree of initiative in respect of the woman who had given birth as in respect of the five students who failed a new examination on 9 August 2005.

In the light of the above, the Tribunal stated its opinion that the university's failure to make special arrangements for the examination on 9 August 2005, and the consequent failure to admit the student to further studies, constituted direct differential treatment pursuant to section 3, second paragraph, no. 2 of the Gender Equality Act.

The opinion was unanimous.

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Case 25/2006 – Woman not subjected to differential treatment by employer due to maternity leave in connection with her application for appointment to a permanent position as executive officer

A woman applied for one of three permanent positions as executive officer in a municipality just before taking maternity leave. She was invited to come for an interview, but was not offered a position. The employer had prepared a written recommendation of candidates for the position, stating its reasons. The woman was ranked in fourth position among the candidates. The appeal concerned only her relationship to the person who was ranked as number three. The parties agreed that the candidates who were recommended as first and second choice were better qualified than the complainant.

The Equality Tribunal considered the appointment in accordance with the provisions regarding indirect discrimination.

The Tribunal found that there were circumstances that gave reason to believe that the maternity leave had contributed to the woman's not being offered the position. The woman had had several temporary positions as executive officer in the municipality. She had also substituted for the person who resigned from one of the positions. Thus in actual fact she was applying for a position in which she had worked as a substitute. The municipality had not expressed any dissatisfaction with the job the woman was doing. The woman was pregnant at the time she applied for the job, and on maternity leave at the time the appointment was made. Based on the sum total of these circumstances, the Tribunal found that the burden of proof had passed to the municipality pursuant to section 16 of the Gender Equality Act.

However, the municipality had satisfied its burden of proof. The municipality considered that the complainant and the person who was recommended as the number three candidate had virtually equal education and experience, and regarded them both as qualified for appointment to the position. It was emphasised that only four applicants were found to be qualified for recommendation, out of a total of 60 applicants, eight of whom were invited to an interview. The complainant was recommended as the number four candidate, and the municipality was interested in employing her. The municipality was not certain beforehand that the three candidates who were ranked higher than the complainant in the recommendation would accept the job offer. When questioned, the municipality stated that it would have been no problem for them to employ the complainant, and if necessary, appoint a temporary substitute from among the 60 applicants for the positions until the complainant returned from maternity leave. The complainant's absence had not been an issue, neither at the time of the interview nor in discussions concerning the recommendation, because the municipality did not consider it to be a problem.

With regard to the question of the difference in the expertise of the complainant and the candidate ranked as number three, the municipality's representative pointed out in his statement to the Tribunal that importance was attached in the recommendation to several aspects of the applicants' expertise, including the fact that they can complement one another and the rest of the unit in terms of expertise. In view of the changes facing the municipality in connection with the merger of the institutions into NAV, the head of the office needed to appoint someone who could help to initiate and implement changes. The municipality wanted an *agent of change*. Several persons in the unit had the same non-formal qualifications as the complainant, but none of them had the same formal further education in economic counselling as the candidate ranked as number three. This further education was regarded as an extremely attractive resource, which the municipality wished to make use of. Combined with the municipality's assessment of candidate number three as being extremely well personally suited for the position, this was the decisive factor.

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.

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Case 26/2006 – An employer had not subjected a candidate to differential treatment on account of maternity leave in connection with her application for a permanent position as police lawyer.

A woman applied for a permanent position as a police lawyer while she was on maternity leave. She had held the position in question as a substitute for a period of two to three years prior to the appointment. She was invited to come for an interview, but was not offered the position. The employer had prepared a written list of candidates recommended for the post, stating the reasons. The woman was ranked as number three.

The woman was no longer in the period of six weeks after birth, and the Equality Tribunal therefore considered the appointment on the basis of the provisions regarding indirect discrimination.

The majority of the Tribunal (4) found that there were circumstances that gave reason to believe that the maternity leave had contributed to the woman's not being offered the position. The woman was on maternity leave at the time the appointment was made. She had held the position as police lawyer in question for two to three years prior to the position being advertised as vacant. During this period she had not received any clear feedback that the employer was dissatisfied with the way she was doing her job as police lawyer. The burden of proof thus passed to the employer pursuant to section 16 of the Gender Equality Act.

A minority (1) disagreed that there were circumstances entailing that the burden of proof was on the employer. The minority referred to the fact that the complainant's allegation must be supported by the chain of events and the external circumstances of the case, which necessitates an assessment of the specifics of the case. An allegation by the complainant, or the circumstance that she was on maternity leave at the time the appointment took place, is not sufficient in itself.

The minority referred to the following: the position was advertised as vacant at the time in question because the person who was permanently employed in the position had given notice. The fact that the complainant was on maternity leave at that time was a coincidence. The position was advertised in the usual manner, both internally and externally. In the recommendation of candidates, it was emphasised that the complainant had substituted in the position for a long time, but that she was not considered the top candidate because the two persons ranked ahead of her in the recommendation were considered to be better qualified in terms of the qualifications required for the position. Furthermore, the information that was presented regarding the applicants' qualifications gave no reason to believe that any person had been passed over in breach of the Gender Equality Act. Police lawyers on maternity leave are a familiar situation for the police district, and there were no specific grounds for believing that the complainant was disadvantaged because she was on maternity leave in this case. In this connection, the minority pointed to the fact that the applicant ranked as number two candidate for the position was also on maternity leave at the time the appointment was made.

The entire Tribunal found that the employer had in any event satisfied his burden of proof. In the light of the written recommendation, the Tribunal found it to be proven on a balance of probabilities that the person appointed was best qualified for the advertised position. He had longer and broader-based relevant work experience. The requirements listed in the advertisement were relatively general and did not focus on any specialised expertise in certain types of cases. This corresponded well with his all-round work experience. He had also worked as a lawyer about three years longer than the woman who lodged the appeal. The conclusion that he was best qualified was also supported by the recommendation's description of his personal suitability for the position.

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.

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Case 27/2006 – The appeal against the Equality and Anti-Discrimination Ombud’s summary dismissal of a case regarding possible age-based discrimination in connection with an application for a personal post-doctorate grant was not allowed/rejected*

A man of almost 50 years of age, whose application for a personal post-doctorate grant from the Research Council of Norway had been rejected, wished to have an assessment of whether the rejection was in breach of the prohibition against age-based discrimination laid down in Chapter 13 of the Working Environment Act.

The Equality and Anti-Discrimination Ombud summarily dismissed the case. The grounds for doing so were that the relationship between him and the Research Council of Norway was not an employment relationship within the meaning of the Working Environment Act, and therefore does not fall within the scope of the protection against discrimination that the Ombud has been charged with enforcing.

Based on an interpretation of the scope of the prohibition of age-based discrimination in section 13-1 of the Working Environment Act, the Equality Tribunal endorsed the Ombud’s conclusion that within the meaning of the Working Environment Act there had been no employment relationship between the complainant and the Research Council of Norway, and that the Ombud therefore had to summarily dismiss the case.

The Tribunal’s assessment of the scope of chapter 13 of the Working Environment Act was related to the specific case at hand, and thus also to the specific relationship between the complainant and the Research Council of Norway. The Tribunal therefore did not make a general assessment of whether the relationship between the Research Council of Norway and applicants in other contexts, or other configurations in which a position is financed by a “third party under labour law” to whom an application is addressed, may fall within the scope of Chapter 13 of the Working Environment Act.

The administrative decision was unanimous.