

Case 1/2008 – A hotel refused two women access on the grounds of gender and ethnicity.

*** The whole case is translated into English, see *Cases in English*.**

Two women with an Asian background entered a hotel in downtown Oslo and asked for a room for the night. When the receptionist on duty discovered that the women's home address was in the Oslo area, they were asked why they were not going to spend the night at home. The women were subsequently refused a room at the hotel.

The hotel had prepared written guidelines permitting staff to refuse access to people domiciled in Oslo and its environs.

The women asked for an explanation as to why they had been refused a room. The receptionist informed them of the hotel's guidelines, explaining that the reason was that guests resident in Oslo and its environs could be prostitutes or drug addicts who sought access to the hotel in order to cause trouble.

The Tribunal assessed the case pursuant to section 3 of the Gender Equality Act and section 4 of the Anti-discrimination Act.

The Tribunal found circumstances which gave grounds to believe that the hotel had attached negative importance to the women's gender and ethnicity background when they were refused a hotel room.

In this connection, the Tribunal referred to the guidelines which nevertheless gave staff members access to offer a room to guests whose home address is in Oslo and its environs. A concrete assessment was thus made in each individual instance.

The women had no luggage with them, only shopping bags, when they arrived at the hotel. They explained that they were decently dressed, were not wearing make-up, and that they were not intoxicated.

Further, the Tribunal attached importance to the receptionist's comment about prostitutes and drug addicts. This explanation of the guidelines was given in spite of the fact that there was nothing to indicate that the two women could be linked to the risk groups which the hotel with its guidelines wished to protect against.

The burden of evidence had therefore passed to the hotel pursuant to section 16 of the Gender Equality Act and section 10 of the Anti-discrimination Act.

The hotel was unable to substantiate that only circumstances other than gender and ethnicity lie behind the two women being refused a room. Beyond a general reference to the fact that the guidelines give access to turn away people domiciled in Oslo and its environs, the hotel offered no explanation as to why the receptionist considered it necessary to use the opportunity to refuse access in this instance. The receptionist was aware that discretion could be shown.

The hotel had thus acted in breach of section 3 of the Gender Equality Act and section 4 of the Discrimination Act by refusing the two women a hotel room.

The Tribunal's administrative decision was unanimous.

Case 2/2008 – A hospital discriminated on the grounds of ethnicity and skin colour in connection with the appointment of a physician.

A physician whose ethnic background was from Iran wished to specialize in the field of cardiac surgery. He therefore applied for two training positions that were announced at a

hospital. He was not offered either of the two positions and felt he had been passed over on the grounds of ethnicity and skin colour.

The appointment had occurred before 1 January 2006. The Tribunal therefore considered the case pursuant to the previous Working Environment Act, Chapter XA Equal treatment in working life, which included a ban on discrimination on the grounds of, among other things, ethnicity, skin colour and age.

A majority of the Tribunal (3) found there were circumstances that gave grounds to believe that the hospital attached importance to the complainant's ethnicity and skin colour in connection with the appointment.

The majority attached importance to the fact that the complainant had better formal qualifications than one of the two applicants who was offered the position.

Further, the majority referred to the fact that the complainant's work experience in the field of cardiac surgery had been taken into account in both the recommendation and in the appointment form. None of the appointment documents prepared by the divisional management made mention of the most relevant part of the complainant's work experience. This happened in spite of the fact that part of the complainant's work experience in the field of cardiac surgery took place at the hospital in question.

This omission corresponded with the complainant's subjective perception of having been systematically overlooked by the divisional management during the time he worked at the hospital, which the complainant related to his ethnic background and skin colour.

The burden of proof therefore passed to the hospital pursuant to section 54 I of the Working Environment Act.

The hospital's grounds for why the complainant was not offered the position were only documented to a limited extent. The appointment documents signed by the divisional management contained only a brief assessment of education and work experience. The hospital was therefore unable to substantiate that there had been no discrimination.

The majority therefore concluded that the hospital had acted counter to Chapter XA of the previous Working Environment Act by attaching importance to the complainant's ethnicity and skin colour.

The minority (1) also found that the hospital had discriminated against the complainant in breach of Chapter XA of the former Working Environment Act. However, the minority did not find that this had occurred on the grounds of age.

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Case 3/2008 – An employer did not discriminate against a part-time employee on the grounds of age and disability.

A 63-year-old employee at a tax office felt she had been discriminated against on the grounds of age and disability. The discrimination related to the fixing of salary, professional development, course participation and the sharing of office space with another part-time employee.

The case concerned circumstances both before and after 1 January 2006. The Tribunal therefore assessed the case pursuant both to Chapter 13 of the current Working Environment Act and to the corresponding rules laid down in the Chapter XA Equal treatment in working life of the previous Working Environment Act.

The Tribunal found no basis for claiming that the complainant had been treated any worse on the grounds of disability or age. The Tribunal also referred to the fact that the employer has implemented measures in order to help the complainant in her work situation.

The complainant also claims that a negative comment on the part of the employer was related to her disability. The employer did not confirm that the comment had been made or that it was related to the complainant's disability. Nor was the claim supported by external circumstances in this case.

The employer had thus not acted in breach of the Working Environment Act's ban on discrimination and harassment.

The Tribunal's administrative decision was unanimous.

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Case 4/2008 – The Football Association of Norway (NFF) did not discriminate against a women's football team on the grounds of gender

A women's football team in the Norwegian Premier League submitted an application to the Football Association of Norway (NFF) for a dispensation in order to contract in a keeper outside the stated transfer windows, and was refused. The team felt it had been discriminated against compared with two men's teams, which had been granted a dispensation.

The transfer rules of the Football Association of Norway forbid football teams from contracting in players from another team, outside the stipulated transfer windows. NFF may in special cases grant a team a dispensation to carry out such a contracting in (see section 15-1, litra d of the Transfer Rules).

The Tribunal considered the case pursuant to section 3 of the Gender Equality Act. According to the reasoning behind the complaint submitted to the Tribunal, any discrimination of the football team would have to be considered as discrimination of the women who make up the team. It was not of crucial importance that in formal terms the complainant was a sports team. The female players are protected by the Gender Equality Act.

In addition, the Tribunal referred to section 8 of the Gender Equality Act regarding associations, and the question of whether the provision provides limitations to the scope of

Gender Equality Act in respect of the internal workings of associations, and not only for provisions concerning membership. At the level at which this football team found itself, NFF's practice played an important role in the professional development and career prospects of the players. The Tribunal referred to the fact that a professional contract is required in order to play at Premier League level. As such, the Football Association of Norway was clearly subject to the provisions of the Gender Equality Act in this area. The Tribunal found for this reason that it was not necessary to look more closely at the scope of the provision and the extent of the Tribunal's competence.

The Tribunal found no indication that NFF's handling of dispensation applications ran counter to section 3 of the Gender Equality Act. Among other things, the Tribunal referred to the fact that the Football Association of Norway makes a discretionary overall assessment, where regard for similar competitive terms in each league is taken into account.

The Football Association of Norway had thus not discriminated against the football teams on the grounds of gender.

The Tribunal's administrative decision was unanimous.

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Case 6/2008 – A hotel attached importance to pregnancy and maternity leave in connection with the appointment of a chef. This was in breach of section 4 second paragraph of the Gender Equality Act, cf. section 3.

A woman applied for a position as a chef at a newly opened hotel. She wanted a full-time position, but was instead offered a contract as an occasional fill-in chef.

The Tribunal found that the hotel had attached importance to the fact that the woman was pregnant when they chose not to offer her a permanent position.

Among other things, the Tribunal attached importance to the explanation given by one of the other chefs at the hotel. She mentioned, among other things, a conversation between the pregnant woman and one of the hotel managers, in which the manager stated that they would rather hire someone who could work for longer than six months.

Further, the Tribunal pointed to the fact that the woman's actual workload as an occasional fill-in virtually constituted a full-time position. There was therefore much to indicate that the offer of work as an extra helper was in any case illegal pursuant to the ban on temporary appointments in section 14-9 of the Working Environment Act.

That the hotel actually needed a chef in a full-time position was further emphasised by the fact that another chef was hired in a full-time position several months after the pregnant woman was hired as an occasional fill-in.

Thus, the hotel had an actual need for a chef in a full-time position but nevertheless omitted to offer her a permanent position as a chef. This put the hotel in a situation in which the hotel management knew that the woman was pregnant.

The hotel had thus breached the ban on discrimination on the grounds of pregnancy and maternity leave pursuant to section 3 of the Gender Equality Act.

The Tribunal's administrative decision was unanimous.

Case 8/2008 – A municipality discriminated on the grounds of age and gender in connection with the appointment of a person to a temporary position and the subsequent permanent position as a fire-fighter. This was in breach of section 13-1 of the Working Environment Act and section 3 of the Gender Equality Act.

A female fire-fighter aged 41 who was employed in the part-time fire brigade applied first for a temporary position with the opportunity of an extension and subsequently a permanent position in the full-time fire brigade.

A male fire-fighter aged 27 who was also employed in the part-time fire brigade was appointed to both the temporary position and subsequently to the permanent position.

The Tribunal found that negative importance had been attached to the complainant's age in connection with the appointments. In the announcement, it was stated: "*Applicants should be between 22 and 35 years of age*". In the case material concerning the position as a substitute, it was explicitly stated that importance should be attached to age when assessing the applicants. Further, it was stated: "*Of the applications received, there is one applicant – C – who fulfils the requirements set forth in the announcement.*" In the case material concerning the permanent position, it was stated: "*As regards the announcement, age has been included ...*" and "*C is 27 years old and within the preferred age group (see the announcement).*" In the recommendation, the applicants were ranked according to age. The complainant, who was the oldest of the three applicants, was recommended as number three.

The exemption in section 13-3 second paragraph of the Working Environment Act was not applied.

The Tribunal also found it proven that negative importance was attached to the complainant's gender in connection with the appointments.

Among other things, the Tribunal attached importance to the fact that the complainant was just as qualified as the man who was offered the positions. Only the male fire-fighter who was appointed to the positions was recommended for the substitute position. The complainant's qualifications were not assessed at all, despite the fact that she had worked at the municipal fire brigade for four years and that both unions pointed out that the complainant, as a woman, had the first right of refusal to the position.

Further, the announcements contained no wording urging women to apply, despite the fact that women are clearly underrepresented in the municipal fire brigade. The Tribunal pointed out that pursuant to section 1 a of the Gender Equality Act the municipality has a duty to work actively,

regularly and in a targeted manner in order to achieve equality between the genders within its operations.

The Tribunal also attached importance to the link between the lack of assessment of the complainant as being qualified for the temporary position, the fact that she was the only woman in a male-dominated environment and that after she had brought up matters worthy of criticism she was considered by her employer to be a difficult employee.

The municipality's appointments thus represented a breach of both the ban on discrimination on the grounds of age in section 13-1 of the Working Environment Act and the ban on discrimination on the grounds of gender in section 3 of the Gender Equality Act.

The tribunal's decision was unanimous.

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Case 9/2008 – The opportunity for outdoor exercise and the offer of physical activity for female prisoners in Stavanger prison are not in breach of section 3 of the Gender Equality Act.

The Tribunal considered whether female prisoners in Stavanger prison have less opportunity for outdoor exercise and other physical activity than the male prisoners. Women and men have separate exercise yards in the prison. The exercise yard used by the male prisoners is proportionately larger than the yard in which women are offered outdoor exercise.

The Tribunal considered the case pursuant to section 3 of the Gender Equality Act. The large exercise yard, used by the male prisoners, allows for a greater degree for physical activity. The Tribunal found for this reason that in order to secure an equal offering for female and male prisoners the large exercise yard should be made available to the female prisoners.

Stavanger prison stated that the women may apply to use the large exercise yard. The Tribunal assumed that the processing time for such applications is not too long, and that it is sufficient to justify the applications with a wish to take part in physical activity. The Tribunal found that the threshold for granting access was low.

Against this background, the Tribunal found that the opportunity for outdoor exercise and the offer of physical activity is not in breach of the Gender Equality Act.

The Tribunal's opinion was unanimous.

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Case 11/2008 – A bakery did not contravene the prohibition on discrimination on the basis of age in connection with appointment to a management position. Assessment under section 13-1 of the Working Environment Act.

The Tribunal considered whether a bakery gave negative emphasis to age in its decision not to appoint a man to a management position within the business.

The parties disagreed about whether the man had been offered a position with the bakery. However, the prohibition on discrimination could already have been contravened if the alleged differential treatment excluded the man from further consideration. Accordingly, the Tribunal did not have to decide whether the man had been offered the position.

The protection against age discrimination applies to the entire appointment process, so that it was also not decisive that the position was neither announced nor newly established.

Age formed an important part of the reason given in the bakery's letter of rejection. The Tribunal therefore concluded that there were circumstances that gave reason to believe that age was the cause of the rejection. The bakery therefore had to substantiate that, nevertheless, no emphasis had been given to age in making the decision.

The Tribunal found the bakery's account of the assessment carried out of the man's suitability for the position to be believable. After the interview, the bakery obtained a reference from the man's employer, which stated that the man had been gradually relieved of his responsibilities as production manager. The bakery was therefore not interested in offering the man a corresponding position in its own business. The Tribunal concluded that it had been documented that the bakery had received negative information about the man's suitability for the position. The bakery therefore succeeded in substantiating that suitability alone was decisive, and that no negative weight had been attached to age in the assessment.

The bakery made the alternative submission that, in light of the business's management change strategies, the man's age would make hiring him pointless. The Tribunal stated that emphasising age may in certain cases be lawful if based on a business continuity motive. As the bakery had substantiated that the rejection took place for reasons other than age, the Tribunal did not need to consider the exclusionary provision in more detail.

Accordingly, the bakery had not contravened the prohibition on discrimination on the basis of age in not appointing the man to a position in the business.

The decision was unanimous.

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Case 12/2008 – A ministry did not contravene the prohibition on discrimination on the basis of age in connection with the development of the complainant's pay. Assessment under section 13-1(1) of the Working Environment Act, see also section 13-2(1)(c).

The complainant, who was born on 1 May 1944, had been employed by a ministry since 1994. He believed himself to have been discriminated against on the basis of age in connection with the development of his pay between his 58th birthday, when he became a senior adviser, and the present day.

The complainant was promoted to the position of senior adviser in 2002. His salary was at pay grade 55, the lowest pay grade for senior advisers. The complainant was placed in pay grade 56 in the central pay settlement of 2005. The complainant did not receive pay rises in

the local pay settlements of 2004 and 2006. He was awarded a pay increase of two pay grades in the local pay settlement of October 2007, putting his salary at pay grade 58.

The complainant pointed out that the average salary of the other senior advisers in the ministry was at pay grade 62 in 2004, pay grade 63 in 2005 and 2006, and pay grade 65 in 2007.

As the prohibition on age discrimination came into force in Norwegian law on 1 May 2004, and Norwegian legislation did not contain any prohibition on age discrimination before this point in time, the Tribunal limited the case to matters arising after this point in time, see section 18, first paragraph, of the Anti-Discrimination Ombud Act.

The Tribunal pointed out that the fact that the complainant's pay increased more slowly than that of other senior advisers, and the fact that he was 64 years old, were not in themselves sufficient to demonstrate the existence of discrimination. There must be circumstances in the case that show that it is age, and not other factors, which has caused the slower pay growth. Pursuant to the burden of proof rule in section 13-8 of the Working Environment Act, the complainant has the initial burden of proof.

After reviewing the submitted documents and other information presented in the case, the Tribunal concluded that none of the circumstances of the case gave reason to believe that the complainant's age had been given negative emphasis in connection with the development of his pay.

Accordingly, the ministry had not contravened the prohibition on age discrimination in the Working Environment Act.

The opinion of the Tribunal was unanimous.

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Case 13/2008 - Vinmonopolet applied differential treatment on account of maternity leave in connection with the appointment of a shop manager. Section 4, second paragraph, and section 3 of the Gender Equality Act.

A pregnant woman applied for the position of manager of the shop in which she worked as deputy manager. She was invited to an interview, but was not nominated for the position. Two men, one the deputy manager of another shop, the other the temporary manager of a third shop, were nominated as the no. 1 and no. 2 candidates. The recommendation noted that the complainant was to go on maternity leave.

The Tribunal pointed out that the prohibition on discrimination relates to the entire recruitment process, not only the final choice of who is to be appointed. The prohibition could already have been contravened if the alleged differential treatment excluded the complainant from further consideration for the position.

The Tribunal concluded, on the basis of a united, overall evaluation of the submitted documents and the oral statements made at the Tribunal hearing, that it was most likely that unfavourable weight was given to the complainant's pregnancy and the maternity leave during the recruitment process.

The Tribunal pointed out that the complainant explained during the interview that she was pregnant, and that she was subsequently not nominated for the position. The Tribunal pointed out that it was apparent from the recommendation that, in Vinmonopolet's view, both the person nominated as the no. 2 candidate and the complainant needed a little more time before being ready for a shop manager position. Further, Vinmonopolet expressed uncertainty about whether the person nominated as the no. 2 candidate would be able to deal with the challenges of managing the shop in question. The Tribunal also pointed out that the complainant had at times acted as stand-in in the position in question, and that the employer was well satisfied with her performance.

The Tribunal was further of the view that the note concerning the maternity leave in the recommendation indicated that the complainant's pregnancy and the maternity leave were a consideration in Vinmonopolet's further evaluation of the candidates. The Tribunal also took some account of the complainant's statement concerning what took place during the interview and what was communicated during a conversation between her and a person who interviewed her, even though the person had a different view of the conversation than the complainant.

Accordingly, Vinmonopolet had contravened section 4, second paragraph, of the Gender Equality Act (see also section 3), during the recruitment process relating to the appointment of a shop manager.

The opinion of the Tribunal was unanimous.

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Case 15/2008 – An appeal against a dismissal decision of the Equality and Anti-Discrimination Ombud did not succeed. Assessment under section 3, fifth paragraph, of the Anti-Discrimination Ombud Act.

The case concerned the question of whether the reservation of parking spaces for women in certain parking garages in Stavanger contravened section 3 of the Gender Equality Act.

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

The Ombud pointed out that male motorists were not excluded from parking in the same parking garage, and would still have many spaces to choose from. In the Ombud's view, the case did not raise equality issues of such significance as to justify pursuing the case, taking into account the Ombud's available resources and caseload.

The Tribunal stated that there were arguments both for and against hearing the case, and that the Ombud's assessment could have been of interest.

Nevertheless, following an overall evaluation, the Tribunal concluded that there were no grounds for reviewing the Ombud's assessment of whether it was appropriate to dedicate more resources to the case in question.

The appeal was therefore dismissed.

The decision of the Tribunal was unanimous.

Case 16/2008 – A hospital applied differential treatment on account of maternity leave in connection with the appointment of a temporary doctor.

A woman doctor was appointed to a temporary position in connection with her specialist training at a hospital. The temporary position ran from 22 February to 31 August 2006. She was pregnant when appointed to the new temporary position, with a due date three weeks after 31 August 2006. The hospital was aware of this.

The hospital thus chose an end date for the temporary position that coincided with the expected start of the woman's maternity leave.

The hospital did not succeed in linking the choice of the end date to the end of other employees' leaves of absence. The most obvious person for the woman to have replaced was expected to return from maternity leave well into 2007. Accordingly, there was no obstacle to the temporary appointment of the woman for a significantly longer period than until 31 August. Nor were there any rival candidates.

The Tribunal therefore concluded that there were circumstances that gave reason to believe that the maternity leave had influenced the hospital's decision to limit the temporary position to 31 August 2006. The burden of proof therefore shifted to the employer pursuant to section 16 of the Gender Equality Act.

The hospital did not submit any documentation relating to the assessments carried out when choosing the end date for the temporary position. Nor was any alternative reason for the choice of end date given that could substantiate that the end date was not chosen because of the maternity leave.

Moreover, the hospital had not proved or documented matters that could justify an exception pursuant to section 3, fourth paragraph, of the Gender Equality Act.

The hospital had therefore contravened section 3 of the Gender Equality Act.

The opinion of the Tribunal was unanimous.

Case 17/2008 – A computer company did not apply differential treatment on the basis of ethnicity or skin colour pursuant to section 4 of the Anti-Discrimination Act.

A man applied for a part-time job in a computer company's test team. He had lived in Norway for most of his life, and spoke fluent Norwegian.

The man was invited to an interview while he was studying in Germany. He travelled to Norway to participate in the interview. His job application was rejected after the interview.

He claimed that the rejection was due to his ethnic background and skin colour.

The Tribunal was of the view that no facts had been documented or otherwise substantiated that indicated differential treatment on the basis of ethnicity or skin colour. Accordingly, the burden of proof did not shift to the computer company pursuant to section 10 of the Anti-Discrimination Act.

The rejection of the job application did not contravene section 4 of the Anti-Discrimination Act.

The decision of the Tribunal was unanimous.

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Case 18/2008 – An upper secondary school contravened the prohibitions on discrimination on the basis of ethnicity and language in section 4 of the Anti-Discrimination Act in connection with the appointment of a permanent teacher.

A woman born in Guyana in South America applied for a permanent position as a teacher at an upper secondary school at which she worked as a temp. The woman was not nominated for the position. Only the woman who was appointed to the position was nominated.

The Tribunal pointed out that the prohibition on discrimination applies to the entire recruitment process, not only the final choice of who is to be appointed. The prohibition may already have been contravened if the alleged differential treatment excluded the complainant from further consideration for the position.

The Tribunal concluded that there were facts that gave reason to believe that the school had attached importance to ethnicity and language during the appointment process, see section 10 of the Anti-Discrimination Act.

The Tribunal pointed out that the woman's relevant work experience at the school, and her education, were under-reported in the expanded list of applicants. Further, it took an unusually long time for the woman's expertise to be recognised when she was appointed to a temporary position at the school. She had also previously applied for permanent positions at the school without being offered a job.

The Tribunal further pointed out that the recommendation noted that the woman spoke "somewhat unclear Norwegian". The Tribunal was of the view that such a note would not

have been made if the applicant had been of Norwegian ethnicity, and therefore concluded that there was an obvious connection with the applicant's ethnic background.

Finally, the woman was not even nominated for the position. Even though the Tribunal did not undertake a complete comparison and ranking of the applicants, it pointed out that both applicants appeared qualified for the position. The woman both had greater experience at the school and had completed more extensive higher education than the woman who was nominated and appointed.

The school therefore had to substantiate that weight had only been given to grounds other than language and ethnicity when it failed to nominate the woman.

The Tribunal concluded that the school had not sufficiently substantiated that ethnicity and language had not played a disadvantageous role in the recruitment process.

The school had acknowledged under-reporting the woman's experience and education, and that she should have been nominated as the number two candidate.

The school did not provide an explanation of why a single applicant had been treated unfavourably in relation to all of the aforementioned points, and did not succeed in showing that this was not connected to ethnicity/language. Nor could the school show that corresponding inaccuracies had occurred in relation to applicants/employees of Norwegian ethnic origin.

The school had therefore contravened the prohibitions against discrimination on the basis of ethnicity and language in section 4 of the Anti-Discrimination Act.

The opinion was unanimous.

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Case 19/2008 – StatoilHydro ASA did not apply differential treatment on account of gender reassignment or age in connection with the appointment of North Sea process technicians.

A woman applied unsuccessfully for a job as a process technician in StatoilHydro's North Sea operations. She had worked in Hydro's onshore industrial operations and North Sea supply operations for many years.

The woman had undergone a sex change operation some years previously. She was 54 years old at the time she applied.

The Tribunal took the view that gender reassignment is a relevant basis of discrimination under the Gender Equality Act. This interpretation corresponds with the European Court of Justice's treatment of cases under Equal Treatment Directive 76/207/EEC.

However, the Tribunal found no connection between age or gender reassignment and any negative assessment of the woman's job application.

Those who were appointed were distributed fairly evenly across the various age groups from 20 to 50. Two of those appointed were over 50 years old. A key argument for the appointments that were made had been to safeguard current employees during an adjustment phase. The consideration of achieving a balanced age profile had constituted a more general, overarching backdrop to the whole appointment process, which had covered various types of North Sea position.

Moreover, no facts were documented or otherwise substantiated that indicated differential treatment on account of gender reassignment. There were numerous applicants for the positions. The complainant had worked for the company for many years, and had been given a new position in offshore supply after the employer had become aware of the gender reassignment.

Accordingly, the burden of proof did not pass to StatoilHydro ASA pursuant to section 13-8 of the Working Environment Act or section 16 of the Gender Equality Act.

StatoilHydro's rejection of the woman's job application did not contravene section 13-1 of the Working Environment Act or section 3 of the Gender Equality Act.

The decision of the Tribunal was unanimous.

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Case 21/2008 – An appeal against the Ombud's dismissal of a case succeeded. The case concerned the effect of the Gender Equality Act in relation to residences that could only be sold to and occupied by unmarried women.

The appellant was of the view that the Ombud should assess whether the following clause contravened the Gender Equality Act:

THE FLAT IS SUBJECT TO THE PROVISIO THAT OCCUPATION/OWNERSHIP IS RESTRICTED TO UNMARRIED WOMEN.

The block of flats was built by Supreme Court advocate Elise Seim, who believed it to be unfair that women in the 1920s were not permitted to purchase their own flats. All of the flats were therefore reserved for financially independent, single women, and became a symbol of gender equality.

The Ombud dismissed the case pursuant to section 3, fifth paragraph, third sentence, of the Anti-Discrimination Ombud Act.

In special cases, the Ombud may drop a case if he or she finds no grounds for dealing with it any further.

The Ombud referred to the earlier decision of the Gender Equality Board of Appeals in case 8/2003, in which the proviso of Kvindernes Boligselskap AS (a women's housing association) was considered. The Appeals Board concluded unanimously that there was no contravention of the act's prohibition on direct differential treatment of men. The Appeals Board gave weight to the fact that the matter was in the grey zone as regards what the act is

intended to regulate, the lawfulness of establishing associations with similar purposes, the fact that the flats shared bathrooms and toilets, and the far-reaching consequences a different result would have for the status quo.

The Tribunal allowed the appeal, meaning that the Ombud has to deal with the practical aspects of the case.

The Tribunal took the view that there is more room for making new assessments when the decision was made by the former Gender Equality Board of Appeals.

The Tribunal further pointed out that information submitted in the case indicated that the circumstances might have changed significantly since the Appeals Board made its decision in 2003. At least one of the flats in the block in question now had its own bathroom and toilet. It would be natural during a full hearing of the case by the Ombud to investigate whether other flats also now had their own bathrooms and toilets. Moreover, the Appeals Board's reference to the matter being in the grey zone of the Gender Equality Act would today have to be considered in the light of subsequent legislative amendments and the case law of the Tribunal relating to other bases of discrimination in the area of housing.

The decision was unanimous.

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Case 22/2008 – An appeal against the Ombud's dismissal of a case did not succeed. The case concerned the effect of the Gender Equality Act in relation to spouse's pensions.

A woman asked the Ombud to consider whether the rules in the Marriage Act relating to divorcees' entitlement to spouse's pensions contravene the Gender Equality Act. The issue was whether the stricter requirements that came into force on 1 January 1993 constituted indirect discrimination pursuant to section 3 of the Gender Equality Act.

The woman had previously been refused a spouse's pension because she did not satisfy the requirements of the new rules. The refusal had been upheld in a judgment of the Supreme Court.

The Tribunal assessed the case pursuant to section 3, fifth paragraph, third sentence, of the Anti-Discrimination Ombud Act:

In special cases, the Ombud may drop a case if he or she finds no grounds for dealing with it any further.

The Tribunal found no grounds for reviewing the Ombud's decision to dismiss the case. The Tribunal emphasised that the Supreme Court had concluded that the application of the new statutory rules to the pension application of the woman in question did not have a clearly unreasonable or unfair retroactive effect, see Article 97 of the Constitution. The question of whether the statutory rules were unreasonable towards the woman and other widows had therefore been considered by the Supreme Court.

The assessments relating to indirect differential treatment of women did not involve a substantially different balancing exercise than the one undertaken by the Supreme Court in its assessment of the reasonableness of the matter. Few questions of significance to gender equality therefore remained.

Accordingly, the appellant did not succeed.

The decision was unanimous.

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Case 23/2008 – Harstad Municipality’s remuneration of two charge nurses did not contravene the Gender Equality Act. Comparison, under section 5 and section 3 of the Gender Equality Act, with four male technical coordinators employed by the municipality in the technical sector.

*** The whole case is translated into English, see *Cases in English*.**

Two woman charge nurses claimed the same pay as four male technical coordinators. All six were employed by Harstad Municipality.

The Tribunal took the view that the work carried out in the relevant charge nurse positions was equal in value to the work carried out in the relevant technical coordinator positions. This was based on an overall assessment of the skills required in the positions, the responsibility involved, and the working conditions.

In its assessment, the Tribunal emphasised the aspect of ensuring the effectiveness of the equal pay provision. It pointed out, among other things, that the real skill requirements of the positions were the same. Further, the two kinds of position were on the same organisational level within the municipality.

The most important difference between the positions was the substance of the management responsibility. The charge nurses had greater management responsibility related to supervision and responsibility for residents, while the management responsibility involved in the relevant technical coordinator positions primarily related to the coordination of technical operations, including the coordination of municipal and hired-in personnel, and subject responsibility. The Tribunal pointed out that one of the aims of the equal pay provision and the job evaluation is to adjust upward professions typically chosen by women, and that the same weight should therefore be attached to responsibility for people as to responsibility for tangible assets.

The Tribunal concluded that the differences in pay were not based on gender, but on other factors. However, the Tribunal pointed out that even apparently gender-neutral pay settlement norms may contravene the prohibition on indirect discrimination in section 3, third paragraph, of the Gender Equality Act.

The Tribunal took the view that, as the profession of charge nurses is dominated by women and the profession of technical coordinators is male-dominated, the pay differences had a distorting gender-related effect. The pay differences therefore basically contravened the prohibition on indirect discrimination.

However, the municipality succeeded in substantiating that the pay differences were objectively justified, and that the higher pay was a suitable and necessary means of retaining the technical coordinators in question.

The technical coordinators in question had developed specialist expertise through their long employment with the municipality, and they held key positions in the municipality. It would be difficult for the municipality to replace this expertise. Taking account of this fact when setting the technical coordinators' pay was good personnel policy, given the fierce general competition in relation to the recruitment and retention of engineers and the resulting upward pressure on the level of ordinary engineers' salaries.

The Tribunal split into a majority and a minority in relation to the assessment of proportionality:

The majority (4) took the view that it would be unreasonable if, in this case, the municipality was unable to use pay as an instrument for retaining the technical coordinators in question. The exception in section 3, fourth paragraph, therefore applied, and the matter did not contravene section 5 (see also section 3), of the Gender Equality Act.

The minority (1) pointed out that giving weight to market-related considerations would have a distorting gender-related effect, and that this would have major consequences from a gender equality perspective. The minority took the view that the differential pay contravened the Gender Equality Act.

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Case 24/2008 – The Football Association of Norway contravened the prohibition against discrimination on the basis of pregnancy in connection with the nomination of international football referees. Assessment under section 3 of the Gender Equality Act.

Every year, the Football Association of Norway nominates Norwegian football referees for international assignments. Three woman referees were nominated for the 2007 international season. The recommendation was sent to FIFA at the end of September 2007.

One of the three woman referees who had been nominated in 2006 was not nominated in 2007. She had given birth in August 2006, and had not refereed international or national matches since the autumn of 2005. Her lack of refereeing practice during the 2006 season and lack of availability in 2007 formed part of the Football Association's basis for not nominating her.

The Tribunal pointed out that the case related to refereeing assignments at such a level that the Football Association's practice affects the referees' professional development. Among other things, the referees receive fees for the assignments, which in sum can provide a substantial income each season. There was therefore no need to consider in more detail the scope of the provision in section 8 of the Gender Equality Act or the extent of the Tribunal's competence.

The Tribunal then considered the case in the light of the prohibition against differential treatment on the grounds of pregnancy and childbirth in section 3 of the Gender Equality Act.

The Tribunal concluded that it was clear that the Football Association of Norway had given weight to pregnancy and childbirth-related absence in connection with the nomination of FIFA referees for 2007.

Moreover, the matter was not lawful under the exceptions.

The Football Association had argued that the nomination of football referees depends on the performance of the candidates. The Tribunal did not reject the view that such a need to document and assess the relevant candidate's refereeing qualifications could justify an exception to the prohibition on giving weight to pregnancy-related absence. Given the circumstances of the case, however, there was no need for the Tribunal to adopt a stance on this issue.

The Tribunal's impression was that the Football Association had decided at an early stage that the woman was not a relevant candidate due to her pregnancy and the birth. The Football Association failed to carry out a sufficiently thorough assessment of the practical possibilities for nominating the woman without sacrificing professional refereeing requirements or FIFA's availability requirements.

The disadvantages of the lack of availability could have been materially reduced by better adaptation of the woman's assignments as a FIFA referee. Possible measures included enabling her to take her child with her on international assignments and raising with FIFA the right to refuse longer assignments. The Tribunal was further of the view that the Football Association could have considered the possibility of nominating four FIFA candidates for 2007.

The decision was unanimous.