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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

28 May 2018

Case Document No. 8

University Women of Europe (UWE) v. Finland
Complaint No. 129/2016

**OBSERVATIONS BY EQUINET, EUROPEAN NETWORK OF
EQUALITY BODIES**

Registered at the Secretariat on 30 March 2018



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Equinet

Reference: Your email on 5 February 2018

Observations of the Ombudsman for Equality, submitted to Equinet to be passed on to the European Committee of Social Rights of the Council of Europe regarding the complaint No. 129/2016 University Women of Europe v. Finland

Introductory remarks

The Government of Finland is a State Party to the European Social Charter of the Council of Europe. The Government of Finland signed the revised Charter on 3 May 1996 and ratified it on 21 June 2002. International human rights law lays down obligations which States Parties are bound to respect. By becoming a party to the European Social Charter, the Government of Finland has assumed obligations and duties under the Charter to respect, to protect and to fulfil rights covered by the Charter. The obligations and duties stemming from the European Social Charter are obligations and duties of the Government of Finland.

As an independent national equality body, the Ombudsman for Equality carries out her activities independently and autonomously from the Government.

The Ombudsman for Equality considers the effective implementation of equal pay an issue of high priority. The gender wage gap is a persistent phenomenon also in Finland. Finnish women earn on average 17 % less than Finnish men. Pay inequality is to a great extent a structural problem with a long history. Pay structures are differentiated by gender, mostly because female-dominated occupations and male-dominated occupations have been valued differently. Pay inequality is the phenomenon which, at least in Finland, is closely intertwined with the structural and institutional features in the labour market. The aforesaid wage gap is not the same issue as pay discrimination referred to in the Equality Act.

The Ombudsman for Equality – an independent supervisory authority

The Act on Equality between Women and Men (the Equality Act) includes prohibitions of discrimination based on gender, gender identity and gender expression. The Equality Act includes also a specific prohibition of pay discrimination. The Equality Act covers almost all areas of social life, with only few exceptions which are activities associated with religious practices and relationships in private life. The Equality Act also includes obligations imposed to authorities, employers and educational institutions on promotion of equality. Currently, some 5 000 to 6 000 employers and about 3 000 educational institutions are within the scope of the obligation to promote gender equality through equality planning obligation.

The Ombudsman for Equality is an independent national equality body whose main duty is to supervise compliance with the Equality Act. The Act on the Ombudsman for Equality states that the Ombudsman carries out her activities independently and autonomously. The total number of the personnel working in the Office of the Ombudsman for Equality is ten people.

Supervising the compliance with the prohibitions of pay discrimination

The Ombudsman describes below her powers and activities concerning supervision of the prohibitions of pay discrimination.

It is worth beginning with a clarification of the concept of equal pay laid down in the Equality Act. The Equality Act does not cover all pay differences in the Finnish labour market, where, as was mentioned earlier, the average gender pay gap is 17 %. The personal scope of application of the prohibitions of pay discrimination covers employees working for the same employer and, in line with EU legislation and its interpretation, those employees whose pay has a “single source” on which the pay depends. The “single source” concept is based on the idea that the party responsible for implementing equal pay is the one who is in a position to guarantee equal treatment. Consequently, suspicions of pay discrimination under supervision of the Ombudsman for Equality are cases covered by this legal framework.

Only a few cases of pay discrimination are brought to the attention of the Ombudsman per year. In 2014 – 2017, the number of written enquiries concerning pay varied between 10 – 20 enquiries per year. Besides written enquiries the Ombudsman’s legal advice phone line also receive enquiries concerning pay discrimination. For many years, the most common reasons for suspicions of discrimination in working life brought to the notice of the Ombudsman have concerned suspicion of discrimination based on pregnancy and parenthood.

Giving guidance and advice. The Ombudsman shall supervise the Equality Act primarily by giving counselling and advice. Those who suspect they have faced

pay discrimination may turn to the Ombudsman for Equality. Depending on the circumstances of the case, the Ombudsman either investigates the case and, after investigation, issues a statement, or gives guidance on a more general level. When investigating the case, the Ombudsman has extensive rights to receive information e.g. from employers. The Ombudsman finds these rights to be crucial for being able to give assistance to those who suspect they have been discriminated against.

The statements of the Ombudsman are not legally binding. However, being authoritative interpretations by a special authority, the statements are of importance not only for those who are considering whether to take the case to court but also e.g. in negotiations at the workplace, helping to reach a solution. It is not rare that a shop steward or a trade union is already involved in the case when it is brought to the attention of the Ombudsman.

Taking a case to the Tribunal. In the event that the instructions of the Ombudsman for Equality are not followed, the Ombudsman may take the case to the Non-Discrimination and Equality Tribunal. When it comes to work-related discrimination, the Ombudsman for Equality shall first provide guidance and advice to the employer so as to prevent the discriminatory practice. Tribunal may prohibit the employer from continuing or repeating the discrimination, under conditional fine, if necessary. However, an individual who has been discriminated against is not entitled to receive any kind of compensation for discrimination through the Tribunal procedure. A case may be taken to the Tribunal also by central labour market organisations. There has not been any pay discrimination cases before the Tribunal.

Promotion of reconciliation. Since 15 November 2016, the Ombudsman for Equality has had statutory powers to promote reconciliation in gender discrimination matters, based on the consent of both parties. Under the new provision on promotion of reconciliation, the parties can agree to settle their dispute also by agreeing on a financial compensation. The parties may submit the settlement to the National Non-Discrimination and Equality Tribunal for approval. After approval, the settlement is enforceable in the same manner as an enforceable court decision.

There has not yet been a pay discrimination case where this new provision would have applied. However, already before this amendment, the activities of the Ombudsman have promoted reaching a consensus between the parties in the matter. The Ombudsman considers that the option of settling a dispute through reconciliation may strengthen the legal protection of individuals experiencing discrimination.

Giving legal aid. The Finnish Ombudsman for Equality may not take the case before a court of law under her own name. A plaintiff in the court case is the individual who has been subjected to discrimination. The Ombudsman for Equality may in certain cases give legal assistance to those who take their case to the court of law, but this has not been done in practice. The precondition of doing so is that the case is of considerable importance with regard to the

application of the Equality Act. In most cases legal assistance is provided by trade unions.

The Ombudsman has commissioned three reports on the application of the Equality Act at general courts and at administrative courts between 2005 and 2014. In this period some 180 civil cases involving the Equality Act were tried by district courts, where legal action has to be taken in order to claim compensation. Some 25 cases concerned suspicions of pay discrimination. The Finnish Labour Court has also tried a couple of cases regarding pay discrimination.

In Finland the majority of the pay discrimination cases are settled by negotiations between shop stewards or trade unions and employers. This is the information the Ombudsman for Equality receives from the trade unions. The Ombudsman is not in a position to provide any exact numbers of these cases.

Supervising the compliance with the provisions on equality planning and pay survey

The Equality Act obliges employers employing regularly at least 30 employees to draw up every two years a gender equality plan regarding personnel policy. A compulsory part of equality planning is conducting a pay survey. The purpose of the pay survey is to ensure that there are no unjustified pay differences between women and men. The reasons and grounds for any clear pay differences must be analysed. If there is no justification for the pay differences, the employer must take appropriate measures to rectify the situation.

Supervision of conducting pay surveys is the duty of the Ombudsman for Equality. If an employer does not have a gender equality plan in place, the Ombudsman will impose a time limit within which the employer must draw up a plan. This has been done in many cases. Employers are also guided to develop their plans to meet the minimum requirements set by current legislation, e.g. concerning the pay survey.

According to the standard practice employed by the Ombudsman for Equality, employers are requested to present their gender equality plans in conjunction with all work-related discrimination cases that are investigated by the Ombudsman for Equality. The Ombudsman for Equality also takes from time to time supervisory actions, targeted at certain categories of employers, e.g. employers on some specific sector. In 2016 – 2017 the Ombudsman for equality made an assessment of equality planning in municipalities in three provinces of Finland, and in 2018 supervision will be targeted at some big private companies.

After the pay survey became, in 2005, a compulsory part of equality planning, wages have become a topic which is at least to some extent scrutinized during equality planning. However, the supervisory praxis of the Ombudsman for Equality reveals that there is still a lot to be done to enhance the quality of

pay surveys. E.g. pay surveys seldom cover the entire personnel and pay comparisons are often made in a narrow way, sometimes only within the existing pricing groups.

Effective supervision of the obligation of carrying out equality planning is important for effective enforcement of that obligation in practice. More systematic and more comprehensive supervision compared to the current situation would be needed. The Ombudsman for Equality is, however, unable to provide more systematic supervision due to her inadequate resources.

Some remarks on enhancing the effective implementation of equal pay

In conclusion, the Ombudsman for Equality wishes to make some general remarks about achieving equal pay.

Access to pay data and transparency of wage systems. Access to pay data is essential for the effective implementation of prohibitions of pay discrimination. In Finland, pay data is publicly available in the public sector, but this is not the case in the private sector.

An employee cannot learn of the existence of possible pay discrimination unless he or she has access to pay data other than his or her own. Therefore, restrictions pertaining to access to pay data make it difficult for an employee to assert his or her rights concerning equal pay. This is one of the obvious reasons for the low number of equal pay cases.

The Ombudsman for Equality considers that it would be necessary to extend the access to pay data in order to make it easier for employees, also in the private sector, to identify pay discrimination and to invoke their rights. Access to individual pay data would also make it easier to reveal possible pay discrimination by pay surveys.

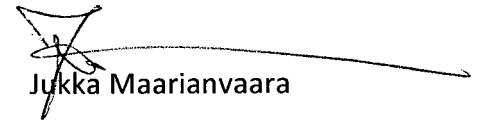
Transparency of pay systems is important for the effective implementation of equal pay. This should always be taken into account when new wage systems are developed and adopted.

Importance of the wage policy as a whole. It is of great importance that equal pay legislation provides strong legal protection for those who have been discriminated against. It is, however, not realistic to think, that equal pay could be achieved on a larger scale only by using prohibitions of pay discrimination. This is due to the structural nature of pay discrimination and also due to the wage setting system in Finnish labour market. Prohibitions of pay discrimination take effect mostly post hoc in the occasional cases brought to authorities or to court. Neither are pay surveys, carried out at workplace level, enough to achieve equal pay, even if they may have a beneficial impact in enhancing equal pay.

In Finland, labour market organizations, including those representing public sector employers, and many statewide collective agreements concluded by these organizations, still have a central role in setting wages. All labour market actors who can influence wages have a role to play in promoting equal pay. Undervaluation of women's wages can be corrected more broadly only if

promoting gender equality in pay is a starting point for a wage policy from the state level to the workplace level. In order to solve women's underpayment, more money needs to be allocated to wages of undervalued female-dominated occupations.

Ombudsman for Equality



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This reply has been sent to the above mentioned recipient electronically. The signed original of the document is lodged at the registry of the Ombudsman for Equality.