

# **The Act on the Equality and Anti-Discrimination Ombudsman and the Equality and Anti-Discrimination Tribunal (The Anti-Discrimination Ombudsman Act).**

**Ministry of children and equality**

## **Section 1. *The purpose and scope of the Act***

This Act prescribes rules regarding the organization and activities of the Equality and Anti-Discrimination Ombudsman (the Ombudsman) and the Equality and Anti-Discrimination Tribunal (the Tribunal).

The Ombudsman and the Tribunal shall monitor and contribute to the implementation of the following sets of rules:

1. The Act of 9 June 1978 No. 45 relating to gender equality, unless otherwise provided by this Act.
2. The Act of 3 June 2005 No. 33 on prohibition of discrimination based on ethnicity, religion, etc., unless otherwise provided by this Act.
3. The Act of 4 February 1977 No. 4 relating to Worker Protection and Working Environment, Chapters X A and X B.
4. The Act of 23 May 1977 No. 31 relating to Owner-Tenant Sections, section 3a, second paragraph.
5. The Act of 26 March 1999 No. 17 relating to Tenancy Agreements, section 1-8, second paragraph.
6. The Act of 6 June 2003 No. 38 relating to Cooperative Housing Associations, section 1-4, second paragraph.
7. The Act of 6 June 2003 No. 39 relating to Housing Cooperatives, section 1-5, second paragraph.

The Ombudsman shall monitor that Norwegian law and administrative practice are in accordance with Norway's obligations pursuant to the following conventions:

1. The United Nations International Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979
2. The United Nations International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965.

To be amended by the Act of 17 June 2005 No. 62 (in force from 1 January 2006 pursuant to the Decree of 17 June 2005 No. 609).

## **Section 2.** *The organization of the Ombudsman*

The Equality and Anti-Discrimination Ombudsman shall be appointed by the King for a term of four years with the possibility of being reappointed for one more term.

The Ombudsman is an independent public administrative agency administratively subordinate to the King and the Ministry. Neither the King nor the Ministry may give instructions to the Ombudsman regarding the way in which individual cases are to be dealt with or regarding any other aspects of the Ombudsman's professional activities. Nor may the King or the Ministry reverse any administrative decisions made by the Ombudsman pursuant to section 4.

## **Section 3.** *The functions of the Ombudsman*

The Ombudsman shall work to promote genuine equality irrespective of gender, ethnicity, national origin, descent, skin colour, language, religion or belief in all areas of society. In the sphere of working life, the Ombudsman shall also work to promote equal treatment irrespective of political views, membership of an employee organization, sexual orientation, disability or age. The Ombudsman shall also work to promote equal treatment irrespective of homosexual orientation in the housing sector.

The Ombudsman shall monitor and contribute to ensuring compliance with the provisions mentioned in section 1, second paragraph.

The Ombudsman may give an opinion as to whether a matter is in contravention of provisions mentioned in section 1, second paragraph. The Ombudsman shall seek to secure the parties' voluntary compliance with this opinion. If a voluntary arrangement cannot be reached, the Ombudsman may bring the case before the Tribunal to be dealt with pursuant to section 6.

The Ombudsman may take up cases on his or her own initiative or on the basis of an application from other persons. Anyone may bring a case before the Ombudsman. Cases brought before the

Ombudsman by a person who is not a party to the case shall only be dealt with by the Ombudsman if the party whose rights were infringed consents to this. If special considerations warrant doing so, the Ombudsman may nonetheless deal with such a case, even if consent has not been given.

The Ombudsman shall dismiss a case summarily if the case has been decided by a court of law or brought before a court of law for decision. The Ombudsman shall also dismiss a case summarily if the conditions for dealing with the case have not been met. In special cases, the Ombudsman may drop a case if he or she finds no grounds for dealing with it any further. The decision of the Ombudsman to dismiss summarily or drop a case may be appealed to the Tribunal.

The Ombudsman shall provide guidance to the person who brings a case before the Ombudsman. The duty to provide guidance encompasses all relevant matters related to the case and applies irrespective of whether the Ombudsman has the authority to

give an opinion pursuant to this Act. The Ombudsman shall not represent the party in external proceedings.

#### **Section 4.** *The Ombudsman's administrative decisions*

If the parties do not voluntarily comply with the opinion of the Ombudsman, cf. section 3, third paragraph, and it must be assumed that waiting for an administrative decision by the Tribunal will cause inconvenience or have a harmful effect, the Ombudsman may make such administrative decision as is mentioned in section 7.

The Ombudsman shall state the grounds for the administrative decision at the time the decision is made. The Tribunal shall be notified of the decision.

The Ombudsman's administrative decision may be appealed to the Tribunal.

#### **Section 5.** *The organization of the Tribunal*

The Equality and Anti-Discrimination Tribunal shall consist of a chairperson, a deputy chairperson and six other members. There shall also be four deputy members. The Tribunal shall be divided into two divisions. The chairperson and the deputy chairperson shall participate in both divisions.

The members and deputy members shall be appointed by the King for a term of four years. Reappointment for one more such term is possible. The chairperson and deputy chairperson shall fulfil the requirements prescribed for judges. When the members and deputy members are appointed for the first time, half of them shall be appointed for a term of two years.

The Tribunal is an independent public administrative agency administratively subordinate to the King and the Ministry. Neither the King nor the Ministry may give instructions regarding or reverse the Tribunal's exercise of authority in individual cases.

Cases shall be prepared by a dedicated secretariat.

#### **Section 6.** *The functions of the Tribunal*

The Tribunal shall deal with cases that are brought before it pursuant to sections 3 and 4. If the Ombudsman decides not to bring a case before the Tribunal pursuant to section 3, third paragraph, the case may be brought by a party to the case or by a person who has brought the case before the Ombudsman without being a party. Cases brought before the Tribunal pursuant to the second sentence shall only be dealt with by the Tribunal if the party whose rights were infringed consents to this.

The Tribunal may require the Ombudsman to bring specific cases that have been dealt with by the Ombudsman before the Tribunal.

The Tribunal shall summarily dismiss a case if the case has been decided by a court of law or brought before a court of law for decision. The Tribunal shall also summarily dismiss a case if the conditions for dealing with the case have not been fulfilled. In

special cases, the Tribunal may drop a case if it finds no grounds for dealing with it any further.

**Section 7.** *The authority of the Tribunal to make administrative decisions. Orders to stop, remedy, etc.*

The Tribunal may make administrative decisions to the effect that there is a breach of provisions mentioned in section 1, second paragraph, unless otherwise provided. If the Tribunal cannot make an administrative decision pursuant to section 9, it shall give an opinion as to whether the matter brought before the Tribunal is in contravention of the provisions mentioned in section 1, second paragraph.

Subject to the exceptions that follow from sections 9 and 10, the Tribunal may order an act to be stopped or remedied 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 shall state the grounds for an administrative decision at the time the decision is made.

**Section 8.** *Coercive fines*

The Tribunal may make an administrative decision to impose a coercive fine to ensure implementation of orders pursuant to section 7, if the time limit for complying with the order is exceeded. The coercive fine begins to run if a new time limit for complying with the order is exceeded, and shall normally run until the order has been complied with. The Tribunal may reduce or waive a fine that has been imposed when special reasons warrant doing so.

The coercive fine shall accrue to the State. An administrative decision to impose a coercive fine constitutes grounds for enforcement.

The Tribunal shall state the grounds for an administrative decision to impose a coercive fine at the time the decision is made.

The King may by regulations make rules regarding the amount and duration of the coercive fine and other provisions regarding its determination and implementation.

**Section 9.** *The competence of the Tribunal in relation to other administrative authorities*

The Tribunal may not annul or alter administrative decisions made by other public administrative agencies. Nor may the Tribunal issue orders as to how the authority to make administrative decisions must be exercised in order to avoid contravening the provisions mentioned in section 1, second paragraph.

Administrative decisions made by the Tribunal are not binding on the King or ministries.

**Section 10.** *The Tribunal's relationship to the Labour Disputes Court*

If a case pursuant to the provisions mentioned in section 1, second paragraph, that indirectly raises a question about the existence, validity or interpretation of a collective wage agreement is brought before the Tribunal, each of the parties to the wage agreement may have this question decided by the Labour Disputes Court.

The Tribunal may give a reasoned opinion as to whether a collective wage agreement or a provision in such an agreement that is brought before the Tribunal is in contravention of the provisions mentioned in section 1, second paragraph. In such cases, the parties to the agreement may bring the question of the agreement's relationship to a provision mentioned in section 1, second paragraph, before the Labour Disputes Court.

Cases before the Tribunal that are brought before the Labour Disputes Court pursuant to the first paragraph or the second paragraph, second sentence, shall be suspended until the Labour Disputes Court has finished dealing with the question.

In no circumstance may the Tribunal make decisions which lie within the competence of the Labour Disputes Court pursuant to the Act of 5 May 1927 No. 1 relating to Labour Disputes and the Act of 18 June 1958 No. 2 relating to Public Service Disputes.

### **Section 11.***Duty to provide information*

Notwithstanding their duty of secrecy, public authorities have a duty to give the Ombudsman and the Tribunal such information as is necessary for the implementation of the provisions mentioned in section 1, second paragraph. Such information may also be required of others who have a duty to testify pursuant to the Civil Procedure Act. Section 211 of the Civil Procedure Act applies correspondingly. Such decisions as are mentioned in section 207, third paragraph, section 208, second paragraph, section 209, second paragraph, and section 209a, third paragraph, of the Civil Procedure Act shall be made by the District Court.

The Ombudsman and the Tribunal may undertake such investigations as they find necessary in order to perform their duties pursuant to this Act. If necessary, they may request the assistance of the police.

The Ombudsman and the Tribunal may require that information shall be given to, or investigations may be carried out by, other public bodies that have been directed to assist in the implementation of the provisions mentioned in section 1, second paragraph.

The Ombudsman and the Tribunal may require the judicial recording of evidence in a court of law, cf. section 43, second paragraph, of the Courts of Justice Act.

### **Section 12.***Review of the Tribunal's administrative decisions*

Administrative decisions made by the Tribunal may be brought before a court of law for a full review of the case. Administrative decisions made by the Ombudsman pursuant to section 4, first paragraph, may not be brought before a court of law unless the right to appeal has been exercised, and the appeal has been decided by the

Tribunal. Section 437, first paragraph, of the Civil Procedure Act shall apply correspondingly.

Legal proceedings for the review of an administrative decision made by the Tribunal must be brought within three months of receipt of notification of the decision.

Legal proceedings regarding the validity of an administrative decision made by the Tribunal shall be brought against the State represented by the Tribunal.

**Section 13.***Penalty for contravention of an order and breach of the duty to provide information*

Any person who wilfully or negligently fails to comply with an order given pursuant to sections 4 or 7 or who is an accessory thereto shall be liable to a fine. The same shall apply to wilful or negligent failure to comply with the duty to provide information pursuant to section 11.

Contravention by a person in a subordinate position shall not be punishable if such failure is essentially due to the subordinate relationship.

**Section 14.***Prosecution*

Contravention of section 13 shall only be prosecuted when so requested by the Tribunal, unless public prosecution is required in the public interest.

In connection with the criminal proceedings, the prosecuting authority may request judgment approving measures to ensure that the unlawful act, omission or reprisal ceases and to prevent its repetition.

**Section 15.***Relationship to the Public Administration Act*

Unless otherwise provided, the Public Administration Act shall apply to the activities of the Ombudsman and the Tribunal.

**Section 16.***Regulations*

The King may make regulations with further provisions regarding the organization, functions and administrative procedures of the Ombudsman and the Tribunal, including those of the secretariat.

**Section 17.***Commencement*

This Act shall come into force from the date decided by the King.<sup>1</sup> >

<sup>1</sup> From 1 January 2006 pursuant to the Decree of 10 June 2005 No. 528.

**Section 18.***Transitional provisions*

Cases regarding breaches of the Gender Equality Act that were brought before the Gender Equality Ombudsman or the Gender Equality Board of Appeals prior to the

entry into force of this Act shall be transferred to the Equality and Anti-Discrimination Ombudsman or the Equality and Anti-Discrimination Tribunal, respectively, to be dealt with further. The Equality and Anti-Discrimination Ombudsman and the Equality and Anti-Discrimination Tribunal shall also deal with new cases that concern matters dating from prior to the entry into force of the Act if the matter was in contravention of the provisions mentioned in section 1, second paragraph, or corresponding provisions as they read prior to the Act's entry into force.

Such cases as are mentioned in the first paragraph shall be dealt with pursuant to the provisions of this Act. Such administrative decisions as are mentioned in sections 4, 7 and 8 may only be made to the extent that there was also authority to do so prior to the entry into force of this Act.

### **Section 19.***Amendments to other legislation*

From the date decided by the King, amendments shall be made to other legislation as follows:

1. In the Act of 9 June 1978 No. 45 relating to Gender Equality, sections 9, 10, 11, 12, 13, 14, 15, 18 and 19 shall be repealed. The same Act shall be amended as follows:

Section 1a, fifth paragraph, shall read:

The provisions of the Anti-Discrimination Ombudsman Act shall apply in connection with the enforcement of the third and fourth paragraphs.

Section 2, second paragraph, shall read:

With regard to family life and purely personal matters, this Act shall not be enforced by the bodies mentioned in section 9 of this Act.

Section 8, fourth paragraph, shall read:

The provisions of the Anti-Discrimination Ombudsman Act shall apply in connection with the enforcement of the prohibition against gender-based harassment in the first paragraph and the provision in the third paragraph.

A new section 9 shall read:

### **Section 9.***Enforcement of the Act*

The Equality and Anti-Discrimination Ombudsman and the Equality and Anti-Discrimination Tribunal shall, except for section 17 and the limitations provided by sections 1a and 8a, monitor and contribute to the implementation of this Act, cf. the Anti-Discrimination Ombudsman Act.