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CHAPTER 6

Wage Surveys in an Academic Area: Active Measures for Equal Pay at the University of Gothenburg in Sweden 2002-2006

By Susanne Fransson, doctor of laws, associated professor University of Gothenburg

1. Introduction

1.1. Background

This chapter presents results from a wage survey project at the University of Gothenburg in 2002-2006. By way of introduction I will present facts and figures from the Swedish labour market during the period for this study. Statistics Sweden (2005) shows that the average wage differentials between men's and women's wages were 17 per cent. The statistical differences are fairly constant and have remained more or less unchanged over the past thirteen years.[1] One reason for this is changes in the wage structure. (Löfström 2003:260). The gender pay gap in the European Union has not significantly diminished during this period and women earn on average 73 per cent of men's wages (Magnusson 2003:2). Blau and Kahn's study from the US shows disparate figures and a declining wage gap during the same period (Blau & Kahn 2000, 2003).

1. Figures for wages 2009 show that the gender pay gap has diminished to 15 percent (non-weighted figures) The Swedish National Mediation Office report 2010 ww.mi.se.

However, the statistics are non-weighted and theoretical wage discrimination can be less or more than 17 per cent. Weighted full-time wages show that women's wages in 2005 were 92 per cent of men's earnings. This, in an international perspective, small gender pay gap is found to be the result of relatively narrow dispersion of pay on the labour market as a whole. This situation is rather the result of ambitions towards social equality in more general terms than the result of a specific gender equality agenda. Nonetheless, pay issues was one decisive factor as the United Nations proclaimed Sweden to be the most gender equal country in the world in 1995.

Women in Sweden make up almost half of the labour force, but they are in general employed on different terms than men. Men in Sweden work on a more restricted sphere of the labour market and in occupations that are better paid. 52 per cent of the female workforce are employed in the public sector and 48 per cent in the private sector. When it comes to the male workforce on the other hand, are 19 per cent are occupied in the public sector and 81 per cent in the private sector. However, state employment in Sweden is not feminised; the relation is 45 per cent women and 55 per cent men. This might seem as a notable figure, however, the public sector in Sweden is dominated by the municipal sector where men are underrepresented. Here they make up 18 per cent of the workforce. The lowest average pay level is that of municipal workers, i.e. female workers.

It is really a minor part of the workforce, 16 per cent of all employed women and 14 per cent of all employed men, that work in occupations with equal sex distribution.[2] The gendered Swedish labour market consists of both horizontal and vertical gender segregation. Pay statistics are a valuable instrument to identify inequalities where men and women do equal work, i.e. 'the same job'. However, women and men usually perform different and not equal work. Hence the concept *work of equal value* is of great importance on a gendered labour market; however nobody currently knows the extent of value discrimination.[3] Comparing men's and women's wages performing work of equal value at a macro level goes beyond the method of statistics.

At a local level Swedish employers' have to deal with the concept work of equal value. The legislation demands wage surveys in order to discover, remedy and prevent unwarranted wage differentials or other employment terms and conditions between men and women. In cooperation with the local union, or other representatives for the employees, these wage surveys are to be analysed from a gender perspective and an action plan for equal pay should be elaborated on by the employer in cooperation with labour representatives. This essay is reflecting experiences from the implementation of this proactive equal pay legislation on the level of a single employer, the University of Gothenburg.

2. Women and men in Sweden: Facts and figures 2006. Statistics Sweden 2006. The statistics are built on persons of the total workforce and on whole-time equivalents. Compare with the figures in Blau & Kahn 2000.
3. Defined by England as "jobs filled mostly by women have pay levels that are lower than they would be if the jobs were filled mostly by men". England, 1992 p. 1. The concept is useful in a descriptive way but not in a legal context.

1.2. Issues, focus and methodological aspects

The University of Gothenburg has about 6,000 employees and 55,000 students. In 2002 the University started to work seriously with annual wage surveys. One starting point was a work evaluation project. Some of the findings were summed up in an action plan for equal pay. In 2003-2004 the first plan was set in action. As the person responsible for the annual wage surveys 2002-2006, I have been able to closely follow the process with active measures for equal pay at the University. In every case study where you are close to the studied objects and processes, you have to be aware what an inside perspective has after all its limitations. Every researcher's guiding-star is to be critical to the object that is studied. My way of handling this issue is to analyse the process and the results from a structural perspective.

The data in this study includes for instance work evaluation between jobs that are female dominated (60/40) compared to those that are not female dominated. Groups affected are inter alia professors, lecturers, librarians, technicians, administrators, laboratory workers and cleaners. However, it should be observed that this is not a study on job evaluation. In Sweden as well as in other countries there is a lot of research done on job evaluation and equal pay, on a theoretical level as well as on an empirical level (Remick 1984, Acker 1989, Sorensen 1994, Rosenberg 2004). Since the Swedish legislation on active measures for equal pay and wage surveys is unique in a European perspective there are not many foreign studies that can be related to. In fact, in Sweden there are few academic empirical studies on wage surveys and action plans for equal pay as well. Experiences from equal pay legislation in Canada have thus had significant impact on the Swedish legislative process (Fransson et al 2000:37). However there are similarities as well as differences reflecting different labour market relations in the two countries. As this pro active Canadian legislation is relatively new, there is not much research done yet (McCaughy 2005).

In recent years, I have made two quantitative studies on wage surveys in Sweden. The first study included 531 private employers (Fransson 2003,

Fransson & Thörnqvist 2006) and in the second study there were 50 employers, 40 municipalities and 10 private employers (Fransson & Andersson 2005). The primary material for the studies comes from the Equal Opportunities Ombudsman's office monitoring employers wage surveys and action plans for equal pay. The results of the first study in 2003 showed that the implementation of the legislation had not reached any significant impact on the employer's activity for equal pay and that only some four per cent of the monitored employers found unwarranted wage differentials (Fransson 2003, Fransson & Thörnqvist 2006). In the second study the result of the implementation could be described as a step forward. Especially municipalities` wage surveys resulted in significant pay wage increases for female dominated groups (Fransson & Andersson 2005). The Ombudsman has presented facts and figures from 900 employers wage surveys examined between 2001 and 2004. The report shows adjustments in pay within at least 100 employers' activities (JämO, the Equal Opportunities Ombudsman 2005).

In this study of one single employer, the Gothenburg University, the description of data and the analysis of the implementation process has its point of departure from two main perspectives; the academic structure at the University and the interaction between the demand for adjustments in pay according to the Equal Pay Action Plan and traditional local bargaining. My focus in the analysis is on this second aspect, as I find that implementation of the legislation has a real potential to change traditional pay structures on the labour market from a gender perspective.

The revealed pay structure at the University is hierarchical with well paid male dominated groups like professors at the top, female dominated groups like administrators in the middle and female dominated groups like cleaners at the bottom. The structure is also patriarchal and as such a structure of power. My main question here is if legal demands for annual pay surveys combined with equal pay action plans can change these structures?

The second issue concerns the interaction between the result of the wage survey and the local bargaining rounds. When unwarranted pay differentials are identified, the employer has to take action according to the law. Groups like laboratory workers and technicians may then find themselves in competing positions as means for pay rises are limited. Is it possible for different union representatives to cooperate on pay adjustments (according to gender equality demands) on the one hand with representatives from other unions, and on top of that also cooperate with the employer in order to comply with the legislation? I will also focus on the employers` responsibility for the result of the proactive work for equal pay.

To sum up, my overriding empirical question is; are we actually closing the gender pay gap at the University? Finally this is a qualitative study and no general conclusions in relation to the Swedish labour market as a whole should therefore be made.

1.3. Theoretical framework

This essay is written in the field of labour law from a gender perspective. Law as a scientific concept, compared to social science, is in general lacking grand theories and analytical methods. Law as science can neither be used to explain, nor to describe why there are gender related wage differences on the labour market. Law as science is traditionally in Sweden dogmatic and mainly descriptive and with an ambition to be objective.[4] My approach to this is that even legal scientists have to be critical and not only act as lubricant in the machinery. Studying implementation of labour law, it is rather helpful to use theories and concepts so that an external perspective on law can be achieved. It is also necessary to contextualise analytical concepts; which I will now try to do.

Since 1803, there has been no legislation on wages in Sweden and since about 1890 collective agreements have filled out the absence of norms for wage setting. Wage setting became a collective matter of negotiations and agreements "the freedom of labour market parties" (Fahlbeck 2002:94). In 1965 the Swedish Confederation of Trade Unions, LO, and the Swedish Employers' Confederation, SAF, decided to eliminate direct gender based wages in central collective agreements. Collectively agreed direct discrimination between men and women performing the same job then ceased.

Historically and from a comparative perspective, the Swedish labour market is almost unique in that sense that the state left the task to regulate to the labour market parties. The Swedish system of industrial relations is from this perspective a *self-regulating system.*[5] Typically a self-regulating model involves organisations with the aim to regulate the standards of behaviour for its members. These organisations monitor and create standards and norms. This self-regulation model produces control-efficiency and legitimation (Baldwin & Cave 1999:126-133). In a Nordic context, self regulation is a

4. See Svensson E-M. (2007) 'Boundary-work in Legal Scholarship' in Gunnarsson, Svensson and Davies (eds.) *Exploiting the Limits of Law. Swedish Feminism and the Challenge to Pessimism.*
5. See Eijlander 2005. Eijlander uses three different categories of self-regulation; free or pure self-regulation, substitute or alternative self-regulation and conditioned self-regulation.

common concept that is used to describe the regulatory mode on the labour market, especially when it comes to wages (Fahlbeck 2002:94). In this respect the concept is used as an alternative for regulation.

My interpretation of the self-regulating system on the Swedish labour market is that it is fundamentally built on a conflict perspective. Matters of strength between the collective partners decide the outcome of bargaining. Strike and lock-outs are legitimate and necessary instruments in a system where the outcome is sealed by a collective agreement. Hence, the state as a legislator primarily has a role of defining procedural norms rather than normative ones. The mere part of Swedish labour law is also semi-autonomous and is an expression for the synthesis *legally conditioned self regulation* (Baldwin & Cave 1999 p.41, Witteveen 2005). The Co-Determination Act (1976) is an example of this legislative technique and the act is theoretically based on the assumption of cooperation and a balance of powers between the parties on the labour market. The empirical data in this essay relate to state employment and the Swedish public sector. When it comes to the concept of self regulation used as a descriptive tool of the regulatory model on the Swedish labour market, researchers seem to make their outline primarily from the private sector (Fahlbeck 2002). My thesis is that the public sector shows up specific features. For instance, self regulation among the collective parties developed at a much later stage compared to the private sector. In short, if we compare the characteristics for self regulation, there are at least three main differences at the collective level in a historical perspective; the autonomy of the unions, the right to bargain for collective agreements and the right to strike. Trade unions in the public sector, especially those of state employees, have not been as autonomous from the employer as unions in the private sector. The unions had no complete legal right to perform collective bargaining until 1965. Wage setting was extremely centralised and there was no room for local bargaining or individual wage setting. Until 1965 the model for regulation was nearly in line with what is labelled *command-and-control regulation*. The essence of command-and-control regulation are central rules and regulations backed up by sanctions to exercise influence and control over the citizen's behaviour (Baldwin & Cave 1999:25). Today there are very few differences in labour law regulations between the public and the private sector. Thus, the self regulation system characterizes the entire Swedish labour market.

In the last decade, agreement models have changed in Sweden. Paradoxically, the parties in the public sector have been the fastest to adopt decentralised wage setting and individual-based wages. Here, the state as an employer has shown itself to be the real frontrunner. The function of central collective

agreements for state employed is rather to deliver frames and principles for local bargaining. E.g. that wage ought to be set individually and on factual grounds. The concept factual ground may be unknown to some readers. However, it is a common concept in Nordic labour law and within an EC context. When it comes to wages, the concept factual grounds indicates that pay for all employees from a single employer is related to the same norm, and that this norm is neither directly nor indirectly beneficial to either of the sexes. Clear criteria for wage setting should be a prerequisite and the formally agreed upon criteria should be applied in a consistent and systematic way. Moreover, the local parties are jointly responsible for adjusting and preventing differentials in wage and working conditions for men and women with the same job or the job of equal value.[6] Today's decentralised and individualised wage formation process has led to clauses in central collective agreements that usually make at least as rigorous demands for setting wages on factual grounds as the legislation. My conclusion is that there is an interaction between legislative demands and central collective agreements and that the pivotal link is the principle of individual and decentralized wage setting. We call it "collective individualisation". However, wage setting is still a part of the self-regulating system (Fransson & Thörnqvist 2003).

One can observe that the rules of active measures for equal pay in the Swedish legislation interact with the field for traditional self regulation. The law regulates matters of pay which exclusively belonged to the field for bargaining and collective agreements. The question is; what kind of regulative model is herebyused?

Firstly, we can notice that the Swedish legislation is mandatory. Secondly, the demands are the same for all employers. In Germany for instance, only public employers are affected by demands for equal opportunities plans. The demand for annual (until 2009) wage surveys is thus a regulative model that restricts the parties' full autonomy in the field of pay setting. One can say that legislation like the active measures for equal pay is a result of the failure of the self-regulating system as it comes to the responsibility for equal pay in relation to gender. This norm is thus not negotiable; wages ought to be set on non-gender discriminatory grounds.

My conclusion is that the regulative model is some sort of *co-regulation* (Eijlander 2005:5). Indeed one can see a mixture of regulatory instruments; basically the parliament has set up the norms in legislation from a theoretical

6. See for instance the central collective agreement for academics RALS 2004-2007 § 6:1.

harmony perspective as employers and employees are supposed to share the same objectives in relation to sex discrimination. At the same time it is clear in the preparatory works that the legislators' starting point is the self regulating system for setting pay. (Prop. 1999/2000:173, see Eijlander 2005:6, Fransson & Thörnqvist 2006).

To sum up, theoretically the framework of this article are the concepts *self regulation, command-and-control regulation* and *co-regulation*. From an overall point of view the first and the third concepts emerge from the dichotomy; conflict and harmony. I will use these concepts as descriptive and analytical tools. That means that I am starting at a structural level and then use the regulative models on my case study.

2. Legislation for equal pay in Sweden

2.1. Background

The first law for equal opportunities between men and women in Sweden came in force in 1980. The law included active measures for equality at the workplace and that appropriate measures should be summed up in an Equal Opportunities plan. Since 1994 Swedish employers also have the responsibility to make annual wage surveys from a gender perspective. The Equal Opportunities Act was amended in 2001 and the demand for analysis and corrections in pay within three years came into force. All employers were requested to make annual wage surveys and employers with ten or more employees were annually obliged to make written action plans for equal pay (section 10 and 11). The main purpose of the amended rules in 2001 was to close the gender pay gap and to avoid litigations on equal pay. The position of the local trade union was also strengthened at the same time. The local union representatives have the right to take part in the work with annual wage surveys. The legislation also gives the right to obtain information on individual wages beyond the realm of the own collective agreement including non-unionised employees wages if this is required for the gender pay assessment. This unique insight into pay structures is combined with rules of confidentiality and damages for the union representatives.[7]

In a European perspective, the Swedish legislation of active measures for equal pay and working conditions is unique. On the one hand this is somewhat surprising, as the European Union already in 1996 adopted a guideline for proactive and soft-law like measures concerning equal pay to be transformed in the member states' national systems.[8] Still, the Swedish legislation is unique in a European perspective from at least two aspects. Firstly, no other countries have experiences with proactive legislation in order to rectify unwarranted differentials in pay between men and women. Only Finland has adopted similar legislation as of 1 June 2005. Secondly, reports show that equal pay litigation in most EU countries has a poor record. This has been even more obvious in relation to the concept of equal pay for work of equal value. Reports from the Equal Opportunities Ombudsman show that Swedish legislation has had notable impacts on women's wages (the Equal Opportunities Ombudsman 2005).

On 1 January 2009 a new Discrimination Act entered into force and rules on equal pay and prohibition against gender wage-discrimination in the Equal Opportunities Act was transformed into the new law. Gender became one of seven protected discrimination grounds. Age and gender transgressing identity or expression became new protected grounds. A new agency; the Equality Ombudsman, which merges the four earlier Ombudsmen, was established. From a feminist point of view the Discrimination Act is a backlash. The Equal Opportunities Act stated that the primary aim of the law was to improve women's conditions and positions in working life. This statement was now expelled (Fransson & Stüber 2010:56). The Discrimination Act also can be questioned from an EC-perspective though the new legislative technique is to legislate through statements in the preparatory works.[9] Wage discrimination is no longer expressively prohibited in the law and neither the concepts equal work and work of equal value is used. In section 2:1 all aspects and conditions in working life is covered by the law, which due to the preparatory works include wage-discrimination (Fransson & Stüber 2010:189, Prop. 2007/2008:95).

2.2. In cooperation with the representatives for the employees

The starting-point for the work with wage surveys is cooperation between the employer and representatives for the employees in order to obtain and guarantee equal pay. Before the amendment of the Equal Opportunities Act in 2001, the possibility for cooperation and getting information was more restricted for employee representatives. However, the legislation does not regu-

7. This insight into pay structure is unique in comparison with for instance legislation in Britain where employers are under no legal duty to answer questions on wages even in a single equal pay claim.

8. A code of practice on the implementation of equal pay for work of equal value for men and women, EC-Commission 1996.

9. See the EC case 143/83 The Commission v. Denmark.

late or specify how this cooperation is to be done. In the preparatory legal work cooperation is expressed as: "something natural". There are also references to the Co-determination Act and that the forms of employee influence that are already present at the workplace ought to be suitable to use for gender pay audits (prop. 1999/2000:173: 82).

Compared to Canadian legislation the Swedish demand for cooperation for equal pay is more informal and not as regulated (McCaughy 2005). In comparison with the Co-determination Act which supports formalised routines combined with sanctions, the Equal Opportunities Act has a more informal view on cooperation between unions and employers. It should be underlined that more guidance is demanded from local parties, especially from union's representatives. It is also questioned from both sides how to achieve equal pay across the boundaries of collective agreements. In our study from 2004 one central union representative said: "*The union representatives are not used to cooperate across collective agreements' boundaries. It works in some workplaces but I think that most union representatives are strictly focused on benefits for their own members.*" A representative from an employer's organisation claimed that: "*The problem is the definition of the concept cooperation. Is it the same as reaching an understanding or?*" (Fransson & Andersson 2005). Actually the question puts the finger on the regulatory model – cooperation from a harmonic perspective. Surveying and analysing wages in cooperation with the employer and all unions at the workplace in the same room is fraught with difficulties. For instance, in the municipal sector the employer will have to cooperate with up to twenty different unions.

2.3. Mapping wages and working conditions

The purpose with mapping is to discover any differences that could be related to a gender aspect. Wage surveys ought to be made annually (until 2009) with the aim to give the employer and the unions a foundation for the local wage bargaining round. Moreover, the annual request is necessary to visualize gender related features, changes and developments and to give a base for comparison. Practically it is a question of facts and figures. Facts not only on wages but also fringe benefits, over-time pay etc. should be monitored. Other facts like age, length of services, part-time employment and temporary employment can give additional information from a gender perspective.

The legislation on active measures for equal pay also requests the employer to present and analyse regulations and practices for wage setting. The purpose in this case is to create a more conscious and systematic application of the norms used for wage setting. This means that collective norms agreed upon on central and local level and the subsequent practice should be analysed from a gender perspective.

Employers with at least ten employees were until 2009 required to show the result of the wage survey in a written annual action plan, section 11 The Equal Opportunities Act. The regulation was criticized primarily from an employer's perspective and the Swedish Government proposed that the rules should be changed. The keyword for that change was simplification of rules. From 2009 employers with at least 25 employees (former 10 employees) are required to create an action plan for equal pay, but now every third year and not on annual base, section 10 the Discrimination Act (Fransson & Stüber 2010:413). Still the action plan should include appropriate measures that are needed to be taken to reach the goal equal pay and equal working conditions. The measures should be cost-calculated and put into a time schedule. Pay adjustments should be carried out as soon as possible and at the latest within three years.

2.4. Equal wages and job evaluation

Job evaluation can be used for different aims and with different methods. The intent of the law is to force the employer to make norms visible so that a comparison from a gender perspective is possible. These norms should be used in the employer's entire activity for all employees and across different unions' (collective agreements' boarders. The law leaves it to the employer to define what activities are appropriate in each single business, as long as they are gender neutral and transparent. To define what is meant by work of equal value, there are four main criteria to be observed; knowledge and skills, responsibility, effort and working conditions. The employers are free to use these criteria in a simple way or to build computer-based and sophisticated work evaluation systems. If systematic work evaluation systems are used, it is up to the employer to choose a system of preference. In Sweden there is a variety of companies and consultants that offer these services. This has led to a debate because some employers prefer to cooperate with a consultant rather than cooperation with employee representatives, a practice that is not in line with the intent of the legislator.

Secondly the focus of the active measures for equal pay is primarily on the employer's gender structure. Thus, the employers are not required to evaluate every single employee's work tasks although an analysis often leads to closer checks of single individuals' wages. The demands of the law are about comparing men's and women's wages within groups of equal work.

When it comes to work of equal value the comparison ought to be between groups of equal value that are female dominated and groups that are

not female dominated (60/40). To understand this structural and collective point of departure is crucial when coping with the active measures for equal pay. It is also of importance to bear in mind the purpose of the legislation – equal pay from a gender perspective and not egalitarian pay for every worker. On the other hand the law has its structural limits. There exist no references or guidelines on a national level supported by the labour market parties that define what jobs are equal or of equal value. Comparison within the requirements of the legislation for equal pay is limited to the workplace and to one single employer's staff. This makes sense as an employer as a legal object can never be responsible for any other employers' wage setting.[10] However, Swedish national economists often criticise legislation for being ineffective as a tool to change structural wage differentials between men and women (Thoursie 2005). Löfström has a more long-term perspective and states that: "*In the long run, however, when all companies have adjusted wages according to the demand for 'equal pay for equal work' and 'equal pay for work of equal value' structural wage differentials may also disappear*" (Löfström 2003: 270).

2.5. Unwarranted wage differentials and the concept of wage discrimination

If the employer finds out that there are unwarranted wage differentials between men and women, an analysis has to be made and the question "why?", must come to an answer. This simple question "why?" includes the entire gender discrimination concept. The legislation is methodically divided in two parts; active measures and prohibition against discrimination. In the active measures for equal pay, individual rights of the employees have been transformed to a proactive responsibility for the employer. The two parts of the law are to be seen as linked to each other. On the other hand the concepts used are not similar. To start with, the employer has to decide whether there is observed any unwarranted wage-setting or not. If so, the employer has to decide to what extent there have to be made any adjustments in pay, immediately and at the latest within three years. If the unwarranted wages are directly or indirectly discriminatory is not a relevant question as the concept of unwarranted wages is broader than the concept discriminatory wages. However, the outcome of the very few wage discrimination cases in the Swedish labour

10. See for instance the British case Lawrence v Regent Office Care Ltd (2002) IRLR 822.

court has spilled over to how unwarranted wage differentials have been treated.

2.6. The midwife cases and the market forces

The prohibition against discrimination is under the jurisdiction of the Swedish labour court. Since 1980 there have been only eleven gender wage discrimination claims in the labour court. In one and a half case the plaintiff did win her case. One explanation to the few cases is that unions have not used legislation to increase women's wages. The prohibition for wage discrimination has been seen as interference in the freedom of collective bargaining for wages. In Britain the unions have been active in bringing wage discrimination claims to the courts and more equal value cases have been heard in Britain than in the rest of the member states in the European Union (Branney, Howes & Hegewisch 1999:208).

It has also been stated that it is not possible to compare apples and pears i.e. different jobs. This question received an answer in 2001. In the second midwife case, AD 2001 no 13, the Labour Court figured out that it was possible to compare different jobs like midwifes and clinical engineers. The court came to the conclusion that the two jobs were of equal value. This was indeed a great step forward as the concept work of equal value was introduced by law in 1980 and especially in the light of the first midwife case, AD 1996 no 41, where the plaintiff had no success in relation to that concept. In this case the labour court rejected the evidence from the plaintiff and expressed that in a comparison with unlike work tasks, the court had to put up especially rigorous demands for the evidence. Thus the midwife lost the case.

However the most crucial evidence in the three latest wage discrimination cases in the labour court has been reference to market forces. In what way are market forces deemed to make up a factual ground for wage setting? Compared to British courts, the Swedish Labour Court actually does not demand any objective facts related to the circumstances in the specific case which can explain how market forces have been interacting in the specific situation.[11]

Thus, market forces are rather to be interpreted as a general explanation on grounds of national economist theory. This viewpoint is underpinned with the fact that labour market parties are autonomous from state intervention in the wage setting process. This means that collective agreements on pay are seen as a concrete expression of the existing market forces. My interpretation is

11. Clay Cross v. Fletcher 1979 I.C.R.1. Ratcliffe and others v. North Yorkshire County Council 1995 I.C.R. 841.

that the Swedish labour courts verdicts ought to be understood as a result of the self-regulative system; a system in which the Labour Court makes up an important and integrated part.

3. Wage surveys at the University of Gothenburg

3.1. Introduction

The following part of this chapter is a description and an analysis of how one single employer, the University of Gothenburg, has handled the requirements in the Equal Opportunities Act during the period 2002-2006. In a political context the government imposes state employers to serve as a model to other employers in active measures for equality on grounds like gender, sexual orientation, disability, race, ethnicity and religion.

In 2002, as a result of the amendment of the Equal Opportunities Act, the University decided to make a new wage survey and to restart the annual work with active measures for equal pay. Thus a wage survey group was formed with representatives from the University; the head of department from almost each faculty, the University's Equality Ombudsman, a statistician and with me as the project leader; all in all seven persons. The group was composed in a way that would give it a high degree of credibility.

The primary aim of the work with wage surveys at the University was to comply with the demands of the Equal Opportunities Act. A driving force not to be underestimated has been to simultaneously create a new wage policy and new methods for individual wage setting. A set of non discriminatory criteria to assess individual qualification and performance have been created and accepted by the head of the University. This qualification system is supposed to be used in the individual wage setting. In this process, on the one hand the demands of the Equal Opportunities Act were observed and on the other hand the needs for a more structured pay policy which meets the requirement of an efficient system for individual wage setting. These requirements as a whole are closely linked to different collective agreements on pay.

Wage surveys shall be undertaken in cooperation with the local unions or other representatives for the employees. At the University we made an informal agreement with the local unions and fulfilled the demand for cooperation in our own way. The local unions served as a reference group to the wage survey group and hence they did not take part in any 'decisions' made by the group. This was a tactical decision made by the unions with the aim to be free to negotiate in the local bargaining rounds without having to be responsible for the result of for instance the work evaluation. In an interview,

the local union representatives stated that the cooperation model functioned in a good way (Segerpalm 2005).

Actually, all decisive decisions were taken by the employer's delegation which was formed as a control group. Finally, the head of the University makes the formal decision on the annual action plan.

3.2. The unions at the University

There are three large trade unions at the University; the Swedish Confederation of Professional Associations, SACO, the Swedish Confederation of Professional Employees, TCO (two white colour unions) and the Union of Service and Communication Employees, SEKO (a blue colour union). The union member density is high in an international perspective but it has declined during the last years and in 2002, 32 percent of employees at the University were not organized. The three unions' historical background is of importance to understand their approach to the work with active measures for equal pay at the University. As work evaluation and pay at the university has historically favoured aspects such as knowledge and skill, the academic group has always been privileged compared to other groups with back-up functions at universities. One union, SEKO, stands out as the most sceptic one towards the proactive work with active measures for equal pay. The local union leader expressed that the groups organized in SEKO, like cleaners and porters; "*had nothing to gain* by taking part in active measure-activities *for equal pay and especially not in a job evaluation system*". Thus, traditional trade union work such as bargaining from a conflict perspective was held to be the best method to raise wages for their members. Compared to the academic unions SACO and TCO, this union, SEKO, has historically had union traditions that never accepted a command-and-control model for regulation. The SEKO organizes blue collar workers who in fact are the lowest paid groups at the University. My conclusion is that the representatives from SEKO made a correct tactical analysis from a union perspective. From a purely class perspective, as Figart states, job evaluation historically was a regressive development (Figart 2000: 15). But the union's analysis lacks a gender perspective. It is true that there will be no comparison between cleaners and professors. The results of the job evaluation did not lead to any decisive changes in the hierarchic wage structure at the university. However, one thing that the union leader did not consider, is the gender perspective within the blue collar group; for instance, the comparison between the female dominated group cleaners and the male dominated group porters. The groups organized by SEKO are also the most gendered in the University's structure.

Cooperation for wage surveys goes beyond collective agreement boundaries and is characteristically different from traditional wage negotiations. Union representatives should bear in mind that the purpose of an equal pay survey is not to look after specific interests of union members as such. Instead the employer and the union representatives are supposed to take joint responsibility to fulfil the aim of the active measures; to make it possible to discover, remedy and prevent unwarranted wage differentials and employment terms due to gender for all employees, unionized as well as not unionized. In the initial stage of the wage survey project, there was some scepticism from all the union representatives. All the union representatives had difficulties in leaving the traditional role as a negotiator although cooperation was on the overall agenda. The concept work of equal value also caused some misunderstanding; however, the union representatives finally understood that the valuation was based on the demands of the job and not of the individual performance. Then they also understood that their members position (SACO) in the wage structure like professors actually was not threatened by the valuation of the cleaner's work tasks.

3.3. The demands of the librarians` unions

One female dominated group (85/15), the librarians, had distinguished themselves and had established claims in the local bargaining round according to the prohibition of wage discrimination and the demand for comparing work of equal value. Through their unions SACO and TCO, they claimed that their wages were unfair due to gender and that a comparison, within the frame of work of equal value, should be made with another female dominated group at the University, the group of junior lectures. This demand went beyond the demands of the legislation for equal pay, as the two groups both are female dominated, but the demands were clearly in line with the central collective agreement (RALS). Wages should be set on factual grounds in general. However, the librarians` claims are historically a matter of gender, which means value discrimination. One can also make a link to the concept of "crowding" – originally a theory of labour surplus from 1922 (see Löfström 2003:263). Crowding as a model to explain wage differentials on the labour market has been empirically studied for instance among members of the union SACO. The report shows that when there are 10 percent more women in a job category the pay decreases with 4 percent (SACO 2003). Other studies show that men and women gain less in relation to educational length if they are working in female dominated jobs. This thesis covers the entire Swedish labour market (Thoursie 2004:68 compare with Löfström 2003:265-68 and Blau & Kahn 2000). Historically, the librarians at the Swedish universities have been

a small group of well-paid men, now the group is highly feminized. As the feminization of the occupation – the oversupply of women – has led to shrinking wages, this is an example of the crowding hypothesis.

In 2002 the librarians` unions reached a local collective agreement with the University with the content that the wage survey group should primarily evaluate and compare the work tasks of librarians and lecturers. If the evaluation was not completed at a certain date the University should pay the librarians in general a pay increase of 100 Euro per month. The valuation made clear that there was a difference between the work demands of librarians compared to those of junior lecturers. The difference in valuation points, 33 (maximum 1000), did obviously not correspond with the wage differential of 450 Euro per month. In this case there was an interaction between law and collective agreement. Hence, the librarians' unions used the valuation in the local wage negotiations and reached a general pay increase of 9,5-10 per cent in one year! However, this result did not satisfy the librarians' union representatives. They still thought that their wages were too low compared with junior lecturers (see *GU-Journalen* 2003).

In any case the "militancy" from the librarians is interesting to analyse from the model of self regulation and the model of cooperation. Tactically the librarians have used both. The demands of the librarians take its point of departure from the prohibition of wage discrimination. They have also been very active in the union reference group in the wage survey project. In this way they tactically have combined a legal strategy with traditionally union ones, which means bargaining for collective agreements. Hence, the model for self regulation is used as well as the model for cooperation. So far this has been a successful way of reaching higher wages for the librarians.

3.4. The result of the wage survey

A wage survey does not fulfil the demands of the law if it merely compiles statistics on monthly salary without reflecting a gender perspective. For instance facts like age, time of employment, part-time work, wage distribution and position are all necessary to acknowledge as indicators which can be relevant from a gender perspective.

Data of all employees including their wages and working conditions, e.g. different employment terms such as part-time, short contract, unionized and non-unionized, were collected from the University's HR database and were presented in Excel-files. We used the existing nomenclature for profession, (more than 300 different groups of work tasks) aware that in each group there can be individuals who actually do not perform the same job. Hence there can be individuals in one group that do the same job compared to individuals in

another group. The result of the wage surveys made in 2003 to 2006 was that the University is a workplace with equal sex distribution, 57 per cent women compared to 43 per cent men (2005). We also found that there are no gender differences according to age and length of service and that 26 per cent of women work part-time compared to 24 per cent of the male staff (2005) compared to 21 and 17 percent in 2003. The amount of part-time work has increased, for both men and women at the University during the last five years. This we deemed as not being a gender issue but rather an employment issue. Since the year 2000 the Employment Security Act obliges the employer to employ those who have been working as supply staff totally three years within a period of five years on a permanent contract. This obligation has led to a minimalist employment approach considering the amount of working hours. This approach has led to increasing part-time employed especially among the group lecturers.

But let us return to part-time work from a gender perspective; the figure for men working part time is relatively high; however one explanation is that men's part-time work depends on the fact that they often have several employers or that they in addition run their own business. The hypothesis that men and women work part time on gender specific grounds is confirmed in the figures for receiving pay for extra work. Women working part time get more pay for extra work compared to men.

The mapping shows that there is horizontal as well as vertical gender segregation at the University. The structure is, as mentioned, hierarchal with large low valued female dominated groups at the bottom and one high valued male dominated group at the top. The most gender segregated groups are the technical and the administrative staff. Actually, men and women are not doing the same job. This horizontal phenomenon characterizes the entire Swedish labour market; the public sector as well as the private sector (Fransson 2003, Fransson & Thörnqvist 2006). In a report from the Swedish Agency of Government Employers, the wage differentials between men and women during the period 2000-2005 is analysed. Using the work task classification system BESTA the Agency came to the result that the most important explanation for wage differentials is the vertical segregation, i.e. work tasks performed by male groups are classified with a higher degree of difficulty (Swedish Agency of Government employers 2005).

Full time equivalent figures gave the result that women at the entire University in 2001 earned 83 percent of men's wages. The wage survey made in 2006 showed that this figure had increased to 85.5 percent (2005 wages). Wage dispersion within groups with equal work showed no significant gender related features. However, the statistics showed very small wage differentials between men and women with equal work. For instance, female professors earn 102 percent of male professors' wages, female senior lecturers earn 98 percent of male senior lecturers' wages and female junior lecturers earn 101 percent of male junior lecturers' wages (2005). The amount of additional pay for leadership is also increasing for women in relation to male colleagues. 47 percent of the senior lecturers are women and 63 percent of the junior lecturers are women. It ought to be mentioned that in 2005, 22 per cent of full professors were female. In an international perspective this figure is nothing to be proud of. At least the figures are better than those from the US, 16.2 per cent (Blau & Kahn 2000:89). In summer 2006, for the first time a woman took the position as the head of the university. Hence academic groups are not the most problematic ones when studying wages from a gender perspective. The glass-ceiling is broken and actually there are no wage limits (see Löfström 2003:260). These groups have successfully been represented by their unions at the university and there has been a strong commitment to adjust women's wages within academic groups in the local wage rounds during the last decade.

More problematic is the heavily feminized (circ. 90/10) administrative group where the wage gap between men and women tends to increase. Seen as a group, the wage differentials have increased with 11 percent from 2001 to 2005. One explanation is that the University has had a successful strategy in employing younger (well-educated) men for administrative work with the aim to achieve a less gender segregated administrative staff. One can discuss if it is "necessary" or not that these young men generally are better paid than their female and older colleagues.

We also collected pay data in all its different forms. The EC-court has interpreted the concept of pay in a broad manner within the scope of Article 157 (141) and each piece of wage should in a case of wage discrimination be compared separately.[12] Statistics from the University show that male employees get more over-time pay and due to the patriarchal structure they are still dominating academic and administrative leadership at the University. Equal pay is also a matter of structure and power. It has to be noticed that the gender pay gap at the University increases if we broaden the concept pay and add different kind of pay such as overtime pay and above all, additional pay for leadership assignments. In legal terms, this is not a question of direct discrimination. However, the active measures for equal pay have a more broad and structural perspective for equality between men and women. In the action

12. See C-236/98 the Equal Opportunities Ombudsman v. Örebro County Council.

plan for equal pay the employer has also to handle these structural gender related features.

3.5. The scheme design

In an organisation with a high horizontal gender segregation the comparison between different kinds of work tasks is a matter of decisive importance if the aim is to reach more equal and fair wages from a gender perspective. The legislation on active measures for equal pay draws up the necessary criteria for the employer's method to compare work tasks in a non-gender discriminatory way. These criteria are: knowledge and skills, responsibility, effort and working conditions. To make it possible to compare different kinds of work tasks, an analytical work evaluation system was created at the University by the wage survey group and with the unions as a reference group. The points of departure were the above mentioned criteria.

In a factor plan we defined the different factors for evaluation, their levels and we attached scores to each level. In connection to each sub-factor, we made a description of how each factor ought to be interpreted. For instance, the sub-factor demand for knowledge is of crucial importance, so the factor includes 8 different levels. The sub-factor demand for responsibility includes personnel, students, research and development. The different factors of the work evaluation system were also internally weighted from an academic structure as follows; high points for knowledge and low points for physical effort

As a comment, one can say that there was no intention to make a big revolution in the University's wage policy. In the project group our attempt was rather to make a soft revolution in our proposal for how to weigh the different factors in the evaluation system. This proposal was rejected by the employer's delegation. Hence the work evaluation system maintains the structure from a class and educational perspective (Figart 2000:15). Like the union leaders from SEKO said; their members had nothing to gain in a work evaluation system.

3.6. The evaluation process

It is a common misunderstanding that work evaluation is objective in itself and that the method automatically leads to pay equity. From a methodological view-point, it should be underlined that work evaluation is not objective and scientific as such (Remick 1984). The purpose is to evaluate work tasks in a systematic and non gender discriminatory way with the purpose to find out if there are any unwarranted wage differentials at the University. Work evaluation is rather a method that can reveal values and subjectivity in a structured way.

The work tasks or professions that were valued were professor, senior lecturer, junior lecturer, librarian, different kinds of administrators, laboratory worker, research laboratory worker, research-engineer, technician, IT-technician, cleaner, porter, catering assistant i.e. groups that are female or not female dominated. Compared to the study at Karlstad University the work tasks as junior lecturer as well as senior lecturer was seen as two groups where the differentials within the groups are so small that they can be classified as two equal work groups (Gonäs, Bergman & Rosenberg 2006). To have a ground for the evaluation process, general descriptions of the different work tasks were made by the project group. The most striking was that it is very easy to use subjective and estimating words even in a process of describing different kind of work tasks in general.[13] To support the group in this part of the work, the local union representatives were directly involved and also other employees at the University with special knowledge. Especially the description of the librarians work tasks was discussed and adjusted in cooperation with the librarians and the local union representatives, but unfortunately we did not reach full consensus. One Union representative stated that: "*The valuation is coloured with words that are sex discriminatory in itself. The junior lecturers' work tasks is expressed in an active manner while the librarians' work tasks are described in a passive manner*" (*GU-Journalen* 2003). Even after an adjustment the librarians thought that their work tasks were not described in a fully correct manner, so they subsequently found that the valuation had failed. Their tactical goal was to be equally valued compared to the junior lecturers.

The result of the work valuation was presented in a report. Three different methods were used to describe the result of the evaluation; an expression for working in an academic structure with high demands for legitimization. According to the first method the evaluated work tasks were divided into groups from the letter A to J within an interval of 40 points.[14] In each group the work tasks were considered being of equal value. For instance in group H, including the female dominated group administrators and the non female dominated group IT-technicians, the wage differentials were about 400 Euros per month. Comparison was also made between different groups ranged at a lower and higher level. In three female dominated groups, laboratory workers, research

13. No interviews or paper questionnaires were made with employees describing their jobs.
14. The second method had the interval 60 points which led to more comparable groups.

laboratory workers and assistant secretaries, the work tasks were ranged higher than the IT-technicians work tasks. The wages of the IT-technicians were however higher than the mentioned higher evaluated female groups.[15] In the bottom group, group J, including the work tasks of an office porter, office foreman, cleaner and catering assistant, all groups are organized in The Union of Service and Communication Employees, SEKO. The wage differentials are between 100 to 300 Euros to the advantage of the non female dominated groups.

The third method gives a more complex picture of the valuation and is useful to compare occupations without having to form fixed comparable groups. The method is more open, however, to decide whether the wage differentials are unwarranted or not. I think you need to use the first or the second method with defined groups for comparison.

4. How to handle unwarranted wage differentials

4.1. To deconstruct the gender pay structure

The wage surveys showed no significant wage differentials between men and women with equal work at an aggregated level. It is likely that there may be unwarranted wage differentials between individual men and women at the department level. However, it was deemed that such a level of detailed statistics would go far beyond what would have been an appropriate effort to comply with the demands for gender based analyses.

The work evaluation showed that there are comparable female dominated groups and non-female dominated groups who perform work of equal value. In some cases there are considerable differentials in pay between these groups. This has to be analyzed, and if the pay differentials are founded unwarranted the employer is responsible to undertake corrections and define these corrections in the action plan. The action plan has to include a cost computation and a time schedule for the pay differentials to be adjusted. This should be done as soon as possible but at the latest within three years. That's what the legislation stipulates! The way to carry out these pay adjustments is controversial. Should these adjustments be regarded as a part of the local bargaining wage scope? Or should there be a rectification separately from the ordinary wage scope? In compliance with the self-regulatory system, the local parties are supposed to carry out the wage adjustment in the local bargaining wage round (Prop. 1999/2000:173). Otherwise the employer is responsible according to the law. The question not answered within the legal framework is if the employer is obliged to give in extra money on top of what is planned to be negotiated in the bargaining rounds?

15. Compare with the EC-case Macarthys LtD 129/79.

4.2. Local bargaining and equal pay at the University

In the work evaluation report, we did not analyze whether the wage differentials were unwarranted or not. In the report it is said that the University has to 'objectively' justify the wage differentials between female and non-female groups that perform work of equal value. From my point of view, this was an issue for the employer and the unions to decide upon. It would have gone beyond the mission and the mandate of the wage survey group to make such a decision. If the wage differentials are concluded as unwarranted, the next step is to decide about the remedy. In this case, the persons in charge need authorisation to make such decisions. Ultimately, the person in charge is the head of the University.

It has been stated that annual wage surveys go beyond the scope for what is necessary to guarantee equal pay in the sense of EC law and that the surveys rather cause a lot of extra work for the employer. However, the meaning with these annual wage surveys was to integrate legal obligations according to active measures with the local bargaining round, i.e. obligations according to collective agreements. The wage surveys are to be seen as a foundation for the local parties and they are also necessary to fulfil as wage surveys are part of central collective agreements such as RALS. During the local bargaining round in spring 2005, the employer and the three unions at the University came to similar agreements with the following summarized content: The result of the work evaluation shall be one part of the foundation for the local wage round. The parties agree to further cooperation with the aim to analyse wage differentials between groups with work of equal value. If there are any resisting unwarranted wage differentials when the local wage round 2005-2007 is completed, they should be adjusted outside the frame for local bargaining. The parties also stated their commitment to collaborate in matters regarding equal pay. However, it is underlined in the agreement that the employer is responsible if there are any unwarranted wage differentials left when the wage round is completed.

My comment to these agreements is that the deconstruction of the gender related pay structure is in its primary stadium. The parties have accepted the work evaluation system as a method to compare men's and women's work tasks. They have also accepted the result of the evaluation. More over, they have used the bargaining arena and the collective agreement in matters of ac-

tive measures for equal pay and that is indeed a step forward. To my knowledge there are few local collective agreements concerning equal pay matters at the Swedish labour market.

However, employers and union representatives are used to negotiate on wages from a conflict perspective but they are not familiar with analyzing wage differentials due to gender. Furthermore, they are not used to cooperate on wage issues beyond collective agreement borders. Due to this date, nothing has actually happened at the bargaining arena to fulfil the agreement. The unions have been passive and so has the employer, in spite of the collective agreements and the expelled intentions from both parties.

4.3. The market forces as a legitimizing concept?

Changes on the labour market in supply and demand for labour have in some respect bearing on wage setting. This is also the case for the University as an employer. In the Enderby-case the EC-court has stated that market forces can be the explanation to different wage setting when it comes to testing the employer's evidence in a case of wage discrimination. Judicially it is as always a matter of evidence. The EC-court stated that: *"If, as the question referred seems to suggest, the national court has been able to determine precisely what proportion of the increase in pay is attributable to market forces, it must necessarily accept that the pay differential is objectively justified to the extent of that proportion. When national authorities have to apply Community law, they must apply the principle of proportionality.*

If that is not the case, it is for the national court to assess whether the role of market forces in determining the rate of pay was sufficiently significant to provide objective justification for part or all of the difference".[16] The Swedish labour court has reflected upon the market forces as a legitimate ground for wage setting in the Midwife case, AD 2001 no 13 (also in AD 2001 no 51 and no 76). In the Midwife case the comparison was made between the performed work of two midwifes and a clinical engineer. The court found their work being of equal value and the employer, the Örebro County Council stated as objective grounds for wage setting; age, different collective agreements and market forces. In this case the court referred to the Enderby case and the question is how the labour court dealt with testing the employer's evidence from the principle of proportionality. Actually the employer did not have to prove anything and certainly did not have to present any analysis about the actual situation on the market or even to define what the relevant market was.

16. See theEC- case C-127/92 Enderby v. Frenchay Health Authority, 1993 ECR I-5535.

The employer just had to show that the wage-setting had been performed on "normal" grounds – i.e. that the wages had been set as a result of some kind of negotiation and settled by a collective agreement. In the three mentioned cases the labour court found no discriminatory wages due to gender as the market forces were seen as an objective ground for wage-setting. Market forces and the existence of a collective agreement were handled as somewhat equivalent. In comparison to the EC-court's statement in the Enderby-case and British case law, the Swedish labour court seems to be very sensitive to the employer's arguments for different wage setting for female and non-female dominated groups.

In the Ratcliffe case the Court of Appeal stated that: *"If market forces' are relied upon, he (the employer) must show that these are gender-neutral if he is to succeed in establishing the defence*". The Ratcliffe case was appealed to the House of Lords which declared: *"The basic question is whether the DSO paid women less than men for work rated as equivalent. The reason they did so is certainly that they had to compete with CCG [a private company]. The fact, however, is that they did pay women less than men engaged on work rated as equivalent. The industrial tribunal found and was entitled to find that the employers had not shown that this was genuinely due to a material difference other than the difference of sex.*

The women could not have found other suitable work and were obliged to take the wages offered if they were to continue with this work. The fact that two men were employed on the same work at the same rate of pay does not detract from the conclusion that there was discrimination between the women involved and their male comparators. It means no more than that the two men were underpaid compared with other men doing jobs rated as equivalent."[17]

The House of Lords then stated that the wage setting was directly discriminatory to the female group as there were no possibilities for them to apply for another job.[18]

So we have to be aware that employers on the Swedish labour market can hold up the midwife case as a *carte blanche* for their wage setting practices. This brings us back to the work evaluation at the University. The wage setting of IT-technicians at the University is probably a result of the overheated market in the 1990s. However; today's issue is for how long shuffling market effects can justify wage differentials between groups with work of equal val-

17. I.C.R. 1995.833.
18. For an analysis of the case see Aileen McColgan, Equal Pay, Market Forces and CCT, Industrial Law Journal, 1995, pp. 368-371.

ue? My point of view is that every employer has to decide upon whether there is a market effect or not; and what is meant by 'the market'. It is also in the employers hand to decide if it is necessary to pay the 'market price'. The market is not in itself objective in a way that a reference to the market forces per definition legitimises unwarranted wage differentials. To justify wage differentials between men and women with work of equal value merely with reference to market effects is also contradictory to equal pay legislation (Townshed-Smith 1996). The purpose of the legislation is thus to change discriminating values on the labour market and not to strengthen them.

In February 2006 the employer's delegation at the University decided that market forces was the factual ground that explained the wage differentials between female dominated and non-female dominated groups with work of equal value. Consequently there were no unwarranted wage differentials and no adjustments had to be done. I find this decision very problematic and not quite logical. First, a work evaluation system like the system used at the University is used at a collective level for evaluating the demands of work tasks in general. It should be stressed that in this evaluation at a group level, market forces are not considered, as the evaluation process is reflecting the employer's internal values. In an individual discrimination case where we evaluate a single employee's work tasks compared to another single employee, the market factor could be an external explanation and the wage differential then might be deemed as non discriminatory.

Secondly, in 2004 the University established norms for how to handle the concept market forces in individual wage setting. Market factors that can influence the employer's individual wage setting are:

1. The employee's wage in relation to comparable jobs at a relevant market, i.e. the private sector, the municipal sector and foreign universities,
2. Actual risk that the employee will leave the university,
3. The possibilities for replacing the employee in a situation of possible loss.

All these three factors are described as external factors to be used in a situation where the employer is able to calculate the costs. To sum up my opinion is that critics ought to be stressed upon how the employer's delegations handled the result of the wage evaluation. However, this is a spill over effect of the Swedish labour court's case-law concerning the market concept as a general legitimisation for men's higher wages.

5. Closing the gender pay gap at the University – a matter of co-operation or self-regulation?

By way of introduction, I put forward some issues that are complex and internally linked to each other. They are connected in purpose with the active measures to close the gender pay gap at the University. The primary issue was whether the undertaken active measures for equal pay can change the gender structure i.e. the patriarchal structure?

The work with active measures for equal pay and equal working conditions is today highly legitimised at the University even by the trade unions. From this angle, the implementation of the legislation is successful (see Segerpalm 2005). Actually we have not yet faced any strong open resistance in the implementation process, which in one way bothers me. Research on policy changes due to equality between women and men, always points out resistance in the organization as the main problem (Pincus 2002).

The general feminization of the employed staff at the University increases and in 2006 almost 60 per cent of the employees were women. This also has to be mirrored in a structure of power; academically as well as administrative. By working with different kinds of active measures, for instance affirmative action, the amount of female academics and administrative leaders has increased. The glass-ceiling has been broken. This is in line with the general plan for equality at the University.

My main issue concerns the interaction between the results of the wage surveys, especially the work evaluation and the local bargaining. Is it possible for the union representatives to cooperate with the employer to achieve pay equity, when their member's position in the wage structure is threatened? My study shows that there are problems in cooperation on wages. The work with active measures for equal pay at the University proceeded on two parallel agendas; cooperation within the wage survey group and wage negotiations between the unions and the employer, i.e. the self-regulating model. The two agendas for wage formation are built on two different perspectives; a harmony perspective and a conflict perspective. Theoretically the grounds for wage setting should be similar; wages ought to be set on factual and objective grounds in line with the central collective agreements. However, the local unions are supposed to take responsibility for the result of the work evaluation for all the employees and not only for their members. I am not sure how to analyse the passivity at the bargaining arena after the agreements set in spring 2005. It might be, as Brian Bercusson stated that: *"In discussing the potential for collective bargaining as a mechanism for promoting gender equality it is necessary to observe that, even where collective bargaining is securely estab-*

lished and extensive, there will be areas outside the scope of joint regulation and within employer prerogative which are crucial for equal opportunities. Employers' opportunities to tackle discrimination and promote gender equality in the workplace are, therefore, potentially greater than those open to trade unions, since employers can act not only through collective bargaining but also by unilateral action in their employment strategies and human resource policies" (Bercusson 1996 p. 186).

This potential the University as an employer has not used yet. My concern that there was a risk that the market forces as a legitimizing concept would be the easy way out of any consequences, was unfortunately redeemed and the union representatives seem to make no fuzz about that. In this way, it seems as like everybody wants to keep status quo.

My conclusion is that the University and the unions have failed in cooperating for equal pay; they have also failed in bargaining for equal pay at the local level. The implementation of the law has gone so far that the employer and the unions have accepted the goal and the methods; however they are not capable of handling any kind of consequences at a collective or a structural level. My conclusion is that there is a serious will to comply with the active measures for equal pay but in case the market forces are allowed to function as a general legitimate ground for wage differentials between male and female groups doing work of equal value, the result of the wage survey and the action plan will only legitimise the existing wage structure. The University's wage adjustment strategy at a central level is then actually to make no changes in the wage structure.

Finally, we must neither underestimate small wage differentials between men and women nor small steps to narrow the gender pay gap. Nonetheless, the gender pay gap at the University has diminished with 2.5 per cent during the period when the activities in favour for equal pay have been going on. However, analysing wage from a gender perspective gives rise to a variety of new perspectives that hardly ever before have been addressed. Nonetheless, closing the gender pay gap at the University of Gothenburg takes greater demands than a project on wage surveys. It also takes two to tango.

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CHAPTER 7

Discrimination against Women in the Field of Criminal Law

Particularly on Gender-based Violence

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1. Introductory remarks

In most of the European countries equality between men and women has formally been recognised for many years. In spite of this recognition, in reality, there is still a widespread gender inequality within Europe and even within the member states of the European Union. Also in the Nordic Countries, which usually boast themselves of being modern societies, a great deal of discrimination against women takes place every day.

In the field of criminal law, discrimination against women has many faces. One of the considerable problem areas is gender-based violence, particularly domestic violence. This is due to at least two reasons. Firstly, domestic violence has generally been seen and understood as a private matter in which the government should not interfere and for which it is not accountable. The home has traditionally been idealised as a place of safety and security, and the relationship between members of the family has been idealised as a respectful and supportive relationship[1] – even though it has been known since the dawn of time that this approach is far from reality in every home.

1. See Dorothy Q. Thomas and Michele E. Beasley, Domestic Violence as a Human Rights Issue, Human Rights Quarterly, 1993, p. 43 and Trine Baumbach, Vold mod