



Service terms of use and other information provided on a service

1 COMPLAINT

In their complaint referred to the Chancellor of Justice on 3 December 2020, the complainant criticizes the terms of use of the Omaolo service provided by DigiFinland Oy (hereinafter also 'the company'). The complainant considers the terms of use to be so strict, absolute and unreasonable that the service provider accepts no liability. In particular, the complainant refers to the limitations of liability included in the terms of use that state that the service provider's liability under the agreement is limited to EUR 50.

2 STATEMENTS RECEIVED

I requested a statement on the complaint from the Ministry of Finance, which is responsible for the ownership steering of DigiFinland Oy, and from the Ministry of Social Affairs and Health, which is responsible for managing the content of the service (digital social and health services). The statement submitted by the Ministry of Finance is dated 17 March 2021 (VN/2752/2021) and the statement submitted by the Ministry of Social Affairs and Health 15 March 2021 (VN/2772/2021).

3 DECISION

3.1 Statement of the Ministry of Social Affairs and Health

In my request for a statement from the Ministry of Social Affairs and Health, I stated that the Omaolo service is produced by DigiFinland Oy and provided by municipalities, joint municipal authorities and hospital districts to their customers. The company also collaborates with the aforementioned bodies to develop the service. However, the Omaolo website or the service terms of use do not indicate whether the service is a public healthcare service or a commercial service that is provided in connection with or in addition to public health services. I stated that the status of the private individuals using the service is not made clear on the website or in the terms of use.

I requested that the Ministry of Social Affairs and Health provides a description of the steering methods or other methods that the Ministry uses to ensure that service users are provided with sufficient and appropriate information in the terms of use and generally on the website. I also requested a description of the guidance on the information to be provided on the Omaolo service that the Ministry or the authorities under its administration have issued to the parties organising or producing the public health services that include the Omaolo service.

In its response, the Ministry stated that the Omaolo service is a digital service channel of public social and health services and dental services that supports citizens' self-management of health and refers them to the appropriate services when necessary. The service description states that the content of the Omaolo service is based on researched medical information and validated questions, and for social services, on the criteria for eligibility to social services laid down in legislation, for example. The individual health guidance provided in connection with symptom checks is generated with a digital deduction system based on medical knowledge produced by Duodecim Publishing Company Ltd. The service analyses the users' responses and uses the information available to it to generate guidance that is as personal as possible. The service has a feature for booking appointments which enables providing digital service chains for its users. The aim is to refer the users to the service most suitable for them as efficiently as possible.

According to the statement, Omaolo is a CE marked medical device subject to Regulation (EU) 2017/745 on medical devices. In addition, Omaolo is considered to be a class B information system within the meaning of section 19b of the Act on the Electronic Processing of Client Data in Healthcare and Social Welfare.

According to the Ministry, it does not contribute to the drafting of the Omaolo terms of use or other service descriptions. In the Ministry's view, the regions that introduce the service in their areas are responsible for informing the residents on the digital services available to them. In addition, municipalities must ensure that the principles of good governance are observed in the provision of digital services as well.

However, the Ministry also states that the website for the Omaolo service should make it clearer with whom the service user concludes the agreement referred to in the terms of use and how the users' personal data are processed at the different steps of the service. The Ministry states that the terms of use could be improved by adding information on customer contact channels, more detailed information on the regions where the service is available, and contact details for the regions.

3.2 Statement of the Ministry of Finance

In my request for a statement from the Ministry of Finance I described the same deficiencies in the Omaolo terms of use as in the request I sent to the Ministry of Social Affairs and Health. I also requested the Ministry to review the content of the terms of use and information provided on the service in terms of the above. I requested that the Ministry provides a statement on whether it considers the terms of use to be sufficiently informative from the point of view of the appropriateness of the service and good governance, and whether customers can be assumed to understand their legal status when using the service based on the terms of use.

I requested that the Ministry describes how it ensures – as the Ministry responsible for the ownership steering of the company – that the Omaolo terms of use are sufficiently clear and easy to understand to enable the users of the service to have sufficient information on the nature of the service they are using and their status as the user of the service.

In addition, I requested the Ministry's view on whether DigiFinland Oy is carrying out a public administrative task in connection with providing the Omaolo service.

3.2.1 Public administrative task

3.2.1.1 The Ministry's statement

According to the Ministry's statement, the Omaolo service is based on the renewal of social and health services' operating models and on supporting this renewal. The purpose of the service is to improve the quality of social and health services and to eliminate overlapping work. The service enables the national monitoring of public health and collecting data on the population level.

According to the statement, DigiFinland Oy's Omaolo service is not considered to be a public administrative task within the meaning of section 124 of the Constitution of Finland. No public administrative task has been delegated to the company by an Act or by virtue of an Act as laid down in the section mentioned, nor is there legislation requiring the creation or provision of the service. DigiFinland Oy is the developer, administrator and distributor of the Omaolo service based on an agreement that the company has concluded with the Ministry of Social Affairs and Health.

In its statement, the Ministry assessed the provision of the Omaolo service in the context of section 124 of the Constitution of Finland and deemed that determining whether the service and DigiFinland's role in its development, administration and distribution can be considered to be a public administrative task is a complex issue. The company's role is largely technical, and the service is provided in connection with or in addition to public health services. The Ministry initiated a project on 9 March 2021 (VN/3214/2021) with the purpose of investigating the need to regulate DigiFinland Oy. One of the project's objectives is to identify the situations where the company could be deemed to carry out public administrative tasks.

3.2.1.2 Statement requested by the Ministry

After submitting its own statement, the Ministry delivered to the Office of the Chancellor of Justice a statement from Tuomas Ojanen, Professor of Constitutional Law and Docent of European Law. The statement is dated 2 July 2021 and was requested by the Ministry. In his statement, Ojanen discusses the status of digital services in relation to public administrative tasks and how the services provided by DigiFinland Oy should be viewed in relation to section 124 of the Constitution of Finland.

Ojanen states that based on the government proposals for the Constitution of Finland and the statements of the Constitutional Law Committee summarised in his statement, it can be concluded that a broad definition should be adopted for the 'public administrative task' referred to in section 124 of the Constitution due to the primary intention of the provision, i.e. limiting the delegation of public administrative tasks to parties outside the authorities.

Ojanen states that, so far, the Constitutional Law Committee has issued relatively few statements on digital services in the context of section 124 of the Constitution of Finland. Therefore, no general assessments can be made on which digital services and activities are considered to be public administrative tasks within the meaning of section 124 of the Constitution. In all cases, a case-specific assessment must be made that considers the special characteristics of the task or activity in question.

Ojanen does however state that a digital service or activity must generally be considered to be a public administrative task within the meaning of section 124 of the Constitution if the digital service or activity in question has a sufficiently established and strong connection to the following: (1) a public or social interest that is deemed to be particularly important; (2) matters that the basic right provisions of the Constitution safeguard, or Finland's international human rights obligations; (3) the implementation of law; or (4) decision making related to the rights, obligations and interests of individuals and communities.

On the Omaolo service, Ojanen states that the service is a digital service channel for public social and health services intended for assessing customers' needs for health care and their urgency. According to Ojanen, the service has a relatively established and strong connection to the rights safeguarded by section 19, subsection 3 of the Constitution and their implementation. In addition, in some individual cases, the service may affect the real-life implementation of the right to life enshrined in section 7, subsection 1 of the Constitution, since the purpose of the Omaolo service is not only to assess customers' needs for health care but also their urgency.

According to Ojanen, Omaolo's connection to the basic rights safeguarded by section 19, subsection 3 and section 7, subsection 1 of the Constitution highlights the significance of the service to basic rights, since section 22 of the Constitution obliges public authorities to guarantee the protection and observance of basic rights. In Ojanen's view, as a whole, the Omaolo service includes digital subservices that are significant for the implementation of the aforementioned basic rights and that must be considered public administrative tasks within the meaning of section 124 of the Constitution. According to his statement, the Omaolo service must be assessed with the requirements laid down in section 124 of the Constitution for delegating public administrative tasks to parties other than authorities.

3.2.2 Good governance and information provided on the service

According to the statement of the Ministry of Finance, the Omaolo terms of use are public information and clearly indicated in the bottom section of the www.omaolo.fi home page. The terms of use can be accessed without logging in or registration (<https://www.omaolo.fi/palvelunkayttoehdot>) and with several internet browsers. The terms of use are available in Finnish, Swedish and English. The layout of the terms of use can be deemed clear and understandable. Separate instructions for use are also available (<https://www.omaolo.fi/kayttoohjeet/omaolo-kayttoohjeet.pdf>) that have information on the purpose of the service, for example.

According to the statement, it is common practice that the providers of online public and private services request users to read the terms of use before using their service. The use of a service may also require registration. The use of services and the possible registration require that the terms of use are accepted or, barring acceptance, that the user ceases using the service or is

prevented from using it. Using a service may also be deemed to be an acknowledgement of the terms of use. These matters are clearly stated in the introduction of the Omaolo terms of use.

According to the statement, the terms of use do not clearly state that, based on their responses, users may be directed to interact with different parties within the service. An Omaolo user may enter into an agreement with DigiFinland Oy, the social and health service provider of their region or, when using Koronavilkku, the Finnish Institute for Health and Welfare (THL). The roles and registers for processing personal data are assigned similarly to the above parties and this is referred to in the Privacy Policy of the service, a link to which is included in the terms of use.

The Omaolo terms of use and the legal status of the user described therein do not, in principle, differ from those commonly used by public administration, but there is room for improvement in their accessibility and clarity.

According to the statement, the limitation of liability in the terms of use is similar to those of most online services. In its statement the company grants that some of the terms, such as determining the governing law in case of disagreements and the limitations of liability in case of damage, may not necessarily be appropriate for an agreement concluded with citizens using a public service. For example, it is debatable whether the limitation of liability to EUR 50 can be deemed to be proportionate or necessary.

3.3 DigiFinland Oy's statement

The Ministries of Finance and Social Affairs and Health appended the statements DigiFinland Oy provided to them (hereinafter 'statement') to their statements delivered to the Office of the Chancellor of Justice.

According to the company, the provision of the Omaolo service is based on three framework agreements that were tendered in 2016–2017 by KL-Kuntahankinnat Oy as a centralised procurement. All KL-Kuntahankinnat Oy customers could enter into the framework agreements based on the customer definitions of the agreements. The framework agreements enabled Omaolo to expand into a national solution. The service was transferred for further development from the City of Espoo that acted as its original parent municipality to SoteDigi Oy, now known as DigiFinland Oy. The services covered by the framework agreements are key components for the production of the Omaolo service.

DigiFinland Oy is responsible for the development and distribution of the service. In most of its projects, the company handles the procurement, development and administration in a project

that is owned and steered by a government agency, usually a ministry, with funding and authorisation from a ministry, but the Omaolo service is a DigiFinland Oy product that is commissioned and steered by the Ministry of Social Affairs and Health based on a commission agreement.

According to the statement, due to its history and the fact that several different parties are involved, the service is a complex entity. The Omaolo service comprises several service components designed for the different purposes of different parties. In 2020 the scope of the service significantly extended with new deployments and subservices, and it quickly became a central and vital tool in managing the coronavirus pandemic in particular. In compliance with the coronavirus contact tracing strategy, the Koronavilkku application – a mobile application within the meaning of section 43 of the Communicable Diseases Act and provided by THL – was connected to the Omaolo service. The service is an electronic contact channel within the meaning of the government proposal for the amendment of the Communicable Diseases Act ([HE 101/2020 vp](#)). Authorities instruct citizens to use the coronavirus symptom checker in the Omaolo service to assess their symptoms. In addition, in the service, a healthcare professional generates a code for Koronavilkku that a person who has tested positive for the coronavirus can enter into the application to allow the application to alert those that have been in contact with the person who had tested positive.

According to the company, Omaolo directs users to the services of different parties based on the users' responses and needs. For example, the service provider of the self-care instructions and wellbeing coaching programmes in the Omaolo service is DigiFinland Oy, whereas in cases requiring more personal health care or service, the user is directed to the social and health services of their own region. THL is the company's partner for Koronavilkku.

According to the statement, DigiFinland Oy's participation in the provision on the Omaolo service is neutral and purely based on technical expertise. The company does not independently make any decisions in the context of the service on the status or rights of users nor any other matters; the Omaolo service using AI is only used to support the advice and guidance provided to users. According to the statement, the service includes guidance services, the provision of which is in principle the statutory duty of municipalities. According to the company, among other aspects, the scope and central status of the Omaolo service in the management of the coronavirus pandemic and the authorities strongly recommending citizens to use the service when seeking health care could indicate that the service provided by DigiFinland Oy may partly be interpreted to be a public administrative task. According to the statement, some of the components of the Omaolo service could be interpreted as public administrative tasks but the more technical components are clearly not public administrative tasks.

The company states that using the symptom checkers or the guidance services in Omaolo does not require user authentication or accepting the terms of use. In these cases, the user enters into an agreement with DigiFinland Oy. If the user does not want to or the Omaolo service does not recommend the user to contact a social or health service organisation, the user can choose whether the information they have entered is saved in the Omaolo wellness data register (DigiFinland Oy's personal data register).

If the user wants to or the Omaolo service recommends the user to contact a social welfare or healthcare professional, the information entered by the user is transferred to the register (customer or patient information register) of the municipality or social or health service provider of the user's choice based on the user's consent. In this case, the service provider is the regional service provider in question.

A professional, citizen or other party using the Koronavilkku application connected to Omaolo enters into an agreement with THL. Users are not provided with a true opportunity to voluntarily give consent when assessing their symptoms with the coronavirus symptom checker in Omaolo. This has been accounted for in the service and the results are not saved in the wellness data register but in the patient information register of a municipality or hospital district based on the user's consent.

In terms of processing personal data, the responsibilities related to registers have been agreed on with municipalities and hospital districts. Regional organisations have deemed it to be important that DigiFinland Oy is the controller for the wellness data register, since municipalities and hospital districts do not have any actual contact with the users that use the service only for the self-management of their health. In these cases, DigiFinland Oy is the service provider.

According to the statement, the Omaolo service and the agreements it is based on were originally designed for a different operating environment. Although the activities are still appropriate from a legal and contractual point of view, the need for the service and its scope have changed rapidly. The current situation is also different because the basis for the service of the original service provider (City of Espoo) was to carry out the public administrative tasks of an authority. When the service was transferred to the company, a number of organisation and responsibility issues arose that were not sufficiently considered during that time.

According to the statement, during the provision of the service, several operators have edited the Omaolo terms of use and the current terms of use are the result of this. The terms of use do not clearly state that based on their responses, users may be directed to interact with different parties within the service. The company will review the terms of use and take the requirements of good governance into account. The terms of use will be made more user-friendly and

informative to ensure that users understand their legal status, which parties they enter into an agreement with when they use the service, to which registers their personal data is collected and by which parties, and how their personal data is processed.

3.4 Assessment

3.4.1 Nature of the Omaolo service

Originally, the Omaolo service was a service tendered and administered by KL-Kuntahankinnat Oy with the City of Espoo acting as the parent municipality. According to the statement received, at that time, the service was intended to be a delegated public administrative task. Today, the Omaolo service is provided by DigiFinland Oy based on a commission agreement and commissioned and steered by the Ministry of Social Affairs and Health. The service and the company's commission are not regulated by legislation, but the company serves as the service developer, administrator and distributor based on the aforementioned agreement. Municipalities and joint municipal authorities provide the service for their residents and collaborate with the company in the development of the service. In its view, the company provides technical expertise for the service.

The Ministry of Social Affairs and Health stated that content-wise, the service is a digital service channel of public social and health services and dental services that supports self-management of health and refers users to the appropriate services when necessary. The service enables users to assess their need for health care or social services based on the information they enter (symptom checkers and service assessments), to assess the general state of their health or wellbeing (different checks and surveys), and participate in wellbeing coaching programmes. During the coronavirus epidemic, the service also became a contact channel used to manage the epidemic.

Based on their responses, the service users move between the different service components, which results in them establishing a relationship with public (social and health service providers, THL) or private (DigiFinland Oy) operators. Based on the information received, if users use the service only for the self-management of their health, they do not have contact with public service organisers and producers.

Based on the information received, the Omaolo service is a joint service of public and private operators and its nature is something between public and private as well; the service has different service components for the content of which a public authority is responsible, but the service is technically implemented and generally provided by a private, albeit state-owned, company. The service is connected to public social and health services that in turn are connected to certain

basic rights safeguarded by the Constitution of Finland, and protecting these rights is the responsibility of the authorities. When assessing the nature of the task, I deem it important to assess how strongly the task is connected to the responsibility of the authorities to organise social and health services.

According to section 7, subsection 1 of the Constitution, everyone has the right to life. The provision is connected to section 19, subsection 3 of the Constitution, which guarantees the right to adequate social, health and medical services for everyone.

According to section 19, subsection 3, ‘the public authorities shall guarantee for everyone, as provided in more detail by an Act, adequate social, health and medical services and promote the health of the population’.

According to the view of the Constitutional Law Committee, the first sentence of section 19, subsection 3 of the Constitution does not require any specific method of service provision; instead, the provision requires that the services are adequate and their availability is guaranteed by authorities.¹ The requirement for the adequacy of services leads to requirements for the quality of the services as well. According to the government proposal for the amendment of basic rights ([HE 309/1993 vp](#), p. 71), in assessing the adequacy of services, a service level that enables each individual to fully function as a member of the society is used as a reference.

According to section 22 of the Constitution, ‘the public authorities shall guarantee the observance of basic rights and liberties and human rights’.

Public administrative tasks are primarily carried out by authorities and the public servants working under them.

Section 124 of the Constitution states the following: ‘A public administrative task may be delegated to others than public authorities only by an Act or by virtue of an Act, if this is necessary for the appropriate performance of the task and if basic rights and liberties, legal remedies and other requirements of good governance are not endangered. However, a task involving significant exercise of public powers can only be delegated to public authorities.’

The ‘public administrative task’ of section 124 of the Constitution refers to a relatively large set of administrative tasks that includes the implementation of legislation and tasks related to decision making affecting the interests, rights or responsibilities of private individuals and communities ([HE 1/1998 vp](#), p. 178). In its statement practice, the Constitutional Law Committee has

¹ [PeVL 17/2021 vp](#), p.18; [PeVL 26/2017 vp](#), pp. 32, 36–41 and 44–45; [PeVL 12/2015 vp](#), p. 3; [PeVL 11/1995 vp](#), p. 2; and [PeVL 54/2014 vp](#), p. 2/l.

assessed whether a number of different tasks should be deemed to be public administrative tasks, and as a result, the term is applied broadly.

The Ministry of Finance investigated the need to regulate the activities of DigiFinland Oy in dedicated a project (VN/3214/2021). The aforementioned expert statement was requested in the project. According to the statement, the Omaolo service has such connections to the basic rights enshrined in the Constitution and to the responsibilities of public authorities that the service can be deemed to be a public administrative task, and delegating it to a private company should be assessed based on the requirements laid down in section 124 of the Constitution. In particular, the statement highlights assessing the users' needs for health care and their urgency as such service components. According to the statement, the service provision method (digital or non-digital) in itself has no effect on whether a service is a public administrative task; instead, the decisive factor is whether the service has a sufficiently established and strong connection to certain matters².

The Ministry of Finance submitted a project report detailing the results of the aforementioned project to the Office of the Chancellor of Justice. The report states that DigiFinland Oy's activities must have a sufficient legal basis. The project included carrying out an assessment on alternative regulation models. The project proposed a model for advancing the matter in which wellbeing services counties could commission services from DigiFinland Oy based on an agreement, if the requirements laid down in section 12 of the Act on the Organisation of Social and Health Services were met.

The company deems that its activities are based on technical expertise and that some components of the Omaolo service could be interpreted to be public administrative tasks, while the more technical components are clearly not public administrative tasks.

The provider of the Omaolo service and the agreements it is based on have changed as described previously during the provision of the service. Different views have been presented on the whether the service and its components are public administrative tasks. The differences in these views signal that the matter is complex and the company's share of the service is hard to define.

DigiFinland Oy is a government-owned company and the Ministry of Finance is responsible for its ownership steering. According to section 11, subsections 1 and 3 of the Government Rules of Procedure, ministries carry out the legislative drafting work and handle all matters related to

² To a public or social interest that is deemed to be particularly important; to matters that the basic right provisions of the Constitution safeguards or to Finland's international human rights obligations; to the implementation of law; or to decision making related to the rights, obligations and interests of individuals and communities.

companies falling in their administrative branch. The Ministry's task is, therefore, to investigate what regulation may be needed as the basis of DigiFinland Oy's activities. The Ministry has initiated such an investigation and collaborated with the Ministry of Social Affairs and Health, which is responsible for steering the content of the Omaolo service and for the drafting work related to legislation on social and health services.

Due to the above, I will not directly comment on the nature of the Omaolo service in relation to section 124 of the Constitution in my decision. However, I will express the following views based on the information available to me.

The health checks and wellbeing coaching programmes provided through Omaolo are connected to the promotion of public health as referred to in section 19, subsection 3 of the Constitution. Based on the information available, these service components are provided to users independently and based on the consent of the users, and they do not seem to include any actions that could be seen as assessing the need for health care or its urgency or other actions that could affect or be connected to the users' rights. Insofar as these service components include guidance related to social and health services and depending on the nature of the guidance, they are similar to public administrative tasks.

When assessing the nature of the Omaolo service in relation to section 124 of the Constitution, my attention is drawn to the service components that use the information entered by the user to generate an assessment based on which the user may be referred to public social or health services that are deemed suitable for the user. These services provided by authorities implement the right to adequate social and health services protected by section 19, subsection 3 of the Constitution, and section 22 of the Constitution obliges public authorities to ensure the provision of these services when they implement substantive legislation on social and health services.

The Omaolo service includes phrases such as 'symptom check' (healthcare) and 'service assessment' (social services) that seem to refer to assessing a user's need for health care or social services. In social and health services, such assessments and checks – and providing service advice – have been deemed to be public administrative tasks.³

³ [HE 241/2020 vp](#), pp. 682–684. In the government proposal on the renewal of social and health services, assessing the need for social services was considered to be so strongly connected to making decisions on who is granted access to the services that it was deemed to include aspects of exercising public powers. According to section 12, subsection 3 of the Act on the Organisation of Social and Health Services, which enters into force on 1 January 2023, wellbeing services counties must, as a rule, retain responsibility for health care and social service needs assessments when they procure services from private operators. However, the Act allows certain derogations from this. In its statement on the proposal ([PeVL 17/2021 vp](#), p. 20), the Constitutional Law Committee referred to the statement ([PeVL 26/2017 vp](#), pp. 38–39) the Committee issued on the proposal on social and health services that was submitted to Parliament by the previous Government, in which the Committee stated that authorities must be able ensure that service needs assessments are carried out based on uniform criteria and practices.

Section 51, subsection 1 of the Health Care Act requires that in basic healthcare services, the assessment on an individual's need for health care must be carried out by a healthcare professional. Section 52 of the Act provides for assessing the need for health care in specialised health care.

The general provision for assessing the need for social services is in section 36 of the Social Welfare Act. According to subsection 5 of the section, the social welfare professional within the meaning of section 3 of the Act on Social Welfare Professionals (817/2015) who is appropriate for assessing the need is responsible for assessing an individual's need for social services, unless otherwise provided for elsewhere in legislation. For children and other individuals requiring special support, a social worker acting as a public official is responsible for assessing the need for services.

According to the statement provided, the Omaolo service includes aspects affecting the effectiveness and quality of the provision of social and health services. The purpose of the service is to support the self-management of health and wellbeing. The information available left the impression that the Omaolo symptom check and service assessment components are intended to steer users to the actual care and service needs assessments carried out by social and health services, i.e. they are a function preceding the actual needs assessment. Therefore, from this perspective, the symptom check and service assessment components of the service are somewhere between public and private activities.

In the service, health care needs assessments are carried out with symptom checkers and social service needs assessments with surveys. Completing a needs assessment is possible only for a limited set of symptoms and certain social services. The service does not include all social and health services. Users are provided guidance based on their personal situation. Social welfare or healthcare professionals do not contribute to the assessments; instead, the assessments are computer generated based on the information entered by the user, a medical knowledge base, and data on eligibility criteria for social services.

The public social and health service organisers that have introduced the Omaolo service in their region promote the use of the service, and the service is one digital channel for accessing the services they organise. Since the connection between the public social and health service organisers and the Omaolo service is clear, users may assume that the needs assessments generated by the service are in fact health care and social service needs assessments carried out and related guidance provided by the organisers of the public services.

My interpretation is that the Omaolo symptom checks and service assessments are not health care and social service needs assessments carried out by public social and health service providers as referred to in legislation. However, the symptom checks and service assessments are clearly related to these public assessments, since users are directed to contact public social and health services based on the results of the checks and assessments. I assume the assessments generated in the service are based on the same criteria that assessments carried out by social welfare or healthcare professionals. The provided guidance can be deemed to include guidance on public social and health services.

Since the Omaolo service falls somewhere between a private and public service, it is important for safeguarding the users' rights that users are sufficiently informed which service provider they are interacting with and what kind of service they are using. In other words, when the users complete the symptom checks and service assessments independently, they must be informed whether their eligibility for services is determined in the same manner as it would be if the needs assessment was carried out in public social and health services. If a user assumes that the result of the symptom check or service assessment is a statement of a public social or health service provider on their eligibility for services, the service may actually prevent the user from accessing public social and health services and from acquiring an official decision on their eligibility for a service. In this case, the user's protection under the law that public authorities must guarantee is not realised.

To summarise, based on the information available to me, the Omaolo symptom checks and service assessment and assessments on the urgency of health care needs seem to have a connection to the obligation of public authorities to organise social and health services laid down in section 19, subsection 3 of the Constitution as well as to the provisions of sections 7 and 22 of the Constitution. However, in my view, the assessment of the service in relation to section 124 of the Constitution is to some degree dependent on the way the service is implemented (e.g. providing users with information on the nature of the service and their rights).

In my view, in addition to fulfilling the obligation laid down in section 19, subsection 3 of the Constitution, authorities can take action to encourage citizens to independently take care of their health without this action alone constituting a public administrative task. However, a service provided in addition to or in connection with public services may not violate its users' legal right to access public social and health services, and the service may not function as a 'gatekeeper' for public services. Therefore, it is vital that the users understand the nature of the service and their legal status in relation to it.

The Omaolo service also functions as a contact channel for Koronavilkku, and according to the company's statement, is, therefore, an important part of the management of the coronavirus

epidemic. In practice, the Koronavilkku application provided instructions in situations where the users had been exposed to the virus. The application enabled users to complete the coronavirus symptom check in the Omaolo service. If there was reason to suspect infection, the application provided instructions for contacting healthcare services and Omaolo was included as one contact option.

As also stated in DigiFinland Oy's statement, the Omaolo service functioning as the digital contact channel for Koronavilkku brought the service closer to public administrative tasks, especially since public authorities themselves instructed citizens to use the Omaolo coronavirus symptom checker. Today, the Koronavilkku application is no longer in use and, therefore, I will not discuss it here further. However, despite Koronavilkku being taken offline, the coronavirus symptom checker is still available in the Omaolo service.

3.4.2 Terms of use and other information provided on the service

The complainant criticized the Omaolo terms of use for having too strict limitations of service provider liability. In particular, the complainant referred to the limitation of liability stating that the service provider's liability under the terms of use is limited to EUR 50.

According to the Ministry of Social Affairs and Health, it is important that service users understand with which party they enter into an agreement. According to the Ministry, information on contact channels and more detailed information on regions and their contact details should be added to the terms of use.

The Ministry of Finance questioned the appropriateness, proportionality and necessity of certain provisions (governing law, limitation of liability). According to the Ministry, the terms of use could be made clearer and easier to understand.

DigiFinland Oy brought up the fact that the terms of use do not explain that the Omaolo service may direct users to the services of different parties based on the information the users enter. According to the statement, the terms of use will be made more user-friendly and informative to ensure that users understand their legal status and know which parties they enter into an agreement with when they use the service, to which registers their personal data is collected, and how their personal data is processed. The company stated that in the future, it will consider the requirements of good governance when it reviews the terms of use.

I agree with all above views and the suggestions for improving the terms of use and the information provided on the Omaolo service.

Organisers and producers of public social and health services carry out the public administrative tasks they are responsible for and in producing these services, exercise public powers when they make decisions on the eligibility of citizens for social and health services. When carrying out public administrative tasks, it must be ensured that the users' rights and protection under the law are observed and principles of good governance are complied with. The official accountability for crimes and damages laid down in section 118 of the Constitution also applies to public administrative tasks and citizens must be able to invoke this accountability if necessary.

The foundations of good governance are laid down in chapter 2 of the Administrative Procedure Act. Section 7 of the said chapter has provisions on the service principle and the appropriateness of services, section 8 regulates the advice to be provided, and section 9 lays down the requirement for appropriate language.

Section 7, subsection 1 of the Administrative Procedure Act states that 'an authority shall seek to arrange the use of its services and the consideration of matters in such a way that those to whom it is providing services in administrative matters receive administrative services appropriately and the authority can perform its duties effectively'.⁴

Section 8, subsection 1 of the Administrative Procedure Act states that 'an authority shall, within its competence, provide its customers, as necessary, with advice on dealing with administrative matters and respond to questions and enquiries concerning the use of its services'.⁵

Section 9, subsection 1 of the Administrative Procedure Act states that 'an authority shall use language that is clear, easy to understand and to the point'.⁶

These provisions requiring customer-orientation in the organisation of administration and administrative activities aim at ensuring the observance of the rights and protection under the law of the customers of public administrative tasks. Based on these provisions, it is important that

⁴ According to the government proposal for the Administrative Procedure Act ([HE 72/2002 vp](#), pp. 61–62), the purpose of section 7 is to highlight customer-orientation to ensure that when services are organised, the needs of those using the public services are considered. This means that using public services should be as swift, flexible and simple as possible, and that people using public services should be informed of the content of the service they use and the actions related to it.

⁵ According to the government proposal referred to in citation 4 (pp. 62–63), the obligation to give advice would primarily refer to providing advice on procedures, and authorities should ensure that their customers know how they can exercise their procedural rights. Customers' possible misunderstandings about procedural questions should be corrected to the extent possible.

⁶ According to the government proposal referred to in citation 4 (pp. 63–64), a response from an authority that is intended as advice within the meaning of section 8 should meet the requirements of section 9, i.e. it must be clear, easy to understand and to the point. Language meeting these requirements is such that customers of public services can unambiguously understand the content of the matter being communicated and that it provides sufficient information to the customer in relation to the nature of the matter. The provision would require clear language and easy to understand content. The provision would not apply solely to decisions – the language of other documents, information and instructions drafted by authorities must also be good and clear.

customers of public services are provided with information in a manner that is appropriate and easy to understand if the information affects their ability to exercise their rights.

As concluded herein, the Omaolo service includes components that fall somewhere between public and private social and health services, and users of the service may be referred to either kind of service based on the information they enter in the service. This highlights the importance of Omaolo users being aware of their legal status and rights when they use the different components of the service. To protect the rights of the service users, it is particularly important to inform the users when they are referred to a new service provider and when the user is referred to the services of a party that is responsible for organising public social and health services and can make decisions on the customer's access to health care and services, i.e. decisions affecting the customer's rights. This information is important because the status and rights of service users vary depending on whether the service producer is a private or public organisation.

Based on the above, I deem that the Omaolo terms of use and service instructions must meet the requirements set by the principles of good governance so that service users can obtain the information required for them to easily and clearly understand their legal status. The information provided must be understandable both in terms of language and content.

The fulfilment of the aforementioned principles of good governance in informing service users advances and promotes the fulfilment of the rights and obligations set out in the EU GDPR regarding the transparency of the processing of personal data and the rights of data subjects to obtain information⁷, and, therefore, contributes to the appropriate implementation of the GDPR.

In my view, all parties promoting the use of the service should contribute to ensuring that the service users have access to the information required to protect their rights regardless of whether the information is provided in the terms of use or in some other context. This must also be considered when authorities issue instructions relating to the use of the service.

3.5 Conclusions and measures

The Omaolo service produced by DigiFinland Oy has several service components that are to varying degrees connected to the basic rights safeguarded by the Constitution of Finland and that fall somewhere between public and private activities. The Ministry of Finance, which is responsible for the ownership steering of the company, has investigated the need to regulate DigiFinland Oy's operations in relation to carrying out public administrative tasks. The result of the project investigating this was a model in which the future wellbeing services counties could

⁷ Related provisions include Article 5(1)(a) (transparency of processing), Article 7 (conditions for consent), and Article 12 (transparent information, communication and modalities for the exercise of the rights of the data subject) of the GDPR.

procure the social and health services provided by the company under the Act on the Organisation of Social and Health Services. According to information provided by the Ministry of Finance, the Ministry of Social Affairs and Health is planning to start drafting legislation to supplement the above Act.

The task of the Ministries responsible for legislation applied to DigiFinland Oy and the social and health services it produces is to assess the necessity of adopting regulation. Based on the information available to me, this assessment is currently being carried out.

Above in section 3.4.1, I presented some of my views on the nature of the Omaolo service in relation to section 124 of the Constitution of Finland. I will refer these views to the Ministries of Finance and Social Affairs and Health.

According to the statement that DigiFinland Oy provided to the Ministries, the Omaolo terms of use will be made more informative and such that they better protect the rights of service users. In my view, this is an appropriate measure. I deem it to be particularly important that service users can understand their legal status in their use of the different service components based on the information provided to them.

Since the company is aware of this issue and already working on it, there is no need for me to take any other action than to inform the Ministries of Finance and Social Affairs and Health of the views I have presented in section 3.4.2 on the user-orientation and understandability of the terms of use and other information provided in the service, among other matters.

This document was signed electronically.

Chancellor of Justice

Tuomas Pöysti

Referendary Counsellor

Marjo Mustonen