



29.10.2020

OKV/138/10/2020
OKV/138/10/2020-OKV-1**MATTER** Issuing an automated labour policy statement**COMPLAINT**

The complainant filed a complaint with the Chancellor of Justice on 9 September 2019, criticising the procedure applied by the Employment and Economic Development Office (TE Office) in the issuance of a labour policy statement.

STATEMENT

The Centre for Economic Development, Transport and the Environment (ELY Centre) has issued a statement dated on 13 December 2019, which is appended by the TE Office's report dated on 21 November 2019.

RESPONSE

The complainant has provided a response.

DECISION

Complaint

On 29 August 2019, the complainant registered as a jobseeker, but not as an unemployed jobseeker, through the te-keskus.fi website. In accordance with the labour policy statement issued to the complainant on 3 September 2019, they were not entitled to the unemployment benefit, and the statement indicates that it is an automated statement. According to the complainant, the Unemployment Security Act does not enable the issuance of a labour policy statement in a situation in which the client does not intend to apply for the unemployment benefit. They state that a separate administrative review cannot be filed against the statement, but only against the decision made by the payer of the benefit, and therefore, the complainant cannot have the matter reviewed through the administrative review process. The complainant requests that the legality of the TE Office's procedure be investigated.

Report and statement

The report issued by the TE Office makes reference to the Act on Public Employment and Business Service chapter 2, section 1 subsection 2 and, in particular, its paragraphs 2 and 3, which lay down the expiration of the validity of job seeking in certain situations, and states that the said provisions do not require applying for benefits or that the person in question is unemployed. The complainant's job seeking was discontinued

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in a “Job seeking status check” batch run. The TE Office’s URA customer information system does not include standard information on whether or not a customer is applying for the benefit, and the batch run does not examine whether or not the customer has a valid “payment statement”. The system checks whether the customer has a prior statement, and since the complainant had prior labour policy statements, an automated statement was issued to them.

According to the report, the complainant commenced their job search because they wanted to send a request for changes to their earlier notification of the start of unemployment to the TE Office through the system, which they could also have done over the phone, for example. Since the complainant registered as a jobseeker through the “Oma asiointi” online service, the system functioned in accordance with the information provided in the registration.

The ELY Centre’s statement refers to the labour policy statement issued to the complainant, according to which the complainant had, when registering as a jobseeker, been given instructions to which the complainant was to respond by the deadline of 2 September 2019. According to the TE Office’s statement, the complainant’s job seeking had expired based on the Act on Public Employment and Business Service chapter 2, section 1, subsection 2 and, in particular, its paragraphs 2 and 3.

The ELY Centre has made reference to the provisions of the Unemployment Security Act chapter 11, section 4, and stated that a labour policy statement is issued at the request of the Finnish Social Insurance Institution Kela and the unemployment fund, and if the jobseeker informs the employment authorities that they are applying for a labour market subsidy or unemployment allowance, the statement can be issued and complemented without a separate request. According to the statement, the TE Office’s report includes an explanation of the factors behind the issuance of the labour policy statement in the complainant’s case even though the complainant did not apply for the unemployment benefit. According to the Centre’s view, a labour policy statement could not have been issued in the said case based on the Unemployment Security Act chapter 11, section 4. It is the ELY Centre’s view that the aforementioned provision does not define the manner in which a labour policy statement can be issued.

According to the statement, the Ministry of Economic Affairs and Employment, as the controller, is responsible for the overall functioning of the customer information system of the TE Offices and for the cohesion of the register functions based on the Act on Public Employment and Business Service chapter 13, section 2, and based on the report received by the Centre, the issuance of labour policy statements is an integral part of the said system.

Response

In their response, the complainant states that the TE Office does not in its report comment on whether the labour policy statement issued to them is based on law. According to the complainant’s view, the customer information system used by the TE Office is designed erroneously since it has been possible for the situation described in the complaint to occur. According to the complainant, the ELY Centre should have commented on whether the Ministry of Economic Affairs and Employment or the ELY Centre has acted erroneously when taking the said system to production use.

Assessment

The complainant registered as a jobseeker through the labour administration website on 29 August 2019. Based on the labour policy statement issued to them on 3 September 2019, the said statement was a labour policy statement in accordance with the Unemployment Security Act chapter 11, section 4, subsection 1. The statement was issued by the TE Office, and according to the statement, the applicant was not entitled to the unemployment benefit because their job seeking application was not in effect on 3 September 2019. According to the statement, it was based on the Unemployment Security Act chapter 2, section 1 and chapter 10, section 2, subsection 2. The statement was addressed to the unemployment fund, and the statement had been delivered to the jobseeker, that is, the complainant, for information.

Chapter 2 of the Unemployment Security Act lays down the general labour policy conditions for receiving unemployment benefits. According to section 1, subsection 1 of the chapter, an unemployed jobseeker seeking full-time employment is entitled to the unemployment benefit under the conditions laid down in this Act.

According to chapter 10, section 2, subsection 2, the unemployment benefit is only paid for the period for which the person is a jobseeker in the Employment and Economic Development Office, as referred to in the Act on Public Employment and Business Service.

According to chapter 1, section 4, subsection 3 of the Act, the Employment and Economic Development Office or the customer service centre of the employment and economic services issues a binding statement on the labour policy conditions for receiving unemployment to the Finnish Social Insurance Institution Kela and the unemployment fund as laid down in chapter 11, section 4.

According to chapter 11, section 4, subsection 1 of the Act, the TE Office issues a labour policy statement referred to in chapter 1, section 4, subsection 3, when needed, on the general labour policy conditions for receiving the unemployment benefit laid down in chapter 2, and, according to subsection 3, on a benefit that is laid down in chapter 10, section 2, subsection 2 and payable for the period of services that promote employment.

According to chapter 11, section 4, subsection 3 of the Act, the labour policy statement is issued at the request of the Social Insurance Institution of Finland and the unemployment fund. The statement must be complemented without delay at the request of the Social Insurance Institution and the unemployment fund. If the jobseeker has informed the employment authorities that they are applying for unemployment allowance, a labour policy statement can be issued and it can be complemented without a separate request. According to subsection 4 of the section, the labour policy statement is delivered to the jobseeker for information in connection with a decision referred to in section 3.

A labour policy statement was issued to the complainant because their job seeking in the TE Office had expired and they were thus not entitled to the unemployment benefit. According to their complaint, the complainant did not register as an unemployed jobseeker but just a jobseeker, and they had not applied nor were going to apply for the unemployment benefit. According to the information available to me, the unemployment fund in which the complainant is a member had not requested the said statement and the complainant had not informed the TE Office that they were applying for the unemployment benefit. Thus, based on the information available to me, the complainant was not an unemployed jobseeker seeking full-time employment, as referred to in the Unemployment Security Act chapter 2, section 1, who should have been issued a labour policy statement referred to in the Unemployment Security Act chapter 11, section 4 on the conditions of receiving the unemployment benefit, and therefore, there was no legal grounds for issuing the statement.

The labour policy statement is not a decision that would have determined the complainant's rights or obligations, and according to the information available to me, the issuance of the labour policy statement did not cause any damage to the complainant. Nevertheless, the complainant has found the statement condemning and offensive. The complainant has been unable to have the statement removed or changed, because in accordance with the Unemployment Security Act chapter 12, section 4, subsection 1, no administrative review can be filed against it separately but a review can be applied for when appealing a decision issued on a benefit.

Based on the report, the labour policy statement issued to the complainant was an automated statement, issued by the TE Office's customer information system under certain conditions. It appears that the system allows the issuance of a labour policy statement in situations in which there are no grounds for issuing it.

Section 2 of the Administrative Procedure Act lays down the principles of good governance based on section 21 of the Constitution. Section 7 of the Act lays down the service principle and the appropriateness of service. According to subsection 1 of the section, 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.

In accordance with the detailed justifications given in the Government Proposal ([HE 72/2002 vp](#)) on the Administrative Procedure Act, the purpose of the said provision is to emphasise not only the effectiveness of the authorities' performance but also the customer perspective, which means that those who use the services in administrative matters receive the administrative services they need appropriately and that their needs are taken into consideration when providing such services.

In its statement practice concerning regulating decision-making, the Parliament's Constitutional Law Committee has concluded that the regulation must be assessed, among other things, from the perspective of the principles of good governance laid down in section 21 of the Constitution and considers that the requirement of good governance or the protection under the law of the parties concerned may not be jeopardised in automated decision-making in routine administrative tasks either (e.g. [PeVL 7/2019 vp](#) and [PeVL 49/2017 vp](#)).

This case does not concern the automated decision-making referred to in the statements of the Constitutional Law Committee; however, it does concern the equivalent automated issuance of binding statements affecting the unemployment benefits of unemployed jobseekers and, subsequently, their rights. The realisation of the principles of good governance must be ensured in all provision of administrative services, regardless of the method by which the services are provided.

The appropriateness and customer perspective in the organisation of services, referred to in section 7 of the Administrative Procedure Act, mean, among other things, that those to whom the services in administrative matters are provided receive the services they need appropriately and are not subjected to treatment that has no legal grounds and that they may find offensive. Viewed from this perspective, issuing a labour policy statement to the complainant in the situation described above was not appropriate service as referred to in the provision.

According to section 1 of the Act on the Centres for Economic Development, Transport and the Environment, the Act lays down the Development and Administration centre for ELY Centres and TE Offices (the KEHA centre) and its duties, among other things. In accordance with section 3 a, subsection 1 of the Act, the Development and Administration centre tends to the shared HR and financial administration tasks and other corresponding service and general administration tasks of the ELY Centres and TE Offices and provides general administrative guidelines and supervises their application in the ELY Centres and TE Offices.

Sections 1 and 2, effective as of 1 July 2020, of chapter 13 of the Act on Public Employment and Business Service lay down the TE Office's customer information system and the controllers of the system. In accordance with section 1, subsection 1 of the chapter, the employment and economic development office's customer data system is maintained for the purpose of providing public employment and business service and, among other things, tending to the duties laid down for the TE Office in the Unemployment Security Act. In accordance of section 2, subsection 1 of the chapter, the Development and Administration centre for ELY Centres and TE Offices and the TE Offices are the joint controllers of the TE Office's customer data system.

The duties of the KEHA centre include the supervision and development of data management as well as electronic services and systems. In my view, the KEHA centre's field of activity thus covers the customer data system used by the TE Office and the automated services provided by it.

Conclusions and measures

The TE Office issued a labour policy statement on the complainant's conditions for receiving the unemployment benefit although the complainant was not an unemployed jobseeker with the TE Office and had

not claimed nor was planning to claim unemployment benefits. The complainant found the statement condemning. The statement was an automated statement which the customer information system used by the TE Office had issued when certain conditions were met.

In my view, the grounds laid down in the Unemployment Security Act for a labour policy statement were not fulfilled in the complainant's case, and the statement should not have been issued. The service principle and appropriateness of service referred to in section 7 of the Administrative Procedure Act mean, among other things, that the customer appropriately receives the services they need and is not subjected to a service that is not based on law and that is potentially offensive to them. Issuing a labour policy statement to the complainant in the situation described above did not constitute appropriate service within the meaning of the provision, although the issuance of the statement, based on the information available, did not cause negative consequences on the complainant's rights or obligations.

I am informing the TE Office and the ELY Centre of the view stated above. In addition, I am informing the KEHA centre of my decision in an anonymised form and requesting that it, taking into consideration the matters presented above, provide its assessment of the appropriateness of the customer information system used by the TE Offices as far as automated labour policy statements are concerned. The said assessment should be submitted to the Office of the Chancellor of Justice no later than 11 December 2020.

This document was signed electronically.

Chancellor of Justice

Tuomas Pöysti

Referendary Counsellor

Marjo Mustonen