

**Matter Equality in access to services****COMPLAINT**

In a complaint addressed to the Chancellor of Justice on 16 February 2018, the complainant requests that the legality of the employment administration's procedure be examined when it provides services for the unemployed in its online services so that some services are not available on mobile devices but only on computers. According to the complaint, a large part of the services for jobseekers are mainly provided online, while others are only provided online. According to the complaint, not all jobseekers have access to computers but to cheaper mobile devices that people with lower incomes are able to acquire. According to the complaint, the problem with access to online services is emphasised in the case of jobseekers living in remote areas, who may have a long distance to the nearest library or to an Employment and Economic Development Office with commonly used client terminals. The complainant requests that it be examined whether the e-services provided by the employment administration implement equality between jobseekers.

REPORT

The Ministry of Economic Affairs and Employment has submitted a report dated 10 April 2018. appended to the report is the report of the Development and Administration Centre of the ELY centres and TE Offices (KEHA Centre) dated 26 March 2018. The Ministry of Economic Affairs and Employment has also submitted an additional report dated 19 June 2018, attached to which is the additional report of the KEHA Centre dated 29 May 2018. In addition, the KEHA Centre

provided information on the current situation of the online services of the employment and economic development administration on 22 March 2019.

The clarifications and additional clarifications are delivered to the complainant together with the decision for information.

DECISION

The Chancellor of Justice is responsible, among other things, for ensuring that the courts of law, other authorities and public officials, public employees and others, when performing a public task, obey the law and fulfil their obligations. In the performance of this task, the Chancellor of Justice, for example, examines complaints addressed to them.

Under section 4, subsection 1 of the Chancellor of Justice Act, the Chancellor of Justice investigates a complaint if there is reason to suspect that a person, authority or other corporation under the authority of the Chancellor of Justice has acted illegally or neglected their duties or if the Chancellor of Justice for some other reason deems this necessary.

Assessment

Provisions

Provisions on the services offered to jobseekers by the employment and economic development administration are laid down in the Act on public Employment and Business Services.

The basic provision on equality is in section 6, subsection 1 of the Constitution, according to which everyone is equal before the law. Subsection 2 of this section contains a provision on prohibition of discrimination. According to the subsection, no one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other personal characteristics.

According to the detailed rationale of the Government Proposal on the reform of basic rights (Government Proposal 309/1993 vp), the general provision on equality includes a requirement for equal treatment in similar cases. According to the proposal, the personal reason mentioned in the prohibition of discrimination may be, for example, social status, wealth or place of residence. According to the proposal, the prohibition of discrimination would also apply to measures that indirectly lead to a discriminatory end result, in which case the use of discrimination should be assessed from the perspective of the actual consequences of any action.

Pursuant to section 5, subsection 1 of the Non-discrimination Act, an authority must assess the realisation of equality in its activities and take the necessary measures to promote the realisation

of equality. The promotion measures must be effective, appropriate and proportionate in view of the operating environment, resources and other circumstances of the authority. Under subsection 2 of the section, the authority must have a plan for the necessary measures to promote equality.

Under section 8, subsection 1 of the Non-discrimination Act, no one may be discriminated against on the basis of age, origin, nationality, language, religion, belief, opinion, political activity, trade Union activity, family relationships, state of health, disability, sexual orientation or other personal characteristics.

According to the detailed rationale for section 8 of the Government Proposal for the Non-discrimination Act (Government Proposal 19/2014 vp), the list of grounds for discrimination would be open in the same way as in section 6 of the Constitution and most international human rights treaties. According to the proposal, drawing up an exhaustive list of all prohibited grounds for differentiation is not objectively possible, which is why other personal characteristics are compared to the reasons expressly mentioned in the proposed provision. According to the preliminary work on the fundamental rights reform, such other reasons may include, for example, social status, wealth or place of residence (Government Proposal 309/1993 vp, p. 44). According to the proposal, differences in people's de facto circumstances, activities or procedures do not usually constitute a personal reason referred to in the proposed provision.

The Non-discrimination Act differentiates between direct and indirect discrimination, both of which are prohibited. According to section 13 of the Act, discrimination is indirect if, for example, a seemingly equal practice puts a person at a disadvantage compared to others on the grounds of personal characteristics, unless the practice has an acceptable objective and the measures used to achieve it are appropriate and necessary.

According to the detailed rationale for section 13 of the Government Proposal for the Non-discrimination Act, the phrase "practice" refers, among other things, to how different services and access to them have been arranged in practice.

Under section 8, subsection 1 of the Act on public Employment and Business Services, the realisation of equality must be actively promoted when providing, developing and providing information on public employment and business services. Under subsection 2 of the section, the Employment and Economic Development Office, the customer service centre of the employment and economic development administration and the centre for economic development, transport and the environment shall provide public employment and business services on an equal basis in accordance with the same principles, irrespective of the gender of the individual client and the circumstances referred to in section 8(1) of the Non-discrimination Act (1325/2014).

Section 21 of the Constitution lays down the principles of good administration, which are provided for in more detail in Chapter 2 of the Administrative Procedure Act. According to section 6, subsection 1 of the chapter, an authority shall treat the customers of the administration equally and according to section 7, subsection 1 of the Act, service and consideration of a matter by an authority shall be arranged so that the customers of the administration receive appropriate administrative services and the authority can perform its duties successfully.

According to the detailed rationale for section 7 of the Government Proposal for the Administrative Procedure Act (Government Proposal 72/2002 vp), special attention should be paid in the organisation of public services to the sufficiency and availability of services and to the freedom of choice of those using public services. According to the proposal, access to services should not be restricted without substantively acceptable grounds, and the right of self-determination and operating conditions of those using services provided by public authorities should be promoted wherever possible. According to the proposal, the needs of those working for the administration must be taken into account in the organisation of administrative services, as must the availability of services that are important to those working for the administration throughout the country.

Under section 1 and subsection 1 of the Act on Electronic Services and Communication in the public sector (eServices Act), the purpose of the Act is to increase the smoothness and speed of transactions as well as information security in administration by promoting the use of electronic data transfer methods.

Under section 5, subsection 1 of the Act, an authority with the necessary technical, financial and other capacity shall, within their limits, provide everyone with the opportunity to send a message to the electronic address or specified device they have indicated so that the matter can be initiated or dealt with. In such a case, everyone shall also be offered the possibility to send electronically notifications, reports or other similar documents or other messages that are prescribed or ordered to be submitted to the authority. Under subsection 2 of the section, an authority may also provide the services referred to in subsection 1 by task or establishment. Under section 3, the authorities shall strive to use equipment and software that are technically compatible and easy to use for the customer.

According to the detailed rationale for section 5 of the Government Proposal for the Act (Government Proposal 17/2002 vp), the obligation to organise the authorities' e-services would be laid down in proportion, taking into account the information, skills and financial resources available to the authorities. According to the proposal, special attention must be paid to ensuring that customers are treated equally in the development of electronic services for each task and establishment. Furthermore, in the development of e-services, attention should be paid not only

to the availability of services but also to their accessibility, affordability and suitability for the needs of different users.

The Act on the Provision of Digital Services will enter into force on 1 April 2019. Among other things, it lays down provisions on the organisation of digital services for the authorities. Chapter 3 of the Act on the availability of digital services will be applied in accordance with the transitional provisions of the Act. At the same time, section 5 of the Act on Electronic Services and Communication in the public sector will be amended so that it will refer to the Act on the Provision of Digital Services with regard to the organisation and availability of electronic services.

According to section 1 of the Act on the Provision of Digital Services, the objective of the Act is to promote everyone's opportunities to operate in an information network and use digital services. Section 4 of the Act requires the planning and implementation of digital services in a way that ensures their information security, data protection, findability and ease of use. In addition, authorities should ensure the compatibility of their digital services with commonly used software and data connections. This means, in the same way as section 5 of the Act on Electronic Services and Communication in the public sector, that the special features of users and the general software used by users, such as mobile solutions, are taken into account (Government Proposal 60/2018, p. 21, 62 and 64-65).

Equal access to services

The employment and economic development administration has a statutory duty to provide public employment and business services, such as services for job seekers. The provisions on good governance, equality and electronic services as well as their organisation must be complied with in the provision of services.

The question in the assessment of the legality of the matter is whether jobseekers are treated equally in similar cases, i.e. whether they receive services on an equal basis without some having to be treated differently from others on the basis of the manner in which the services of the employment and economic development administration are organised without an acceptable reason. Wealth and place of residence have been highlighted as such personal characteristics in the complaint. In addition, the legality control evaluation is concerned with whether the authorities have sufficiently fulfilled their obligations under section 7 of the Administrative Procedure Act regarding the organisation of smooth transactions and consideration of customers' needs as well as the provisions of section 5, subsection 3 of the Act on Electronic Services and Communication in the public sector concerning smooth and easy-to-use services.

According to a report by the Ministry of Economic Affairs and Employment, Chapter 2 of the Act on public Business and Employment Service contains provisions on the key elements of the

jobseeker's service process. According to the report, these include launching job search, interviewing the jobseeker, drawing up and reviewing an employment plan, directing the jobseeker to the services agreed in the plan, and monitoring the implementation of the plan.

According to a report by the Ministry of Economic Affairs and Employment, a person's job search will begin when they request it online or in person at the TE Office and they are registered as jobseekers in the TE Office's customer information system. The right to unemployment benefit depends on the duration of the job search and it begins when the job search begins. The TE Office can also accept starting a job search by phone if the office can verify the person's identity.

Jobseekers who have started their job search online will be directed to the digital assessment of their service needs in the My Enterprise Finland service if certain conditions are met. If a person has started a job search in person at the TE Office, an individual assessment of their need for services is conducted at the TE Office, by telephone or in a video conference.

The employment and economic development authorities will arrange the first interview of the jobseeker within two weeks of the start of the job search, unless this is manifestly unnecessary. In the interview, an employment plan is drawn up and the modes of communication and contacts between the employment and economic development authorities and the jobseeker are agreed upon. The employment plan includes provisions on job seeking, employment and business services for jobseekers, and other employment-promoting services.

According to a report by the Ministry of Economic Affairs and Employment, a job search will expire if the jobseeker declares that they do not wish to keep the job search in force or that the jobseeker does not deal with the employment and economic development authority within the time limit set by the authority and in the manner required by the authority, or if the jobseeker does not notify the employment and economic development authority of the implementation of the plan within the time period agreed in the employment plan or a replacement plan and in the manner agreed upon. The termination of the job search results in the termination of the right to unemployment benefit.

According to the report, the way the jobseeker uses services and the time limits set for using them depend on whether or not the person has been referred to digital service needs assessment. In the digital assessment of the need for services, questions concerning the need for services must be answered in the My Enterprise Finland service within two days of the date on which the job search entered into force, otherwise the job search and the right to unemployment benefit ends. Once the need for services has been assessed in the My Enterprise Finland service, the client is guided to update their employment plan within seven working days in other cases, and the right to unemployment benefit ends.

If the customer is not directed to the online service, the assessment of the need for services and the employment plan are made in the interview at the TE Office on-site, by telephone or in a video conference. If the client does not arrive or cannot be reached at the agreed time for the interview, their job search and right to unemployment benefit will end.

According to the Act on public Employment and Business Services, the employment and economic development authority must provide the jobseeker with an opportunity to interviews at regular intervals, which can be conducted in online services, at the local TE Office, by telephone or via video conference. In the follow-up and review of later interviews and plans, the procedure is the same as in the first interview, and jobseekers' job seeking and their right to unemployment benefit cease under the same conditions.

It is the understanding of the Ministry of Economic Affairs and Employment that jobseekers who use the services on-site or via remote connection are in an equal position with regard to unemployment benefit.

According to a report by the Ministry of Economic Affairs and Employment, the same measures can be taken in online and personal services (on-site at the TE Office or by telephone), with the exception of the use of the CV. In addition, registering as a jobseeker is not always possible through speech and face-to-face visits.

Of the services offered to jobseekers by the employment and economic development administration online, only the CV internet is a service that is only available online. According to the report, in the CV online service, the customer publishes a presentation of their competence to employers, allowing the employer to contact them directly after finding a suitable job applicant. As such, it is clear that, due to its nature, the CV online service is only available in the online service. The use of the service in question is not a prerequisite for starting or maintaining a job search, and its non-use does not result in sanctions or loss of benefit or other rights. Based on the information available, the service can be considered to be an online service that does not affect the jobseeker's interests, rights or obligations and aims to promote the employment of jobseekers. At the same time, the service promotes the objective laid down in the Client Act to increase the use of electronic services in public administration. On the basis of the above, it cannot be estimated that the mere provision of the service through an online service would mean placing jobseekers who do not use online services in an unequal position with jobseekers who use online services in the manner referred to in the Constitution and the Non-discrimination Act.

Under the services Act, an authority does not have an absolute obligation to provide electronic services. Instead, their provision depends on whether the authority is able to do so in terms of its knowledge, skills and financial resources. When an authority provides electronic services, it

shall strive to use hardware and software that are technically compatible and easy to use from the customer's viewpoint. The aim is to provide as many people as possible with an opportunity to use e-services. When providing services, the employment and economic development administration, on the other hand, has an obligation under section 8 of the Act on Public Employment and Business Services to actively promote the realisation of equality, which means, among other things, service models and forms as well as practices through which services are equally available to customers.

According to a report by the Ministry of Economic Affairs and Employment, particularly in the past decade, the central government's savings and performance targets have made it necessary to adapt the functions of the employment and economic development administration to the diminishing resources. There are 15 regional TE Offices across the country, the number of local offices has been reduced and the number of people working in employment and economic development services has been reduced. In the operating environment in question, the Ministry has considered the development of electronic services necessary, with the aim of ensuring equal access to services.

According to a report by the KEHA Centre, the jobseekers' own e-services have so far not been adapted to mobile devices (iPad, iPhone, Android and Windows phones and tablets). In other words, not all of its applications have been adapted to the smallest mobile device displays. Instead, making the information visible requires prolonged and transferring the screens. The My Enterprise Finland jobseeking applications, CV-Web, Labour market training and My unemployment security data are designed for the desktop. According to the report, the tool-independent job search service will be reformed during spring 2018. According to information received from the KEHA Centre, the application was renewed as a responsive browser application supporting mobile devices, and the changes are in production starting on 19 May 2018.

According to the report by the Centre, the Ministry of Economic Affairs and Employment has mainly closed down the development of the electronic service system for employment and business services. According to the policy, only the necessary changes resulting from changes in legislation and practices can be implemented. The use of the existing system will end at the end of 2019, when the new system entity is planned to be introduced. Therefore, according to the report, the current systems will not be implemented by reforming other services designed for desktops to be terminal-independent. According to the report, improvements have been identified in the accessibility of existing applications and they will be better taken into account in the new system.

Based on the study, not all jobseekers are able to use the online services of the Employment and Economic Development Administration on all mobile devices and jobseekers using the

online services may not necessarily be able to use the services as extensively as they do, depending on the device they have at their disposal. However, these device-dependent services are available, for example, on self-service terminals of TE Offices and on computers generally available in libraries. In addition, the services are available in the same way as for jobseekers who do not use online services in other forms of services.

Services intended for job seekers in the employment and economic development administration must be provided on an equal basis so that persons in a comparable situation receive services on the same grounds and their services are not dependent on reasons related to their person. However, equality does not mean that the conditions of jobseekers should be the same and that the requirement of equal treatment does not mean that everyone must be offered the same service. the same service can be offered by different means (e.g. PeVL 35/2010 vp). As described above, jobseekers can receive the aforementioned services of the Employment and Economic Development Administration in different ways, but with the same content (excluding the CV-net), so the availability of online services of different scopes for users of different devices does not lead to a different end result in practice. Therefore, jobseekers cannot be considered to be in an unequal position in accessing the relevant services of the employment and economic development administration within the meaning of the Constitution and the non-discrimination Act, even though it is not possible to use the services provided by the administration to them as extensively on all devices and thus to achieve the same implementation in all respects.

However, the prevalence of the service network of the employment and economic development administration is caused by the fact that physical services are not, in practice, such a smooth form of services that it could replace the shortcomings in the availability of digital services. In this situation, it can be assessed that the objectives of the Act on Electronic Services and Communication in the public sector and its section 5 on the implementation of user-friendly and easy-to-use services in an equal manner have not been fully realised. This also leads to a situation where e-services do not fully meet the objectives and requirements set out in section 7 of the Administrative Procedure Act for taking user needs into account.

Depending on the jobseeker's place of residence, the use of a self-service terminal in general use may in practice require particular effort from the jobseeker. However, the services provided by the employment and economic development administration to job-seekers are also available in the aforementioned manner, other than online services. Registration as a jobseeker is the only service that, according to the information available at the moment, cannot necessarily be managed, in addition to the online service, by other means than visiting the TE Office on the spot. In this case, the availability of the service at the TE Office on the grounds of the jobseeker's place of residence may require particular effort from the jobseeker and cause extra costs compared to those jobseekers who do not need to visit the TE Office on the grounds of online services.

Conclusions and measures

The services offered by the employment and economic development administration as an online service have not been adapted to all mobile devices, and all jobseekers using the online services are thus not necessarily able to use the services as extensively as they do in the online service, depending on the device they have at their disposal. However, the online services intended for jobseekers by the employment and economic development administration can be used with commonly used self-service terminals, for example at the Employment and Economic Development Offices. In addition, the services are available in person by telephone, as a video conference or in person at an Employment and Economic Development Office.

The complaint does not concern an individual situation where a jobseeker would have been in a less favourable position compared to other jobseekers in accessing the services of the employment and economic development administration for a personal reason. The employment and economic development administration has striven to secure services by developing e-services as a result of the reduction in the number of administrative branches. However, the complaint and the reports received on it show that the objective of the Act on Electronic Services and Communication in the public sector is not fully met in this situation. This leads to a situation where, in the manner referred to in section 7 of the Administrative Procedure Act, access to services is not always smoothly running and problems with access to services are difficult for persons who, due to their lack of means or, for example, low level of financial resources, cannot maintain different terminal devices.

The employment and economic development administration is reforming its electronic service system. I would like to draw the attention of the Ministry of Economic Affairs and Employment to ensure that all jobseekers have, in accordance with the good governance laid down in the Constitution and the Administrative Procedure Act, the opportunity to receive the services of the employment and economic development administration appropriately and that the administration promotes electronic services in a customer-oriented manner, the new service system should strive for maximum equipment independence in online services. In practice, this means that digital services should also be possible with commonly used mobile devices and the applications used in them. This is also required by the Act on the Provision of Digital Services, which will enter into force on 1 April 2019. The Act aims to improve everyone's equal opportunities to use digital services and to promote the provision of digital public services to customers in a uniform and customer-oriented manner. With device-independent online services, the employment and economic development administration would also carry out the promotion of equality laid down in the non-discrimination Act and the Act on public Employment and Business Services.

I would also like to inform the Ministry of Economic Affairs and Employment of my opinion that due to the reduction in the number of offices at Employment and Economic Development Offices, attention should be paid to ensuring that, in accordance with section 7, subsection 1 of the Administrative Procedure Act, customers are guaranteed appropriate access to administrative services in compliance with the service principle, taking into account the provisions of section 6 of the Constitution, section 8 of the Non-discrimination Act and sections 5 and 8 of the Act on public Employment and Business Services, so that services are available in person at the time of a case; when it is not otherwise possible to obtain a service, the difficult accessibility of the service points will not unreasonably complicate access to services or even prevent access to services.

The Ministry of Economic Affairs and Employment must inform me by 31 December 2019 of the measures it has taken and of the action plans it has in the services of the employment and economic development administration to safeguard the service principle so that it can use services in person and organise device-independent digital services.

Chancellor of Justice

Tuomas Pöysti

Referendary Counsellor

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