



TE Office's labour policy statements and e-services

COMPLAINT

In the complaint addressed to the Chancellor of Justice on 13 July 2020, the complainant criticised the incorrect labour policy statement issued by the TE Office on 12 June 2020 regarding short-term studies whilst claiming unemployment security. The complainant had informed the TE Office on 23 May 2020 and 25 May 2020 that he is a full-time student with no right to unemployment security. According to the complainant, the incorrect labour policy statement in question deprived their right to short-term studies whilst claiming unemployment benefits. The complainant has also criticised, for example, the inappropriate treatment it has received during telephone discussions with the TE Office and the conflicting information provided by officials as well as the response it has received from the TE Office to its request for a review that correcting the incorrect labour policy statement is not considered appropriate.

According to the complainant, the notification of starting studies in the TE services' electronic services system (Oma asiointi) does not allow students to declare full-time studies in such a language that they would not be prepared to accept full-time work in addition to their studies. The form used in the online service only asks whether the customer is applying for unemployment security, in which case the customer has reason to assume that the answer will be used to process the right to unemployment security. The TE Office has replied to the complainant's queries stating that the matter should be stated in a certain wording which, according to the complainant, cannot be found in the reporting system used in the service.

CLARIFICATION REPORT

The TE Office has issued the statement dated 11 November 2020.

REPLY

The complainant has been given an opportunity to submit a reply to the report. No response has been given.

ADDITIONAL CLARIFICATION

On my request, the Centre for Economic Development, Transport and the Environment (ELY Centre) has submitted a statement dated on 27 October 2021. The statement is supplemented with the statement dated on 29 September 2021 and supplemented on 5 October 2021 by the Development and Administration Centre of the ELY centres and TE Offices (KEHA Centre). The opinions shall be sent to the complainant for information as an appendix to this decision.

DECISION

1. Applicable legal rules

Under section 21, subsection 1 of the Constitution, everyone has the right to have their case dealt with appropriately and without undue delay by a legally competent court of law or other authority and to have a decision pertaining to their rights or obligations reviewed by a court of law or other independent organ for the administration of justice. Under subsection 2 of the section, the publicity of the proceedings and the right to be heard, to receive a reasoned decision and to appeal as well as other guarantees of a fair trial and good governance are guaranteed by an Act.

Under Chapter 2 (1001/2012) of the unemployment Security Act (1290/2002) (general labour market policy requirements for eligibility), an unemployed jobseeker applying for full-time employment is entitled to unemployment benefit under the conditions laid down in this Act. Under subsection 4 of the section, a jobseeker whose job search and possible employment plan aim to find full-time employment is considered to apply for full-time employment.

According to Chapter 2, section 10, subsection 1 of the unemployment Security Act (1001/2012), full-time students are not entitled to unemployment benefit. The restriction also applies to holiday periods in full-time studies. Subsection 2 of this section contains a provision on what kind of studies are considered full-time.

According to Chapter 2, section 10a (1267/2018), subsection 1 of the unemployment Security Act, the provisions of section 10, subsections 1-3 do not apply to the right of a jobseeker to receive unemployment benefit if: 1) the jobseeker has reached the age of 25 before beginning their studies; 2) the entity formed by the studies lasts uninterrupted or divided for a maximum of six months; and 3) the studies provide vocational skills or support business activities. Under subsection 3 of the section, the provisions of subsection 1 shall be re-applied when the studies referred to in the said subsection have ceased and the person has subsequently fulfilled the work requirement, which is a condition for receiving unemployment allowance, and the maximum period for receiving unemployment allowance has commenced at the beginning.

Under Chapter 12, section 1(5) of the unemployment Security Act (288/2012), binding opinions issued by the employment authorities cannot be appealed separately.

Under section 1 of the Administrative Procedure Act (434/2003), the purpose of the Act is to implement and promote good governance and legal protection in administrative matters. The purpose of the Act is also to promote the quality and performance of administrative services.

Chapter 2 of the Administrative Procedure Act lays down the principles of good administration. These include the provision of section 7 (368/2014) on the service principle and the appropriateness of the service. Under subsection 1 of the section, efforts must be made to organise the services and consideration of matters by the authorities in such a way that those involved in the administration receive appropriate administrative services and the authority can perform its duties successfully.

Under section 8, subsection 1 of the Administrative Procedure Act, an authority shall, within its competence, provide its customers, as necessary, with advice on attending to an administrative matter and answer questions and queries concerning the use of its services. Advice is free of charge.

Section 31 of the Administrative Procedure Act contains provisions on the duty to establish facts. Under subsection 1 of the section, the authority shall see to it that the matter is sufficiently and appropriately investigated by obtaining the information and reports necessary for resolving the matter. Under subsection 2 of the section, a party shall provide evidence of the grounds for their claim. A party shall also otherwise contribute to the clarification of a matter filed by them.

Section 34 of the Administrative Procedure Act provides for hearing a party. According to subsection 1 of the section, before the matter is decided, the party shall be reserved an opportunity to express an opinion on the matter and to provide an explanation on such claims and reports that may affect the decision on the matter.

According to the detailed rationale for the provision on the duty to provide advice in section 8 of the Government proposal on the Administrative Procedure Act (HE 72/2002 vp, p. 62-63), an authority must advise its customers, for example, on how to initiate a matter and what documents should be presented for initiating a matter. Procedural advice would also include providing information on the agency's practices, such as handling methods and phases. The authority shall ensure that the client has a clear understanding of the exercise of their procedural rights and that any misunderstandings concerning them by the client should be corrected. The need for and scope of the counselling shall be decided separately in each case on the basis of the nature of the matter and the special circumstances related to it. The client's actual possibilities of coping with their case themselves must be assessed. The obligation to provide advice would be complemented with a general obligation imposed on the authorities to respond to questions and enquiries concerning the use of services. E-services would mean not only the performance of measures necessary for the management of an administrative matter, but also dealing with authorities relating to actual administrative activities. In practice, the obligation to respond would apply to relevant and sufficiently specified questions and enquiries.

The detailed rationale for the provision on the duty to investigate in section 31 of the Government proposal (Government proposal 72/2002 vp, p. 93) notes that the purpose of the proposal is to increase the initiative of a party in presenting information. However, the provision would not mean a change to the rule concerning the official principle, according to which the procedural obligation of an authority includes, where necessary, directing a party to the submission of information needed to resolve the matter. A party does not always have clear understanding of what information and facts are essential for the resolution of the case. Understanding the content of legal provisions may also cause difficulties. In accordance with the obligation to provide advice laid down in section 8 of the Act, the authority should ensure that the party is, where necessary, informed of relevant legal provisions and their content. This also gives the party a clearer idea of what kind of evidence should be presented to the authority.

The government proposal (Government proposal 72/2002 vp, pp. 95-96) notes that the right of a party referred to in section 34 of the Administrative Procedure Act to be heard has traditionally been considered a principle promoting legal protection. In addition, the hearing has been considered to emphasise the individual's possibility of exerting influence, which is essentially related to their position as a party. Hearing the views of the parties also contributes to the investigation of the matter. In this way, the obligation to consult promotes the impartiality of the authorities' activities and the due diligence in processing.

2. Circumstances as shown in the complaint and its appendices

The complainant stated on 23 May 2020 that they had registered for a vacant university and began full-time studies, in which case he would not be entitled to unemployment security. According to the extract from the website of the TE services' online service (Oma asiointi) appended to the complaint, the complainant has stated the following: "I will start studying (other than labour market training). My first day of study is 23.05.2020." In the section on education/educational institution and qualification/study module, the complainant has reported "University of Helsinki, open university" and "introduction to neuropsychology". The section on applying for full-time employment mentions "I apply for full-time employment. To receive unemployment benefit, I am prepared to accept offered work." The complainant has answered "No" to the question "Do you intend to apply for unemployment allowance or labour market support".

In the complaint on 23 May 2020, the complainant stated that they had also notified the Social Insurance institution of Finland (Kela) that it is a student and that it does not apply for unemployment security. The complainant's unemployment security was terminated on that date.

On 25 May 2020, the TE Office sent the complainant a request for information on their studies. the request states, among other things, the following: "According to your notification, you have the right to study, and you will be guided to neuropsychology at an open university starting on 23 May 2020." On 25 May 2020, the complainant informed the TE Office of the following, among other things: "I have applied to Kela for the implementation of my career plan for vocational rehabilitation, and I had to have a student place for applying. I had to register for university studies in a binding manner without knowing whether I will receive a favourable decision on my rehabilitation application or not. Studies are full-time, so I will not be entitled to unemployment security for that period. Because my situation is unclear until I get a rehabilitation decision, I still remain a jobseeker and will also accept work if I find full-time work that matches my work ability." The complainant has replied "No" to the question "are you applying for unemployment benefit after the start of your studies?" on the website of the e-services. The complainant has replied to the question "When did your studies start or start?" "23 May 2020". The question "are you applying for and ready to accept full-time work?" (Select the right alternative) "*" the complainant has replied "Yes".

On 27 May 2020, the TE Office sent the complainant a new request for information in order to establish the right to unemployment security. The request states, among other things, the following: "According to your report, you have started several separate study modules at an open university. To process your matter, please provide a copy of the school diploma indicating the duration of the right to study and the scope of the courses to be completed in credits." On the same day, the complainant responded to the request for information and informed the TE Office, among other things, that anyone can sign up for an open university freely, each course has its

own duration, and that they do not give any separate right to study at the university that could be proven with any certificates. The complainant has submitted to the TE Office a list of the courses for which they had registered at that time, because they had not been able to issue any other certificate or a university document. The complainant has also referred to earlier reports submitted to the TE Office stating that they had had to register for study periods to process the application for a rehabilitation allowance, and that a Kela official had also instructed the complainant to do so.

In the above-mentioned report on 27 May 2020, the complainant also requested from the TE Office what kind of documents the TE Office needs to investigate the complainant's right to unemployment security when they have already stated that they are not even applying for unemployment security as a student. The complainant has inquired why the TE Office must investigate the complainant's right to something that they are not applying for. The complainant stated that the TE Office did not provide answers to the above-mentioned questions.

On 12 June 2020, the TE Office issued a labour policy statement (02/0D6), according to which "the applicant has started independent studies". There are no obstacles to the payment of unemployment benefits between 16.05.2020 and 21 October 2020 (Finnish Institute of Occupational Health, chapter 2, section 10 a)." Reasons for the statement: "the applicant has the right to study in an open university. They have registered for four courses in psychology, the overall scope of which is 20 credits. the duration of the courses is between 16.5.20 and 21.10.20. The applicant must inform the students of any changes in their studies."

According to the complaint, Kela telephoned the complainant on 15 June 2020 about a labour policy statement, which the complainant then heard for the first time. The complainant received a telephone call from TE services on 23 June 2020, when the complainant demanded legal justifications for the labour policy statement made on 12/06/2020, which had consumed the complainant's right to short-term studies whilst claiming unemployment security. According to the complainant, the official spoke false, interrupted the complainant's speech and criticised the complainant's situation. The complainant has been informed of the possibility to call the unemployment security advice telephone service.

In the afternoon 23 June 2020, the unemployment security advice service of TE services called the complainant in response to his call request. The official of the unemployment security counselling has stated to the complainant that even if a new labour policy statement is issued, the statement cannot be given retrospectively, i.e. the possibility for short guidance has expired, the complainant applied for unemployment benefit or not. The official has instructed the complainant to have two options: appeals against the decision of the payer on unemployment benefit – if the complainant applies for unemployment benefit – or writes it to the TE Office and requests a review, i.e. a request for a review.

On 30 June 2020, the complainant sent a request for review of the labour policy statement issued to the TE Office on 12 June 2020. They have also asked the TE Office whether, under the law, the office is not obliged to answer the customers' wondering questions and to investigate the matter together with them if and when it is obvious that the customer does not understand the purpose of the investigation and/or other measures.

By an email dated 3 July 2020, the TE Office responded to the complainant, among other things, that it would retain the statement on short-term studies issued on 12/6.2020. In its report 30 June 2020, the TE Office referred to the complainant's announcement that they are not available for full-time work. The TE Office will issue a new statement on this as of 0A2 30 June 2020. The statement may not be issued retroactively but from the date of notification.

The complainant informed the TE Office on 3 July 2020 that they are still full-time students who are not entitled to unemployment security during their studies. This was not a request to deal with the matter retroactively. The complainant again requested that the TE Office rectify the incorrect labour policy statement and act in compliance with good governance in other respects as well. The TE Office has not corrected or rectified its statements.

3. The report by the TE Office

According to the TE Office, a labour policy statement of 12 June 2020 was issued because the complainant, while a TE Office customer and a jobseeker, announced on 25 May 2020 that they would start studying, be available for full-time employment and left their job search in force, but stated that they would not apply for unemployment benefit. Because the studies reported by the complainant lasted less than 6 months and his job search was valid, the TE Office stated in its labour policy statement that the studies were short-term studies whilst claiming unemployment benefit. The complainant has stated that he is a full-time student, but the TE Office has considered that the matter should be investigated by means of a request for information. Regardless of whether or not a TE Office customer applies for a benefit, the TE Office must report the situation by issuing a statement to the payer. In the TE Office's view, appealing against Kela's decision would have been the right way to influence the statement given.

The statement issued by the TE Office on 30 June 2020, according to which the complainant does not apply for full-time employment and is therefore entitled to unemployment benefit, has been issued since the date on which the complainant has informed of the matter. Because the complainant had previously stated that he was available for full-time work, it was not possible to issue an opinion earlier. The TE Office has considered it the only option to issue a statement claiming that the studies were short-term studies whilst claiming unemployment benefit, which has resulted in the use of a one-off opportunity. In its statement, the TE Office considered 16

May 2020 to be the beginning date of studies, as the start date of the study module had been announced on 16 May 2020 in the link concerning studies provided by the complainant.

As a rule, the TE Office does not send the labour policy statement to the customer separately, as it has been estimated that the statement shown in the decision of the payer is sufficient. The statement can also be checked via the e-services (Oma asiointi) and the telephone service. The aim has been to answer the complainant's questions as clearly, quickly and appropriately as possible. The TE Office has been of the view that the complainant has received adequate responses, even if the complainant has been dissatisfied with the interpretation and activities of the TE Office. The request for information made on 25 May 2020 has also been sufficiently detailed, and an effort has also been made to provide more information on it during telephone discussions.

4. Reports by the ELY centre and the KEHA centre

According to the KEHA Centre, there are three options in the electronic services system (Oma asiointi). The first one is "I am applying for full-time work. To receive unemployment benefit, I am prepared to accept offered work." Second: "I do not apply for full-time employment. This is why I do not have the right to unemployment benefit paid by an unemployment fund or Kela." Third: "I receive disability pension as a partial pension. I apply for unemployment benefit and am prepared to accept part-time work."

According to the ELY Centre, it is always possible to make incorrect interpretations when you provide ready-made options for using the online service. The fact that the complainant is prepared to accept full-time employment but does not apply for unemployment benefit was also likely to give rise to incorrect interpretations in the case on 23 May 2020. Based on an internal report by the ELY Centre, the right choice in this case would have been an alternative: "I do not apply for full-time employment. This is why I do not have the right to unemployment benefit paid by an unemployment fund or Kela." The ELY Centre considers that the TE Office has had a special duty to investigate because of the conflict.

On 12 June 2020, the TE Office issued a labour policy statement. The ELY has examined telephone conversations transcribed by the complainant, and it cannot be concluded on the basis of these that there have been any inadequacies reported by the complainant. ON 30 June 2020, the TE Office issued a new labour policy statement stating that the complainant is not entitled to unemployment benefit as of 30 June 2020. According to the ELY Centre, at this point the complainant has also presented unambiguously for the first time that they are unwilling to accept full-time work, except when the pay for work is high. The case involves the obligation of an authority to clarify the matter and, on the other hand, the obligation of a party/complainant to contribute to the clarification of a matter that has been initiated.

The ELY Centre states in general that the customers contact the TE Office largely through the e-services, and it may be that the customers and officials interpret the matters presented in the system in a different way. For this reason, the importance of good communication that listens to the client is emphasised. An attempt must always be made to determine the customer's actual intent. If necessary, the decisions made by the TE Office must be justified to the customer and it must be ensured that the customer understands why the decision on an administrative matter has been taken in a certain way. In the view of the ELY Centre, the TE Office has fulfilled its obligation to check by sending the customer a request for additional information 23 May 2020 based on the information provided in the electronic service system (Oma asiointi). In that case, however, the complainant's intent in the matter has remained unclear.

The ELY Centre states that, on the basis of the information received on the matter, the alternative mentioned by the complainant is not directly available among the alternatives in the information system. On the other hand, the conflicting information provided by the complainant at the beginning may also have been a complicating factor in the investigation. The TE Office's view that the statement can be influenced by appealing against a decision of the Social Insurance institution is correct under the unemployment Security Act. In accordance with the interpretation of the ELY Centre, the TE Office first remained waiting for the complaint against the decision of the Social Insurance institution and did not immediately rectify its statement on its own initiative. However, the view of the ELY Centre is that the matter could already have been corrected on its own initiative before. However, viewed as a whole, the actions of the TE Office have not been reprehensible, as efforts have been made to investigate the matter and there have been no unnecessary delays in the matter. If the complainant's intent had been expressed more clearly from the outset, no misleading labour policy statement (12 June 2020) would necessarily have been made.

5. Assessment

Chapter 2, section 10 of the unemployment Security Act provides for full-time studies that do not entitle to unemployment benefit. Chapter 2, section 10a of the Act, on the other hand, lays down provisions on short-term studies that do not affect the jobseeker's right to unemployment benefit. However, it is not within my competence as the overseer of legality to assess whether the complainant's studies were full-time or short-term studies within the meaning of the above-mentioned provisions, nor to take a stand on the date from which the studies should be deemed to have started. As the overseer of legality, my assessment concerns the legality and appropriateness of the actions of the TE Office in processing the matter referred to in the complaint.

I agree with the ELY Centre that when applying for benefits via an online service, choosing one of the available options from the system and answering standard questions (yes/no), misunderstandings and diverging interpretations of the parties are always possible. The person using the services may also be uncertain which options correspond to their actual situation. As the ELY Centre has pointed out, good communication that listens to the customer is emphasised when using an electronic transaction system, and the customer's actual intent must always be determined.

The complainant's matter has been somewhat open to interpretation. However, from the outset, the complainant has consistently brought to the TE Office its expression of intent that they will not apply for the unemployment benefits referred to in the unemployment Security Act. The complainant has informed the TE Office that they do not even have the right to unemployment benefit as a full-time student. He has also informed the TE Office that he has applied for rehabilitation subsidy from Kela for vocational rehabilitation, which has required that a student place be admitted in accordance with Kela's instructions to the complainant. In reality, the nature and amount of the studies have resulted in the complainant not being able to accept full-time work at the same time as the completion of the studies. The complainant has informed the TE Office of the facts above on several occasions (23.5., 25.5. and 27 May 2020), for example in its written reports, and therefore also in a manner other than just answering questions and alternatives in the e-service. The complainant has also requested that the TE Office provide answers to, for example, which documents they must provide and why the TE Office asks for reports on unemployment benefits that the complainant is not even applying for. In the circumstances described, I hold that the complainant has actively and appropriately contributed to the clarification of the matter that they have initiated as referred to in section 31, subsection 2 of the Administrative Procedure Act.

The preparatory work for the Administrative Procedure Act states on the obligation of an authority to provide clarification and advice that the authority's procedural obligation includes, where necessary, directing a party to the provision of information needed to resolve the matter. A party does not always have clear understanding of what information and facts are essential for the resolution of the case. The authority shall ensure that the client has a clear understanding of the exercise of their procedural rights, and any possible misunderstandings by the client concerning this should be corrected. In the consideration of the need for and scope of counselling, on the other hand, the actual possibilities of the client to cope with their own affairs must be assessed. The obligation to provide advice applies to relevant and adequately specified questions and enquiries.

The report gives the impression that TE Offices have focused on examining and assessing whether the complainant's studies are short-term or full-time. The TE Office has ignored the

complainant's recurring reports and reports that they do not even apply for unemployment benefit under the Unemployment Security Act. Neither has the TE Office responded to all of the complainant's enquiries and questions even though, on the basis of the reports and contacts described above, it must have become evident that the complainant had an unclear idea of their rights and obligations and of the processing of their matter.

The complainant reported that it was only informed of the employment policy statement dated 12 June 2020 through a contact by Kela on 15 June 2020. The TE Office has stated that the statement can be checked, for example, in the Oma asiointi service and the telephone service. I wish to point out that even if a labour policy statement is not a decision referred to in the Administrative Procedure Act, the party concerned must be heard in accordance with Section 34 of the Administrative Procedure Act before issuing a labour policy statement. The documents show that THE TE Office did not contact the complainant after they had responded to the request for information of the Office on 27 May 2020 and requested further advice from the Office on their matter.

The provisions on the rectification procedure laid down in Chapter 7 of the Administrative Procedure Act do not apply to labour policy statements, either, as the rectification procedure is only applied to actual administrative decisions. Furthermore, under Chapter 12, section 1, subsection 5 of the unemployment Security Act, an opinion may not be appealed separately. In my view, however, the provisions of the unemployment Security Act or the Administrative Procedure Act do not prevent the TE Office from taking up the matter for reconsideration if necessary and drawing up a new labour policy statement, for example in situations where a person who is a client of the TE Administration presents a new and reliable account of their circumstances. The ELY Centre has also stated that, on its own initiative, the TE Office could have corrected its labour policy statement and would not have been left waiting for an appeal against the decision of the Social Insurance institution. An official of the unemployment security advice service had also instructed the complainant to make a request for reconsideration by telephone (23 June 2020).

In my view, when acting in the manner described above, the TE Office has neglected its obligations concerning the service principle and appropriateness of the service laid down in section 7 of the Administrative Procedure Act, the provision of advice laid down in section 8, the clarification of a matter laid down in section 31, and the hearing of a party laid down in section 34. The actions of the TE Office have resulted in the labour policy statement issued to the complainant on 12 June 2020, according to which the complainant is entitled to unemployment benefit that they have not even applied for. In violation of the interests of the complainant, the opinion was also used to consume their chances of completing short-term studies with unemployment security at a later stage. However, I wish to point out that the aforementioned omissions are, as such, reprehensible even if they did not have a de facto impact on the rights of the complainant.

On the other hand, based on the report at my disposal, I have no grounds to state that an official of the TE Office had behaved inappropriately in the telephone conversation with the complainant in the morning of 23 June 2020 in such a way that I would have reason to intervene in the procedure through controls of legality. According to my estimate, the telephone service for unemployment security advice has also proceeded in line with the good governance service and advice principle in a telephone conversation with the complainant that took place later in the same afternoon.

6. Conclusions and measures

I would like to draw the TE Office's attention to compliance with the provisions of the Administrative Procedure Act concerning the appropriateness of the service, advice, the obligation to clarify the matter and the obligation of a party to be heard.

The complaint does not give cause for any other measures I may take.

This document has been signed electronically.

Deputy Chancellor of Justice

Mikko Puumalainen

Referendary Counsellor

Tuula Karjalainen