DECISIONS BY THE SUPREME ADMINISTRATIVE COURT AND HELSINKI ADMINISTRATIVE COURT

PERSONAL ASSISTANCE

KHO 2011:69

Supreme Administrative Court decision KHO 2011:69 evaluated the right of a man with severe intellectual disabilities to personal assistance in functions outside his unit of residence. Within the limits of his understanding, the person could form his own opinion and express in different ways his view on tasks relating to everyday situations, hobbies and handling his affairs, if the opinion concerned concrete matters familiar to him. The application could not be rejected based on the fact that the person did not have the capability to determine the content of the personal assistance that he needed and how it would be provided.

https://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2011/201102120

KHO 12.8.2011 T 2121

In situations where someone has been unable to express their wishes, even with support or the help of communication aids, the capability requirement is not usually deemed to have been met. Supreme Administrative Court decision KHO 12.8.2011 T 2121 concerned a young person with severe intellectual disabilities, who had had autism, dysphasia and ADHD since childhood. Personal assistance was sought for hobbies and recreation. Personal communication mainly took place through expressions and gestures, and even through sounds that could be perceived as words. He also used pictures and communicators for communication. According to the decision, the application could be rejected because, even though the person could express his feelings through expressions and gestures, he himself could not express an opinion on his needs for help and how to meet them, as required by the law. The determination of the need for help should not have been completely based on views expressed by someone else.

https://thl.fi/documents/470564/715504/KHO%2B2121_2011.pdf/b298accf-b45b-4ea3-a35f-1e6f806c4899

KHO 2016:7

Based on the decision-making practice of the Supreme Administrative Court, there have also been situations where the capability requirement could have been deemed to have been partially met,

i.e. the capabilities was deemed sufficient for personal assistance in leisure activities whilst, in all daily functions, it was not in the absence of capabilities considered that personal assistance could be available. In yearbook decision KHO 2016:7 it was found that an applicant who required help in all daily functions could, within the limits of their understanding, form their opinion and express their view in different ways in activities outside the home. The applicant communicated and was able to perform some domestic functions, but the need for help seemed largely to be determined by an external party. Communication largely consisted of the applicant telling what they liked.

https://www.finlex.fi/sv/oikeus/kho/vuosikirjat/2016/201600125

KHO 14.6.2017 T 2911

In decision KHO 14.6.2017 T 2911, the Supreme Administrative Court upheld the decision of the Administrative Court, according to which A could express their needs in everyday situations, but they did not demonstrate the ability to express the content of help and how to provide it, which is needed when it is a question of personal assistance to enable living in one's own home.

https://thl.fi/documents/470564/715504/2911+2017.pdf/6804354d-29be-4a65-8c77-6314edeba938

KHO 12.8.2011 T 2122

The Supreme Administrative Court has also evaluated the resource requirement from the perspective of children. Decision KHO 12.8.2011 T 2122 dealt with a 13-year-old child, who had been diagnosed with autism, dysphasia and ADHD. The child needed help in communication, guidance in their own activity, remembering things and concentration. They expressed their will under guidance and by means of supported communication. Personal assistance was sought for hobbies and maintaining social relationships. According to the Supreme Administrative Court, a child with disabilities must also be given the opportunity to be independent like their peers. According to the principle of normality, personal assistance must be granted when a child, on account of a functional limitation caused by a disability or illness, is unable to do things unassisted that children of a similar age can usually do. It was established that the child could express their need for help. The Supreme Administrative Court deemed that the child be considered a person with severe disabilities as referred to in the Act on Disability Services and Assistance, who had the resources to determine the content of personal assistance that they needed and how to provide it.

https://thl.fi/documents/470564/715504/KHO%2B2122_2011.pdf/89288212-54c8-4938-9e3f-c626d2f7d635

SERVICE HOUSING

KHO 14.11.2007 T 2900

In the case, the Social Welfare Board had rejected an application whereby the parents of an 11-year-old child with multiple disabilities had applied for service housing organised at home. According to the decision, the municipal services organised under the Act on Disability Services and Assistance and the Act on Special Care for Mentally Handicapped Persons were sufficient when also considering the duty of parents to take care of their under-age child.

The Supreme Administrative Court repealed the decision and deemed that service housing can be organised at home for persons with severe disabilities. Persons with intellectual disabilities may also be deemed to have severe disabilities as referred to in the Act on Disability Services and Assistance. Services and support functions based on the Act on Disability Services and Assistance are also intended for an under-age child with severe disabilities, when the special needs of the child, considering their age and level of development, require of the parents special supervision and care that exceed normal parenting.

http://data.finlex.fi/ecli/kho/2007/79/fin.html

KHO 17.8.2016 T 3412

In the case KHO 17.8.2016 T 3412, A applied for, among other things, personal assistance and service housing at home under the Act on Disability Services and Assistance. The local authority rejected the application for service housing based on the fact that A's care could not be ensured in non-institutional care.

A appealed to the Administrative Court, asking to be granted service housing under the Act on Disability Services and Assistance. The Administrative Court studied the appeal, repealed the decision and returned the case to the board to organise service housing. According to the Administrative Court, A was not deemed to be in need of constant institutional care, because meeting their needs for service did not principally require medical expertise or special expertise constantly or in the long term. It was possible to ensure the sufficient care required by A in non-institutional care. Because of this, the local authority must organise for A service housing for persons with severe disabilities.

The Supreme Administrative Court upheld the decision of the Administrative Court, further stating that the fact that a person needs the help and care of another person around the clock does not necessarily exclude them from being entitled to service housing. Neither does the right to service

housing as referred to in the Act on Disability Services and Assistance require that the person themself be able to determine the help their needs and the need for support functions.

https://thl.fi/documents/470564/715504/3412+2016.pdf/dec47a55-4094-4b44-9db4-84390d938c06

KHO 2013:6 and KHO 2013:7

In its decisions KHO 2013:6 and KHO 2013:7, the Supreme Administrative Court stated that, even if a person requires the help and care of someone else around the clock, this does not necessarily exclude that person from being entitled to service housing. In these cases, the persons were not deemed to be in need of constant institutional care, because meeting their needs for service did not principally require medical expertise or special expertise constantly or in the long term. It was possible to ensure sufficient care in non-institutional care.

https://www.kho.fi/fi/index/paatoksia/vuosikirjapaatokset/vuosikirjapaatos/1364381254210.html

https://www.kho.fi/fi/index/paatoksia/vuosikirjapaatokset/vuosikirjapaatos/1364381884949.html

HOME ALTERATIONS

KHO 17.8.2016 T 3421

In its decision KHO 17.8.2016 T 3421, the Supreme Administrative Court evaluated the necessity of the support functions applied for in connection with home alterations. The Supreme Administrative Court deemed, among other things, that modifying the kitchen cabinets into easily retractable baskets would have made it easier for the person to perform daily functions. Based on an assessment of the person's state of health and functional ability, the alteration was not, however, considered a necessary home alteration in terms of the person's ability to cope in daily life as referred to in the Act and Decree on Disability Services and Assistance, for which the local authority should compensate.

KHO 13.9.2013 T 2398

In its decision KHO 13.9.2013 T 2398, the Supreme Administrative Court evaluated whether the construction of a toilet on the upper floor of a detached house was necessary for A to perform their daily functions as stated in the Act on Disability Services and Assistance, when an accessible toilet was located on the ground floor of the house.

The Administrative Court found that, when taking into account a report received in the case on the facilities in the house and the fact that it was also possible to locate adequate bedroom facilities on

the ground floor of the building where the present toilet was located, the costs arising from the construction of a toilet upstairs were not unavoidable costs compensatable under the Act on Disability Services and Assistance, arising from a need caused by A's disability or illness to perform their normal life functions. The Supreme Administrative Court upheld the decision of the Administrative Court.

https://thl.fi/documents/470564/715504/KHO+2898+2013+AS.MUUTOSTY%C3%96%2C+v%C3%A4ltt%C3%A4m%C3%A4tt%C3%B6myys.pdf/397d84e3-adf7-4251-b49c-67e0b0a13132

TRANSPORT SERVICES

KHO 2018:64

In its yearbook decision KHO 2018:64, the Supreme Administrative Court dealt with the need of a child with severe disabilities for transport services. The child A, with severe disabilities, born in 2002 suffered from a serious congenital heart defect, in addition to which their functional ability was weakened by hemiplegia and epilepsy caused by a cerebral infarction. A could not withstand physical stress, which caused their bouts of nausea and, because of their illness, they could not be outdoors in temperatures below -10°C.

A was granted transport service under the Act on Disability Services and Assistance and exempted from using the City of Helsinki Matkapalvelu transport service, as a result of which they were able to order transport belonging to the transport services directly from a taxi company chosen by them. In 2016, the City of Helsinki decided that, now that A was 13 years old, they should no longer be granted exemption from using the City of Helsinki Matkapalvelu.

The Supreme Administrative Court found that, in the provision of services under the Act on Disability Services and Assistance, the child with severe disabilities was in need of special support on account of their young age and severe disability. Because of this, the local authority had to pay special attention to A's benefit and support of independence when organising services based on the Act on Disability Services and Assistance. The Supreme Administrative Court judged that A's independent movement without their parents and the autonomous use of the transport service would become unreasonably difficult for them when organised through Matkapalvelu on account of their serious illness and the functional limitations resulting from it. A was again exempted from the use of Matkapalvelu. Voting 4–1.

http://www.kho.fi/fi/index/paatoksia/vuosikirjapaatokset/vuosikirjapaatos/1524828752140.html

KHO 6.5.2014 T 1500

An official rejected a person's application to receive the right to use the same taxi for transport services granted to them under the Act on Disability Services and Assistance. According to the decision, the person did not have a reason stemming from disability or illness for not being able to use the central taxi ordering number when ordering transport services. The Administrative Court found that, according to a report presented on the matter, the person was blind from birth. They based their application, among other things, on the fact that they were unable to control what the driver did or, if necessary, to help the driver to find the correct address. Although the person was said to have had practical difficulties with drivers they did not know, it did not, however, emerge in the case that, despite these problems, they could not use transport services in the manner organised by the city without the right to use the same taxi each time. The person was granted a service subsidy so that, if necessary, the taxi driver could assist them before and after the journey. The Supreme Administrative Court upheld the decision of the Administrative Court.

https://thl.fi/documents/470564/715504/KHO+1500+2014+KULJETUSPALVELU%2C+vakiotaksi.pdf/c5c54a2d-ed8e-4405-af86-7f63605ef4e6

KHO 31.5.2005 T 1298

In case KHO 31.5.2005 T 1298, the Supreme Administrative Court deemed that, although a local authority has the right to decide on how to organise transport services, a person with disabilities has the opportunity to demand that the service be organised in an individual manner tailored to them. This means that the local authority must also make a decision on individual care with regard to the requirements concerning the way of organising the service.

Decision-related matters concerning the method of organisation may be, for example, a request for the same taxi (the person with disabilities wishes to use the same familiar taxi driver each time) or a request that, considering the person with disabilities' individual needs, their journeys will not be combined, or a request that the person with disabilities will be exempted from ordering a taxi through the journey combination centre or some other similar way of organising transport services, which ensures the person's individual needs for mobility, and takes into account the limitations in mobility caused by their disability or illness.

HELSINKI ADMINISTRATIVE COURT 10.5.2007 no. 070559/6

An official had rejected the application of a person with severe disabilities to receive the right to use the same taxi for journeys to work and for leisure activities, because the journeys could be organised by the Matkapalvelu transport service centre. In the case, the applicant with severe disabilities said that they could not use a vehicle ordered from the transport service centre for journeys to work, and they had often been late for work when a vehicle arrived that the person with severe disabilities could not use on account of their illness or disability.

The Administrative Court found that the transport services of the person with severe disabilities could not always be organised through the travel service centre, as was marked on their customer information. The Administrative Court deemed that, because it was a question of the journeys to work of a person with severe disabilities, the provision of transport services for the journeys to work required the use of a regular taxi.

HOUSING SERVICES AND PROTECTION OF PRIVACY

KHO 2002:75

In its yearbook decision KHO 2002:75, the Supreme Administrative Court dealt with the organisation of housing services from a perspective of the protection of privacy. According to this decision, the evaluation of the facilities must take into account both public living requirements and the basic rights of residents such as the protection of privacy. According to the decision, homely living requires the resident to have their own room. Irrespective of the form of living, everyone has a basic right to privacy.

https://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2002/200202807

DECISIONS BY THE LABOUR COURT

TT 2018:8

In case TT 2018:8, an employee had been dismissed from their sorting, loading and unloading job based on a fundamental and permanent reduction in working capacity. The interested parties were unanimous over the fact that the employee was no longer able to perform their previous tasks. The company had an established test to discover whether an employee with reduced working capacity could be found suitable jobs. The test done on the employee included the same tasks that they had done prior to the accidents which reduced their working capacity. Because these tasks were in no way adapted to correspond to the employee's remaining working capacity, the employer was deemed not to have established the dismissed employee's working capacity for other work.

The employer was deemed to have acted in contravention of the collective agreement when dismissing the employee. The employer was obliged to pay compensation to the employee for the groundless termination of the contract of employment.

https://www.tyotuomioistuin.fi/fi/index/tyotuomioratkaisut/tyotuomioratkaisut/1517999829696.html

TT 2016:65

In case TT 2016:65, an employee was dismissed from their job as a purchasing supervisor based on a fundamental and permanent reduction in working capacity. The interested parties were unanimous over the fact that the employee was no longer able to perform their previous tasks.

Prior to the dismissal, the employer had hired another person for the job of transport supervisor. The employer did not offer this job to the dismissed employee, even though they would have been suitable for it based on their professional skills and experience.

The court found that, in terms of its level of difficulty, the job of transport supervisor was much easier than that of purchasing supervisor. The employer did not investigate the working capacity of the dismissed employee as transport supervisor or the opportunity to reorganise the job to be suitable for them, for example by changing the working methods or working arrangements. The employer did not have sufficient grounds for not offering the employee the chance to demonstrate that they could cope with the job. No other grounds were offered for the dismissal. The employer was deemed to have acted in contravention of the employee protection agreement when dismissing the employee. The employer was obliged to pay compensation to the employee for the groundless termination of the contract of employment.

https://www.tyotuomioistuin.fi/fi/index/tyotuomioratkaisut/tyotuomioratkaisut/1465454115929.html

ABBREVIATED DESCRIPTIONS OF CERTAIN DECISIONS BY THE NATIONAL NON-DISCRIMINATION AND EQUALITY TRIBUNAL REGARDING THE DISCRIMINATION OF PERSONS WITH DISABILITIES (2015–2018)

21/2015

14 December 2015, plenary session

The applicant is a person with disabilities who did not consider themself capable of full-time employment in the work they had trained for. They had been accepted for special teacher studies at Åbo Akademi University. The applicant considered that there were special reasons why they should have been granted unemployment benefit for the duration of the studies.

The applicant submitted an account of their studies to the Employment and Economic Development Office in order to keep their unemployment benefit. In accordance with the Unemployment Benefit Act, the Employment and Economic Development Office studied the applicant's labour policy conditions to receive unemployment benefit and, on 23 January 2015, submitted its binding labour policy statement to the unemployment fund. According to the statement, the applicant did not have the right to unemployment benefit, because they studied full-time.

When the matter was processed by the National Non-Discrimination and Equality Tribunal, the answers and further clarifications by the Employment and Economic Development Office did not indicate that it had taken into account the obligations under the Non-discrimination Act.

The National Non-Discrimination and Equality Tribunal stated that when making a decision on a discretionary benefit, an authority must apply the provisions of the Non-discrimination Act regarding the prohibition of discrimination.

The National Non-Discrimination and Equality Tribunal deemed that the Employment and Economic Development Office neglected its obligation to promote the implementation of equality under Section 5(1) of the Non-discrimination Act, because it had not assessed the reasonable accommodation laid down in Section 15 of the Non-discrimination Act although the applicant had presented issues that should have been taken into account under the Non-discrimination Act.

The National Non-Discrimination and Equality Tribunal deemed that the applicant's legal position as a university student among other adult students was such that it could be comparable with "other personal characteristics" in the list of prohibited grounds of discrimination included in the prohibition of discrimination in the Non-discrimination Act.
The National Non-Discrimination and Equality Tribunal deemed that the applicant's situation was not comparable with other adult students, so the applicant had not been discriminated against in relation to other adult students.

The National Non-Discrimination and Equality Tribunal deemed that the Act on public employment and business service and the related application directive by the Ministry of Employment and the Economy do not prevent the Act to be interpreted in the way requested by the applicant.

The National Non-Discrimination and Equality Tribunal stated that it was not indicated in the labour policy statement drafted by the Employment and Economic Development Office, which was negative for the applicant, or any other documents relating to the matter that the obligation of an authority for reasonable adjustments under Section 15(1) of the Non-discrimination Act had been taken into account or applied when considering the applicant's case.

The National Non-Discrimination and Equality Tribunal also stated that according to Section 15 of the Non-discrimination Act, an authority has to make due and appropriate adjustments necessary in each situation for a person with disabilities to be able, equally with others, to have their matters taken care of by the authorities and gain access to education, work and generally available goods and services, as well as to manage their work tasks and to advance their career. The wording of Section 15 of the Non-discrimination Act does not set the condition for the obligation of an authority that the person with disabilities expressly demands reasonable accommodation from an authority or contributes in any other way.

Paying special attention to the requirement to respond case-specifically to the needs of each person with disabilities with reasonable accommodation and the obligation of an authority to interpret and apply the responsibility of an authority, prescribed in Section 15(1) of the Non-discrimination Act, for reasonable accommodation in a manner that guarantees the observance of basic rights and liberties and human rights under Section 22 of the Constitution of Finland, the National Non-Discrimination and Equality Tribunal deemed that the Employment and Economic Development Office had denied the applicant reasonable accommodation in violation of the prohibition of discrimination in Section 8(2) of the Non-discrimination Act when it had submitted to the unemployment fund the labour policy statement on 23 January 2015 according to which the applicant was not entitled to unemployment benefit because they had studied full-time at Åbo Akademi University to become a special teacher and Master of Arts (Education).

The National Non-Discrimination and Equality Tribunal deemed that the Employment and Economic Development Office had neglected its responsibility for reasonable accommodation under Section 15 of the Non-discrimination Act. The Tribunal prohibited the Employment and Economic Development Office from continuing or repeating the discrimination in violation of Section 8 of the Non-discrimination Act and commanded the Employment and Economic Development Office to make the due and appropriate accommodations necessary in accordance with Section 15 of the Non-discrimination Act.

(Vote 7–6)

Not legally valid.

31/2015

14 December 2015, plenary session

The applicant considered that they had been discriminated against because a bank had not granted them Internet banking personal identity codes because of visual impairment and had not made the necessary reasonable accommodations. The applicant requested the prohibition of discrimination against them and the imposition of a default fine to intensify the prohibition. The bank had refused to give the applicant Internet banking personal identity codes on the grounds of safety considerations and considered the applicant's demand of reasonable accommodations unreasonable. The bank had not expressed that the reasonable accommodations requested by the applicant would not have been safe or that they would have caused the risk of damage.

The National Non-Discrimination and Equality Tribunal considered the adjustments requested by the applicant reasonable in the manner referred to in Section 15 of the Non-discrimination Act. The Tribunal prohibited the bank from continuing or repeating the discrimination of the applicant or other visually impaired persons when providing banking services and commanded the bank to make the due and appropriate adjustments necessary under Section 15 of the Non-discrimination Act for visually impaired persons to be able, equally with others, to receive banking services, including Internet banking personal identity codes. The National Non-Discrimination and Equality Tribunal set a default fine of EUR 50,000 to intensify its prohibition decision and its command.

(Vote)

Legally valid – The bank made the reasonable adjustments requested by the applicant.

47/2015

31 March 2016, plenary session

The applicant is a person with disabilities who has to use a wheelchair in order to move. The applicant had been on their way to exchange currency but could not access the bureau de change because of the non-accessibility of the entrance.

The applicant considered themselves to have been discriminated against because they could not exchange currency inside the business premises like other customers. According to the applicant, the bureau de change should have arranged a detachable ramp for the applicant to be able to enter the premises. In the opinion of the applicant, exchanging money in the street is a safety risk and was not an appropriate and reasonable accommodation in this situation.

The bureau de change had notified the customer of the opportunity to serve persons with reduced mobility outside the premises. The bureau de change had also offered the opportunity to guide the applicant to another bureau de change. According to the company, installing a detachable ramp could have compromised the safety of both the wheelchair user and the personnel.

The National Non-Discrimination and Equality Tribunal stated that, in the light of the account received, installing a detachable ramp would not have been appropriate in this situation because adjustments must not cause hazards.

In the opinion of the Tribunal, it had to be taken into account that money was handled in the situation. Although the circumstances in which services are offered do not have to be, after reasonable accommodations, exactly the same for persons with disabilities as for other customers, it is not possible, when exchanging currency outdoors, to provide persons with disabilities the same protection as when providing the service indoors. Although this kind of adjustment may in itself be suitable for the conditions in some situations, the applicant has justifiably felt that exchanging currency outdoors involves such a safety risk that the offered accommodation may not be considered appropriate as specified in the Non-discrimination Act.

The National Non-Discrimination and Equality Tribunal deemed that guiding the applicant to the nearest accessible bureau de change can be considered a reasonable accommodation in a situation like this. In the opinion of the Tribunal, this would have created the opportunity for the applicant to receive currency exchange services equally with others.

In addition, the applicant considered that they had been discriminated against because the bureau had served another customer but not the applicant. During the situation, however, there had been police officers on duty in the bureau and the staff could not have exited the bureau for safety reasons. Based on the account presented, it could not, objectively assessed, have been presumed that not providing service to the customer in this rare exceptional situation had been caused by the applicant's disability. The fact that, because of the personnel's mistake, another person that could

access the bureau had been served did not give reason to assess the discrimination presumption in any other way.

The National Non-Discrimination and Equality Tribunal rejected the application.

Legally valid.

60/2015

31 March 2016, plenary session

The applicant is a person with disabilities who has to use a wheelchair in order to move. The applicant considered that they had been discriminated against due to their disability, because there was no accessible toilet available in the restaurant.

According to building regulations, there had to be an accessible toilet available to the customers of the restaurant. Later on, when the Accessibility Representative was on an inspection visit in the restaurant, it was revealed that the accessible toilet was used as a storage room, it had no sign and the handle for pulling back the door was missing. The Accessibility Representative made a request to the shift supervisor to bring the accessible toilet to proper working order.

According to the National Non-Discrimination and Equality Tribunal, the case gave rise to a discrimination presumption. On the basis of the account received, the Tribunal deemed that the mere claim of the respondent that the accessible toilet had been available to the customers when the applicant visited the restaurant was not sufficient to disprove the discrimination presumption. Also, the respondent had not presented a justification for their conduct referred to in Section 15 of the Non-discrimination Act.

The National Non-Discrimination and Equality Tribunal decided that the conduct of the restaurant had discriminated against persons with disabilities who need an accessible toilet. The Tribunal prohibited the company from continuing or repeating the discrimination.

Not legally valid.

27/2015

7 June 2016, plenary session

The applicant is a visually impaired person who considered that they had been discriminated against when VR-Group Ltd's free assistant's ticket could not be obtained in the company's online shop or from ticket vending machines and the person travelling with the assistant's ticket was required to be over 18 years old. When the assistant's ticket became available in the company's online shop, the applicant considered that they had been discriminated against because the company's online shop required persons with disabilities using an assistant's ticket to provide a

separate statement to the effect that they are visually impaired or wheelchair passengers who are entitled to the assistant's free journey.

The National Non-Discrimination and Equality Tribunal stated that the free assistant's ticket offered by VR-Group Ltd is not a case of reasonable accommodation, which is a situation-specific arrangement in an individual case based on a request by a person with disabilities in the manner referred to in Section 15 of the Non-discrimination Act.

The Tribunal rejected the application to the extent that it concerned the availability of the assistant's ticket in the online shop and the requirement of 18 years of age for the person travelling with the assistant's ticket, because these factors did not give rise to a discrimination presumption.

VR-Group Ltd justified the requirement of a separate statement required from persons with disabilities obtaining a free assistant's ticket in the online shop by the desire to emphasise that the service is only available to wheelchair customers and persons with visual impairments.

However, the National Non-Discrimination and Equality Tribunal stated that this was not required from other groups entitled to a discount or free tickets. Therefore, it is not acceptable to require that from passengers with disabilities, because it would be a case of unjustified differential treatment of persons with disabilities.

The Tribunal deemed that VR-Group Ltd could not disprove the discrimination presumption. The company has discriminated against the applicant and other persons with disabilities using an assistant's ticket by requiring a separate statement in the online store to the effect that they are visually impaired or wheelchair passengers who are entitled to the assistant's free journey.

The National Non-Discrimination and Equality Tribunal prohibited the company from continuing or repeating the discrimination.

Legally valid.

154/2016

10 November 2016, division

The applicant is a visually impaired person who considered that they had not been properly assisted in the shop because the personnel did not always agree to help them in collecting the groceries.

The respondent denies having discriminated against the applicant. The shop is designed to be a self-service shop, and personnel resources are planned accordingly. The intention is to help customers in the shop, but there is no separate assistant or collection service in the shop.

The National Non-Discrimination and Equality Tribunal deemed that, considering the presented account, the shop had not neglected making reasonable adjustments under Section 15 of the Non-discrimination Act or denied reasonable accommodation from the applicant in its operations.

Not legally valid.

117/2016

16 December 2016, division

The applicant is a deaf-blind person who has a legally valid decision on the right to use the interpretation service for persons with disabilities. They were denied the opportunity of receiving interpretation services when they were about to make a phone call to Portugal. The interpreter the applicant wanted had not taken the course in interpreting for deaf-blind individuals required by the Social Insurance Institution of Finland Kela. According to the contract terms prepared by Kela in 2013, interpreters who have completed a course including guidance of a blind person and description for the blind may interpret for deaf-blind individuals. The applicant considered that compliance with the contract had resulted in denying interpretation services from certain groups in certain situations. The applicant had been left without the interpretation service because an interpreter who would have been compliant with the contract terms and proficient in Portuguese was not available. The applicant requested the National Non-Discrimination and Equality Tribunal to prohibit the Centre for Interpreting Services for the Disabled of the Social Insurance Institution of Finland from continuing of repeating the discrimination based on disability. The applicant demanded a default fine to be imposed to intensify the prohibition.

The respondent denied that they had discriminated against the applicant or that the contract had been discriminatory. The applicant placed the interpretation order very close to the interpretation event. In addition, the order required special expertise (proficiency in Portuguese). One interpreter proficient in Portuguese who produced services for deaf-blind persons was found in Kela's employment exchange system. However, this interpreter was not available, and therefore, the service could not be organised for the applicant. Kela took all the measures available to it as the service provider in order to implement the applicant's order.

The National Non-Discrimination and Equality Tribunal considered that a presumption of indirect discrimination had arisen because apparently equal grounds had placed the applicant in an unfavourable position compared to others due to a reason relating to hearing and visual impairment. The Tribunal considered that the requirement set for the interpreter had been inflexible and the individual needs of deaf-blind persons in individual interpretation events had not been taken into account in its application. The Tribunal deemed that the method, acceptable in itself, used to reach a goal related to ensuring the quality of interpretation had not been appropriate and necessary. Because the applicant had suggested an interpreter whom they had previously used and who had been available, the Tribunal did not consider the factors presented by Kela to have justified Kela's procedure.

The National Non-Discrimination and Equality Tribunal deemed that Kela had discriminated against the applicant, prohibited Kela from continuing or repeating the discrimination and set a default fine of EUR 5,000 to intensify the decision.

(Vote)

Legally valid.

146/2016

25 November 2016, division

The applicant considered a company to have indirectly discriminated against them when a sauna opened temporarily as a marketing event had not been accessible to a person using a wheelchair. According to the respondent, the sauna under evaluation was not about offering the actual game services of the company, and the event, being of short duration, regional and free of charge, did not make possible the implementation of accessibility in a manner corresponding to conventional services.

According to the National Non-Discrimination and Equality Tribunal, it would have been economically feasible for the company to implement its advertisement event using accessible facilities. The company marketed the sauna as open to all. The Tribunal deemed that the practice presented as equal had resulted in the applicant in reality not having been able to use the service provided like other people because of their disability. By appealing to pure marketing purposes, the company did not present a legitimate aim for its activities, as referred to in Section 13 of the Non-discrimination Act, that would remove indirect discrimination. The National Non-Discrimination and Equality Tribunal stated that the company had not presented evidence that would rebut the discrimination presumption that arose on the basis of the applicant's account.

The National Non-Discrimination and Equality Tribunal deemed that the respondent had indirectly discriminated against the applicant and prohibited the company from repeating or continuing the discrimination.

Legally valid.

185/2016

25 November 2016, division

The applicant, who uses a wheelchair to move because of their disability, considered that the conduct of a restaurant had been a case of prohibited discriminatory differential treatment of persons with disabilities when the accessible entrance to the restaurant had been arranged so that it was not connected to the main entrance. The National Non-Discrimination and Equality Tribunal stated that an accessible entrance to the restaurant which was in line with the construction licence granted had been arranged, and using this entrance, a person with disabilities using a wheelchair could access the restaurant appropriately. The Tribunal deemed that the case did not give rise to a discrimination presumption and therefore rejected the application.

Legally valid.

152/2016

20 April 2017, division

The applicant is a visually person with visual impairments who considered that they had been discriminated against because the guidance for users of transport under the Social Welfare Act and the Disability Services Act on the website of the disability transport services of the City of

Rovaniemi was not readable with a screen reader and because the disability transport services recommended the applicant to make transport service orders by telephone.

The National Non-Discrimination and Equality Tribunal deemed that the disability transport services of the City of Rovaniemi had indirectly discriminated against the applicant based on their disability because the guideline for users of transport under the Social Welfare Act and the Disability Services Act on the website of the disability transport services was not readable with a screen reader. In addition, the Tribunal deemed that the City of Rovaniemi had neglected its obligation to promote equality under Section 5(1) of the Non-discrimination Act by not considering the need for reasonable accommodation based on the feedback given by the applicant to the disability transport services. The Tribunal prohibited the City of Rovaniemi from continuing the discrimination against the applicant or other people and rejected the other parts of the application.

Legally valid.

150/2016

20 April 2017, division

The applicant, who uses a wheelchair because of their disability, considered that they had been discriminated against when a restaurant intended to be accessible had maintained a non-accessible entrance for months and thus put customers with disabilities into an unequal position in relation to other customers.

The National Non-Discrimination and Equality Tribunal stated that it only evaluates violations of the discrimination prohibition under the Non-discrimination Act and that it is not within its authority to evaluate the content of accessibility regulations, construction performed according to these regulations or any deficiencies found.

The National Non-Discrimination and Equality Tribunal stated that those putting a building to use can rely on the building complying with the accessibility regulations in a situation where the licensing authority has approved the building for a certain purpose and the approval is not particularly old. In this case, the building had been approved for use during the previous owner in February 2015 and the premises had come to the ownership of the respondent on 1 June 2016. The National Non-Discrimination and Equality Tribunal deemed that the approval had been so recent that those putting the building to use had the right to rely on the authority’s approval of the accessibility of the building.

However, the Tribunal deemed that the previous approval of the accessibility of the building does not rule out the possibility of non-accessibility emerging later that could discriminate againstpersons with disabilities.

According to the account on the matter, the CEO of the respondent company had visited the restaurant, taken note of the accessibility situation and ordered a permanent repair approximately two weeks after the first contact by the applicant. Temporary ramps had been installed approximately one and a half months after the applicant’s first contact.

The National Non-Discrimination and Equality Tribunal stated that it had not been demonstrated that the respondent had placed the applicant in an unfavourable position compared to other customers when the non-accessibility had emerged. The Tribunal deemed that the respondent had, based on the account presented, rebutted the discrimination presumption. Therefore, it rejected the application.

Legally valid.

102/2016

20 April 2017, division

The Non-Discrimination Ombudsman requested the National Non-Discrimination and Equality Tribunal to investigate whether Finnair Plc had discriminated against a party with physical disabilities when it had not made reasonable accommodations under the Non-discrimination Act for the passenger requiring three adjacent seats because of their disability.

The National Non-Discrimination and Equality Tribunal considered the fact that party T had to buy three adjacent seats for the total price of three basic tickets an unreasonable cost because of which the participant had been prevented from using the service.

The Tribunal deemed that the business base of the company's operations and the freedom to price its products cannot as such liberate the provider of goods and services from the obligation under the Non-discrimination Act to make reasonable accommodations.

The Tribunal stated that Finnair Plc is a significant listed state-owned company whose business as such has notable economic effects. Although a flight ticket given without compensation or a significant reduction of the ticket price would cause loss of income to the company, the capability of both sides to manage the loss caused by the ticket prices must be evaluated in the case. Considering the uniqueness and presumable rarity of party T's disability and the case-specificity of the reasonable accommodation, the reasonable accommodation needed in the case does not affect the company's general freedom of pricing.

The Tribune deemed that Finnair Plc had neglected the arranging of reasonable accommodations for party T and thus discriminated against them based on their physical disability in violation of the Non-discrimination Act.

The National Non-Discrimination and Equality Tribunal prohibited Finnair Plc from repeating or continuing the discrimination against party T or other persons in air traffic services.

Not legally valid.

139/2016

20 April 2017, division

The applicant, who uses a wheelchair because of their disability, considered that they had been discriminated against because some of Posti's parcel lockers were so high that a person in a wheelchair or a short person could not reach them.

The National Non-Discrimination and Equality Tribunal stated that from the point of view of using Posti's service, there was no significant difference between picking up a parcel at a parcel point and picking it up at a service point. Posti offers its customers many opportunities to choose whether to use parcel services or Posti service points and which particular service point to use. In addition, when using a parcel point, the customer has the opportunity to enquire in advance about which locker their parcel is in. If the locker is too high, the parcel can be moved to a different locker by Posti personnel.

The National Non-Discrimination and Equality Tribunal stated that based on the respondent's account, the service can be organised so that it is accessible for wheelchair users and short persons, and the respondent had therefore not neglected making reasonable accommodations in the case.

The National Non-Discrimination and Equality Tribunal deemed that the respondent had rebutted the discrimination presumption and demonstrated that it had not violated the discrimination prohibition in Section 8 of the Non-discrimination Act. Therefore, the Tribunal rejected he applicant's application.

Legally valid.

158/2016

29 May 2017, division

The applicant, who uses a wheelchair to move because of their disability, considered that the respondent had indirectly discriminated against them when they could not access the show flat that the company had displayed on a pallet trailer. The applicant considered that reasonable accommodations had not been assessed in the case.

The National Non-Discrimination and Equality Tribunal stated that when offering services, a large company such as the respondent must be prepared for people wanting to use its services extensively. The Tribunal considered that the respondent should have ensured in advance that the introduction of the movable show flat does not lead to discrimination against anyone. In the opinion of the Tribunal, the fact that the applicant had had a chance to receive information about the displayed flat in other methods was not significant for the evaluation of the case because such methods were not services comparable to the constructed show flat.

The National Non-Discrimination and Equality Tribunal deemed that the respondent had not presented evidence that would rebut the discrimination presumption that arose on the basis of the applicant's account. Because the practice presented by the respondent as equal had led to the applicant in reality not having been able, due to their disability, to use the service provided to the public by the respondent like other people, the Tribunal deemed that the respondent had indirectly discriminated against the applicant. Because the applicant had not demanded reasonable

accommodations, the possible reasonable accommodations proposed by the respondent were not assessed.

The National Non-Discrimination and Equality Tribunal prohibited the respondent from repeating the discrimination.

(Vote)

Legally valid.

249/2017 (26/2015)

8 June 2017, division

In its decision issued on 14 December 2015, the National Non-Discrimination and Equality Tribunal rejected A's application in which A had requested the National Non-Discrimination and Equality Tribunal to state that the respondent had violated the prohibition of indirect discrimination in the Non-discrimination Act when organising a political debate open to the public and to prohibit the respondent from repeating the discrimination in its events. After A appealed the decision, the Administrative Court of Turku considered that the respondent had not been able to rebut the discrimination presumption. Therefore, it repealed the decision of the National Non-Discrimination and Equality Tribunal and referred the case back to the Tribunal.

The respondent had clarified that it traditionally organises its events at some brewery-restaurant, usually restaurant K. However, since the space had already been booked when organising the event held on 16 April 2015, the event was exceptionally held at restaurant T.

The National Non-Discrimination and Equality Tribunal determined that the space the respondent had given as the usual location of its events was accessible.

The respondent had stated that it tries to choose locations for its events so that they are as accessible as possible. The respondent had announced that it would pay more attention to the accessibility of the premises in future.

According to the account presented to the Administrative Court of Turku, a similar event was organised in 2016 on the same non-accessible premises. The National Non-Discrimination and Equality Tribunal stated that when it had made the decision in 14 December 2015, it could not have known that the respondent still intended to organise similar events on non-accessible premises even after the decision. In the account sent to the Administrative Court of Turku, the respondent did not present an acceptable reason for organising the event open to the public on 26 April 2016 on non-accessible premises. Neither did the respondent present an acceptable reason for organising the event on non-accessible premises in the response to the Tribunal on 31 March 2017.

Therefore, the National Non-Discrimination and Equality Tribunal deemed that it was not a question of exceptional space arrangements based on an acceptable reason when the respondent

had continued its conduct and organised events for the public on non-accessible premises that could not be accessed by persons with disabilities using a wheelchair.

The National Non-Discrimination and Equality Tribunal considered it necessary to set a default fine of EUR 2,000 to intensify its prohibition decision.

Legally valid.

313/2017

26 October 2017, division

The applicant, who uses a wheelchair to move because of their disability, considered that they had been discriminated against because they perceived that the train personnel's announcement on the delayed departure due to the jamming of the wheelchair ramp created a humiliating atmosphere for the applicant, which was a case of harassment.

The train personnel's conduct had made it clear to the other passengers in the same carriage that the delayed departure had been caused by a failure of the wheelchair ramp and, since there were no other wheelchair passengers on the train, that the applicant was the person using a wheelchair that the guard had talked about with rail traffic control while sorting out the matter.

However, the National Non-Discrimination and Equality Tribunal stated that the applicant had not presented an account of the matter to the effect that the conduct of the train personnel could be considered to have offended human dignity in a way that would have given rise to a presumption of the train personnel's fundamental lack of respect for the claimant due to a reason mentioned in Section 8(1) of the Non-discrimination Act or a presumption that the train personnel would have questioned the right of the applicant to be treated equally with others.

Even if the applicant had felt that any frustration of passengers caused by the 9-minute delay in the train's departure had been targeted at the applicant, the mere subjective experience of the applicant is, in objective assessment of the case, not sufficient to give rise to a discrimination presumption concerning a humiliating atmosphere without a report on how the possible humiliating atmosphere targeted at the applicant had manifested itself.

The National Non-Discrimination and Equality Tribunal deemed that the case did not give rise to a discrimination presumption and therefore rejected the application.

Legally valid.

292/2017

21 November 2017, division

The applicant, who uses a wheelchair to move because of their disability, considers that they had been discriminated against when it was impossible for them to participate in an election rally open

to the public that was organised by a political association because of the non-accessibility of the premises.

According to the respondent, the event was a gig night at nightclub D organised as part of a larger municipal election campaign. When deciding to organise the event, it was known that the premises were non-accessible.

The respondent justified its conduct by pointing out that the target group of the event was only reachable in the desired extent on the said non-accessible premises and that this was just one non-accessible election campaign event while all the other events organised by the respondent had been held on accessible premises.

The National Non-Discrimination and Equality Tribunal considered it acceptable that the respondent wanted to run a successful election campaign by reaching out to different target groups in different contexts.

The respondent had aimed the election rally in question at approximately 20–40-year-old people interested in urban culture and making the world a better place. The respondent expressed that they knew that this target group also included persons with physical disabilities.

Therefore, the National Non-Discrimination and Equality Tribunal did not consider the method of achieving the goal (organising an election rally on non-accessible premises) appropriate and necessary.

The respondent did not deny that there would have been accessible premises available for organising the event.

Therefore, the National Non-Discrimination and Equality Tribunal deemed that this was not a question of exceptional space arrangements based on an acceptable reason.

The National Non-Discrimination and Equality Tribunal deemed that the respondent's decision to organise a political election rally open to the public on non-accessible premises indirectly discriminated against the applicant, and the Tribunal prohibited the respondent from continuing or repeating the discriminatory conduct against the applicant or any other person with disabilities.

Legally valid.

236/2017

30 January 2018, division

In 2016, the applicant won a bronze medal in the open relay at the World Trail Orienteering Championships. The city did not reward the applicant for the accomplishment, although the applicant had been rewarded for similar success in sports in 2011. In accordance with the new rewarding regulations adopted in 2011, the city considered that trail orienteering was not a generally known, widespread sport that would justify rewarding. The applicant considered that they had been discriminated against in the rewarding for sporting achievements.

The National Non-Discrimination and Equality Tribunal considered that the case gave rise to an indirect discrimination presumption because the applicant, who competed in a sport mostly intended for people with disabilities, had not been rewarded for their sporting achievement.

The Tribunal considered that changing the rewarding rules to reduce their ambiguity and to restricting the rewarding to internationally known and widespread sports in accordance with the new rules had been acceptable. Because trail orienteering is not a sufficiently well known sport internationally, the criteria set by the city for rewarding sporting achievements were not fulfilled in this case. Restricting the rewarding to internationally known and widespread sports was an appropriate and necessary method, in the manner referred to in Section 13 of the Non-discrimination Act, to reach the goal stated above.

The National Non-Discrimination and Equality Tribunal deemed that the discrimination presumption had been rebutted and therefore rejected the application.

Not legally valid.

314/2017

18 June 2018, division

The applicant considered that they had been discriminated against due to their disability when they had not been invited to the general orientation day organised by the school before the pre-primary education or the first grade of comprehensive school within the scope of their extended compulsory education. Instead, they had been invited to visit the school at a separate occasion before the pre-primary education within the scope of their extended compulsory education.

The National Non-Discrimination and Equality Tribunal considered that as regards the school visit before the pre-primary education within the scope of their extended compulsory education, the conduct of the school had been a case of positive special treatment. The Tribunal also deemed that the applicant had not been treated more unfavourably than pupils in a comparable situation when they had not been invited to the general orientation day organised by the school before the first grade of comprehensive school. The Tribunal deemed that the case did not give rise to a discrimination presumption and therefore rejected the application.

178/2016

21 March 2018, plenary session

The applicant considered that they could not use the public transport services organised by the respondent equally with others because they could not use the value function of the respondent's travel card due to their disability. The applicant requested from the respondent an exemption from using the value function of the travel card as a reasonable accommodation. The respondent considered that the applicant's opportunity to use public transport equally with others had been secured in other ways.

The National Non-Discrimination and Equality Tribunal deemed that the respondent had not presented an account that would have rebutted the discrimination presumption that had arisen in the case. Therefore, the Tribunal deemed that the respondent had denied the applicant reasonable accommodations and prohibited the respondent from repeating the discrimination against the applicant.

Taking into account that, since 1 January 2018, the applicant has had the possibility of receiving a travel card from the respondent free of charge and therefore has had no need for reasonable accommodations relating to travel payments in public transport services organised by the respondent due to their visual impairment, the National Non-Discrimination and Equality Tribunal deemed that imposing a default fine was not necessary in this case.

Not legally valid.

301/2017

30 January 2018, division

The applicant had to move with forearm crutches because they had hurt their knee two months earlier. They considered that they had been discriminated against in taxi services.

The National Non-Discrimination and Equality Tribunal deemed that the applicant was not to have been considered a person with disabilities at the time referred to in the application due to their temporary injury. Therefore, the taxi driver's obligation to make reasonable accommodations was not assessed. The Tribunal deemed that the case did not give rise to a discrimination presumption due to the applicant's state of health either, and therefore rejected the application.

Not legally valid.

DECISIONS BY THE CHANCELLOR OF JUSTICE

OKV/834/1/2012

The appellant criticised the city's procedure for services for the elderly and persons with disabilities in a case concerning the granting of a personal assistant. The appellant's application for personal assistance under the Act on Disability Services and Assistance was initiated in spring 2012. A home visit to assess the need for service was made on 13 November 2012, and a service plan was drawn up the same day. The decision on the application for assistance was made on 18 December 2012.

The stand-in for the Deputy Chancellor of Justice declared that the assessment of the need for service was begun later than the seventh working day after receipt of the application as stated in Section 3(a)(1) of the Act on Disability Services and Assistance. The service plan was not prepared without undue delay in accordance with Section 3(a)(2) of the Act on Disability Services and

Assistance, and the decision on the case was not given within three months of the initiation of the case in accordance with Section 3(a)(3) of the Act on Disability Services and Assistance. No explanation of the reasons for the stated delay could be found from the documents. Since the home visit to assess the need for service and the service plan were made on 13 November 2012, and the requested explanation was given to the deputy Chancellor of Justice on 17 October 2012, it may be considered possible that, without the appeal made to the Chancellor of Justice, measures carried out under the above act would have been delayed even more.

The stand-in for the Deputy Chancellor of Justice drew the attention of the city's social and health services to compliance with the provisions of the Act on Disability Services and Assistance with regard to the statutory prompt processing of the application concerning personal assistance.

OKV/1130/1/2012

The appellant criticised the delay in handling applications under the Act on Disability Services and Assistance and decisions issued in matters based on the Act on Disability Services and Assistance. It emerged that the justifications for the decision concerning a personal assistant referred to in the Act on Disability Services and Assistance contained a statement relating to the person of the personal assistant that was unfounded in law. The Deputy Chancellor of Justice drew the attention of the municipal federation to the application of Section 8(d)(4) of the Act on Disability Services and Assistance and of Section 45 of the Administrative Procedure Act. It also emerged that the processing of applications concerning alteration work on the apartment had exceeded the processing time prescribed in the Act on Disability Services and Assistance. Although the case remained somewhat unclear as a result of which the handling of the applications exceeded the deadline given in Section 3(a)(3) of the Act on Disability Services and Assistance, the deputy Chancellor of Justice expressed to the municipal federation his view on the importance of complying with the said provision.

OKV/254/1/2014

The handling of the request for rectification made against an official decision under the Disability Services Act lasted a little under 5,5 months in the city's social and healthcare board. The Deputy Chancellor of Justice stated that the handling of the case had been delayed and drew the attention of the board to the urgency of the handling of requests for rectification.

OKV/875/1/2017

The Deputy Chancellor of Justice drew the attention of the municipality's social services to the duty to handle matters and reminders concerning disability services without delay, and to the duty

to prepare and review service plans and to send them to clients as required by law. He also drew the attention of the Administrative Court to the duty to handle appeals without undue delay.

The handling by social services of the case concerning personal assistance for a person with severe disabilities had lasted three months and 20 days. The Deputy Chancellor of Justice stated that the official decision had not been made within the statutory time period of three months. The appellant had sent a reminder to the social services about the delay in the decision, and the handling of this reminder took approximately six weeks. According to the law, a reminder must be handled within a reasonable time frame which, according to the guidelines of the National Supervisory Authority for Welfare and Health, means 1–4 weeks. According to the supervisory practice of senior judicial reviewers, a reasonable period of time is considered to be approximately one month unless the case is particularly problematic. In the light of the above-mentioned guidelines and supervisory practice, the social services did not handle the reminder within a reasonable period of time.

When deciding on how to organise personal assistance, the service plan is a crucially important document. The appellant's service plan was reviewed, but the social services were not sure whether the reviewed plan had been sent to the appellant for approval. The Deputy Chancellor of Justice declared that, from a perspective of the legal protection of a person with severe disabilities, it is particularly important for their service plan to be appropriately prepared and to be up-to-date. The actions of the social services in connection with this case did not completely meet the legal requirements.

Furthermore, the time spent by the Administrative Court to handle the appeal concerning disability services made by the appellant had been a little over 17 months, whilst the average handling time for this category of cases in 2016 was less than nine months. The Deputy Chancellor of Justice declared that the handling of this case was delayed unduly.

OKV/882/1/2015

The stand-in for the Deputy Chancellor of Justice considers that, in the reform of the disability legislation, it is advisable to pay attention to the clarity of regulation concerning guidance and assistance tasks. He expressed his opinion to the Ministry of Social Affairs and Health.

According to the Act on Disability Services and Assistance, a municipality is obliged to guide and help a person with severe disabilities in matters concerning the hiring of a personal assistant, if the person with severe disabilities acts as the employer for their assistant. The appeal dealt with, among other things, whether this guidance and assistance task was a public administration function and whether the task could be given to a private body for implementation.

There are very different views on the content of the guidance and assistance task, and the legal provision has been interpreted broadly in its practical application. The stand-in for the Deputy

Chancellor of Justice declared that the reform of the disability legislation currently being prepared must pay attention to the clarity of regulations concerning the guidance and assistance task, the content of the task, its legal nature and the requirements set for the legislation of the said matters. A clearer definition of the task would prevent different interpretations and thus improve the equality of persons with severe disabilities acting as employers with respect to each other.

In the view of the stand-in for the Deputy Chancellor of Justice, the guidance and assistance task includes both public administrative functions and other type of functions. The duty has, at its core, more general counselling, which is expanded and/or deepened according to the type of guidance and assistance a person needs.

Regulations enacted before the entry into force of the current Finnish Constitution gave municipalities the general and loose authority to decide where to procure social and health care services that were their responsibility to organise. According to the stand-in for the Deputy Chancellor of Justice, assigning the provision of services concerning guidance and assistance to private actors was not against regulation applied at the time in question. According to the present Constitution, taking care of public administrative functions principally belongs to the authorities and can only be given to parties other than the authorities to a limited extent. The stand-in for the Deputy Chancellor of Justice considered that the above-mentioned provisions do not meet the requirements set in the present Constitution with regard to the exactness and clearly defined nature of regulation.

DECISIONS BY THE PARLIAMENTARY OMBUDSMAN

2391/4/13

According to the decision-making practice of the Parliamentary Ombudsman, a prisoner should not be obliged to serve his or her term in isolated circumstances because of his or her physical impairment. It must be an option for a physically impaired prisoner to be placed in an open institution on the same grounds as any other prisoner.

https://www.oikeusasiamies.fi/fi/ratkaisut/-/eoar/2391/2013

3703/4/14

Decision no. 3703/4/14 of the Parliamentary Ombudsman concerned reasonable accommodations. The Parliamentary Ombudsman found that in the police practices for recording demands of punishment the special needs of a person with a disability should be observed in the manner referred to in Section 15 of the Non-Discrimination Act. The Parliamentary Ombudsman ruled that, for example, a practice allowing the driver of the car of a physically impaired person or a

person with limited functional capacity wait in the car, if he or she so wishes, while the demands of punishment are being recorded, would reasonably safeguard the position of physically impaired persons in such situations.

4576/4/14

According to Decision no. 4576/4/14 of the Parliamentary Ombudsman, the obligation to make reasonable accommodations, together with a reading of the law that is favourable to fundamental and human rights and observation of the client's bests interests, means that an enhanced obligation arises for the authorities to find pre-emptive means that promote the right to self-determination and to plan for individual coercive measures in circumstances where a person with a disability, placed in institutional care, becomes subject to restrictions to his or her right to self-determination or subject to coercive measures. This also applies to such social welfare housing units where the freedom of movement and other fundamental rights of persons with disabilities are restricted.

https://www.oikeusasiamies.fi/fi/ratkaisut/-/eoar/4576/2014

24/4/15

In case no. 24/4/15, the complainant's son was a young person on the autism spectrum, about to start an independent life, and his need for housing services to be provided without delay had been considered. As the decision made by the public official had been revoked by the regional state administrative agency with a legally valid decision, the matter was referred back to the social services. However, the department of social services and health care failed to take immediate action to execute the decision of the regional state administrative agency, and no decision that can be appealed had been made in the matter. For this reason, and because arranging the said housing service for the complainant's son had already taken unreasonably long, the Parliamentary Ombudsman deemed the conduct of the department of social services and health care seriously reprehensible.

https://www.oikeusasiamies.fi/fi/ratkaisut/-/eoar/24/2015

233/4/16

The Acting Deputy Parliamentary Ombudsman has considered that the duty to make reasonable accommodations, referred to in the UN Convention on the Rights of Persons with Disabilities, may in some cases require safeguarding the right of access to information of the person with a disability by, for example, reviewing on an individual basis the practices applied with person having a disability and, consequently, assessing his or her access to information. In decision no. 233/4/16, the Deputy Parliamentary Ombudsman considered that, in the present case, the practice of the social and health services to draft the client's service plan by hand may have endangered the right of this person with a disability to access information on certain significant details concerning him or her that had been entered in the service plan. According to the Acting Deputy Parliamentary Ombudsman, a practice more apt to implement the rights of a visually impaired client would have been to provide the service plan for the client to read and check using a method that takes into

account his or her disability. Seen that different types of laptops and terminal devices are so readily available today, the Acting Deputy Parliamentary Ombudsman found that such an accommodation would not cause unreasonable financial or other burden.

https://www.oikeusasiamies.fi/fi/ratkaisut/-/eoar/233/2016

1066/3/16

During inspection of a sheltered housing facility for persons with intellectual disabilities, ordered by the Parliamentary Ombudsman, the authorities observed a wooden indoor gate whose function was to limit or block the access of residents with challenging behaviour to the shared spaces and prevent them from harming themselves or the other residents. This locking gate was going to be replaced with an electronic recognition device. The purpose of the electronic system was to let the staff know whenever a resident leaves his or her own room. It would allow to anticipate the movements of the residents so that a restricting gate would no longer be needed and the residents would not have to be isolated in their own rooms. The Parliamentary Ombudsman found that the removal of the gate, planned by the staff, was a positive development. Such a measure (a reasonable accommodation) allowed to replace a more restrictive option by a solution that less severely violates the residents' right to self-determination.

1216/2016

In decision no. 1216/2016, the Parliamentary Ombudsman considered that, under the obligation to make reasonable accommodations, the prison hospital should have acquired a wider bed for the complainant to enable him or her to turn around in it. The view of the Parliamentary Ombudsman regarding shortcomings in making reasonable accommodations was conveyed to the prison health care unit for its information and attention.

339/2017

In decision no. 339/2017, the Parliamentary Ombudsman considered that an obligation arises for a court to consider making reasonable accommodations when a person with a disability requests well ahead of the trial that the hearing take place on the ground floor of the three-floor building, where the only accessible toilet is located. In such a case, the court should consider whether the space arrangements allow to transfer the hearing to the ground floor courtroom.

https://www.oikeusasiamies.fi/fi/ratkaisut/-/eoar/339/2017

628/2017

During inspection of a housing unit for persons with intellectual disabilities, the national supervisory body found that the doors of the individual apartments were not kept locked unless the residents themselves expressly wished to lock their doors at times. On one of the floors of this housing service unit, a resident suffering from dementia had a special door and a wristband that allowed to monitor this person's movements. There were no restrictions on the freedom of movement of the other residents. A decision on restrictive measures concerning monitored movement was made on the use of the dementia door and dementia wristband.

https://www.oikeusasiamies.fi/fi/ratkaisut/-/eoar/628/2017

1129/2017

In case no. 1129/2017 that concerned access to information by the patient and his or her family member, the Deputy Parliamentary Ombudsman reviewed the action of the physician who made a DNR decision for a 61-year-old patient who had a moderate intellectual disability, a CP disability and other primary diseases. The primary diseases and the current health status of the patient did not constitute sufficient grounds to justify a DNR decision or exclusion from intensive care. The patient was therefore placed in a disadvantageous position on grounds of their disabilities.

3287/2017

The Deputy Parliamentary Ombudsman considered in the decision no. 3287/2017 that the treatment of a person with cerebral palsy and reduced mobility who had to eat in the isolation room of a psychiatric ward by sitting on the floor on a thin mattress and by using unsuitable dishes and utensils was degrading and humiliating. The treatment failed to respect human dignity and could not be considered good-quality health and medical care. The complainant wore diapers during the isolation that lasted for longer than 24 hours. Due to insufficient patient record entries, it was not possible for the Deputy Parliamentary Ombudsman to be certain of whether the complainant's right to be treated with human dignity and the provision of good-quality health and medical care were fulfilled in this respect.

https://www.oikeusasiamies.fi/fi/ratkaisut/-/eoar/3287/2017

5662/2017

Case no. 5662/2017 involved limiting the freedom of movement. During inspection of a student accommodation facility for persons with disabilities, it was observed that limiting the freedom of movement of one young person to the kitchen or outside areas, for example, limited the freedom of movement of all residents of the shared flat. The Parliamentary Ombudsman emphasised that according to the Act on Special Care for Persons with Intellectual Disabilities, Section 42m, care should be taken to ensure that monitoring the movement of one person does not limit the freedom of movement of other persons. If the freedom of movement of other young people in the residential facility has to be limited for some reason, a decision regarding this should be based on the Act.

https://www.oikeusasiamies.fi/fi/ratkaisut/-/eoar/5662/2017

5920/2007, 6670/2017 and 6311/2017

During inspection of residential long-term care facilities for persons with disabilities, managed by the Joint Municipal Authority for North Karelia Social and Health Services (Siun Sote), it was observed that cage beds were used in the residential facilities. Based on the views of the European

Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), these residential long-term care facilities were requested to discontinue the use of cage beds and find alternative solutions instead.

https://www.oikeusasiamies.fi/fi/ratkaisut/-/eoar/6670/2017

https://www.oikeusasiamies.fi/fi/ratkaisut/-/eoar/6311/2017

6270/2017

In case no. 6270/2017 the Parliamentary Ombudsman proposed that a university of applied science assess whether it could make moderate accommodations to the way it organises meals and, in cooperation with the complainant, reach a solution regarding the meals which would enable the complainant to participate and advance in studies, thereby taking into consideration the complainant's state of health.

https://www.oikeusasiamies.fi/fi/ratkaisut/-/eoar/6270/2017

1496/2017

The Parliamentary Ombudsman pointed out in the decision no. 1496/2017 that treating the patient against his or her will is a serious violation of the patient's personal integrity. The effective investigation of the measure requires that the grounds for the measure have been carefully evaluated and documented. The procedure in this case was flawed, because the medical records did not include an entry of an explanation (as referred to in the Patient Act) given to the complainant before the administration of the medicine. The records also did not include assessments by the physician as regards fulfilling the requirements of the Mental Health Act, Section 22b, and no entries of the injections were made in the list to be kept of measures limiting self-determination. The Parliamentary Ombudsman considered that the decision on hypodermic medication violated the complainant's procedural rights and therefore the complainant's legal safety.

https://www.oikeusasiamies.fi/fi/ratkaisut/-/eoar/1496/2017

3158/2017

The Parliamentary Ombudsman considered it problematic in the decision no. 3158/2017 that a patient in a psychiatric hospital did not understand the decisions based on which the patient had been admitted to involuntary treatment in the psychiatric hospital. Consequently, the patient would not have had the possibility to appeal the decision without an assistant. According to a report by the hospital, an application for guardianship had been submitted but a decision from the guardianship authority had not arrived. The Parliamentary Ombudsman considered it appropriate that the hospital had taken measures to designate a guardian for the patient. The Ombudsman stated, however, that the hospital had at its disposal means to guarantee the patient's right to appeal even earlier.

EXAMPLES OF STATEMENTS BY THE NON-DISCRIMINATION OMBUDSMAN TO COURTS OF LAW (2016–2018)

VVTDno-2016-26

On 18 August 2016, the Non-Discrimination Ombudsman issued a statement to the Northern Finland Administrative Court in a case where a municipality prohibited a child with a disability from travelling with transport provided as a disability service by using taxi services provided by the child's family member, as a result of which the opportunities of the child to get transport services in the municipality were more limited than those of other persons with disabilities entitled to such services. The Ombudsman held that, in the circumstances of the case, the child was put in a disadvantaged position compared to the other persons with disabilities residing in the municipality and using transport services.

VVTDno-2017-7

On 16 October 2017, the Non-Discrimination Ombudsman issued a statement to the Supreme Administrative Court in a case where a municipality failed to arrange cost-free school meals for a pupil with a disability who was nourished with a nutrient solution through a PEG button. According to the Ombudsman, she had not been informed about any acceptable reason for denying the child a free meal referred to in the Basic Education Act. Moreover, it was warranted in the case to consider the obligation under section 15 of the Non-Discrimination Act to make reasonable accommodations in order to realise effective equality of persons with disabilities.

VVTDno-2017-496

On 8 March 2018, the Non-Discrimination Ombudsman issued a statement to the Helsinki Administrative Court on compensation for travel and hotel expenses of personal assistants. A municipality had granted a person with a disability the right to use, during a planned journey abroad, personal assistance provided under the Disability Services Act. However, the journey was cancelled because the person with a disability fell ill. The Ombudsman considered it unreasonable that a person with a severe disability, because of suddenly falling ill, was compelled to pay the costs for using the person's subjective right to disability services, intended as free of charge. According to the Ombudsman, the person in question was put in an inferior position compared to both persons without disabilities and those persons with severe disabilities whose personal assistance was arranged by a model other than the employer model. Furthermore, it could be considered that the complainant was put in an inferior position because of their state of health.

VVTDno-2018-30

On 12 March 2018, the Non-Discrimination Ombudsman issued a statement to the Supreme Administrative Court in a case concerning the right of a refugee with a disability and living in Finland to family reunification. The Ombudsman held that the requirement for sufficient financial resources applied by the Finnish Immigration Service to the sponsor with a disability was unreasonable. An exemption should have been made from the requirement as allowed by the Aliens Act, considering especially such sources of law as the UN Convention on the Rights of Persons with Disabilities, binding on Finland, the case law of the European Court of Human Rights and section 22 of the Constitution of Finland, which obliges public authorities to interpret law in a manner favourable to human rights.

VVTDno-2018-30

On 7 May 2018, the Non-Discrimination Ombudsman issued a statement to the Supreme Administrative Court in a case concerning the right of a lower secondary school pupil to cost-free school transport also when the pupil's school day was interrupted for reasons attributable to the person themselves. The pupil was taught in a group for rehabilitative teaching of pupils with retarded growth and development and intellectual disabilities. The Ombudsman drew the attention of the Supreme Administrative Court to the fact that, in the case at issue, not only the Basic Education Act but also the Non-Discrimination Act had to be applied, and especially section 15 of the latter Act, obligating education providers to make the reasonable accommodations needed in each situation to ensure that pupils with disabilities can receive education on an equal basis with other pupils.

VVTDno-2018-30

On 11 September 2018, the Non-Discrimination Ombudsman issued the Northern Finland Administrative Court with a statement where she considered it unreasonable that a complainant who, because of their severe disability, used transport services based on the Disability Services Act, incurred considerably higher monthly costs for travelling between home and general upper secondary school than those pupils who used public transports (with **school** transport subsidy 43 €/month, with transport as a disability service more than 200 €/month). The Ombudsman held that the obligation of public authorities to make reasonable accommodations, imposed in section 15 of the Non-Discrimination Act (1325/2014), should have been applied in the case. According to the Ombudsman, the amount of the deductible paid by clients of disability transport services in the municipality on the whole was not a decisive factor in the matter, and neither was the question whether the complainant's effective opportunity to attend school was compromised. Instead, the relevant question was whether the complainant's home municipality, in the individual case at issue, could reasonably be required to reduce the deductible so as to realise the complainant's effective equality with the other students.

VVTDno-2018-30

On 4 October 2018, the Non-Discrimination Ombudsman issued a statement to the Supreme Administrative Court in a matter concerning the right of a comprehensive school pupil with a disability to have a personal assistant in order to realise the pupil's right to inclusive teaching in an ordinary teaching group with sufficient supportive measures. In her statement, the Ombudsman drew the attention of the Supreme Administrative Court to the duty of the education provider under section 6 of the Non-Discrimination Act to promote equality and, to the extent possible, make reasonable accommodations requested by the person with a disability in accordance with section 15 of the Non-Discrimination Act. The persons in care and custody of the pupil did not want the child to be transferred to teaching in a small group. The Ombudsman stated in general terms that the best interest and the wishes of a child must be taken into consideration in teaching arrangements. She also pointed out that if inclusive teaching can be arranged for a pupil, the refusal of a personal assistant in such a situation cannot be justified by an appropriate use of resources alone, but the pupil's need for support must be assessed individually, taking into account the child's situation and needs as well as the obligation of reasonable accommodation.