



## NATIONAL NON-DISCRIMINATION AND EQUALITY TRIBUNAL OF FINLAND

PRESS RELEASE 8/2016  
20 December 2016

### **Non-Discrimination and Equality Tribunal: discrimination of female couples in assisted reproductive treatment provided by public health-care services is prohibited**

The Non-Discrimination Ombudsman requested the National Non-Discrimination and Equality Tribunal to examine whether a client of the health care services had been discriminated when she was denied the possibility to have assisted reproductive treatment in public health care. Further, the Ombudsman requested the Tribunal to examine whether the medical directors of hospital districts had committed discriminatory conduct prohibited in Non-Discrimination Act by giving an order to their respective hospital districts based on which certain groups of patients such as single women and female couples had completely been excluded from the assisted reproductive treatments provided for by the public health-care services. The Ombudsman also requested the Tribunal to prohibit the respondents from continuing and repeating the discriminatory conduct and to impose a conditional fine to enforce compliance with its injunction.

The objective of the joint position taken by the medical directors of hospital districts had been to guarantee the adequacy of the resources in public health-care. The National Non-Discrimination and Equality Tribunal considered the guaranteeing of the adequacy of the resources in public health-care to be as such an acceptable objective according to Non-Discrimination Act. However, an acceptable objective alone was not sufficient justification for different treatment but the Tribunal had also to evaluate whether the measure taken to attain the objective was necessary as provided for by the Non-Discrimination Act.

It had not been established in this case that there would not have been available other means to employ to guarantee the adequacy of the resources which would not have been discriminatory to any group of people. The Non-Discrimination Ombudsman had suggested that all those in need for assisted reproductive treatment could be placed on a waiting list for treatment. Thus, the exclusion of all female couples from assisted reproductive treatment was not necessary in guaranteeing the adequacy of resources. Therefore the National Non-Discrimination and Equality Tribunal considered that the measure taken by the respondents in this case to attain acceptable objective had not been proportionate as provided for by the Non-Discrimination Act. According to the Tribunal it had been particularly reproachable in this case that the client of the health-care services had been denied assisted reproductive treatment despite that she had acquired on her own cost the gametes needed for the treatment.

The National Non-Discrimination and Equality Tribunal considered that the medical directors of the hospital districts must in their activities follow the Non-Discrimination act as it is to be interpreted in accordance with the constitutionally guaranteed fundamental rights and international human rights obligations taken by Finland. When deciding on which groups of people are included to have assisted reproductive treatment one is not to conduct in a discriminatory manner as provided for by the Non-Discrimination Act.

The National Non-Discrimination and Equality Tribunal considered that the medical directors of hospital districts had given to their respective hospital districts discriminatory orders and prohibited them from continuing discrimination. The Tribunal also considered that a client had been discriminated because of her sexual orientation when she had been completely denied assisted reproductive treatment in public health-care. In addition the Tribunal considered that the medical directors of hospital districts had been neglecting their duty to promote equality as provided for by section 5 chapter 1 of the Non-Discrimination Act.

The National Non-Discrimination and Equality Tribunal imposed a conditional fine of 30 000 euro on each of the medical directors of hospital districts to enforce compliance with its injunction.

The full case report is available in Finnish on the Tribunal's website at <http://yvltk.fi/fi/>



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### **THE NATIONAL NON-DISCRIMINATION AND EQUALITY TRIBUNAL OF FINLAND**

The National Non-Discrimination and Equality Tribunal is an impartial and independent judicial body appointed by the Government. The Tribunal supervises compliance with the Non-Discrimination Act and the Act on Equality between Women and Men (Equality Act) both in private activities and in public administrative and commercial activities. Issues concerning work fall outside the mandate of the Tribunal with the exception of application of Equality Act.

However, the mandate of the Tribunal does not cover matters related to private life, family life or practice of religion.

The function of the Tribunal is to give legal protection to those who consider they have been discriminated against or victimised.

The person being discriminated or, with his or her consent, the Non-Discrimination Ombudsman or an association promoting non-discrimination may submit a matter to the Non-Discrimination and Equality Tribunal for consideration. Only the Ombudsman for Equality or a central organization of employers' associations or of central labour market organisation may submit a matter falling under the scope of the Equality Act to the Non-Discrimination and Equality Tribunal for consideration

If a case concerning a prohibition on discrimination has been or is to be taken up by another authority, the Tribunal may not investigate it.

The Tribunal may prohibit continued or repeated discrimination or victimization based and impose a conditional fine to enforce compliance with its injunctions and order payment of such a fine.

The Tribunal may oblige the party concerned to take measures within a reasonable period of time in order to fulfill the obligations under the Non-Discrimination Act.

The Tribunal may not order any compensation to be paid

A decision issued by the Tribunal may be appealed to the competent Administrative Court.

The courts, the Non-Discrimination Ombudsman for Minorities, other public authorities or associations may request an opinion from the Tribunal on the application of the Non-Discrimination Act.

The Tribunal deals with petitions free of charge. However, the parties concerned are liable for any other legal costs.

National Non-Discrimination and Equality Tribunal of Finland  
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