

A petition to the European Parliament Committee on Petitions

Legal basis for the petition in European Union law

We consider that the matter described below belongs within the competency of the European Union under Article 227 and Article 10 of the Treaty on the Functioning of the European Union. Under the latter article, the European Union shall aim to combat discrimination based on, for example, disability. Also, Article 21 on non-discrimination of the legally binding Charter of Fundamental Rights of the European Union lists disability, to which our petition is related, as one of several grounds for discrimination. In addition, the matter directly concerns citizens of a European Union Member State, namely Finland.

We ask that, under Article 227 of the Treaty on the Functioning of the European Union, the European Parliament Committee on Petitions investigate the Finnish national practice of applying the EU directive on public procurement to the tendering of services for people with disabilities. In particular, we ask for an investigation into whether the procurement procedure chosen by Finland in organising social services for persons with disabilities specifically violates the prohibition of discrimination, as defined in EU law, as well as the fundamental and human rights of vulnerable individuals.

The European Union has ratified the UN Convention on the Rights of Persons with Disabilities (hereinafter the UN Disability Convention), which prohibits all discrimination against persons with disabilities in, for example, Article 5. In addition, according to Article 19 of the UN Disability Convention (Living independently and being included in the community), persons with disabilities have the right to choose their place of residence and where and with whom they live and are not obliged to live in a particular, pre-determined living arrangement.

Article 4.3 of the UN Disability Convention stipulates that in all development of legislation and policies and in other decision-making processes concerning issues relating to persons with disabilities, persons with disabilities shall be closely consulted and actively involved both personally and through their representative organisations. In Finland, persons with disabilities, who use social services, or their families and caregivers, are not actively involved and, for example, their representative organisations are typically not consulted when local authorities make plans for procuring social and health services which have an impact on the everyday lives of people with disabilities.

The problem: The procedure under the Finnish national law on public procurement and its practical applications in particular are in violation of the fundamental and human rights adopted by the European Union.

The Finnish national Act on Public Contracts (30.3.2007/348), based on the earlier EU directive on public procurement, leads to discriminatory practices at the regional and local level regarding persons with disabilities when individual social services are being provided to them, such as housing services and assistance by another person.

Their homes and the services provided for them at home are put out to tender at pre-determined intervals based on the Act on Public Contracts without consulting the clients of the services at any point during the procurement process. In our opinion, and from the point of view of persons with disabilities as clients receiving such services with an essential impact on their lives, this is against human rights provisions, which are binding on Finland and the EU, such as, for example, articles 4 and 19 of the UN Disability Convention.

Tendering of the Joukontalo housing unit in Tampere

Two families who have signed this petition have children with disabilities living in the city of Tampere in flats built by Setlementtiasunnot Oy. They were completed in 2010 and our family members moved in during the autumn of 2010. The City of Tampere did not provide services for the housing unit in question on its own but decided instead to put the services out to tender, using a procedure stipulated in the Act on Public Contracts.

The service provider who has been operating in the housing unit so far lost the tender for providing the services related to living in the unit. The service provider will be replaced by another one on 1 December 2015. We, as residents or family members, were not consulted or asked for our opinion at any point of the procurement process. Instead, we were only informed afterwards that the service provider would be replaced by another one. In the beginning of May 2015, we were informed that a tender process concerning the services was going on. In the beginning of July, we were told that the service provider would be replaced by another as of 1 December 2015. The chosen procurement method that, according to our understanding, is in violation of several conventions on human and fundamental rights is causing both our family members with intellectual and developmental disabilities and us as their parents constant uncertainty and stress in our everyday lives. Our family members do not communicate with speech, and they have pervasive and life-long support needs due to their disabilities. A public tender is by no means the right way to organise their services. The clients with intellectual and developmental disabilities and their families must be allowed to voice their needs for assistance and support and their goals in life as well as to participate in choosing the service provider. Only in this way can the fundamental and human rights of the clients and the provisions of the international agreements, which are binding on Finland, be implemented in everyday life in the services needed by the clients. By excluding the clients and not allowing them to participate, they are made victims of an electronic tendering auction.

We feel that the rights that belong to our family members and us, their caregivers, as Finnish citizens, have been violated. Neglecting to consult us in our situation regarding, among other things, the provision of services at the housing unit represents discrimination on the basis of disability, which is prohibited under Article 21 and Article 10 of the Charter of Fundamental Rights of the EU. Since we are not considered interested parties according to the national Act on Public Contracts, we have been excluded from the planning of our essential services.

Tendering of the Kangasrousku housing unit in Oulu

Our family member lives in the Kangasrousku housing unit in Oulu, which was completed in 2010 and where clients were able to move in during August 2010. We have recently celebrated the fifth anniversary. During the first years, the original service provider's work was inappropriate in many ways. However, since the director was replaced a few years ago, there is now more peace and stability in the everyday life. In the Kangasrousku housing unit, too, the five-year term ended, and the City of Oulu selected a new service provider through a tendering process. The new service provider will start in Kangasrousku on 1 January 2016. Clients and their families were formally consulted, of course, but the main criterion in the procurement process was the cost, and the cheapest bid was selected. This means that clients and their families are facing a change in practices and a partial change in staff. This is causing unnecessary anxiety and fear for families and clients, not all of whom communicate by speaking, signing, or other intelligible means. Their anxiety and fear are often manifested in crying or angry moods.

We appeal to the European Parliament to leave the services provided for persons with intellectual and developmental disabilities outside of the tendering obligation so that our family members could have permanent peace of mind regarding their living arrangements.

Background of the national problem

The purpose of the current Finnish Act on services and support measures to be provided on the basis of disability (3.4.1987/380) is to promote the possibilities of persons with disabilities to live and function as equal members of society and to prevent and eliminate handicaps and hindrances caused by disability. Under this specific act, persons with severe disabilities have a subjective, or, in other words, unconditional right to, for example, housing with services and personal assistance, regardless of the financial resources available in their municipality. In Finland, the Act on specialised care for persons with intellectual and developmental disabilities (23.6.1977/519) is also a specific act aiming to make suitable social services available to persons with intellectual and developmental disabilities on the basis of their individual needs. Under this act, persons with intellectual and developmental disabilities have the right to receive the housing services and other services according to their individual needs.

Applying the Act on Public Contracts to organising these special services leads to a situation in which the services intended to meet the lifelong needs of persons with disabilities are divided up into small parts organised through a tendering process, which is repeated every few years. In addition, the mass approach of the Act on Public Contracts is not suitable for meeting the individual special needs of vulnerable persons with disabilities. In other European countries, we can find good practices of organising such services in other ways, based on the individual needs of persons with disabilities.

The new Social Welfare Act (30.12.2014/1301), which entered into force this year, is based on actively involving and consulting the person and taking the person's needs and wishes into consideration when providing social services for him/her. Consulting does not only mean providing a formal opportunity to be heard. It has a deeper meaning from the point

of view of a person's ability to function and take responsibility. It is a matter of making persons with disabilities equal in real terms and of genuinely involving them in the process of organising social services for them.

Finland has signed the UN Disability Convention, and its ratification has been passed in the Finnish Parliament, but the ratification process has not yet been completed. The ratification of the UN Disability Convention is planned to be completed next year, and this will bring the Convention into force in Finland as a statute equal to an Act.

According to the current Finnish Act on Public Contracts, if a municipality does not provide services on its own, it must put the provision of those services out to tender in situations where certain threshold values are exceeded. In the procurement of social welfare and health care services, the threshold value according to the present law is EUR 100,000. In 2007, Finland decided to include all social welfare and health care services needed by Finnish citizens within the scope of the national Act on Public Contracts, even though Community legislation did not require this. Finland thus made it obligatory to strictly apply the procedures laid down in the Act on Public Contracts when procuring social welfare and health care services as secondary service contracts referred to in Annex B of the EU directive on public procurement.

The choice made by Finland at the time was based on intensive lobbying at the national level by business associations, among others, with the core argument that small enterprises and women's enterprises in the social welfare and health care service sector must be supported. The main purpose of the Act on Public Contracts was to secure the transparent and non-discriminating treatment of potential operators.

We, the undersigned citizens of Finland, have had to witness how the Finnish government is violating both the rights of persons with disabilities and their justified need to have services covering their entire life cycle organised in an appropriate way, so that the involvement and influence of persons with disabilities and their families and caregivers is also taken into consideration.

The experiences of applying the present Finnish Act on Public Contracts during the past eight years have, in our opinion, shown that Finland made the wrong decision when developing this Act: the Act on Public Contracts guides the provision of services to persons with disabilities in a way that does not take into consideration their individual needs or their fundamental and human rights. Persons with disabilities or their families and caregivers have no possibility to be involved in or influence matters concerning themselves; Finland is only offering them the status of a mute object.

We would also like to inform the European Parliament that the development has taken a completely different direction than was aimed for. In Finland, care services are now concentrated in the hands of a few large companies owned by international capital investors, whereas small enterprises have completely disappeared from the sector. In practice, strategic decision making within these large service providers and the individual needs of persons have drifted quite far apart. As various company-specific standards and efficiency targets are receiving increased focus, it is to be feared that less and less

consideration will be given to individual needs. The municipal sector is also facing tremendous economic challenges. In the middle of such developments, it will be of crucial importance in the future to recognise the significance of advocating for and consulting persons with disabilities.

Request for action

We ask the European Parliament Committee on Petitions to investigate the procurement practice adopted by the Finnish government in relation to essential services for persons with disabilities and to point out that this practice requires significant corrections and reforms in which the national disability law and other substantive law in Finland, as well as international human rights conventions and obligations, are given their rightful role and place.

Finland is currently reforming its national public procurement law to bring it in line with the new EU directives on public procurement. We ask the Committee on Petitions to remind the Finnish government that it must give appropriate consideration to the fundamental and human rights of citizens using essential services for persons with disabilities, such as the right to be heard and the right to the continuity of essential long-term services. In our opinion, the Finnish government could opt for a customer choice system or other licence system, in which case the essential special services for persons with disabilities would not be included within the scope of the Act on Public Contracts at all. We also ask the Committee on Petitions to emphasise to Finland that if the special services for persons with disabilities are procured through a tendering process, effective legal remedies for both persons with disabilities and their representative organisations must be included in law so that they can be used if binding fundamental and human rights provisions are not complied with in organising the services.

Oulu, 6th December 2015

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Tampere 8th December 2015

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