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NEWS REPORT

Country:	Finland
Title:	Discrimination on the ground of sexual orientation in assisted reproductive treatment prohibited
Date:	10 January 2017
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<u>Context</u>	
Issue at stake:	Non-Discrimination and Equality Tribunal considered that differential treatment of same sex female couples in assisted reproductive treatment provided by public health-care services is direct discrimination because of sexual orientation and therefore prohibited by Non-Discrimination Act
Ground of discrimination:	Sexual orientation
Source:	National Non-Discrimination and Equality Tribunal decision 80/2015, 9.12.2016
Field:	Access to goods and services, health care
Applicable law:	Non-Discrimination Act

Content

Case development:

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 National Non-Discrimination and Equality Tribunal considered that the medical directors of the hospital districts must in their activities follow the Non-Discrimination Act which explicitly prohibits discrimination on the ground of sexual orientation in both public and private sector in e.g. providing goods and services and when providing health care.

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 the person who had contacted the Non-Discrimination Ombudsman had been discriminated because of her sexual orientation when she had been completely denied assisted reproductive treatment in public healthcare. 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 the medical directors who had given the discriminatory order to their hospital districts to enforce compliance with its injunction.

Key points of analysis:

- The prohibition of discrimination in the Non-Discrimination Act is applicable also when providing medical care in public hospitals.
- The need for restrictions because of lack of resources does not justify discrimination.
- The amount of conditional fine is to be imposed taking into consideration the financial position of the party and the reprehensibility of the discriminative act and in order to be effective, proportionate and dissuasive.

Internet link source:

http://www.yvtltk.fi/material/attachments/ytaltk/tapausselosteet/L8kc38yv9/Tapausseloste_Dnro_80_2015.pdf;
http://www.yvtltk.fi/material/attachments/ytaltk/tiedotteet/D6Uldqs7L/yvtLTK-tiedote-8-2016_en.pdf.