Helsinki Court of Appeal **22.6.2024**

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Applicants for authorisation to proceed:

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Respondents:

1) The Finnish State
2) Fazer Restaurants Oy

APPLICATION FOR AUTHORISATION FOR FURTHER PROCESSING

Asia:

Application for leave to continue proceedings concerning the judgment of Helsinki District Court in case L706/2022/1504 (31.5.2024, decision number 1017 5944)

Grounds for applying for leave to continue proceedings under the Code of Judicial Procedure:

We respectfully request the Helsinki Court of Appeal to grant the applicants leave to appeal the entire judgment, as there is reason to doubt the correctness of the final result of the district court's decision, and it is not possible to assess the correctness of the final result of the district court's decision without granting leave to appeal.

Furthermore, this is an exceptional case in which the constitutionality of the Communicable Diseases Act, the obligation of Fazer Ravintolat Oy to comply with all the articles of the Communicable Diseases Act in the same case at the same time, the European Convention on Human Rights and the European Convention on Human Rights, the European Convention on Human Rights and the European Convention on Human Rights are assessed.

the binding nature and applicability of the case law of the European Court of Human Rights to the application of the Communicable Diseases Act, fundamental procedural issues and the interpretation of the Equality Act. In this respect, the Court of Appeal should most respectfully grant further leave to apply the law to other similar cases. We consider that the Helsinki District Court has completely failed to assess the relevance of the above-mentioned laws and case-law in the case brought by the applicant.

Subject-matter and pleas in law

The applicant Mika Vauhkala (hereinafter either the applicant, Vauhkala or the applicant) has been prevented from entering Fazer Cafe (Kluuvikatu 3, Helsinki) on 10 December 2021 at 9 a.m. The applicant has been required to show a so-called coupon pass as a condition for entry to the restaurant. The applicant did not have such a passport, so he was turned away from the café. The applicant considers that, in his case, the requirement to show a passport was unjustified and unlawful, inter alia because

a) he has been in perfect health when he went to the café
b) he or she is not a member of a "risk group" and, knowing at the time that coronary vaccines cause harmful side effects, could not have been forced to take a potentially harmful coronary vaccine
c) According to the statements made in the district court by Hanna Nohynek, Chief Physician of the THL, and Asko Järvinen, Infectious Diseases Physician at HUS, the coronary vaccines were only intended to protect the persons who had received them, and Vauhkala could not have protected any person at Fazer Cafe from coronary heart disease by taking the coronary vaccine himself. This is also confirmed by our written evidence, where the European Medicines Agency confirms the information given by Nohynek and Järvinen: the coronary vaccine only protected those who had taken the coronary vaccine.
d) the applicant considers that the requirement of vaccination as a condition for access to a café (Article 1 of Protocol No 12 to the European Convention on Human Rights requires the State to ensure that individuals are not arbitrarily prevented, inter alia, from eating in a restaurant) is contrary to his convictions and religion, since believers constitute the body of Jesus on earth and the body of Jesus must not be contaminated with harmful substances.
e) as early as December 2021, it was known to the medical community that the coronary vaccines used to qualify for the coronary passport did not prevent the spread of coronary heart disease at that time. This was confirmed in the district court proceedings by, inter alia, the THL Chief Physician

Hanna Nohynek and Asko Järvinen, HUS infectious diseases physician. In addition, we have presented extensive medical evidence to the district court that coronary vaccines have not prevented the spread of coronary heart disease. Nohynek and Järvinen have testified that they have already communicated this information to the Council of State in the summer of 2021.

f) the Constitutional Committee has approved coronary passport legislation on the basis that medical evidence showed that coronary vaccines prevent the spread of coronary heart disease. At the same time, the Constitutional Committee has required the Government to monitor developments in medical knowledge of coronary heart disease. Since Nohynek and Järvinen have stated at the district court hearing that they have passed on information about the ineffectiveness of coronary vaccines to the Government, and the Government has not obtained information about the actual effectiveness of coronary vaccines even from publicly available information sources (of which we have submitted numerous examples as written evidence at the district court hearing), the Government has clearly not followed the development of medical knowledge about vaccines. We would have liked to have heard former Prime Minister Sanna Marin, who was in charge of the Council of State at the time the legislation on the interest rate passport was drafted, specifically on this issue, but the district court has refused to allow us to call her as a witness. Since the Government has not complied with the requirement of the Constitutional Committee to monitor the progress of medical knowledge, the Coronary Passport legislation has not been drafted in accordance with the Constitution, and it has certainly not been applied in the way required by the Constitution. Similarly, the Council of State has not followed the development of medical knowledge as to whether the corona tests, known as PCR tests, have been valid in establishing with sufficient certainty that a person has covid-19

g) the applicant has been able to have breakfast at Hotel Kämpp on the same day (10.12.2021) and in the coming days also at other locations, even at other Fazer Restaurants Oy locations. As the Equality Act states that "discrimination is direct if someone is treated less favourably on a personal ground than someone else would have been, is or would be treated in a comparable situation", this comparable situation has arisen from that, when Vauhkala has been able to enter other cafés/restaurants at approximately the same time and under the same interest rate pass legislation as he has not been able to enter Fazer Cafe (Kluuvikatu, Helsinki). The discrimination was based on the presumption of Vauhkala's state of health when he did not have to present a coupon pass. However, Mr Vauhkala was in perfect health when he went to the café, and he was not covered by the health insurance scheme in force at the time (10.12.2021).

on the basis of medical knowledge, caused any health risk to others in the café by his presence there

h) Fazer Ravintolat Oy has, in the applicant's view, infringed the Equality Act, because the company has directly discriminated against Vauhkala, as Fazer Ravintolat Oy's actions have not been based on law. Fazer Ravintolat Oy has failed to comply with Articles 58h and 58i of the Communicable Diseases Act.

§ 58j concerning the company's failure to draw up a written plan on how it will implement the obligations and restrictions imposed by the decision of the Regional Administrative Board of Southern Finland, and § 58j concerning the company's failure to inform Vauhkala about the processing of personal data contained in the interest-bearing passport. In addition, Fazer Ravintolat Oy has decided to start requiring customers of its cafeteria to present a coupon card throughout the day, whereas normally the coupon card is required in catering establishments only from 5 p.m. onwards. This has been based on the fact that it has allowed Fazer Restaurants Ltd to attract customers to its premises without the need to comply with any restrictions on its premises, thereby maximising its profits. The refusal of access to the restaurant infringed the constitutional right to equal treatment and protection of private life with regard to the disclosure of health information, the right to respect for private life, freedom of religion or belief and freedom of conscience and the right to non-discrimination guaranteed by the European Convention on Human Rights, and the right to freedom of religion or belief guaranteed by Article 12 of the ECHR. the right not to be subjected to arbitrary denial of access to a restaurant, Fazer Ravintolat Oy has failed to comply with its human rights obligations to respect the dignity, privacy and fundamental rights of individuals and not to tolerate discrimination of any kind

i) the State's interest rate passport legislation has also been unconstitutional because it has allowed for a significant transfer of public power to a private company, in this case Fazer Ravintolat Oy. The legislation has allowed a private company to decide for itself when to require a passport as a condition of entry to a restaurant. Fazer Ravintolat Oy has required a card as a condition of entry throughout its opening hours, usually only after 5 p.m. in other restaurants.

According to Article 124 of the Constitution, "a *public administrative task may be entrusted to a person other than.*

to a public authority only by or under a law, if it is necessary for the proper performance of its task and does not undermine fundamental rights, legal certainty or other requirements of good administration. However, tasks involving the exercise of significant public authority may be entrusted only to a public authority." Barring access to a restaurant for the whole day as an exception to the others

of companies in the same sector has implied a significant exercise of public authority, which may only be entrusted to a public authority. The applicant further submits that the fact that an ordinary restaurant worker is entitled to check the interest rate passport through which that restaurant worker obtained access to Vauhkala's personal medical data also constituted a significant exercise of official authority.

j) other criteria for obtaining a coronary passport, other than just taking coronary vaccines, have also violated Vauhkala's fundamental and human rights. Vauhkala could not have been required to contract a communicable disease of general interest every six months. Mr Vauhkala, in good health and in good condition, has never contracted coronavirus. Matti Muukkonen, a doctor of law, has testified at the district court hearing - also on the basis of his only peer-reviewed legal article on the coronary passport legislation - that in order for the coronary passport legislation to ensure that the fundamental rights of healthy individuals who had not received coronary vaccinations for ideological reasons were also guaranteed, the State should have paid for free coronary testing for all, so that individuals could enjoy the fundamental and human rights to which they are entitled. In order to obtain a coronary passport and enjoy the fundamental rights of all, in accordance with Article 6 of the Patients Act, Article 5 of the Oviedo International Convention and point IV of the Code of Medical Ethics, those who refused the medical procedure would have had to undergo a PCR test every three days and pay between EUR 100 and EUR 200 each time. This would have meant that, in order to fully enjoy their fundamental and human rights, those who refused the coronary vaccine would have had to pay between EUR 1000 and EUR 2000 per month out of their own resources, which would have been totally unreasonable in financial terms. Fundamental and human rights must be enjoyed by everyone, regardless of their wealth

Serious procedural errors that occurred during the district court proceedings and prevented a fair hearing of the case

It is necessary to obtain leave to continue the proceedings because of a number of serious procedural errors in the district court proceedings, which have prevented a fair hearing of the case and jeopardised the applicant's legal protection.

These serious errors include:

1) Judge Markku Saarikoski, the judge hearing the case, was unable to hear the case
2) Judge Marko Lepistö, the judge hearing the case, was unable to hear the case

3) The refusal to hear Sanna Marin, a witness called by the applicant, was not based on law
4) The refusal to hear Satu Koskela, a witness called by the applicant, was not based on law
5) The oral hearing at the main hearing of Janne Salminen, the legal expert appointed by the defendant, was contrary to the prevailing case-law
6) The hearing of Hanna Nohynek as an expert was unlawful
7) The admission of the preparatory documents submitted by the defendants as written evidence in the case is contrary to the principle of jura novit curia
8) The applicant's request for a preliminary ruling on the award of contracts for the supply of coronary vaccines in Finland by the State to the applicant was rejected, even though the applicant's main plea in law was the ineffectiveness of the coronary vaccines against the spread of covid-19.

Here are more detailed breakdowns of the serious errors mentioned above, with reasons.

Judge Markku Saarikoski's disqualification

According to Chapter 13, Section 6(2) of the Code of Judicial Procedure (OC, 4/1734) (441/2001), a judge is disqualified if he or she has a relationship with a party, whether by reason of employment or otherwise, which, particularly in view of the nature of the case before him or her, gives rise to reasonable doubt as to the judge's impartiality in the matter. According to paragraph 2 of the same Article, the mere fact that a party is a State, a municipality or another public body does not constitute a bar under paragraph 1. According to Article 7.3 of Chapter 13 of the Code of Judicial Conduct, a judge is also disqualified if any other circumstance comparable to those referred to in this Chapter gives rise to reasonable doubt as to the judge's impartiality in the matter.

On 9.11.2023, we learned that Markku Saarikoski, who was the District Judge and presiding judge in our case, will, in addition to his judicial work, work as a mediator at the Office of the National Mediator. On 16 September 2021, he was appointed for a three-year term of office, starting on 20 September 2021 (news on this: https://valtioneuvosto.fi/-/1410877/markku-saarikoski- mediator-for-the-office-of-appointed-mediator).

The other defendant in our action is the Finnish State. In practice, the defendant is the Finnish Government, which is the same body that appointed Saarikoski as a mediator for the Office of the National Mediator. The Ministry of Social Affairs and Health, acting as part of the Council of State and on its behalf in the present case, has been assigned to handle the action on behalf of the State. In addition, the Office of the National Mediator operates administratively under the Ministry of Employment and the Economy. The said Ministry played a key role in the preparation of the legislation on the interest rate passport which is the subject of the dispute in the present action.

The information about Saarikoski's secondary function as a mediator appointed by the Government in the Office of the National Mediator came as a complete surprise to us, as there was no mention of this secondary function in the register of judges' affiliations and secondary functions maintained by the judicial administration (the so-called Sisi register, https://asiointi.oikeus.fi/sidonnaisuus-ja-sivutoimirekisteri/ilmoitus/search). According to the entries in the register, Mr Saarikoski has been a judge at the Helsinki District Court since 1 September 2007 and has been a part-time deputy member of the expert and expert members of the Labour Court from 1 January 2019 to 31 December 2023. The Sisi register should also have mentioned Mr Saarikoski's three-year post as a mediator at the Office of the National Mediator. However, this post was only added to the Sisi register after our allegations of obstruction were brought to Saarikoski's attention. In his explanation, Mr Saarikoski said that the information had been 'inadvertently omitted' from the Sisi register.

In our application, we alleged that the Finnish state, in practice the Finnish Government in office in 2021, had violated the European Convention on Human Rights. The same government that we allege committed a serious violation of human rights has appointed Mr Saarikoski as its mediator.

These facts, together with the fact that Saarikoski's position as mediator was not mentioned in the register of judges' affiliations and secondary functions as required by law, in our opinion, give rise to reasonable doubt as to Saarikoski's impartiality in the case within the meaning of § 13:6(2) and § 13:7.3 of the Code of Conduct.

On the basis of the above, we made an objection under § 13:8 of the Rules of Procedure that Judge Saarikoski was unfit to sit.

The District Court rejected Saarikoske's objection of obstruction by decision of 22 January 2024 (decision number 1015 0438). The District Court justified its decision, inter alia, by stating that *"[t]he fact that District Judge Saarikoski's secondary position had not been entered in the register of affiliations is irrelevant for the assessment* [*of* the disqualification]*"*. However, this fact was one of our main grounds for doubting Mr Saarikoski's disqualification; the statutory declaration of that office in the Sisi register had been neglected by Mr Saarikoski for more than two years.
The failure to make the statutory declaration and the fact that he was acting under the authority of the Council of State, which is a co-defendant in the Vauhkala case, give rise to reasonable grounds for alleging that Saarikoski was disqualified from presiding over the jury in the Vauhkala case.

In addition, the district court states the following in its decision:

> *In the present case, it is justified to draw attention to the fact that the Office of the National Mediator has allegedly played no part in the proceedings referred to in the application.*

> *in the preparation of the decision. Similarly, the outcome of the action will have no effect on the functioning of the Office of the National Mediator or its staff. The connection between the Ministry and Mr Saarikoski must be regarded as rather distant.*

However, we did not even argue that the Office of the National Mediator played a role in the preparation of the decisions referred to in the complaint, but the Ministry of Employment and the Economy, which is part of the Council of State. Nor did we argue that the outcome of the action should have had any effect on the Office of the National Mediator or its staff. We argued that the Ministry of Employment and the Economy is the paymaster of Mr Saarikoski and that he was appointed to his post by the same Government which was preparing the contested interest rate passport legislation.

The district court thus completely failed to address or ignored the core grounds of our estoppel argument. The decision is therefore not sufficiently reasoned in the way required by the case-law: according to KHO 2019:110, the adequacy of the reasons given for an administrative decision must be considered from the point of view of whether the right of the party concerned to obtain a reasoned decision and to appeal against it can be effectively safeguarded.

The applicant's right to obtain a reasoned decision and to appeal against it is now denied, as the reasoning does not respond to the arguments put forward by the applicant in substance or at all. The decision is therefore unlawful in the light of the legal guidance given in the abovementioned judgment of the Court of First Instance.

Judge Marko Lepistö's disqualification

Pursuant to Chapter 13, Section 7(2) of the Code of Judicial Procedure (1.6.2001/441), a judge is disqualified from hearing the same case or part of it again before the same court if there are reasonable grounds for suspecting that he or she has a prejudiced view of the case because of a previous decision or other special reason.Pursuant to Section 13(3), a judge is also disqualified if any other circumstance comparable to those referred to in this Chapter gives rise to reasonable doubt as to the judge's impartiality in the case.

According to Antti Tapanila's doctoral thesis "Judge's disqualification" (Publications of the Finnish Lawyers' Association: A series 2007), a judge's disqualification may be affected by a preconception of a legal issue, which may have arisen, for example, in connection with a previous trial.

A judge's preconception of a point of law is revealed by the decisions he has given in similar cases in relation to the case at hand (pp. 307-308). According to Tapanila.

the expression of exceptionally unconditional opinions in isolation from the legal sources may give rise to suspicions of bias that could undermine the judge's impartiality (p. 309, footnote 269).

District Judge Marko Lepistö has acted as District Judge in case L 706/2021/2416 (judgment of 10 September 2021, decision number 165570/2021). The case concerned compensation claimed by the applicants for a violation of the Equal Treatment Act when HUS/Helsinki Women's Clinic did not admit the applicants because they did not use face masks. At the time, the Women's Clinic had a mask recommendation in force. Lepistö dismissed the action without issuing a summons on the grounds, inter alia, that:

> *"[The plaintiffs'] claim was based on a denial of the seriousness of the Corona pandemic, based on denialism. In the district court's view, however, the alleged conduct against [the plaintiffs] was based on what was, at the time of the incident, a generally perceived necessary and indispensable means of protecting the health safety of others in the hospital environment.*
> *The Equality Act cannot protect an individual's opinion that is or may be likely to endanger the health or public safety of other people."*

The judgment further states that *"[the applicants] were a married couple who had been prevented from having an amniocentesis because of the opinion expressed. The plaintiffs had stated that they did not believe in the seriousness of the Covid-19 pandemic and that, at the very least, the masks were not helping against the disease. The use of masks and visors caused both of them to have a panic attack."*

Judge Marko Lepistö therefore refused to serve the summons on HUS on the ground that he himself had argued that the applicants' claim was based on a denial of the seriousness of the interest rate pandemic, based on "denialism". However, no such allegation of 'denialism' was made in the application for a writ of summons. Moreover, the procedure against the applicants (requiring them to wear a mask) was, in the judge's view, based on a necessary and indispensable means of protecting health and safety.

Chapter 5, Section 6 of the Code of Judicial Procedure provides for the inadmissibility of an action and the settlement of the case without requesting a reply:

> *The court shall dismiss the action as inadmissible if the plaintiff fails to comply with the invitation referred to in Article 5 and the application is so incomplete, unclear or confused that it cannot form the basis of the proceedings, or if the court is otherwise unable to admit the case.*

The court must dismiss the action by judgment to the extent that it is manifestly unfounded.

In the preamble to Article 6(2) and in the case-law, it has been held that a manifest lack of foundation for an action means a deficiency in the substantive basis of the action which cannot be remedied even later in the proceedings. Such a situation arises where the factual grounds put forward by the plaintiff (the facts put forward as elements of the case) do not allow the plaintiff to establish what he claims in his application for a writ of summons (so-called 'legal unfoundedness').

Judge Lepistö has therefore already decided, before issuing the summons, that the application for a summons was manifestly unfounded, pursuant to Article 5:6.2 of the Rules of Procedure. According to Mr Lepistö, the applicants had not even alleged that they had been treated less favourably than other clients of the hospital and that, as a result of this failure to meet the burden of proof, the facts set out in the application could not give rise to the result they sought, for which reason the application had to be dismissed. However, that argument is absurd: the applicants expressly stated as a matter of fact that the condition for their admission to the amniocentesis on 23 March 2021 was the wearing of a mask or visor and that they could not wear a mask or visor for health reasons, that is to say, that they were treated less favourably than hospital customers wearing a mask or visor who were admitted to the hospital for treatment, on the basis of a prohibited ground of discrimination. Thus, the mere fact that the plaintiffs did not expressly "underline" that they were treated differently from clients who wore a mask is very difficult to see as a sufficient ground for a "manifest" lack of legal basis for the action within the meaning of Article 5:6.2 of the Code.

<u>The purposeful application of the law</u>

Lepistö's bias and the fact that he refers in his reasoning to Article 11(2) of the Non-Discrimination Act by apparently deliberately omitting to quote the rest of the provision also indicates that his reasoning is biased. He states that a difference in treatment is nevertheless justified even in the absence of a provision laying down the grounds on which the treatment is justified, provided that the treatment has an objective which is acceptable from the point of view of fundamental and human rights and that the means of achieving that objective are proportionate. The provision continues, however, that this provision does not apply, inter alia, to the exercise of official authority or the exercise of a public administrative function. Mr Lepistö knew or ought to have known that amniocentesis falls within the scope of the provision of counselling services under Article 15 of the Health Care Act (1326/2010), which falls within the scope of the exercise of a public administrative function within the meaning of Article 11.2(1) of the Equal Treatment Act. Thus

says for example Eeva Nykänen in her article "Private service providers as providers of public social and health services" (Lakimies magazine 3-4/2020 p. 8):

> *"... social and health services, which are the responsibility of the public authorities, fall within the scope of public administration. Public service tasks which are considered to be public administrative tasks may be similar in content to services provided by the private sector. The decisive factor in defining the nature of the task is whether the public sector is responsible for organising and financing the services. ... For example, services provided by an undertaking providing health services or housing for the elderly do not therefore fall within the scope of the public service remit, unless the provision of the service is based on a statutory obligation on the part of the - - - municipality to organise the service. If the provision of the service in question is based on such an arrangement, it is a public administrative task which the private service provider is carrying out in this case."*

Based on Nykänen's article, it is clear that the provision of child health services - including amniocentesis - is a public administrative task, as it is based on the statutory obligation of the municipality to provide them under Section 15 of the Health Care Act. Thus, the provision of amniocentesis is subject to the requirement of different treatment under the law pursuant to Article 11.1 of the Equality Act, and Article 11.2, as applied by Lepistö, does not apply to amniocentesis. Consequently, the mask claim made by the amniocentesis clinic would have had to be based on a law enacted by Parliament as required by section 11.1 of the Equality Act in order for the claim to meet the equality requirement and thus be lawful. However, at no time was the use of masks made mandatory by law in Finland, and although the Government proposed such a law in the spring of 2021, it withdrew its proposal on 31 March 2021 and never returned to the issue.

Lepistö's attitudinal use of language

The word "denialism" (a word that was never used by the plaintiffs themselves) used by the plaintiffs in the Lepstein claim is generally associated with phenomena that are particularly socially objectionable, such as climate denialism, Holocaust denialism and vaccine denialism. See, for example, Osmo Pekonen's article of 27 April 2022 "Denialists of many kinds" (https://www.tiedetoimittajat.fi/tiedekeskiviikko/monen-sortin-denialisteja/), which states that *"denialism is the disease of our time".* See also e.g. Syksy Räsäsäsen and Kari Enqvist's article of 5.5.2014 "Denialism, a collateral damage of scientific progress?" (https://journal.fi/tt/article/view/41570), where already in the title the word "denialism" is linked to "damage"

a negative, undesirable phenomenon. In both writings, the word 'denialism' has been associated for at least ten years with a strong sense of disapproval and avoidance in common parlance.

The applicant considers that Lepistö's use of the word denialism in relation to the applicant's claim in the case must be regarded as the expression of an exceptionally unconditional position, detached from the legal sources, which gives rise to suspicion of a bias that compromises the impartiality of the judge (see above and Tapanila 2007 p. 309, footnote 269).

Based on the above, the applicant considers it clear that the strong language used by Lepistö in the judgment of 10 September 2021 gives rise to a reasonable doubt as to his impartiality in the handling of cases challenging coronary measures involving similar legal issues, as in the present case of Vauhkala v. State of Finland and Fazer, within the meaning of OC 13:7.2.

Since Marko Lepistö has applied the Equal Treatment Act in case L 706/2021/2416 in the above-mentioned manner in a manifestly purposive manner, has used strongly accusatory language in relation to the applicant's claims and has dismissed the action in question without issuing a summons on manifestly frivolous and/or questionable grounds, this gives rise to a well-founded suspicion that he is subject to OC 13:7.2 of the Law on interest rate pandemics in general and on cases challenging interest rate measures in particular. The applicant considers that Mr Lepistö's bias is such that he is unable to act objectively and impartially in Vauhkala v State of Finland and Fazer.

The district court rejected Lepistö's claim of obstruction by decision of 19 March 2024 (decision number 1016 1641). The district court justified its decision, inter alia, as follows:

> *Vauhkala's view that District Judge Lepistö had made an exceptionally absolute statement, unconnected with the legal sources, was based mainly on the fact that District Judge Lepistö had used the term "denialism" as part of his reasoning.*
> *In this respect, the District Court finds that the mere use of the said expression cannot be regarded as a statement that is detached from the legal sources, let alone as an exceptionally absolute one.*
>
> *The decisive point is that the cases L 706/2021/2416 and L 706/2022/1504 involve different legal issues. In the first case, Judge Lepistö did not express a legal opinion which might lead to a finding of incompetence in a subsequent case.*

> *matter. There is no justification for a different assessment of that conclusion on the basis of a single expression used by District Judge Lepistö.*
>
> *In summary, the district court states that the party's own perception of the judge's disqualification is not decisive, but the doubt must be objectively justified. Mr Vauhkala has not put forward any evidence in support of his allegation of lack of competence which, viewed objectively, would give rise to a reasonable doubt as to the impartiality of District Judge Lepistö in the case.*
>
> *The claim that District Judge Lepistö was not disqualified must therefore be rejected.*

The district court's assessment that Lepistö's use of the term "denialism" could not be regarded as a statement unconnected with the legal sources, let alone an exceptionally absolute one, is incorrect. The district court's finding that the applicant had not put forward any evidence in support of his plea of lack of competence which, objectively speaking, would give rise to a reasonable doubt as to the impartiality of District Judge Lepistö in the case is also incorrect. The use of the word 'denialism', together with the deliberate application of the law and the dismissal of the action without issuing a summons without sufficient reason, gave rise to objectively well-founded doubts as to Mr Lepistö's impartiality in other cases criticising the corona measures.

Refusal to hear the witness Sanna Marin

We demanded an oral hearing in the district court of Sanna Marin, who was Prime Minister at the time the interest rate passport legislation was drafted, on the subject of *"what the Government has based its view of the necessity of interest rate passport legislation on and how the Government has monitored the necessity of regulating interest rate restrictions in relation to the realisation of fundamental rights"*.

The district court refused to hear Marin as a witness in the case, justifying its decision on 27 February 2024, among other things, as follows:

> *The district court considers that the case involves constitutional and procedural questions of law. The views or opinions of an individual politician, albeit a person who was Prime Minister at the time the legislation in question was enacted, are irrelevant when considering such questions of law.*

Frankly, we don't even understand what the district court means by this. There are undoubtedly at least constitutional issues involved. We also agree with the district court's

that the personal views or opinions of Mr Marin, who was Prime Minister, are irrelevant when considering the legal issues involved - the necessity of the interest rate passport legislation and the fulfilment of the government's duty to monitor it. Instead, what is relevant are the concrete actions that the Government did or did not take under the leadership of Prime Minister Marin, and it is Sanna Marin, who was in charge of the Government, who is best placed to speak on these matters. In particular, since the defendants have not adduced any evidence to shed light on these legal issues, there is no basis in law for refusing to hear Ms Marin, and thus the hearing of Ms Marin would have been essential to the success of the applicant's action.

According to the view expressed in the case law, the court should apply the limitation provision in OC 17:8 with a certain degree of caution and target limitation decisions to clear-cut cases. It is difficult for a judge to limit the number of witnesses against the will of the party, because the judge cannot draw conclusions about the credibility of the witnesses in advance, unless there are clearly too many witnesses (*Vuorenpää et al.* 2021, Prosessioikeus, Alma Talent 2021 p. 609; see also HE 46/2014 p. 56 and LaVM 19/2014 p. 8).

According to the preamble to OC 17:8, before the court proceeds to reject evidence under this section, it would normally be justified to discuss the extent of the evidence with the parties. As a matter of priority, agreement should be sought, if possible, so that the parties voluntarily give up evidence that is unnecessary or otherwise objectionable (HE 46/2014 vp p. 57; see also *Rautio et al.*, Evidence: a commentary on Chapter 17 of the Code of Judicial Procedure, Edita lakitieto 2020 p. 85).
However, in the present case, the district court did not even attempt to discuss with the parties the necessity or otherwise of hearing Marin, but only unilaterally and without any practical justification stated that his hearing would not be relevant to the case.
It may even be a violation of the European Convention on Human Rights if the decision to restrict evidence is not properly justified (e.g. *Suominen v. Finland* 1.7.2003; see also *Rautio et al.* 2020 p. 85).

The district court has thus apparently misinterpreted our evidence in relation to the Marin hearing; we did not find any answer to the question of our evidence as to how the government had monitored the necessity of the regulation of interest rate restrictions in relation to the realisation of fundamental rights. Thus, there was no legal basis for refusing to hear Mr Marin.

The district court further justified its refusal to hear Marin as follows:

> *According to Chapter 17, Section 8 of the Code of Judicial Procedure, the court must exclude evidence that is irrelevant or otherwise unnecessary.*
>
> *The hearing of the witness Sanna Marin is not relevant in this case, so it is unnecessary to hear her in this case. The Court must therefore refuse to hear her in this case.*

In addition, the District Court stated in its decision of 28 March regarding the hearing of Sanna Marini and Satu Koskela that case law has consistently refused to hear ministers and heads of department of ministries as witnesses in similar or similar cases.

However, the district court did not make any further reference to such established case law, nor did it give any reasoning as to why the Marin hearing would not be relevant in this case. The parties are therefore unable to assess the legal reasoning on which that case law is based. The decision is therefore not sufficiently reasoned in the manner required by the case-law: according to KHO 2019:110, the adequacy of the reasons given for an administrative decision must be considered from the point of view of whether the right of the party concerned to obtain a reasoned decision and to appeal against it can be effectively safeguarded.

Now, the plaintiff's right to appeal or to obtain a reasoned decision on the refusal to hear Marin is not effectively protected, as the district court gave virtually no concrete reasons for the refusal; more precisely, the district court did not provide any concrete reasons why Marin's hearing would not be relevant to the issue of evidence we have raised.
The district court responded only to the evidence he had invented for which he would have been heard in court: his perception or opinion on the matter. However, as we have already stated, Mr. Marin's perceptions and views are, in our view, irrelevant to the case.

In fact, the district court did not even give any reasons for refusing to hear Marin. For this reason alone, the refusal was unlawful.

Refusal to hear the witness Satu Koskela

We demanded to hear oral evidence from Satu Koskela, Head of Department of the Ministry of Social Affairs and Health at the time of the preparation of the interest rate passport legislation, on the issue of *"what kind of medical research or legal assessment was the basis for the guidance given by the Ministry of Social Affairs and Health to the Regional State Administrative Agencies"*.
The District Court refused to hear Koskela as a witness in the case, justifying its decision on 27 February 2024, among other things, as follows:

> *Moreover, the views or opinions of the official who participated in the preparation of the provision in question are, according to the district court, irrelevant when considering questions of law such as those referred to above. Moreover, according to the district court, the evidence in question is always presented in written form in the legislative project in the form of a draft government bill and its preparatory documents, so that the evidence must be replaced by documentary evidence as provided for in Articles 3 to 4 of that provision.*
>
> *... According to Chapter 17, Section 8 of the Code of Judicial Procedure, the court must exclude evidence that is irrelevant or otherwise unnecessary.*
>
> *... The hearing of witness Satu Koskela is irrelevant in this case and the evidence must be replaced by documentary evidence, so the hearing of the witness is unnecessary in this case. The court must therefore refuse to hear her in this case.*

In Koskela's case, our evidence was based on what kind of medical research or legal assessment the STM's guidance to the regional administrative agencies was based on. We agree with the district court that, like Marin, Koskela's personal views or opinions are irrelevant in considering the legal issues involved. However, the issue on which we would have liked to hear Koskela (the STM's guidance to the regional administrative agencies) was not presented in any written material at any stage of the proceedings or their preparation; the district court's reference to *"such evidence in the legislative project, always in the government bill and its preparatory documents" has* nothing to do with the STM's administrative guidance to the regional administrative agencies, but only with the preparation of the legislation.

Thus, Koskela's hearing could not be replaced by substantially less costly or time-consuming and substantially more reliable evidence, and there was no legal basis for refusing to hear Koskela. In any event, the above-mentioned statement in the case law literature that the court should apply the limitation rule in OC 17:8 with a certain degree of caution and only target limitation decisions to clear-cut cases applies.

In addition, the District Court stated in its decision of 28 March regarding the hearing of Sanna Marini and Satu Koskela that case law has consistently refused to hear ministers and heads of department of ministries as witnesses in similar or similar cases.

However, the district court did not make any further reference to such established case law, nor did it in any way explain why the Koskela hearing would not be relevant in this case. The parties are therefore not in a position to assess the legal reasoning on which

this case law is based on. The decision is therefore not sufficiently reasoned in the way required by the case-law: according to KHO 2019:110, the adequacy of the reasons given for an administrative decision must be considered from the point of view of whether the right of the party concerned to obtain a reasoned decision and to appeal against it can be effectively safeguarded.

Now, the plaintiff's right to appeal or to obtain a reasoned decision on the refusal to hear Koskela is not effectively safeguarded, as the district court gave practically no concrete reasons for the refusal; more precisely, the district court did not provide any concrete reasons why the hearing of Koskela would not be relevant in the case in relation to the evidence we have submitted.

In fact, the district court did not even give any reasons for refusing to hear Koskela. For this reason alone, the refusal was unlawful.

Oral hearing of legal expert Janne Salminen

The State presented its legal expert Janne Salmi for a written and oral hearing in the proceedings, in addition to giving a written expert opinion for the trial. However, according to established Finnish case-law, legal experts are not heard orally in court proceedings. Even the defendant, the Finnish State itself, through its agent, stated the following in its reply of 31 August 2022 to the District Court:

> *117. The (oral) hearing of legal experts is not part of the Finnish procedure. The key principle is that the court knows the law (jura novit curia). The parties (typically through their agents/attorneys) can of course present their legal arguments in their pleadings, and in particular in the final report, and may refer to and present legal sources and expert opinions to the court if they wish.*

We agree with the view expressed in the State's 31.8.2022 reply that legal experts should not, in principle, be heard orally as experts in Finnish court proceedings. We therefore wonder why the State, in complete contradiction to its earlier statement, has nevertheless summoned Salminen to be heard orally, and why the District Court has accepted this.

For the reasons stated above, we are of the opinion that the district court should have denied Salminen an oral hearing under Chapter 17, Section 8 of the Code of Judicial Procedure, as it may be replaced by.

with substantially less cost or effort and substantially more reliable evidence (Salminen's written expert testimony), and because his oral hearing is unnecessary anyway from the point of view of the prevailing Finnish judicial culture. That view was confirmed during the oral hearing of Mr Salminen at the main hearing, since he did not say anything orally at the main hearing that had not already been read in his written expert report; rather, he appeared to be merely reading out extracts from his written report.

The district court should have taken into account the above-mentioned unnecessary oral hearing of Salminen as a matter of course, especially since it refused to hear the applicant's main witnesses, Sanna Marini and Satu Koskela. The mere equality of the parties before the law and the adversarial principle require that the district court should have taken the initiative to consider such fundamental issues of procedural management properly and with respect for the rights of the parties.

Oral hearing of Hanna Nohynek as an expert

The State obtained a written expert report from Hanna Nohynek, the Chief Medical Officer of the THL, and also presented her orally to the district court as an expert, which the district court accepted. In our view, however, Hanna Nohynek could not have been heard as an expert in court, since she was the Chief Medical Officer of the National Institute for Health and Welfare at the time the coronary passport legislation was drafted and came into force, and repeatedly made strong public statements on coronary vaccines and coronary passports. Moreover, as the State has stated in its response to our request for edits, *"the State has relied on the THL throughout the coronary passport legislation, with the THL having issued numerous statements on the matter that are available from public sources"* (see, e.g., Summary of 6 November 2023, p. 43). Since the Government has always relied on the THL in the preparation of the interest rate passport legislation, it is obvious that Nohynek has also been involved in the preparation of the interest rate passport legislation. For these reasons, Mr Nohynek's involvement in the case is such that his impartiality is compromised. For the same reasons, in our view, Mr Nohynek cannot act as an expert for the Finnish State, either in writing or orally. He should therefore have been heard expressly as a witness in the case.

Thus, the written expert opinion given by Nohynek should also have been disregarded.

In its decision of 27 February 2024, the district court stated the following in its decision on the hearing of Nohynek as an expert:

> *The district court finds that the ... Noheneki's status is not covered by Chapter 17, Section 35 of the Code of Judicial Procedure*
>
> *§in the sense of Article 5(1), that they are so related to the case or the party concerned that their impartiality would be compromised or that there is any other objective reason to believe that their impartiality would be compromised.*
>
> *The matters relied on by the applicant concern the normal assessment of the evidence to be taken into account in expert reports. Thus, they may be heard as experts or, in the absence of a written expert report or in the opinion of the appointing party, alternatively as witnesses.*

However, the district court does not give any reasons for this view. The decision is therefore not sufficiently reasoned in the way required by the case-law: according to KHO 2019:110, the adequacy of the reasons given for an administrative decision must be considered from the point of view of whether the right of the party concerned to obtain a reasoned decision and to appeal against it can be effectively safeguarded.

Now, the plaintiff's right to appeal or to obtain a reasoned decision to hear Nohynek as an expert is not effectively protected, as the district court did not provide any concrete reasons for its decision. For this reason alone, the decision is unlawful.

Furthermore, we understand that it is impossible in the eyes of the law for the same person to be heard at the same time as an expert (the State's witness) and as a witness (the plaintiff's witness). However, this is what happened at the trial. This is a question which, in our view, deserves a preliminary ruling from the Court of Appeal.

Legislative material in the form of written evidence

The State and Fazer submitted as written evidence the legislative documents V1 and V6, i.e. Government Bill 131/2021 vp and the opinion of the Constitutional Committee PeVL 35/2021 vp. In our view, however, they cannot be written evidence to be examined during the evidence phase of the main hearing, as they are legislative documents and part of the legislation, which the court must know ex officio. This is a question which, in our view, deserves a preliminary ruling from the Court of Appeal.

Ignoring and ignoring the screen

The district court completely ignored, inter alia, the testimony of the plaintiff's witness Matti Muukkonen and the legal analysis of the contested interest rate passport legislation

the equal treatment approach. The district court merely stated, in the exact wording used by the state's attorney in the main hearing, that *"Muukkonen makes no mention of the right to life and health, which has been the main justification for the state and PeVK's interest rate passport legislation."* However, Muukkonen's article - like Vauhkala's complaint - was not a comprehensive critique of the fundamental rights analysis of the interest rate passport legislation, but primarily a critique of the equality analysis of the interest rate passport legislation. In any case, even if Muukkonen had mentioned something about the right to life and health in his article, this would not have refuted the main jurisprudential finding of Muukkonen's article, which was completely ignored by the district court - from the perspective of the fundamental rights system, it would have been a less intrusive interference with the rights of the unvaccinated (including the plaintiff) if they had been offered free testing (Muukkonen article p. 13), and therefore the interest rate passport legislation did not meet the proportionality requirement of the fundamental rights restrictions.

The district court ignored Article 106 of the Constitution

The decision of the Helsinki District Court proceeds in such a way that firstly, the District Court ignores Vauhkala's main grounds for his action, stating that the District Court is not competent to assess the constitutionality of the interest rate passport legislation. In so doing, the district court effectively disregards the jurisdiction conferred on it by Article 106 of the Constitution to assess the constitutionality of the interest-rate passport legislation and its implementation in the present case. For that reason, and in order that the application for leave to proceed to a further hearing may logically proceed in parallel with the decision of the district court, the applicant also seeks leave to proceed to a further hearing on the ground that it is important, for the application of the law in other similar cases, to assess in which cases the court may assess the constitutionality of a parliamentary law. The Helsinki District Court has completely disregarded Article 106 of the Constitution, stating that the court cannot assess the constitutionality of the Eduskunta Act because the assessment has already been made by the Constitutional Committee.

The applicant's main plea in law is that the State's interest rate passport legislation has led to the abrogation of his fundamental and human rights and that the interest rate passport legislation has been unconstitutional. According to Article 106 of the Constitution, *"[W]here the application of a provision of law in a case before the court would be manifestly inconsistent with the Constitution, the court shall give preference to the provision of the Constitution."*

In its judgment, the district court states that *"in this case, where the Constitutional Committee has assessed the constitutionality of the interest passport legislation, i.e. Section 58i of the Communicable Diseases Act, and held that*

such that the law can be enacted by ordinary legislative procedure, the district court does not have jurisdiction in principle to assess its alleged unconstitutionality. The constitutionality of the provision has been assessed by the Constitutional Committee and neither the Committee nor any constitutional expert consulted during the Committee's deliberations has expressed the view that the provision is unconstitutional'.

However, the district court also states that *"the constitutional review practice has taken as a starting point that the priority provision of Article 106 PL can only be applied in situations of statutory interpretation that have not been subject to review by the Constitutional Committee".*

In the present case, the Constitutional Committee has left a pre-condition on how the government should deal with the coronary passport legislation in the light of evolving medical knowledge. Furthermore, the Constitutional Committee has not assessed the coronary passport legislation in relation to Article 124 of the Constitution, on which we will provide legal assessment and evidence later.

As stated in the judgment of the District Court, *"the applicant has argued that the objective of preventing the spread of the disease, which was the basis of the interest rate passport legislation, was not based on up-to-date scientific knowledge, even though the Constitutional Committee had on several occasions stressed the obligation of the Government to closely monitor the need to maintain the regulation on interest rate restrictions and any problems that might arise in its application".*

All the expert opinions submitted to the Constitutional Committee concluded that the interest rate passport legislation was proportionate and necessary in the light of the medical and epidemiological data explicitly presented. The Constitutional Committee, for its part, stated that *"[w]hile the proposal places individuals in a different position, the proposed regulation cannot be*
in the view of the Constitutional Committee, in the light of the medical grounds on which it is based, arbitrary". With regard to written exhibit 8 submitted by the applicant in the district court, it is noted that the Equal Opportunities Commissioner, Mr Stenman, stated that the use of the interest rate passport was, according to Mr Stenman, acceptable if it could alleviate the medical condition.

The pre-condition for coronary passport legislation has therefore been clear: coronary passport legislation has been proportionate and necessary only and only in the light of the medical evidence presented. The logical legal conclusion is that if medical knowledge changes, the legislation and its implementation must change. This is a matter of legal importance in the light of the general conditions of limitation of fundamental rights. According to the doctrine of the limitation of fundamental rights, fundamental rights can only be limited by a lower level of regulation than the Constitution under certain well-defined conditions. These conditions include, inter alia, that the

ground for limitation must be based on

in the Parliament Act, the restriction must be acceptable and required by a pressing social need, and that the restrictions must comply with the proportionality requirement. The proportionality requirement can be considered to consist of both a requirement of appropriateness and a requirement of necessity; the restriction must be suitable in general to achieve the objective pursued and, in addition, the objective cannot be achieved by means less intrusive than fundamental rights.

The obligation for the Council of State to monitor the effects of regulation and take remedial action

The Government's obligation to monitor the effects of legislation is clear, for example, from the statements of the Constitutional Committee on the interest rate passport legislation:

PeVL 35/2021 vp (regulation on the use of interest certificates) p. 4, point 10:

> (10) The *Government must closely monitor the effects of the regulation and, if necessary, take steps to correct it.*

PeVL 26/2021 vp (border testing and inter alia TTL 16a-16f §) p. 4, point 9:

> (9) *The Committee also stresses the need to closely monitor the impact of the regulation and to introduce legislative changes where necessary.*

PeVL 14/2020 vp (temporary restriction on the operation of restaurants, TTL 58a §) p. 6:

> *The Constitutional Committee stresses that the proposed regulation must also be limited in time to what is necessary. The Government must closely monitor the need for the regulation to remain in force and any problems that may arise in its application and take measures to remedy them.*

In its opinion on the regulation of the use of the jewellery certificate, the Constitutional Committee has made it a condition that the Government must closely monitor the effects of the regulation and, if necessary, take steps to correct it. Thus, if medical knowledge had changed, the regulation (the introduction of the interest certificate and the requirement to obtain it on the basis of decisions by regional administrative offices) would have had to be amended. According to the applicant, the Council of State failed to do so, which resulted in his being required to obtain a passport at the Fazer Kluuvi café at 9 a.m. on 10 December 2021, unnecessarily and in breach of his fundamental rights.

Former Prime Minister Marini's testimony blocked by district court

Since the Constitutional Committee had held that the Government was obliged to monitor the effects of the regulation and, if necessary, to take steps to correct it, and since the Prime Minister was responsible for the functioning of the Government, the applicant had decided to call the former Finnish Prime Minister, Sanna Marin, as a witness before the District Court. It was during her time that the Government submitted the interest rate passport legislation to Parliament for approval. Ms Marin's testimony was entitled: *'on what the Government has based its view of the necessity of the interest rate passport legislation and how the Government has monitored the necessity of the regulation of interest rate restrictions in relation to the realisation of fundamental rights'*.

A key aim of the coronary passport has been to prevent the transmission of coronary heart disease from one person to another. On the basis of the written evidence submitted by the applicant to the district court and the oral testimony of witnesses, in particular the statements of Hanna Nohynek, a senior physician at the THL, and Asko Järvinen, an infectious diseases physician at the HUS, as well as the statements of cardiologist Aseem Malhotra, it was known by the summer of 2021 that coronary vaccines do not prevent the transmission of coronary heart disease from one person to another in more than half of the cases. However, the key information has been that a vaccinated person could also have transmitted coronary heart disease to another vaccinated person. Thus, a coronary passport may have resulted in a vaccinated person who had access to a facility with a green coronary passport being able to infect unsuspecting persons with coronary heart disease.

However, as described above, the district court refused to call Sanna Marin as a witness and the court thus had no first-hand knowledge of how the Government implemented the precondition set by the Constitutional Committee for the adoption of the interest rate passport legislation.

Medical testimonies and medical examinations as written evidence

The witnesses Järvinen and Nohynek - Nohynek also acting as an expert - who were heard in the district court have confirmed the views of the plaintiff that the coronary vaccines have not prevented the spread of covid 19. According to Järvinen, already in late 2020, when the first coronary vaccines were introduced, it was known to the medical community that they provided only 50% protection against coronavirus infection and that the effect lasted 2-3 months. Each time a new variant of the virus appears, the efficacy and duration of action of the vaccines has decreased. This has meant that by early December 2021, the effectiveness of the coronavirus vaccines will have been significantly reduced.
According to Nohynek's testimony, by 6 months after the coronary vaccine was administered, the protection it provided had dropped to zero.

At trial, the plaintiff has presented both Järvise and Nohynek with Exhibit 13, which was a study conducted in the US state of Wisconsin in July 2021 on how the SARS-CoV-2 virus has spread despite the vaccine at a time when the delta variant was in general use. The study measured similar viral loads in people living in Wisconsin, USA, regardless of vaccination status, during a period when the prevalence of the delta variant was high and rising.
The study data confirmed the notion that vaccinated individuals who contracted Delta variant infection were able to spread the SARS-CoV-2 virus to other people in the same way as unvaccinated individuals. Both witnesses have admitted in court that they were familiar with the results of the study. According to Nohynek, the results of the study have been known for several months before August 2021, when the study was published.

Both Nohynek and Järvinen have said that they have informed the Ministry and, through the Ministry, the Government, that the coronary vaccines have not prevented the transmission of covid-19, even from one vaccinee to another. This information has been passed on since at least the summer of 2021. Both say the vaccines have only been effective in preventing hospital admissions and that this, according to Nohynek's statement, has only been the case for frail people, such as the particularly elderly.

Both Nohynek and Järvinen have said in interviews that the entry of a single vaccinee into a room with a large number of vaccinated people has not posed a risk to those vaccinated, who have been protected from hospitalisation by the vaccine. On the other hand, the entry of an unvaccinated person into a room with vaccinated persons has, in the opinion of both parties, not differed significantly from the entry of a previously vaccinated person into a room, because also the vaccinated person may have carried a coronavirus load and may have passed it on to others who, despite vaccination, may well have contracted coronavirus disease.

With regard to the applicant's written evidence, we highlight the following points, which we consider to show that taking the corona mRNA vaccine, which was a condition for obtaining the corona passport, has not fulfilled its intended function of preventing the spread of covid-19, even from one vaccinee to another, nor has it protected against covid-19.

As for Exhibit 14, the survey data suggest that the disease has spread between fully vaccinated individuals. As regards evidence 15, it is concluded that individuals with a breakthrough infection have similar viral loads to unvaccinated individuals and are able to effectively spread the infection under domestic conditions, including to fully vaccinated contacts. With respect to Exhibit 16, many decision makers assumed that vaccinated individuals could be excluded as a source of potential infection. It appears to be grossly negligent to neglect vaccinated

the population as a potential and essential source of infection when deciding on public health measures. The above evidence also shows that the admission of vaccinated persons to public premises under the coronavirus passport has in fact created a situation where individuals who, despite vaccination, have contracted covid-19 have been able to and have spread coronavirus to other - unsuspecting - fellow human beings. In order to respect equality and at the same time - as the government has stated it wanted to do - to protect people from coronavirus, all customers who tried to enter the Fazer Kluuvi café should have been tested for coronavirus.
As for documentary evidence 17, coronavirus vaccines have not prevented the disease, with coronavirus infections being found in Israel (which was at the forefront of the distribution of coronavirus vaccines) in those who received a third dose of the vaccine. Documentary evidence 18 continues the trend in Israel, showing that almost all adults in Israel have been vaccinated, but that coronavirus has only spread.
Vaccination has not prevented the spread of the disease, nor the transmission of the disease among those vaccinated. Exhibit 19 states that a full vaccine series has resulted in coronavirus infections among nurses in Ostrobothnia, Exhibit 20 states that in Pirkanmaa, an increase in vaccination coverage correlates with an increase in the incidence of covid-19 disease, and Exhibit 21 states that in Kainuu Central Hospital, coronavirus infections have occurred among patients and staff who have received coronavirus vaccination. Thus, according to this evidence, the vaccine has not prevented the spread of coronavirus disease; on the contrary, there are indications that it has even accelerated the spread of the disease.

According to Exhibit 31, Nohynek, a senior physician at the THL, says that the studies found that the vaccine only slightly reduced forward transmission, and that the idea of the benefits of the vaccine was too black and white and did not even reflect the scientific knowledge at the time. "The vaccine protected against infection, but only moderately and for a short time". According to Exhibit 32, the European Medicines Agency (EMA) stated that the covid-19 vaccine was not intended to prevent the transmission of disease from one person to another and that the vaccine was only intended to protect those vaccinated. The EMEA's statement indicates that even if Vauhkala had taken the vaccine, it would not have protected anyone else from the disease. Thus, the refusal to allow Vauhkala access to the Fazer café has not protected anyone, has not protected legal interests, but has instead infringed Vauhkala's right to equal treatment and the right of access to the restaurant guaranteed by the European Convention on Human Rights. According to Exhibit 34, the national expert group on vaccination, KRAR, considered, according to THL Kontio, that since vaccination does not completely prevent infections, vaccination would not be the primary means of preventing infections. Further, according to Kontio, herd immunity could not be discussed because it was not achieved.

The district court merely acknowledges the medical assessment of the case by stating the following:

> *"The district court assessed the medical evidence presented as showing that the prevailing medical opinion was that the coronavirus vaccines were effective in protecting the vaccinees from serious forms of disease and that the vaccines also helped to prevent the spread of coronavirus. In addition, the coronavirus passport also protected other fundamental rights of citizens and reduced the burden on the health care system in the face of a challenging disease situation. The purpose of the coronavirus passport legislation was to ensure the widest possible enjoyment of citizens' fundamental rights and to prevent the harm to society caused by a pandemic."*

In light of the evidence presented in the case, we find highly questionable the district court's assertion that coronary vaccines would have helped prevent the spread of coronavirus in the fall and December of 2021.
In any event, limiting fundamental rights solely on the basis of "helpful" utility does not satisfy the proportionality and necessity requirement of the conditions for limiting fundamental rights; here, the district court fails to make this proportionality assessment entirely.

Corona testing performed with an unreliable test

According to the State, Vauhkala was also not discriminated against on the grounds that he could have obtained a negative PCR test result every 72 hours. However, this would have cost between €100 and €200 per session, which would have meant an extra €1000 to €2000 per month just to enable Mr Vauhkala to enjoy his rights under the Constitution and the ECHR. This would of course have been considered a violation of fundamental rights in principle.

However, the plaintiff also questions the effectiveness of PCR tests. On the basis of the opinion of the expert Astrid Stuckelberger, it must be concluded that the PCR tests used by the Finnish authorities give 97 % false positive results. Consequently, restrictions of fundamental rights based on PCR tests cannot meet the general conditions for restrictions of fundamental rights. It should also be noted that the Constitutional Committee - despite relying on medical knowledge - has not assessed the conditions for the use of PCR tests, even though they have played a key role in assessing the incidence of coronary heart disease. It must be held that the Constitutional Committee did not carry out an adequate assessment of the legislation on the coronary passport by failing to assess the possible unreliability of the PCR test. In practice, the spread and extent of Covid-19 has been assessed solely on the basis of the results of PCR tests. It is to be feared that this

the test format has resulted in a very high number of false positive results, leading to unnecessary restrictions on the fundamental and human rights of the persons concerned.

On this basis alone, the Helsinki Court of Appeal should grant Vauhkala leave for further proceedings in order to assess the constitutionality of the coronary passport legislation in relation to the detection of covid-19 almost exclusively by PCR testing.

Stückelberger's expert testimony indicates that the PCR test results have not reliably predicted the health status or infectivity of the person being tested for coronavirus. A coronavirus passport could be obtained with a negative coronavirus test result, in addition to the so-called green coronavirus vaccination and coronavirus disease, even though the coronavirus test did not meet the expectations of the coronavirus passport legislation.

It is undisputed that the infection by Covid-19 is established on the basis of the PCR test result and to this end the applicant has submitted a number of written proofs. It is clear from Mr Stückelberger's statement that the PCR test is not a diagnostic tool and that in any event it cannot be said with certainty whether a positive test indicates the presence of residual antibodies to the virus or to an old infection in the sample. The US Centers for Disease Control and Prevention (CDC) has also stated in its guidelines for the use of PCR that *"the detection of viral RNA does not necessarily indicate the presence of an infectious virus or that 2019-nCoV is the cause of clinical symptoms"*. These facts alone are sufficient to demonstrate that PCR test results, and hence corona statistics, are unreliable.

In relation to a domestic sample study in the HUS region, the State argued that in this sample study positive PCR test results would have been achieved with relatively low Ct values, which would make the test results reliable. However, our evidence 31 - the HUS diagnostic centre's HUSLAB study document - shows that the HUS diagnostic centre itself claims that the Ct value does not allow reliable conclusions to be drawn about the viral load of the sampled person and thus his or her infectivity, and that there are large uncertainties in the clinical interpretation of the samples in general. Because of this high uncertainty, PCR test results therefore do not reliably indicate anything about a subject's morbidity or infectivity to coronavirus.

The high level of uncertainty in the PCR test results highlighted by the HUS diagnostic centre is explained by the scientific facts presented in Stückelberger's statement. PCR technology can identify the genetic material of a virus, but not the whole virus: although PCR technology is good at correctly identifying the genetic material of a virus, it does not detect whether it comes from a whole

about the virus. Therefore, the PCR test cannot diagnose any viral infection and is not a valid test for demonstrating infectivity.

COVID patients are infectious for 7-8 days, but an infected person can test positive for PCR even if they are no longer sick or infectious. People with a history of COVID can have a positive PCR test result for 80 days or more, even if they are no longer sick, infected or infectious. Patients who are immune and have never had symptoms can test positive.

In his expert and witness testimony, THL Chief Medical Officer Nohynek has said that PCR tests are very sensitive and do not give the full picture of infectivity. PCR test results can remain positive long after the end of infectivity. A person may excrete traces of the virus but not necessarily be infectious. In fact, in a statement to the Helsinki District Court, Mr Nohynek confirmed Mr Stückelberger's statement.

The district court acknowledges the above evidence as follows (pp. 47 and 51 of the operative part of the judgment):

> *The district court also notes that the interest rate vaccine was not the only condition for obtaining the interest rate passport. If a person has not wanted/has not been able to take a coronary vaccine, such a person has also been able to obtain a coronary passport by obtaining a negative coronary test, or if the person had a coronary disease within the last six months. If Mr Vauhkala did not want to take the coronary vaccines because he considered it against his religious convictions to do so, he was never forced to do so. This must be taken into account when assessing the compatibility of the interest rate passport legislation with Article 9 of the EIS, specifically from the perspective of the principle of proportionality. And in any case, the interest passport legislation was only in force for operators who do not provide a so-called 'necessity service'. Thus, for example, pharmacies or grocery stores were not required to have a passport, which is an important consideration when examining whether the proportionality condition of the passport legislation is fulfilled.*

The district court thus does not in any way consider the evidence presented in the case regarding the reliability of the corona tests or the fact that the tests were paid for, but merely states that Vauhkala would have had the opportunity to take the tests if he so wished. The district court thus completely ignores and disregards the relevant evidence. This omission of factual reasoning alone renders the judgment unlawful.

Interest rate passport legislation loses Constitutional Committee approval

In the applicant's view, the oral testimonies and the written evidence show that the Council of State did not take medical information into account at the time when the interest rate passport legislation was drafted, that distorted or at least outdated medical information on the benefits of vaccines was most probably communicated to the Constitutional Committee and that the interest rate passport legislation could not have been based on up-to-date medical information.

By 10.12.2021 at the latest, the interest rate passport legislation did not meet the criteria for general restrictions of fundamental rights, because the restriction, i.e. the requirement of an interest rate passport as a condition for access to a catering establishment, was not suitable to achieve the stated objective. That was because the condition for obtaining a coronary passport, namely the taking of a coronary vaccine, did not result in the coronary disease not spreading and the coronary vaccine could only protect at most the person who had taken the coronary vaccine himself. If Mr Vauhkala had taken the coronary vaccine and had obtained a green coronary pass which would have enabled him to enter the Fazer Kluuvi café, the situation with regard to the transmission of coronary heart disease would not have changed in any way for those who had already been in the café and who had not yet been vaccinated.
for any new customers that may come to the site.

In this way, the Constitutional Committee cannot be considered to have assessed the constitutionality of the interest rate passport legislation when the constitutionality of the legislation has changed in the light of changing medical knowledge. The Government should have followed the evolution of medical knowledge. This is not what the Council of State has done. Further, the Council of State should have taken corrective measures to the regulation, as the Constitutional Committee has required. Since the Government has not taken corrective measures, the interest rate passport legislation has lost the constitutional approval given to it by the Constitutional Committee.

Violations of Article 124 of the Constitution

The state's interest rate passport legislation has also been unconstitutional because it has enabled a significant transfer of public power to a private company, in this case Fazer Restaurants Ltd. The legislation has allowed a private company to decide for itself when to require a passport as a condition of entry to a restaurant.

Fazer Restaurants Ltd has demanded a coupon pass as a condition for access to its premises throughout its opening hours, usually only from 5pm onwards in other restaurants. Article 124 of the Constitution

"A *public administrative task may be entrusted to a person other than a public authority only by law or statute.*

if it is necessary for the proper performance of the task and does not undermine fundamental rights, legal certainty or other requirements of good administration. However, tasks involving the exercise of significant public authority may be entrusted only to a public authority." Barring access to a restaurant for the whole day, as an exception to other businesses in the same sector, involved a significant exercise of official authority which can only be entrusted to a public authority. The purpose of the Communicable Diseases Act is to prevent communicable diseases and their spread and the harm they cause to people and society, not to regulate the opening hours of businesses. The closure of shops is aimed at preventing the spread of covid-19 and, while the closure of shops has an effect on the protection of the public from the spread of covid-19, the closure of shops has an effect on the protection of the public from the spread of covid-19.
§, the right to freedom of trade and industry cannot be transferred to a private undertaking, but such a task involving the exercise of significant public authority could only have been entrusted to a public authority.

The applicant further submits that the fact that an ordinary restaurant employee is entitled to check the interest rate passport through which the restaurant employee has access to Vauhkala's personal health information also constitutes a significant exercise of official authority.

The obvious unconstitutionality of the interest rate passport legislation is evident from the fact that the legislation, namely Section 58i of the Communicable Diseases Act, has not been precise, but has left it to the private operator, in this case Fazer Ravintolat Oy, to choose whether or not to infringe fundamental rights. The representatives of the Fazer group had the option of choosing either to act in a non-discriminatory manner towards the applicant
which would have resulted in financial losses for Fazer, or discriminatory behaviour towards the applicant. The defence of a breach of fundamental rights on the basis of financial loss is not in accordance with the law. According to Mr Kostilainen, the defendant's managing director, 'the material you refer to elsewhere (on the website of the Regional Administrative Office) states that "it is up to the catering trade to determine the dates on which it adopts the interest rate pass".

When the legislation is not specific, i.e. it allows a private company to decide whether or not to prevent an individual from entering its premises based on presumed health information at a certain time of day, the legislation does not comply with the doctrine of restriction of fundamental rights. As the defendant's CEO himself explains in his letter to the applicant, it has exercised the "right" mentioned on the Regional Administrative Office's website to determine for itself the times at which the company has introduced the interest rate pass.

The district court stated the following in response to our arguments above concerning Article 124 of the Constitution (p. 56 of the judgment):

> *"The district court finds that this issue was also clarified in accordance with established practice when the coronet certificate legislation was introduced and that there is no significant exercise of public authority when a cafeteria worker merely checks whether a person has a coronet certificate or not."*

However, it is not clear from the district court's decision what this "established practice" is, and how the matter was resolved accordingly. Indeed, this particular question was not addressed in the Parliamentary Papers (HE 131/2021 vp), apart from Mr Hidén's attempt to raise the issue in his opinion. The district court thus simply ignores and disregards the applicant's legal arguments by 'holding' that the case is not as the applicant claims, without giving any reasoning. The parties are thus unable to assess the legal reasoning on which the decision is based. The decision is therefore not sufficiently reasoned in the way required by the case-law: according to KHO 2019:110, the adequacy of the reasons given for an administrative decision must be considered from the perspective of whether the party's right to obtain a reasoned decision and to appeal against it can be effectively safeguarded.

The importance of the matter is also reflected in the fact that the Constitutional Committee has not taken any position on this issue in its opinions, which shows that this is a genuinely open issue on which the Court should take a position on the basis of the Constitution, based on legislation, legal principles and case law. In an ambiguous situation, and especially where the issue has not been properly addressed at the drafting stage, the issue should be interpreted in favour of the applicant. In order to legally assess the definition of a function exercising significant public authority and whether the communicable disease law and the measures taken by the authorities have transferred significant public authority to a non-public authority, we respectfully request the Helsinki Court of Appeal to grant Vauhkala leave to proceed in the case.

<u>Preparation of interest rate passport legislation unconstitutional</u>

Furthermore, the district court has not assessed in any way the apparent unconstitutionality in the context of the preparation of the interest rate passport legislation that, when the plaintiff requested the State to provide the preparatory documents for the interest rate passport legislation, the State has stated during the litigation process that it does not have such preparatory documents, but the State has relied only on the statements made by the THL. This is contrary to the position taken by the Constitutional Committee, which in its opinion PeVL 11/2016 vp - HE 13/2016 vp (in relation to the Government's

on the proposal to Parliament for a law on communicable diseases and certain related laws), it is stated that*, according to the general explanatory memorandum of the Government proposal, the basic draft of the Government proposal was prepared by a consultant commissioned by the Ministry of Social Affairs and Health. Legislative drafting is one of the main tasks of the ministries. It is clear that it cannot be outsourced. In practice, however, it has been held that this does not prevent external studies or expert advice from being obtained.*

In the present case, however, it is undisputed that, according to the State's statement, the preparation of the interest rate passport legislation was entirely based on the statements and preparation of the THL, not the ministries. We respectfully request the Helsinki Court of Appeal to grant leave for further proceedings in the case also so that the State's statement that it relied solely on statements made by the THL in the preparation of the interest rate passport legislation can be examined and it can be determined whether the preparation of the interest rate passport legislation violated the view of the Constitutional Committee that the preparation of legislation is one of the most important tasks of the ministries.

When the State relies in its evidence, inter alia, on the THL's weekly bulletins, it is clear that what is at issue is not the opinions of an impartial expert body, but an organisation directly and obviously centrally involved in the preparation of the interest rate passport legislation, whose bulletins have supported the legislation prepared by the organisation. Consequently, the State's evidence in this respect cannot be considered credible.

Application of Section 28 of the Non-Discrimination Act to the case

Vauhkala also considers that the Helsinki District Court did not assess the meaning of Section 28 of the Equality Act in the case. For this reason, too, leave to continue the proceedings should be granted.

When Vauhkala has provided sufficient grounds in the course of the proceedings for his claim that he has been discriminated against by both Fazer and the State, it is for the respondents to prove that there has been no breach of the prohibition, pursuant to Section 28 of the Equality Act.

However, the State has done everything in its power during the legal process to prevent the case from being resolved. Vauhkala has not succeeded, despite his representations, in getting the State's representatives, former Prime Minister Sanna Marini and the head of department of the Ministry of Justice, Koskela, to testify in court.

Despite the request for a preliminary ruling, the State has not handed over the above-mentioned preparatory documents for the coronavirus passport legislation, nor the contracts for the supply of coronavirus mRNA vaccines in so far as they concern the coronavirus vaccines supplied to Finland.

The importance of the supply contracts would be

was to see whether the vaccines had been guaranteed by the manufacturer to work and whether they had been tested to ensure that they did work.

Violations of the European Convention on Human Rights

Vauhkala is also seeking leave to continue the proceedings on the grounds that the Court of Appeal should assess whether the ECHR and the case law of the European Court of Human Rights apply to Vauhkala's case. The Helsinki District Court has held, with very brief reasoning, that in the Vauhkala case there is no reason to consider that the State has committed a human rights violation against Vauhkala.

The district court's view is based solely on the opinion of Salminen, who gave an expert opinion on behalf of the State, that the jewellery certificate has been assessed in the opinions of the Constitutional Committee as meeting the requirements of admissibility and proportionality for fundamental rights restrictions and further that *"the assessment is in line with the requirements of the EIS for corresponding fundamental rights restrictions and that therefore the fundamental rights restrictions do not violate the obligations of the EIS either".* According to the district court's statement, *"Salminen has stated that it is well established that bills under review by the Constitutional Committee also undergo a similar test of compatibility with human rights conventions, and that this has been held to be the correct interpretation of the EIS".* In its judgment, the District Court further relies on Salminen, stating that *"Salminen has also stated that, in addition to the factors mentioned in the PeVL's opinion, and in view of the very short time-limits for the legislation to come into force, he considered it to be clear that the regulation of the coronet certificate fulfilled the proportionality requirements of legislation restricting a fundamental right."*

Further, in the judgment, the district court states that *"the district court will assess the relevance of the report of the plaintiff's witness Muukkonen below, but already states here that Muukkonen has not provided any relevant information in this regard that would affect this assessment."*

For the reasons set out below, Vauhkala's case has a very similar relationship to the ECHR, and the district court's disregard of the ECHR on the basis of Salminen's statement alone also disregards Vauhkala's right to a fair trial. In this regard, we conclude that obtaining leave to proceed is essential to the realisation of Vauhkala's right to a fair trial under Article 6 ECHR.

As the district court refused to assess the case for violations of the ECHR and relied in its reasoning only on Salminen's statement, we recall that already at the beginning of the application for leave to continue the proceedings we stated that the oral hearing of the legal expert appointed by the defendant, Janne Salminen, at the main hearing was contrary to the prevailing case-law for the following reasons:

According to established Finnish case law, legal experts are not heard orally in court proceedings. Even the Finnish State itself, through its agent, stated the following in its reply to the District Court on 31 August 2022:

> *117. The (oral) hearing of legal experts is not part of the Finnish procedure. The key principle is that the court knows the law (jura novit curia). The parties (typically through their agents/attorneys) can of course present their legal arguments in their pleadings, and in particular in the final report, and may refer to and present legal sources and expert opinions to the court if they wish.*

We agree with the view expressed in the State's 31.8.2022 reply that legal experts should not, in principle, be heard orally as experts in Finnish court proceedings. We therefore wonder why the State, in complete contradiction to its earlier statement, has nevertheless summoned Salminen to be heard orally, and why the District Court has accepted this.

For the reasons stated above, we are of the opinion that the district court should have refused Salminen's oral hearing under Chapter 17, Section 8 of the Code of Judicial Procedure, as it can be replaced by substantially less costly or time-consuming and substantially more reliable evidence (Salminen's written expert testimony), and as his oral hearing is unnecessary in any event from the point of view of the prevailing Finnish judicial culture. That view was confirmed during the oral hearing of Mr Salminen at the main hearing, since he did not say anything orally at the main hearing that had not already been read in his written expert report; rather, he appeared to be merely reading out extracts from his written report.

The district court should have taken into account the above-mentioned unnecessary oral hearing of Salminen as a matter of course, especially since it refused to hear the applicant's main witnesses, Sanna Marini and Satu Koskela. The mere equality of the parties before the law and the adversarial principle require that the district court should have taken into account of its own motion such a

fundamental issues of procedural management in an appropriate manner and with respect for the rights of the parties.

Muukkonen is a doctor of law by training and, as he told the district court, he has offered to write an assessment of the implementation of unvaccinated fundamental rights in relation to the interest rate passport legislation for the Constitutional Committee, an offer that the Ministry of Social Affairs and Health and the Ministry of Education and Culture have not taken up. He is also the author of the only peer-reviewed legal article on the passport and fundamental rights, which is included in the written evidence submitted to the Vauhkala District Court.

Ignoring Muukkonen's opinion without a valid reason

The district court has effectively completely ignored the significance of Muukkonen's testimony and the peer-reviewed legal article he wrote, on the sole basis that Muukkonen would not have assessed the right to life in any way. However, there are many fundamental rights, and no single one of them can be elevated to a level of importance vastly superior to others. Muukkonen has also pointed this out in his witness statement to the district court, stating that fundamental rights form a coherent whole, from which it is not possible to separate the pieces and place them in an unequal position. According to him, fundamental rights are assessed on a case-by-case basis. For example, according to the WHO definition, health is not only the absence of disease-causing elements, such as a virus, but is above all the totality of a meaningful life. If a person is unable to live a full life, for example because of forced medical interventions and restrictions, this in fact and according to research shortens life and negatively affects the quality of life.

In any case, even if Muukkonen had mentioned something about the right to life and health in his article, it would not have refuted the main legal observation of Muukkonen's article, which was completely ignored by the district court - from the perspective of the fundamental rights system, it would have been a less intrusive interference with the rights of the unvaccinated (including the plaintiff) if they had been offered free testing (Muukkonen's article p. 13), and therefore the interest rate passport legislation did not meet the proportionality requirement of the fundamental rights restrictions.

In order to address these issues as well, we respectfully request the Helsinki Court of Appeal to grant leave to proceed.

Vauhkala's own view has been left aside

According to Vauhkala, the central problem with the district court's judgment in relation to the fair trial process is that his own views are in practice completely omitted from the judgment. The district court has acknowledged that Vauhkala has religious beliefs, but nothing else is actually apparent from what Vauhkala himself has said about this in court. However, also according to the case-law of the Supreme Court (KKO:2016:20), the assessment of the offence experienced by an individual is based on the feeling of offence experienced by the individual himself, and this cannot be brought out except by hearing the individual and assessing his account. In practice, the district court has not done this at all. The case is also important in the sense that the district court has, throughout the judgment, referred to the case law of the Supreme Court in relation to the conditions for the State to be liable for damages for human rights violations. These are: (i) the violation of human rights has occurred; (ii) the violation can be considered sufficiently serious; (iii) the violation has caused causal damage.

The severity of the injury and the causal damage should therefore be assessed on the basis of the injury and the depth of the injury experienced by Vauhkala himself.

Vauhkala has actively sought to find out

a) whether he or she belongs to a coronary heart disease risk group to which he or she does not belong
b) what the consequences of taking a coronary vaccine might be for him or her. Through her own research, she has concluded that her risk of becoming seriously ill from the coronary was minimal, and she did not want to take the risk that she, in turn, could suffer serious health damage from the vaccine.

Vauhkala has told the court that his religious beliefs have been at odds with the fact that a potentially harmful vaccine could harm the body of Christ, which is made up of believers together. Vauhkala also knew that the coronary vaccine and the medical procedure in general were voluntary and that refusal of a voluntary procedure should not lead to the annulment of fundamental rights.

At Fazer Kluuvi café, Vauhkala has been prevented from entering the café after a short argument because he did not have his interest rate pass. Mr Vauhkala said that customers at the Fazer café had been watching the discussion between him and the employees. Mr Vauhkala felt that he did not belong and that he was an inferior citizen. During the hearing, he said that he had also been prevented from accessing services on several occasions at a later stage. Vauhkala was

was subjected to many public attacks on the group of people he considered himself to represent, namely people who deliberately - either for so-called ideological or religious or other reasons - refused coronary vaccines. That group of people considered that they had the right to bodily integrity and the right to refuse medical interventions. According to Vauhkala, those attacks included the April 2021 writing by Ilta-Sanomie journalist Manninen about unvaccinated people as kulkus and the October 2021 declaration by Bishop Laajasalo that the unvaccinated are responsible for the death of their fellow human beings. In November, Lasse Lehtonen had called for marketing and propaganda to force people to get coronary vaccinations. Vauhkala saw this action by public figures and decision-makers as demonising and stigmatising her.

Vauhkala told the hearing that public pressure and repeated refusals to serve him made him feel like he was living in an open prison, where he would only be allowed to go to the convenience store, but not much else. He has felt that he was put in this situation through no fault of his own. He said that he had started to plan to move away from Helsinki to find a place where he would not feel that he was living in open prison conditions. What was particularly painful for Vauhkala was that she did not know how long the situation would last and even formed an association to fight for the constitutional rights of people like her.

Vauhkala has made the decision not to have coronary heart transplants out of an informed inquiry and religious conviction. He has told the hearing that he had heard in the spring of 2021 about Jari, who had been blinded in one eye due to a Pfizer coronary vaccine and had also received medical compensation for this. Vauhkala had later met this Jari. He had earlier seen a video statement by Kary Mullis, the developer of the PCR test, in which Mullis said that the test had not been developed to detect the disease. Vauhkala knew that international pharmaceutical companies had been repeatedly fined billions of dollars for dishonest practices in the marketing of medicines.
As he continues to investigate the corona issue, he has uncovered a wealth of other information about how coronary vaccines have harmed people. He has also heard from a client who came to his firm's office about a young person whose health had been completely ruined by a so-called "pig shot". In his research, he has discovered that coronary vaccines have been recommended for high-risk groups, which Vauhkala, as an active, healthy person, does not belong to.

Vauhkala went on to say that he had been a Christian since 1994. His faith includes the view that believers are the body of Christ on earth and that this temple of God must be cared for. Having been aware of the above-mentioned disadvantages, which

and the fact that he cannot be at risk from coronavirus when he is healthy and fit, he has decided not to take the vaccines. He also knew that by taking the coronavirus vaccine he could not protect others, but that people at risk had to protect themselves by taking the coronavirus vaccine themselves.

Vauhkala has belonged to two different groups whose rights have been violated by the state through the constitutional and ECHR interest rate passport legislation and its practical implementation. On the one hand, Mr Vauhkala was a healthy individual who, for ideological reasons, did not wish to take the corona mRNA vaccine and, on the other hand, his religious convictions prohibited him from taking the vaccine, which he considered, on the basis of his own knowledge, based, inter alia, on information from acquaintances and knowledge acquired during his studies, could damage his body, which, on the basis of his faith, is part of the body of Christ, which believers must take the best possible care of. The ideological view of those who do not have a coronary vaccination is also protected by law, since Article 6 of the Patients' Act, Article 5 of the Oviedo Convention and point IV of the Code of Medical Ethics guarantee that no one is obliged to consent to a medical procedure against his or her will.

The case law of the ECtHR in relation to national law

The European Court of Human Rights is above the Finnish court system in human rights matters, and Finnish courts must follow the case law of the ECtHR in their own decisions. In the District Court's view, Salminen's statement that the Constitutional Committee has already assessed the compatibility of the interest rate passport legislation with the ECHR is sufficient to ensure that the state has complied with the ECHR in the Vauhkala case. This is not supported by the case law of the European Court of Human Rights, as it is the task of the ECtHR to assess the compliance of states that have signed up to the EIS with the ECHR. The case law of the ECtHR has shown that even national legislation has directly allowed for a violation of an individual's human rights. In *Norris v. Ireland* (1988), the ECtHR held that Irish legislation has allowed for a persistent interference with an applicant's right to respect for his private life, which the Court has held to be a violation of the ECHR.

The European Court of Human Rights case *I.B. v. Greece* (2013) is directly linked to the Vauhkala case and serves as a precedent for the case. The case of *I.B. v. Greece* concerned an HIV-positive patient.

dismissal of a positive complainant shortly after diagnosis. The appellant's claims for compensation were partially successful in the lower courts, but the country's highest court dismissed the claims on narrow grounds and using a manifestly incorrect premise about the infectious nature of the disease. According to the ECtHR, the procedure amounted to discrimination under Article 14 of the European Convention on Human Rights (ECHR) in relation to the protection of private life guaranteed by Article 8. The present case is very similar to the ECtHR case, in that the introduction of the interest rate passport was also based on a manifestly false premise about the infectiousness of covid-19: at the time of the dismissal in the ECtHR case, it was widely known that HIV:HIV carrier does not transmit HIV in normal human-to-human contact, and similarly it was already widely known at the time of the preparation of the coronavirus legislation that non-coronavirus persons do not transmit SARS-CoV-2 in normal human-to-human contact in a different way from coronavirus persons.

The case law of the ECtHR attaches considerable importance to the resolutions of the Parliamentary Assembly of the Council of Europe. PACE Resolution 2361 (2021): in paragraph 7.3.2, the Assembly requires its Member States, including the European Parliament, to. In Article 7.3.2, the PACE states that no one should be discriminated against on the grounds of non-vaccination, whether this is due to potential health risks or simply to a lack of willingness to be vaccinated. For this reason, too, non-vaccination - and indirectly non-immunisation - must be seen in the light of Articles 14 and 14 of the ECHR.
as "other status-based grounds" within the meaning of the 12th Additional Protocol. Of particular note is paragraph 13.3.8 of Resolution 2383 (2021) of the Parliamentary Assembly of the Council of Europe, which states that, in order to avoid discrimination in the use of the passport, due attention should be paid to situations where people refuse to be vaccinated for reasons of personal opinion or belief, and that, in particular for this group of people, Member States should ensure that any passport system would not in practice lead to pressure or make compulsory the use of the passport.

The District Court correctly states that the resolutions of the Parliamentary Assembly of the Council of Europe are not directly legally binding, but in fact the European Court of Human Rights gives them considerable importance in its case law, and since Finnish courts should also apply the case law of the ECtHR in their judgments, the Helsinki District Court should have done the same.

The following extract from the grounds of the judgment is particularly noteworthy (p. 52):

> *The district court notes that both of the sections of the PACE Resolution cited by the plaintiff (7.3.1 and 7.3.2), however, mention that, while ensuring that,*

> *that no one is pressured or discriminated against for not being vaccinated, but also to ensure high vaccination coverage. The statements also show that the epidemiological situation and estimates within a country are best assessed by local authorities. Furthermore, the PACE resolution is not legally binding on an EU Member State.*
>
> *The district court considers that the applicant has also failed to show that the PACE Decision was breached by the State in this case.*

The applicant has already shown that the interest rate passport legislation was oppressive and/or discriminatory towards non-interest rate borrowers. The PACE resolution states that in *addition to* ensuring that no one is pressured or discriminated against for not being vaccinated, a high level of vaccination coverage must be ensured. In other words, vaccination coverage should not have been ensured by pressuring or discriminating against the unvaccinated, as was done in Finland. In addition, the objective of increasing vaccination coverage was not officially raised in Finland at any stage of the preparation of the Interest Rate Passport Act. Despite this, however, the district court ultimately held, contrary to the logical conclusion of its reasoning, that the applicant had *not* shown that the resolution had been breached by the State. The district court's reasoning does not follow the rules of logical syllogism, and is thus internally inconsistent with itself.

The ECtHR case of Vavricka and others v. Czech Republic

The State argued that the case of *Vavricka v. Czech Republic* (2021) would have been applicable as a preliminary ruling also in the present case. The case concerned compulsory polio vaccinations for children and the discretionary power of the State to impose such obligations on its administrative subjects. However, the applicant gave full and detailed reasons in the Helsinki District Court why that case was inapplicable to the case as a matter of law in any respect:

1) The case concerned traditional vaccines that had been in use for decades and whose safety profile and potential short- and long-term adverse effects had become very clear to the scientific community and the public (see, for example, paragraph 290 of the Vavricka judgment: *'The vaccination duty concerns nine diseases against which vaccination is considered effective and safe by the scientific community'*). In contrast, most of the coronavirus vaccines used in Finland were new-technology mRNA vaccines that had never been used in humans before the coronavirus era, and whose mechanism of action is completely different from that of conventional vaccines, as our Exhibits 23-26 show. Moreover, there was no consensus in the scientific community on the safety and efficacy of mRNA vaccines.

2) The Vavricka case was largely based on the fact that sufficiently high vaccination coverage (polio and other traditional vaccines) creates a so-called "*herd protection*" or "*herd immunity" effect*, which is in the public interest of the Member States and may justify some restriction of the privacy of individual citizens (cf. See paragraph 276 of the ECtHR judgment, and e.g. the opinion of the Czech State General Health Authority in paragraph 153 of the Vavřička judgment; the French intervention, in particular paragraphs 213 and 215, and the Polish intervention, in particular paragraph 223). However, as is clear from our evidence, the coronary vaccines did not cause such a herd immunity effect, i.e. the coronary vaccines did not prevent the spread of the disease, or even the contracting of the disease, and this was already known in the autumn of 2021 (see, for example, the applicant's written Exhibit 34, in which Mia Kontio, a leading expert at the THL, stated in November 2021 that there could be no question of herd immunity in the case of coronary vaccines).
3) A key finding of the ECtHR was also that Czech law allowed for a derogation from the vaccination requirement without the threat of sanction if the party concerned presented a "permanent contraindication" to vaccinating his child (paragraph 291 of the judgment, *"a permanent contraindication to vaccination"*). A contraindication is a reason or obstacle to the use of a medicine or other treatment (source: https://www.terveyskirjasto.fi/ltt03681). In Finland, in order to avoid the strong vaccination pressure imposed by the coronavirus passport, the applicant Vauhkala had practically no alternative but to contract the coronavirus disease or to pay 100-200 euros every three days.
4) The applicant further submitted that the Vavřička case's legal ruling that compulsory vaccination interferes with the right under Article 8(1) ECHR must be interpreted, in particular in the light of the aforementioned PACE resolution, as meaning that strong political and social pressure, in particular to take mRNA vaccines previously unused in humans, which were available under conditional marketing authorisations, also interferes with the right under Article 8(1) ECHR.

The district court rebutted all of the above arguments in the Vavricka case as follows (judgment pp. 47-48):

> *The District Court also considers that the case of Vavricka v Czech Republic, decided by the ECtHR, leads to the conclusion, as interpreted by the respondent, that the State has a wide discretion to protect the sustainability of health and health care at the population level and a strong right to protect and introduce appropriate measures for the protection of the health and health of persons.*

> *to protect life and health, and that it is proportionate to require those for whom vaccination represents a remote health risk to accept this universal safeguard in the name of social solidarity for the benefit of those who, for health reasons, are unable to obtain vaccines.*

The district court thus once again completely ignored and disregarded the arguments put forward by the plaintiff; even the concept of social solidarity used by the district court was based on the herd protection effect of traditional vaccines, which, according to Mia Kontio, a leading expert at the THL, could not be mentioned in the case of coronary vaccines. In fact, the rest of the district court's reasoning is a direct quotation from the State's statement of objections of 31 August 2023 (paragraph 47, p. 16):

> *Furthermore, the ECtHR stated that it cannot be considered disproportionate to require those for whom vaccination represents a remote health risk to accept this generally applicable safeguard in the name of social solidarity for the benefit of those who, for health reasons, are unable to obtain vaccines.*

The district court thus completely ignores the extensive arguments put forward by the plaintiff, and merely copies directly the defendant's old written statement (which was not even presented at the main hearing, and on which the judgment should therefore not even be based), which is not, however, applicable as a legal guide in the present case, since the coronary vaccinations were not even capable of producing a herd protection effect, and could therefore not be demanded from anyone "in the name of social solidarity". The reasoning of the district court therefore does not in any way respond to the arguments put forward by the applicant and the judgment is, for that reason alone, inadequately reasoned and therefore unlawful.

The position of healthy unvaccinated people in relation to the interest rate passport legislation has not been assessed at all

We also ask the Helsinki Court of Appeal for leave to continue the proceedings so that the Court of Appeal can assess to what extent the State should have guaranteed the right of healthy unvaccinated persons and persons who refused coronary vaccines on religious grounds to the exercise of their fundamental and human rights.

Vauhkala called Matti Muukkonen, PhD, who has published the only peer-reviewed legal article on the implementation of fundamental rights in the context of interest rate passport legislation, to testify at the main hearing of the district court.

Muukkonen's legal article and his oral hearing considered the question of the circumstances in which a restriction of fundamental rights should be considered a 'basket case'.

the restrictions associated with. According to Mr Muukkonen, the starting point should be the normal situation, i.e. a situation where there are no restrictions, because if the starting point were the existing factual situation, this would in practice mean accepting the idea that one could first restrict fundamental rights on certain grounds and then impose new restrictions by comparing them with the existing restrictions. However, the government had chosen to do otherwise, i.e. to compare the situation created by the interest rate passport legislation with an already restricted society.

According to Muukkonen, no equality assessment of healthy unvaccinated persons was carried out in the Constitutional Committee. The result was that the access of the two healthy persons to the enjoyment of their rights depended entirely on whether or not they had a valid interest rate passport. Mr Muukkonen pointed out that the comparative situation was wrong because vaccination was voluntary and it could not be right that the enjoyment of fundamental rights should be based on consent to a voluntary medical procedure. In fact, even a person who has contracted coronavirus but has obtained a green coronavirus passport would be in a better position than a healthy person who has not obtained a coronavirus passport to enjoy his rights. Nor would this be the correct perspective from the point of view of the fundamental right to life, since a sick person who has obtained a card would most likely spread his disease elsewhere in the space to which he could gain access with a card. According to Muukkonen, the undeclared but de facto aim of the passport legislation has been to increase vaccination coverage, which may be considered highly questionable in the light of the 'overriding social need' criterion of the doctrine of restriction of fundamental rights.

Interest rate testing should have been free of charge to ensure equality

According to Muukkonen, the proportionality principle would have been best fulfilled if the corona test had been free of charge also for persons who did not take coronary vaccines for ideological or other non-health reasons. Article 6.2 of the Constitution requires an acceptable reason for unequal treatment: whether it was acceptable that two healthy people should be placed in an unequal position because one had taken a voluntary action, i.e. had taken the coronary vaccine, and the other had not; on the other hand, a sick and infectious person who had taken the action was placed in a better position versus a healthy and uninfectious person who had not taken the action. And this inequality of treatment in a situation where vaccination was justified precisely on the grounds of preventing infection and reducing the burden of disease. And as we have seen in Muukkonen, Järvinen, Nohynek and Malhotra

expert testimony, it was not necessary or even possible, at least not in principle, to protect the vaccinated group by avoiding the presence of the unvaccinated.

According to Muukkonen, healthy unvaccinated people were also under political and social pressure to get vaccinated: the logic was that you either give up your equal right to services, or you take a full series of vaccinations to validate your passport, or you get sick, or you pay €100-200 every 72 hours for a PCR test. However, PACE Resolution 2361 of 2021, paragraph 7.3.1 of the Parliamentary Assembly of the Council of Europe (PACE) prohibited any political or social pressure on people who refuse coronary vaccination for any reason. In addition, the second PACE Resolution of 2021, number 2383, states in paragraph 13.3.8 that, in order to avoid discrimination in the use of the passport, due attention should be paid to situations where people refuse to be vaccinated for reasons of personal opinion or conviction, and that, in particular for this category of people, Member States should ensure that any passport system would not in practice lead to pressure or effectively make vaccination compulsory.

In his oral hearing, Mr Muukkonen said that he had approached the Ministry of Social Affairs and Health on his own initiative, offering the possibility of "acid testing" the interest rate passport legislation. The STM directed Muukkonen to contact the Ministry of Education and Culture, but there, too, Muukkonen's offer was not taken up. Mr Muukkonen therefore offered to provide a legal assessment of the equal treatment provisions of the passport legislation to the ministries, but they were not interested in this offer. This lack of interest on the part of the ministries has contributed to the fact that Vauhkala, as a healthy unvaccinated person, has been subjected to unequal treatment for no acceptable reason. If the ministries had exercised the duty of care imposed on them by the Constitutional Committee by accepting Mr Muukkonen's legal assessment, the discrimination against Mr Vauhkala would probably not have occurred.

Mr Muukkonen could not explain the reasons for this lack of interest and enthusiasm in the ministries to receive top-quality legal evaluation. On the other hand, Asko Järvinen said in his oral hearing that the interest rate pandemic was "the first political pandemic". By this, Mr Järvinen meant, among other things, that infectious disease doctors, for example, have disagreed with the ministries on measures relating to interest rate restrictions. On the other hand, increasing vaccination coverage was apparently an unspoken goal of the ministries and authorities at large, and perhaps the lack of enthusiasm for Muukkonen's assessment was due to the fact that an objective assessment would have led to it,

that the chosen pressure procedure, which would have led to the desired increase in vaccination coverage, could not have been justified in a transparent and legally sustainable way.

Nor has the position of those who have refused coronary vaccines for religious reasons been assessed in any way during the preparation of the coronary passport legislation.

The enjoyment of fundamental rights cannot depend on wealth

The coronary passport legislation meant that if you refused a voluntary coronary vaccination, you either had to contract a common infectious disease or undergo a coronary test every 72 hours, which cost €100-200 each time, or around €1000-2000 per month. However, the enjoyment of basic and human rights cannot depend on wealth.

We respectfully request the Helsinki Court of Appeal to grant leave for further proceedings also in this case. For the future interpretation of the law, it is necessary to clarify whether, on a fundamental and human rights basis, it is legitimate for the State to require people to pay to enjoy their fundamental and human rights.

The judgment of the district court is also unfounded in its assessment of the individual provisions

The logic of the Helsinki District Court's decision has thus been to first prevent the applicant from calling its key witnesses to the main hearing, not to grant the applicant's requests for redaction, even though these were essential documents of evidence, and then to declare, on very light legal grounds, that the Court has no jurisdiction to assess the constitutionality of the interest rate passport legislation and that the Court does not consider that the State has breached its obligations under the ECHR.

Even if one accepts - and the plaintiff does not accept - the above premises of the court, the district court's assessment still leaves a considerable number of legally essential elements missing.

The district court unlawfully refused to call the applicant to give evidence against the Head of the Department of the Ministry of Social Affairs, Mr Koskela

The most important of these is that the interest rate passport legislation did not directly lead to the submission of an interest rate passport claim in the Fazer Kluuvi café on 10.12.2021, but it still required a separate application in the South of Finland.

A decision by the Finnish Regional Administrative Board that Fazer Ravintolat Oy could have required its customers to present a coupon pass as a condition of admission to the Fazer Kluuvi café at 9 a.m. The applicant's Exhibit 7 is linked to this case. It states that in October the Regional State Administrative Agencies sent a questionnaire to the Ministry of Social Affairs and Health on the grounds on which restrictions should be imposed. In a reply signed by the Head of Department, Mr Koskela, the STM stated that restrictions should be set at a low threshold.

According to the written evidence, the Regional State Administrative Agencies have requested clarification of the guidance issued by the Ministry of Social Affairs and Health on the setting of restrictions using the risk potential assessment table of the National Institute for Health and Welfare, given that

a) According to THL, the table is indicative and

b) according to information from local and regional experts, infections do not currently originate from events that are particularly high risk.

The Regional Administrative Agencies asked:

1. In the event of an epidemic situation where no infections have been estimated to come specifically from public events, will the STM advise to consider imposing restrictions on public events or the use of premises more generally and in spite of the above?

2. If the STM directs that restrictions should be considered more generally, does the STM consider that they should be set at.

- all public events of significant risk mentioned in the THL risk potential assessment table (taking into account that the table is only indicative)?
- for all public events and general meetings?
- all premises covered by § 58d (including premises where low-risk activities according to the THL risk potential assessment table are carried out), if the conditions for the application of § 58d TTL are met?
- in some other way?

3. How can decisions in the above-mentioned situations be justified in a legally sound way?

It is therefore clear from the Regional State Administrative Agencies' questionnaire to the STM that the restrictions are based on an indicative assessment table provided by the THL, which has not been exact, and most obviously not based on medical knowledge, as we will see in the future. Furthermore, the regional administrative agencies were aware at the time (the letter was dated 1 November 2021, less than 1.5 months before the discrimination against Vauhkala) that, according to information from local and regional experts, infections do not currently emanate from high-risk events in particular.

As is clear from the reply signed by Mr Koskela, the letter does not answer any of the questions raised by the regional administrative agencies. The letter is full of generalities, leaving the Regional Administrative Agencies in the dark as to how to react to the fact that the infections did not originate from high-risk events at the time, and how the AVI's decisions should be legally justified.

Based on this unanswered letter, the Southern Finland AVI imposed a restriction in early December for the Helsinki region, among others, on the basis of which the interest rate passport has been requested from the applicant Vauhkala on 10 December 2021 at 9.00 a.m. at Fazer Cafe (Kluuvikatu 3, Helsinki).

According to Article 107 of the Constitution, "*If a provision of a decree or other subordinate legislation is contrary to the Constitution or other law, it may not be applied by a court or other authority.*" The whole episode of Vauhkala's discrimination has started from a restriction decision by ESAVI, based on STM guidelines, which were not based on legal, nor medical grounds. ESAVI's restriction decision was in itself manifestly contrary to the Constitution or other law and should not be applied in court. Thus, the state authority's action was already discriminatory from the outset, even before Vauhkala sought to enter the cafeteria on 10 December 2021 at 9 a.m.

The applicant would have liked to call the STM's Head of Department Koskela to testify in court on the following topic: *'on what medical research or legal assessment has the STM's guidance to the regional administrative agencies been based'.* The district court refused to allow Vauhkala to call Mr Koskela, even though no written or oral evidence on the subject was otherwise available.

According to Vauhkala, the reply given by the Ministry of Social Affairs and Consumer Protection to the Regional State Administrative Agencies was not based on a medical or legal assessment of the need to require a coupon pass in catering establishments such as Fazer Kluuvi, but it nevertheless led the Regional State Administrative Agency for Southern Finland to issue a restriction decision which discriminated against Vauhkala.

10.12.2021 at 9 am. Thus, the decision of the Regional Administrative Office was not necessary from the point of view of interest rate passport legislation and did not lead to the desired result of preventing the spread of covid-19. Furthermore, the objective would have been achieved by less restrictive means, such as asking people to wash their hands thoroughly before entering a café.

It is clear that the decision of the Regional State Administrative Board of Southern Finland to allow the application for an interest rate passport was contrary to the Constitution and the general conditions for limitation of fundamental rights, and therefore cannot be applied before a court or other authority. Further, the decision of the Regional Administrative Agency was contrary to Article 124 of the Constitution in that it allowed the catering establishment, Fazer Kluuvi café, to decide at what time of day it would begin to require its customers to obtain an interest rate pass.

This decision of the Regional State Administrative Agencies, based on an unsubstantiated letter from the Ministry of Social Affairs and Employment alone is sufficient for the Helsinki Court of Appeal to grant Vauhkala leave to continue the proceedings. The fact that the District Court has not allowed Koskela, who signed the STM letter, to be summoned to appear before the court shows that the District Court acted unlawfully in procedural terms and that, for that reason too, leave to continue the proceedings should be granted.

<u>The district court's assessment of the significance of the OKV's report was manifestly erroneous</u>

The defendant State of Finland submitted as written evidence the decision of the Chancellor of Justice V4 of 12 April 2023 concerning a complaint about coronary vaccinations of health care personnel. The applicant submits that this decision has no connection with the case at issue. The District Court states the following (p. 48 of the judgment):

> *"... on 2 December 2022, the Chancellor of Justice's Office (hereinafter referred to as the "OCA") requested a report from the Ministry of Social Affairs and Health (hereinafter referred to as the "MOH") on how the Ministry has monitored the fulfilment of the constitutional requirements of Section 48a of the Communicable Diseases Act (which concerned the coronary vaccination of nurses) and ascertained the existence of those requirements.*
>
> *... On the basis of its subsequent investigation, the OCR has come to the conclusion that it has not found any unlawful conduct or breach of duty on the part of the STM with regard to the monitoring and assessment of the constitutional or medical-epidemiological conditions for the validity of the provision in question.*

> *The District Court considers that the decision of the OKV shows that the STM's procedure for ensuring the constitutionality of the measures taken during the interest rate pandemic was fully acceptable and sufficient."*

The district court's interpretation is completely untenable and, in the plaintiff's view, an obvious sign of bias and/or unprofessionalism on the part of the judges.

First of all, from the OKV's analysis of Article 48a of the MLO, no conclusions or interpretations can be drawn (at least not by means of traditional logical syllogism) that the STM's conduct in ensuring the constitutionality of measures other than the interest rate passport legislation during the interest rate pandemic was also acceptable and sufficient, let alone "fully" acceptable and sufficient, as the district court put it. The argument is logically equivalent to the following syllogism:

> "The building inspector inspected the plumbing in the house and found no wrongdoing or neglect of duty."
>
> ➔ "According to the building inspector, the measures taken by the developer to ensure the safety and compliance of the building's structures were otherwise fully acceptable and adequate."

Such a "conclusion" is a clear indication of bias and/or unprofessionalism on the part of the judges, which renders them either unqualified within the meaning of Chapter 13 of the Code of Judicial Procedure or otherwise unfit to perform their duties.

Secondly, the OMC practically never gives decisions, but mainly solutions. This is another obvious sign of incompetence and/or indifference on the part of the author of the judgment.

Role of the district court in the case

According to the decision of the District Court (p. 45), *"[t]he District Court's task is to decide whether the interest rate passport legislation, in the light of the information available to the legislators at the time of its entry into force, was a justified and acceptable measure to achieve the benefits it sought to achieve, i.e. whether the interest rate passport legislation was, inter alia, in compliance with the EIS binding Finland."*

However, it was not for the district court to decide whether the interest rate passport legislation was, in the light of the information available to the legislators at the time of its enactment, a justified and acceptable measure to achieve the benefits it sought. It was for the district court to determine whether

interest rate passport legislation is a justified and acceptable measure to achieve the benefits it seeks in the light of the information that careful legislators had or should have known.

The applicant has repeatedly and consistently stressed this point of view: according to the opinions of the Constitutional Committee, the Council of State should have carefully assessed the necessity for the regulation to remain in force and, even if that necessity ceased to exist, the Council of State should have amended or repealed the regulation in that respect. Now, in setting and describing its task, the district court completely ignores this position, which has been repeatedly reiterated by the Constitutional Committee. In the applicant's view, this is further evidence of the apparent bias and/or unprofessionalism of the judges.

Decision of the district court on the request for a preliminary ruling

The applicant asked the District Court to order the Finnish State to produce the following documents:

1) copies of contracts between the EU and/or the Finnish state and the various coronary vaccine manufacturers for the procurement of coronary vaccines. From these documents, we seek information on whether the EU and/or the Finnish state has any specific requirements for the functionality or usefulness of the coronary vaccines, e.g. in preventing the contracting or spreading of covid 19, or whether the EU and/or the Finnish state has any other quality requirements for the ordered coronary vaccines. Alternatively, other documents that provide the above information
2) the medical reports on which the so-called "coronary passport" legislation, which was temporarily in force from 2021 to 2022, was based. In particular, the precise details of the medical and other scientific data and studies on which the claim and assumption that the use of the coronary passport would have prevented the spread of covid-19 was based.

The applicant considered that the information requested is relevant as evidence, since the trial is partly about whether the State authorities should have been aware in December 2021 of the scientific knowledge, widely held in the scientific community at the time, that the use of the corona passport did not prevent the spread of covid-19 to a significant extent or even at all. During the parliamentary debate, several expert opinions considered the interest rate passport legislation to be constitutional if its introduction would be beneficial in preventing the spread of covid-19.

The question in this respect is whether the Government has fulfilled its obligation, as emphasised by the Constitutional Committee, to monitor the necessity of the interest rate passport legislation and whether

The Government should have taken steps to correct the regulation before the events at issue on 10 December 2021.

Since the case also concerned coronary vaccines and their role in preventing the spread of coronavirus and the harm they cause as part of the effects of the coronary passport legislation, these agreements may have been relevant as evidence in the case.

In its decision of 27 February 2024, the District Court responded to our request for a preliminary ruling as follows:

> *In the interpretation of Chapter 17, Section 40 of the Code of Judicial Procedure, case law has considered it sufficient that the documents requested may have evidentiary value for some relevant matter requiring evidence (e.g. KKO 2019:7).*
>
> *With regard to the documents required from the Finnish State in paragraph 1, the District Court considers that these contractual documents or other documents referred to and relied on cannot be relevant as evidence in the case. The issue in the case is not the effectiveness or efficiency of the interest rate subsidies, but whether there was a legal basis for the interest rate pass legislation and whether that legislation complied with the EIS and the Equal Treatment Act. Therefore, whether the contractual documents stipulate any requirements for the effectiveness or efficiency of the coronary injections is irrelevant for the resolution of the case. Nor could anything have been inferred from them or from the other documents relied on as to the legality of the Government's actions in relation to the obligation to monitor the necessity of the regulation relied on by the applicant in the autumn of 2021 before 10 December 2021.*
>
> *With regard to the documents required from the Finnish State in paragraph 2, the District Court considers that the medical reports on which the Corona Pass legislation was based are, on the other hand, in the public domain, i.e. no further order is required. These reports are listed in the references to the Government Bill on the Coronary Passport Legislation (131/2021 vp) and can still be found online at the links provided by the defendant*

The reasoning of the district court's decision is absurd and does not stand up to scrutiny: the interest rate passport legislation was based, to a large extent, on the legal question of whether interest rate vaccines were effective or efficient in achieving the objectives of the legislation - preventing the spread of the coronavirus and reducing the burden of disease - and whether the interest rate passport legislation thus met the proportionality and necessity requirements for the restriction of fundamental rights. The applicant has expressly demonstrated by its evidence that the coronary vaccines could not even achieve those objectives, and that this was already known by autumn 2021

at the latest.

Infringement of the Equality Act by Fazer Ravintolat Oy

Fazer Ravintolat Oy has, in the applicant's view, infringed the Non-Discrimination Act. For the application of the law in other similar cases, it is important to grant leave for further proceedings in the case, because the issue is the interpretation of whether Fazer Ravintolat Oy's conduct was based on a law which - even if, from the applicant's point of view, it was unconstitutional and contrary to the European Convention on Human Rights - Fazer Ravintolat Oy was obliged to comply with.

According to the applicant, the company discriminated against Vauhkala by directly preventing her from entering the Fazer Kluuvi café at 9 a.m. on 10 December 2021, and Fazer Ravintolat Oy's conduct was not based on law. According to Section 11 of the Non-Discrimination Act, different treatment does not constitute discrimination if it is based on law.

It is also important to grant leave to continue the proceedings in order to assess whether Fazer Ravintolat Oy should have complied with the whole of the Communicable Diseases Act in relation to the interest rate capsule.
In the judgment of the District Court (p. 56), it is stated, inter alia, that *"the District Court also considers that the violation of these provisions (§ 58 j and h of the TTL) could not in any way constitute a compensatory sanction under § 13 of the Non-Discrimination Act, but that they are mainly procedural provisions assessed as administrative sanctions".*

The applicant considers that, especially in a situation where the interest rate passport legislation undeniably violates Vauhkala's fundamental and human rights, the entire legislation must be strictly observed. The core of the passport legislation arises from Articles 58h, 58i and 58j of the Communicable Diseases Act and they form a whole which the caterers who requested the passport had to comply with strictly in order to ensure that the fundamental rights of the caterers' clients were not violated.

Fazer Ravintolat Oy has failed to comply with Sections 58 h and i of the Communicable Diseases Act in that it has not drawn up a written plan on how it will implement the obligations and restrictions imposed by the AVI's decision, and with Section 58 j in that it has not informed Vauhkala regarding the processing of personal data in the interest rate bag. In accordance with Article 58 h.3 of the Communicable Diseases Act, the Fazer café should have made the plan required by that section available to customers and other participants in its activities, and in accordance with Article 58 i.4 of the TTC, that plan should have included a statement that Fazer requires customers and participants in its activities to present a passport. Furthermore, Article 58h of the TTL provides that a business requiring a passport must have a written plan on how it will implement the obligations and restrictions laid down in the decision referred to in Article 58d(1) of the TTL.

The plaintiff Mika Vauhkala and his friend Mika Jantus, who accompanied Vauhkala to the Fazer Kluuvi café on 10 December 2021 at 9 a.m., were heard in the district court hearing, and according to them, the written plan on how the café would implement the obligations and restrictions imposed by the AVI decision was not available, although the law requires it. Neither were they informed by the café's employees about the processing of personal data in the coupon bag. The district court did not give any consideration to Vauhkala's and Jantunen's account of the matter, but relied solely on the witness Tuominen of Fazer Ravintolat Oy, who at the time of the incident was the manager in charge of the Fazer Kluuvi café. Mr Tuominen confirmed that a self-monitoring plan had been drawn up. He also said that he had not been able to find such a plan.
When asked what he thought was in the plan, Tuominen did not recall putting information in it that Fazer required customers to show an interest rate passport, nor how Fazer Kluuvi would implement the obligations and restrictions imposed on it. According to the district court's judgment, *"the witness (Tuominen) had drawn up a self-monitoring plan for Fazer Kluuvi's café and it had been duly updated. Unfortunately, after the witness had moved on to other tasks, it was not later found for documentation, but it had certainly been drawn up and was also visible on the wall of the café at the time'.*

It remains unclear on what the district court's certainty about the self-monitoring plan and its actual updated content is based. The district court should act impartially and assess the legal dispute impartially. This has not happened in the present case, but the district court has assessed the case one-sidedly from the defendant's point of view, relying without any apparent basis on what the defendant's witness has said, without taking into account the fact that the witness is employed by the defendant and thus dependent on the defendant, and without taking into account what the defendant has actually said. He has not even been able to explain what the plan says about the requirement for an interest rate passport, even though the law is clear: the written plan should have contained information on how the café/Fazer Ravintolat Oy would implement the obligations and restrictions imposed by the decision of the AVI.

The applicant has made every effort to clarify the matter by requesting to see the written plan in question, but the plan has not been sent to the applicant. The District Court merely notes that, unfortunately, since the witness had moved on to other tasks, the written plan was not subsequently found for documentation, but it was certainly drawn up and was also visible on the wall of the café at the time.

In the applicant's view, the fact that no plan has been found indicates only that there was no plan. The Court has not explained why it has unilaterally believed

the affidavit of the defendant's witness without any further explanation being given. Moreover, the district court's use of the phrase *"it was drafted with certainty"* above is, in the plaintiff's view, another glaring example of the judges' apparent bias and/or unprofessionalism.

Customers have not been informed in accordance with the Communicable Diseases Act

Vauhkala and Jantunen, who have been heard in the case, have said that they have not been informed at Fazer Kluuvi cafeteria about how the personal data in the coupon bag will be processed. The witness for Fazer Ravintolat Oy, Tuominen, has also been unable to say how he would have informed Vauhkala and Jantunen at the café about the processing of the personal data on the coupon bag.

What does the information referred to in the law include? Government Bill 226/2021 clarifies that the content of Section 58j will be clarified in Government Bill 131/2021, which states the Government's position that the processing of personal data would require informing the customer.

Fazer's argument that Vauhkala's dealings would not have progressed to the level of the information obligation under Article 58j(1) of the TTL because he did not have an interest rate passport is, in our opinion, incorrect. According to the provision:

> *... The processing of the personal data included in the certificate also requires the client and the participant to be informed. ...*

According to the preamble of the provision (HE 131/2021 vp, p. 52):

> *... the processing of personal data on the certificate would also require informing the customer and the participant in the activity, in accordance with the GDPR, that the personal data would only be processed to verify the validity of the certificate, to check the name of the person and to check whether the conditions for accessing the facility are met. In addition, it should be informed that the data on the certificate should not be registered or stored under this Act, as set out in paragraph 3 above, or processed for any other purpose. Pursuant to Section 58j(3) TTL, the data on the certificate may not be registered or stored or processed for any other purpose.*

We argue that it is not even possible to apply the GDPR or to provide information under the GDPR. Information within the meaning of the GDPR means specifically informing the data subject. On the other hand, according to Article 58j(3) of the TTL, no registration of data at all was allowed. Since no one can be registered under Section 58j(3)

become a "data subject", it is not possible to provide the information required by the GDPR at all. Thus, the reference to information "in accordance with the GDPR" seems to have been mistakenly or inadvertently included in the Government Bill. Thus, the legal text and its preamble, which refers to information to 'the customer and the participant', must be applied.

Vauhkala was a customer of Fazer or a participant in Fazer's activities within the meaning of Article 58j(1) TTL when he tried to buy breakfast from Fazer Cafe Kluuv. According to the preamble to the provision, he should have been informed, as a precondition for claiming the coupon pass, that his personal data would be processed only for the purposes of checking the validity of the certificate, verifying the person's name and checking whether the conditions for access to the premises were met. This information should have been provided in advance, before the passport was even required to be shown, because if the information had been provided afterwards, the customer would not have been able to be sure, for example, that the data collected from him would not be registered or stored in any way within the meaning of Article 58j(3) of the TTL.

When questioned, witness Tuomis said that he and another café employee had only informed Vauhkala and his friend that they had to present their interest rate passport as a condition of entry to the café. Thus, the customer was not informed in the manner required by law.

Since the preamble to the provision states that the customer or participant must be informed that *"personal data would only be processed for the purposes of checking the validity of the certificate, verifying the name of the person and checking whether the conditions for access to the facility are met"*, and since this has not been done, Fazer has therefore, in our view, directly infringed Article 58j(1) of the TTL.

The applicant submits that Fazer should have complied with the legislation in its entirety and that the lack of a written plan and the lack of information caused Fazer to act in breach of the Communicable Diseases Act by refusing Vauhkala access to the café, thus not discriminating on the basis of the law.

Unequal treatment of Vauhkala

The core of the district court's judgment with regard to Fazer Ravintolat Oy's obligation to pay compensation has thus been dealt with. Fazer Ravintolat Oy's conduct, as we have interpreted and testified, was not based on law, so that discrimination was not justified. Next

we go through how Vauhkala has been treated differently from how other people would have been treated in a comparable situation.

Fazer Ravintolat Oy, a traditional, financially strong and wealthy company, part of the Fazer Group, is committed to respecting human rights, as shown in the applicant's Exhibit 10: Fazer does not tolerate restrictions on movement and Fazer respects the dignity, privacy and fundamental rights of individuals and does not tolerate discrimination of any kind.

Despite this statement, Miika Kostilainen, the defendant's managing director, has replied to the applicant's letter, in which the applicant has demanded that the company compensate him for his infringement, as follows:*Also on the website of the Council of State to which you refer, it is very clearly stated that "if a restaurant requires its customers to have a coupon pass, it does not have to comply with the stricter than usual restrictions imposed on the area in terms of opening and serving hours, the number of customers allowed or the requirement that each customer be seated indoors." The material you refer to elsewhere (on the website of the Regional Administrative Office) states that "it is up to the catering establishment to determine the times at which it adopts the pass."*

In Fazer's case, it was therefore a method by which it managed to avoid the restrictions on customer admission that would otherwise have been imposed on it. It is a question of obtaining a higher profit by limiting Vauhkala's fundamental right to privacy. In several other cafés, there was no such practice restricting the fundamental right, nor in some other Fazer cafés. Fazer has not demonstrated any justification, other than the increase in financial profit, for restricting Vauhkala's access to the restaurant on the morning of 10 December 2021 in relation to Fazer's own policy of respecting the dignity, privacy and fundamental rights of individuals.

Fazer Restaurants Ltd has decided to start requiring its café customers to show a coupon pass throughout the day, although normally the coupon pass is not required in food outlets until after 5pm. This has been done on the basis that it has allowed Fazer Restaurants Ltd to attract customers to its premises without the need to comply with any restrictions on its premises, thereby maximising its profits.

The denial of access to the restaurant violated the constitutional right to equal treatment and protection of private life with regard to the disclosure of health information, the right to respect for private life, freedom of religion or belief and the right to non-discrimination guaranteed by the European Convention on Human Rights, and the right not to be arbitrarily denied access to the restaurant guaranteed by Article 1 of Protocol No. 12 to the Convention. Fazer Ravintolat Oy has thus failed to fulfil its obligations under

its human rights commitments to zero tolerance of restrictions on movement and Fazer's respect for the dignity, privacy and fundamental rights of individuals, and its refusal to tolerate discrimination of any kind.

As can be seen from the written evidence 9, 11 and 12 submitted by the applicant, the applicant had the opportunity to eat at Hotel Kämp immediately after the Fazer Kluuvi episode and, on subsequent days, at other restaurants and even at other Fazer cafés. There was therefore nothing to prevent the Fazer café from actually allowing Vauhkala to have breakfast on 10 December 2021. The situation on the other days and in other places was comparable under the Equal Treatment Act. Section 10 of the Equality Act provides:

> *Discrimination is direct if someone is treated less favourably on a personal ground than someone else has been, is or would be treated in a comparable situation.*

Dining in other places under the same legislation and the same ESAVI restriction decision has been a comparable situation as defined by law. In other words, in the applicant's view, he has been treated in a comparable situation in Fazer Kluuvi at 9 a.m. on 10 December 2021 in a discriminatory manner in relation to other cafés/restaurants both outside Fazer Ravintolat Oy and in the company's other establishments. The discrimination has been based on the presumption of Vauhkala's medical condition, as he has not been able to present a passport for interest. However, Vauhkala was in perfect health when he went to the café.

On the obligation to reimburse costs

Vauhkala considers that the district court's decision to order him to pay the State's costs is not based on a legally valid assessment of the case. Also for this reason, Mr Vauhkala considers that it is important for the application of the law in other similar cases to grant leave for further proceedings.

The main legal errors in the assessment of the liability for legal costs are as follows:

1) At the main hearing, all parties were informed that the bill of costs was to be submitted on Monday 15 April 2024. Only after this date did the State submit a claim for reimbursement of the VAT element. Although the State's claim was late, the district court accepted that the State could have effectively claimed the VAT element as well.

2) The time taken by the State to bring the case was excessive, not least because the State had stated from the outset that there was no basis for the action. The almost double number of hours compared with the time spent by the applicant's lawyer shows that the State has deliberately sought to increase its legal claim, thereby imposing additional costs on the applicant. This can be interpreted as chicanery

3) The hourly rate of the State agent has been too high in relation to the legal skills demonstrated. The State lawyer has no knowledge of human rights treaties and has focused mainly on smearing the opponent, which is contrary to the Code of Good Lawyers' Conduct.

4) Salminen's fee for providing the state expert opinion should not have been accepted because, in accordance with the principle of jura novit curia, the legal expert should not even have been summoned to appear in court

5) Contrary to its initial declaration, the State has used more than one assistant and Vauhkala has declared that he accepts the use of only one assistant - as Vauhkala himself has done.

Application for leave to continue proceedings in respect of Mr Nummelin

Annul the judgment of the Helsinki District Court that 'Nummelin must be ordered to contribute jointly and severally with Vauhkala to the claim for costs in the amount of EUR 20 000'.

a) contrary to the Code of Judicial Procedure

b) as contrary to the State's grounds for the claimant's claim.

Leave for further proceedings should therefore be granted because there is reason to doubt the correctness of the outcome of the district court's decision, and it is not possible to assess the correctness of the outcome of the district court's decision without granting leave for further proceedings.

As stated on page 59 of the judgment, *"Pursuant to Article 6 of Chapter 21 of the Code of Civil Procedure, a representative, agent or assistant of a party who, intentionally or negligently, within the meaning of Article 4 or 5, has caused another party to incur the costs referred to in this Chapter may, after having been given an opportunity to be heard, be ordered to bear those costs jointly and severally with the party concerned."*

The judgment further states: *'The District Court notes that in the case law and literature the liability of an assistant or agent has been considered exceptional, and*

a high threshold for personal responsibility. A lawyer's liability for expenses is a sanction for his conduct in violation of the rules of procedure (Jokela 1995, p 162). Unlike normal liability, the liability of a lawyer requires a subjective basis, i.e. he must have acted intentionally or negligently in breach of the rules of procedure (reference to § 21:6 of the Code of Conduct 21:4 and 21:5 §). The types of conduct referred to in Article 5 of Chapter 21 OC include, inter alia, making an objection which the person making it knew or ought to have known to be unfounded, or failing to comply with a court order, or otherwise breaching a duty to prolong the proceedings. The conduct referred to in Article 4 of Chapter 21 of the OC is, for example, the commencement of unnecessary legal proceedings."

On page 60, the district court states, *"The district court finds that the attorney's actions described above were in themselves lawful means to protect the client's position and interests and to secure a fair trial, but that the making of statements in violation of and in excess of the requests for statements was a breach of duty that prolonged the trial."*

According to the district court itself, therefore, the actions of the agent were legal means of acting on behalf of the client. According to the Bar Association's Guidelines on Good Lawyer Conduct:

> a) Paragraph 5.8. defines the obligation to resign. This obligation arises if, after accepting the post, a circumstance arises which makes the lawyer incompetent or disqualified. The lawyer is also obliged to resign if: 1. a legal impediment or a comparable compelling reason prevents the performance of the task; or 2. the client requests the lawyer to act contrary to the law or good professional conduct and, despite being warned, does not withdraw the request.
>
> b) point 3.1 requires a lawyer to be loyal to his client
>
> c) 3.2 requires that, in the performance of his duties, a lawyer must be free from any outside influence which might impair his ability to control fully the interests of his client. The lawyer must not allow embarrassing circumstances or other such factors to influence the performance of his duties. The lawyer shall maintain his independence in his activities, even if this requires actions or solutions which are not to the liking of his client, his opponent, the authorities or others.
>
> d) point 2.2 states that the defence of fundamental and human rights and the maintenance of the rule of law require the independence of the legal profession from the public authorities.

These guidelines define the scope of the agent's duty to act as Nummelin. According to the district court itself, Nummelin acted precisely in accordance with these instructions. Consequently, the district court's decision to order Mr Nummelin to contribute jointly and severally to the costs of the State for the sum of EUR 20 000 must be regarded as contrary to the Code of Procedure and the Code of Good Legal Practice.

Further, the district court found that some unspecified portion of the liability was incurred as a result, that *"the action, in its original and amended form as described above, in so far as it has been abandoned, is based on a manifest error of law and shows clear negligence on the part of the agent, in so far as the applicant knew or ought to have known that the action was unfounded."*

Chapter 14 of the Code of Judicial Procedure lays down the procedure in court as follows:

> *2 § (22.7.1991/1052)*
>
> *You may not amend the statement of claim in the course of the proceedings. However, the plaintiff has the right to*
>
> *...*
>
> *3) claim interest or make any other secondary claim or even a new claim, provided that it is based on essentially the same grounds.*
>
> *If the application referred to in paragraph 1(2) or (3) is made only at the main hearing, the application shall be inadmissible if its examination would delay the proceedings. Such a claim cannot be made in a higher court.*
>
> *The submission of new facts in support of an action shall not be deemed to be an amendment of the action, unless it changes the case.*

According to the Code of Procedure, the plaintiff is therefore entitled to make another, or even a new, side claim, provided that it is based on essentially the same plea.

In the present case, it is a question of making new claims, supported by a supplementary statement and by the abandonment of some of the grounds of the old claims. Therefore, since the applicant has exercised the rights conferred on him by the Code of Procedure and the applicant's lawyer has assisted him in the present case in accordance with his obligations, the applicant's legal adviser cannot be penalised.

The decision is not based on a claim by the State

The court cannot take up the legal responsibility of a legal adviser under Chapter 21, Articles 4-6 of the Code of Judicial Procedure on its own initiative, but only at the request of a party to the proceedings. The grounds on which the State claimed that Mr Nummelin should be liable for costs are described in the judgment as follows:

"The State has considered that when it has become clear that the State cannot be obliged to pay compensation to Vauhkala for the violation of the European Convention on Human Rights, and when the applicant and his agents have nevertheless continued to pursue the case and to inflate the case by presenting yet another argument relating to freedom of religion, this has been negligent and careless conduct of the case. In this respect, the proceedings are unnecessary. Accordingly, Mr Nummelin, the applicant's agent, must be ordered to pay the costs incurred by the State, together with his client, in the event of the applicant's defeat.'

The State's application therefore seeks an order that Agent Nummelin pay the costs incurred by the State, because:

a) it should have become clear to the Ombudsman that the State cannot be ordered to pay compensation to Vauhkala for the violation of the European Convention on Human Rights

b) the applicant and his agents have continued to pursue the case and to inflate it further, putting forward a new argument relating to freedom of religion.

c) for the reasons set out above, Mr Nummelin's conduct of his case was negligent and careless.

The question of the attorney's liability should be based on the claim made by the party, but the district court's decision is not based on the claims made by the state. Thus, the district court's finding that Mr Nummelin should be jointly and severally liable for the State's claim for EUR 20 000 is not in accordance with the law.

In any case, we will also respond to the arguments put forward by the State:

The State's view that the action would be manifestly unfounded has been based from the outset on the State's desire to prevent an embarrassing action from coming to trial. We discuss the merits of the action at length in the application for leave to proceed and in our appeal, so it is unnecessary to revisit those merits here other than to state that our action was based on a strong legal assessment, a large body of evidence consisting of pharmaceutical and legal experts, and a substantial body of evidence.

experts, numerous medical studies, and irrefutable evidence of the events at the Fazer Kluuvi café on 10 December 2021 at 9 am.

In order to accept the State's view that the action is completely unfounded, the Ombudsman would have to reject the legal reasoning in the case in its entirety, to consider that Vauhkala would not have had the right to eat in the restaurant in principle, even though Article 12 of the European Convention on Human Rights (ECHR) does not apply. Additional Protocol 1 to the ECHR expressly requires the State to prevent arbitrary denial of access to a restaurant, consider the significant medical studies and the views of the medical representatives who gave oral testimony on the matter to be wrong, and reject as nonsense the article by Dr Muukkonen, the only Finnish legal expert to have written an article on the subject. However, it is absolutely impossible to reach such a conclusion - from the point of view of common sense and legal perception. Nohynek, the chief physician of the THL, and Järvisen, the infectious disease specialist of the HUS, have testified in the district court that the vaccines have not prevented the spread of corona except to a small extent, and that the vaccines did not protect anyone except the person who took them, so that Vauhkala could not have posed any danger to anyone at the Fazer Kluuvi café on 10 December 2021 at 9 o'clock in the morning. As this is what medical experts have told us, there is no way that the agent, with his totally inadequate medical training, could have refuted their views - let alone that the agent could have refuted the results of numerous medical studies.

We further recall that the State has already in September 2022 exercised its right to request the district court to dismiss the case as unfounded, and the district court has not agreed. Accordingly, the district court also found that the action was sufficiently meritorious to proceed.

The district court's ruling also leads to difficulties for citizens pursuing claims against the state, especially on human rights grounds, to find an agent. An agent would have to consider the possibility that, in having to specify the grounds of the action and in facing the State's arguments that "the State cannot violate human rights", the agent would run the risk of having to bear part of the costs of the proceedings himself.

In order to be independent of the public authorities, in line with the Good Lawyers' Code of Conduct, a lawyer must be able to work without fear of having to pay his or her client's legal costs. The decision of the Helsinki District Court is a serious breach of the protection traditionally afforded to lawyers, which has enabled citizens to have access to professional legal assistance in actions against the State.

COMPLAINT

Asia:

Appeal against the judgment of Helsinki District Court in case L706/2022/1504 (31.5.2024, decision number 1017 5944)

Requirements:

1) Vauhkala's primary claim is that the case be referred back to the Helsinki District Court for serious procedural irregularities. In addition, the State is ordered to pay the costs incurred by the parties to the proceedings to date, plus default interest pursuant to Section 4(1) of the Interest Act for one month from the date of the District Court's judgment.
2) In the alternative, Vauhkala requests that the Helsinki Court of Appeal decide to hold an oral hearing in the case, at which the plaintiff will be granted the right to call former Prime Minister Marin and Head of Department Koskela of the Ministry of Social Affairs and Health as witnesses, and that the State be ordered to provide the plaintiff with both the coronary vaccine procurement contracts concerning Finland and the preparatory documents for the coronary passport legislation from the Government. We further request that, at the main hearing, the State be ordered to comply with the procedural law and case-law in force, according to which legislative documents may not be designated as written evidence and no legal expert may be called to give oral evidence in court. Similarly, we require that the main hearing of the Court of Appeal be accompanied by the correction of other procedural errors that occurred in the district court.

   In the present main oral hearing, the applicant requests that the defendants be ordered jointly and severally to pay to the applicant

   1. compensation of EUR 10 000 on the basis of Section 23 of the Non-Discrimination Act for discrimination on the grounds of presumed state of health

   2. The Finnish State/Valtiokonttori is ordered to pay compensation of EUR 10 000 on the basis of Article 13 of the European Convention on Human Rights (ECHR).

violation of Article 1, Article 8, Article 9, Article 13, Article 14 and Article 1 of Protocol No 12 to the ECHR

3. The defendants are ordered jointly and severally to pay the costs of the defendant in both the District Court and the Court of Appeal, together with default interest at the rate provided for in § 4(1) of the Interest Act for one month from the date of the judgment.

3) Mr Nummelin requests that the decision of the Helsinki District Court ordering him to share jointly and severally with Mr Vauhkala the sum of EUR 20,000 in the claim for costs be annulled as contrary to the Code of Procedure and the Guidelines on Good Lawyers' Conduct. The district court's decision is also procedurally incorrect, since the grounds put forward by the district court are not based on those put forward by the claimant.

Short description of the case

On 10.12.2021 at 9 in the morning, Vauhkala tried to get into a Fazer Kluuvi café in Helsinki. He has been required to show a coupon pass as a condition of entry. Vauhkala did not have such a passport and was not ill in any way. Vauhkala has been refused entry, after which he has been allowed to eat breakfast at the nearby Kämppi.

The case is based on the assumption that if Vauhkala does not have a green card, he is potentially infected with covid-19 and on this basis his access to the restaurant is blocked. Article 8 of the Non-Discrimination Act (prohibition of discrimination), which states that no one may be discriminated against
on the basis of, inter alia, health status, is directly applicable to the case at hand. Discrimination is prohibited whether it is based on a fact or presumption concerning the person or someone else. The emphasis in this case is therefore on the presumption. This is the basis of our claim for compensation under the Equality Act, because Mr Vauhkala was not ill when he went to the Fazer café, but was discriminated against on the basis of an assumption about his state of health.

We have also claimed compensation from the State for the violation of the rights guaranteed to Vauhkala under Articles 8 and 9 of the ECHR, read through Article 14, and Article 1 of Protocol No. 12 to the European Convention on Human Rights.Article 8 states that everyone has the right to respect for his private life, Article 9 states that everyone has the right to respect for his private life, and Article 12 states that everyone has the right to respect for his private life. Article 8 states that everyone has the right to respect for his private life, Article 9 states that everyone has the right to freedom of thought, conscience and religion, Article 14 prohibits all forms of discrimination in that the rights and freedoms recognised in the ECHR may be enjoyed without discrimination on grounds such as opinion or religion.

(including under Finnish law) to enjoy without discrimination on grounds of, for example, opinion or religion. These rights have also been held to include the State taking measures to prevent arbitrary refusal of access to a restaurant.

The mere fact that a person has been subjected to an act preventing him from enjoying a right to which he is entitled (Article 1 of Protocol No. 12 to the ECHR prohibits arbitrary refusal of access to a restaurant) must be considered a violation of a fundamental right and a human right guaranteed by the ECHR. In the case-law of the courts of appeal, the amount of compensation for discrimination on grounds of ethnic origin has been set at EUR 800 (Helsinki Court of Appeal 18.6.2020, case R20/707, after a service station employee refused to open a fuel dispenser for Roma; Helsinki Court of Appeal 23.Helsinki Court of Appeal of 6 March 2015 in case R14/409 after the defendants refused to open a fuel dispenser for a Roma). According to the recommendations of the Advisory Board for Personal Injury, the recommended compensation for refusal to serve on the grounds of offended ethnic origin is EUR 300-1500, so the compensation practice of the courts of appeal in these cases has favoured the so-called middle way.

The fact that Vauhkala has not been allowed to come to dinner is at least comparable to not being able to fill up your car or get service at a restaurant. In Vauhkala's case, however, it must be borne in mind that her discrimination has taken place in a social context in which it is backed by the authority of the government and the rest of the political decision-making apparatus and by the very strong media coverage of the corona mRNA vaccine. Public opinion has been heavily influenced by these forces, for example against Vauhkala, who has deliberately refused to take the corona mRNA vaccine. Thus, under constant public pressure, the humiliation and suffering experienced by Vauhkala has been substantially greater than that experienced by the Roma who have been denied services. The intensity of the public pressure is evident, for example, in an interview with Prime Minister Marin published shortly after the entry into force of the interest rate passport legislation on 24 October 2021:

> *Marin had no sympathy for the unvaccinated.*
>
> *- I find it hard to relate to people who are critical of vaccination," Marin said.*
>
> *(Exhibit 28)*

The European Court of Human Rights has ruled that the Finnish state must pay compensation of more than 10 000 euros. In the case of *Hokkanen v. Finland* (1994), 200 000

compensation for non-material damage in the amount of DM. In its 1994 judgment, the ECtHR accepted that a mere finding of infringement, i.e. lack of enforcement of visiting rights, would not be sufficient in the circumstances of the case, but reduced the compensation - with reference to equitable grounds - to FIM 100 000 (approximately EUR 16 800). In *Z v. Finland* (1997), the appellant's privacy had been infringed (primarily) by the disclosure of his sensitive medical data in a judgment of the Court of Appeal concerning offences committed by his spouse. Compensation for non-material damage was claimed in the amount of two million marks. The government argued that any compensation should not exceed the maximum of DEM 70 000 for victims of the sexual violence offences in question. The ECtHR stated that it is not bound by national compensation practices, although it may seek guidance from them. In this case, too, the compensation was set at 100,000 marks, or 16,800 euros.

In any case, based on the KKO's decision 2016:20, the key issue is how the injured party perceives the violation.

In the case of Mr Nummelin, the district court found that Mr Nummelin had negligently prolonged the proceedings unnecessarily by making statements which were in themselves lawful and which, according to the district court, were intended to protect the position and interests of the client and to ensure a fair trial. The district court's decision goes strongly against the foundations of the legal profession, since, in principle, the protection afforded to legal counsel must be particularly high in order to ensure that the client has access to adequate legal assistance in pursuing his case. If lawyers have to constantly consider whether they can be held jointly and severally liable with their clients, this will erode the protection traditionally enjoyed by the legal profession and will prevent clients from obtaining legal assistance.

Key legal weaknesses in the Helsinki District Court judgment

The District Court of Helsinki constructs a judgment which, from the plaintiff's point of view, is clearly biased due to the obvious incompetence of the two judges of the District Court and other serious procedural errors during the trial process, and based on very weak legal reasoning, as follows:

a) first, the District Court declares that it has no jurisdiction - notwithstanding Article 106 of the Constitution - to assess the constitutionality of the interest rate passport legislation, since the Constitutional Committee has already assessed the constitutionality of the interest rate passport legislation in the parliamentary debate.

b) according to Mr Salminen, the State expert witness, the interest rate passport legislation is constructed in a manner which respects the European Convention on Human Rights and the Court therefore considers that the interest rate passport legislation does not breach the obligations imposed by the European Convention on Human Rights

c) the individual claims of the applicant against the State are dismissed by the district court by ignoring and disregarding the applicant's key evidence and arguments

d) Fazer Ravintolat Oy has complied - although there is no evidence of this - with all the provisions of the communicable disease legislation, so the refusal to allow Vauhkala access to the Fazer Kluuvi café was not discriminatory because the action against Vauhkala was based on the law. In any event, the Court considers that the alleged infringements of Articles 58h, i and j of the Law on communicable diseases were at most infringements of the procedural provisions and therefore do not affect the substance of the case.

Vauhkala has responded to this as follows:

a) in the present case, the question is not whether the interest rate passport legislation is unconstitutional in principle, but whether the interest rate passport legislation and its implementation were unconstitutional in the Vauhkala case. According to the general conditions for the restriction of fundamental rights, the restriction of fundamental rights must be suitable in general for achieving the objective pursued and, in addition, the objective cannot be achieved by means that are less intrusive. In Vauhkala's case, the restriction that Vauhkala had obtained a 'green interest rate pass' would not have resulted in any of the customers in the Fazer Kluuvi café being safer if Vauhkala had stayed away from the café than if he had been able to enter the café to have breakfast. Thus, the restriction of Vauhkala's fundamental right was not appropriate to achieve the objective pursued, namely the prevention of the spread of covid-19. Moreover, the objective could have been achieved by less intrusive means, such as, for example, by insisting that customers of the café wash their hands thoroughly before entering the café. Moreover, Vauhkala was not himself at risk of covid-19 and had acquired information through reading and observation, which had led him to suspect that a person vaccinated with the coronavirus vaccine might suffer adverse health side-effects. No one can be forced - at the risk of losing their fundamental and human rights - to put their health at risk.

   The Constitutional Committee has set a presumption for interest rate passport legislation that it is constitutional because the Constitutional Committee.

based on the medical knowledge available, the coronary passport legislation has been able to prevent the spread of covid-19 and the harm it causes. However, Vauhkala has testified in the district court, supported by oral and written evidence, that the coronary vaccines, which have been a key method of obtaining the so-called green card, have not been able to prevent the spread of covid-19 and that this was already known in the autumn of 2021. It has been further proven that the requirement to undergo a corona test every 72 hours and to pay EUR 100-200 each time in order to fully enjoy the basic and human rights of each of us has violated the applicant's right to non-discrimination. Mr Vauhkala also proved that the commonly used corona test, the so-called PCR test, gave too many false positive results to allow the determination of who is entitled to the enjoyment of fundamental and human rights. The third way to obtain a coronet pass for the 'green' has been to contract covid-19, classified as a public health communicable disease, every six months. However, this could not be required of Vauhkala

b) The European Convention on Human Rights imposes certain obligations on each state that has signed up to it, and the case law of the European Court of Human Rights defines the implementation of the European Convention. The case law of the ECtHR has established that national legislation can also directly infringe the ECHR. Thus, it is not for the national actor to determine whether national legislation violates the ECHR, but for the court to assess the issue. The Helsinki District Court has effectively refused to make this assessment.

c) the district court's assessment of individual points of law is no longer valid after the district court has not carried out an assessment of the compatibility of the interest rate passport legislation with the Constitution and the European Convention on Human Rights

d) the evidence shows that Fazer Ravintolat Oy has even breached the obligations imposed on it by the interest rate passport legislation, so that the direct discrimination against Vauhkala by the company is not based on law. Fazer Ravintolat Oy has therefore in any event committed an infringement of the Equality Act.

Criteria for a priority claim:

Judge Markku Saarikoski's disqualification

According to Chapter 13, Section 6(2) of the Code of Judicial Procedure (OC, 4/1734) (441/2001), a judge is disqualified if he or she has a relationship with a party, whether by reason of employment or otherwise, which, particularly in view of the nature of the case before him or her, gives rise to reasonable doubt as to the judge's impartiality in the matter. According to paragraph 2 of the same Article, the mere fact that a party is a State, a municipality or another public body does not constitute a bar under paragraph 1. According to Article 7.3 of Chapter 13 of the Code of Judicial Conduct, a judge is also disqualified if any other circumstance comparable to those referred to in this Chapter gives rise to reasonable doubt as to the judge's impartiality in the matter.

On 9.11.2023, we learned that Markku Saarikoski, who was the District Judge and presiding judge in our case, will, in addition to his judicial work, work as a mediator at the Office of the National Mediator. On 16 September 2021, he was appointed for a three-year term of office, starting on 20 September 2021 (news on this: https://valtioneuvosto.fi/-/1410877/markku-saarikoski- mediator-for-the-office-of-appointed-mediator).

The other defendant in our action is the Finnish State. In practice, the defendant is the Finnish Government, which is the same body that appointed Saarikoski as a mediator for the Office of the National Mediator. The Ministry of Social Affairs and Health, acting as part of the Council of State and on its behalf in the present case, has been assigned to handle the action on behalf of the State. In addition, the Office of the National Mediator operates administratively under the Ministry of Employment and the Economy. The said Ministry played a key role in the preparation of the legislation on the interest rate passport which is the subject of the dispute in the present action.

The information about Saarikoski's secondary function as a mediator appointed by the Government in the Office of the National Mediator came as a complete surprise to us, as there was no mention of this secondary function in the register of judges' affiliations and secondary functions maintained by the judicial administration (the so-called Sisi register, https://asiointi.oikeus.fi/sidonnaisuus-ja-sivutoimirekisteri/ilmoitus/search). According to the entries in the register, Mr Saarikoski has been a judge at the Helsinki District Court since 1 September 2007 and has been a part-time deputy member of the expert and expert members of the Labour Court from 1 January 2019 to 31 December 2023. The Sisi register should also have mentioned Mr Saarikoski's three-year post as a mediator at the Office of the National Mediator. However, this post was only added to the Sisi register after our allegations of obstruction were brought to Saarikoski's attention. In his explanation, Mr Saarikoski said that the information had been 'inadvertently omitted' from the Sisi register.

In our application, we alleged that the Finnish state, in practice the Finnish Government in office in 2021, had violated the European Convention on Human Rights. The same

the Council of State, which we allege has committed a serious violation of human rights, has appointed Saarikoski as mediator.

These facts, together with the fact that Saarikoski's position as a mediator was not mentioned in the register of judges' affiliations and secondary functions as required by law, give in our opinion reasonable grounds to doubt Saarikoski's impartiality in the case within the meaning of § 13:6(2) and § 13:7.3 of the OC.

On the basis of the above, we made an objection under § 13:8 of the Rules of Procedure that Judge Saarikoski was unfit to sit.

The District Court rejected Saarikoske's objection of obstruction by decision of 22 January 2024 (decision number 1015 0438). The District Court justified its decision, inter alia, by stating that *"[t]he fact that District Judge Saarikoski's secondary position had not been entered in the register of affiliations is irrelevant for the assessment* [*of* the disqualification]*"*. However, this fact was one of our main grounds for doubting Mr Saarikoski's disqualification; the statutory declaration of that office in the Sisi register had been neglected by Mr Saarikoski for more than two years.
The failure to make the statutory declaration and the fact that he was acting under the authority of the Council of State, which is a co-defendant in the Vauhkala case, give rise to reasonable grounds for alleging that Saarikoski was disqualified from presiding over the jury in the Vauhkala case.

In addition, the district court states the following in its decision:

> *In the present case, it is justified to draw attention to the fact that the Office of the National Mediator is not known to have played any role in the preparation of the decision referred to in the application. Accordingly, the outcome of the action will have no effect on the functioning of the Office of the National Mediator or on its staff. The link between the Ministry and District Judge Saarikoski must be regarded as rather distant.*

However, we did not even argue that the Office of the National Mediator played a role in the preparation of the decisions referred to in the complaint, but the Ministry of Employment and the Economy, which is part of the Council of State. Nor did we argue that the outcome of the action should have had any effect on the Office of the National Mediator or its staff. We argued that the Ministry of Employment and the Economy is the paymaster of Mr Saarikoski and that he was appointed to his post by the same Government which was preparing the contested interest rate passport legislation.

The district court thus completely failed to address or ignored the core grounds of our estoppel argument. The decision is therefore not sufficiently reasoned in the way that the case-law has

required: according to KHO 2019:110, the adequacy of the reasons given for an administrative decision must be considered from the point of view of whether the right of the party concerned to obtain a reasoned decision and to appeal against it can be effectively safeguarded.

The applicant's right to obtain a reasoned decision and to appeal against it is now denied, as the reasoning does not respond to the arguments put forward by the applicant in substance or at all. The decision is therefore unlawful in the light of the legal guidance given in the abovementioned judgment of the Court of First Instance.

Judge Marko Lepistö's disqualification

Pursuant to Chapter 13, Section 7(2) of the Code of Judicial Procedure (1.6.2001/441), a judge is disqualified from hearing the same case or part of it again before the same court if there are reasonable grounds for suspecting that he or she has a prejudiced view of the case because of a previous decision or other special reason.Pursuant to Section 13(3), a judge is also disqualified if any other circumstance comparable to those referred to in this Chapter gives rise to reasonable doubt as to the judge's impartiality in the case.

According to Antti Tapanila's doctoral thesis "Judge's disqualification" (Publications of the Finnish Lawyers' Association: A series 2007), a judge's disqualification may be affected by a preconception of a legal issue, which may have arisen, for example, in connection with a previous trial.

A judge's preconception of a point of law is revealed by the decisions he has given in similar cases in relation to the case at hand (pp. 307-308). According to Tapanila, the expression of exceptionally unconditional opinions detached from the sources of law may give rise to suspicion of a bias that compromises the judge's impartiality (p. 309, footnote 269).

District Judge Marko Lepistö has acted as District Judge in case L 706/2021/2416 (judgment of 10 September 2021, decision number 165570/2021). The case concerned compensation claimed by the applicants for a violation of the Equal Treatment Act when HUS/Helsinki Women's Clinic did not admit the applicants because they did not use face masks. At the time, the Women's Clinic had a mask recommendation in force. Lepistö dismissed the action without issuing a summons on the grounds, inter alia, that:

> *"[The plaintiffs'] claim was based on a denial of the seriousness of the Corona pandemic, based on denialism. In the district court's view, however, the alleged conduct against [the plaintiffs] was based on what was, at the time of the incident, a generally perceived necessary and indispensable means of protecting the health safety of others in the hospital environment.*

> *The Equality Act cannot protect an individual's opinion that is or may be likely to endanger the health or public safety of other people."*

The judgment further states that *"[the applicants] were a married couple who had been prevented from having an amniocentesis because of the opinion expressed. The plaintiffs had stated that they did not believe in the seriousness of the Covid-19 pandemic and that, at the very least, the masks were not helping against the disease. The use of masks and visors caused both of them to have a panic attack."*

Judge Marko Lepistö therefore refused to serve the summons on HUS on the ground that he himself had argued that the applicants' claim was based on a denial of the seriousness of the interest rate pandemic, based on "denialism". However, no such allegation of 'denialism' was made in the application for a writ of summons. Moreover, the procedure against the applicants (requiring them to wear a mask) was, in the judge's view, based on a necessary and indispensable means of protecting health and safety.

Chapter 5, Section 6 of the Code of Judicial Procedure provides for the inadmissibility of an action and the settlement of the case without requesting a reply:

> *The court shall dismiss the action as inadmissible if the plaintiff fails to comply with the invitation referred to in Article 5 and the application is so incomplete, unclear or confused that it cannot form the basis of the proceedings, or if the court is otherwise unable to admit the case.*
>
> *The court must dismiss the action by judgment to the extent that it is manifestly unfounded.*

In the preamble to Article 6(2) and in the case-law, it has been held that a manifest lack of foundation for an action means a deficiency in the substantive basis of the action which cannot be remedied even later in the proceedings. Such a situation arises where the factual grounds put forward by the plaintiff (the facts put forward as elements of the case) do not allow the plaintiff to establish what he claims in his application for a writ of summons (so-called 'legal unfoundedness').

Judge Lepistö has therefore already decided, before issuing the summons, that the application for a summons was manifestly unfounded, pursuant to Article 5:6.2 of the Rules of Procedure. According to Mr Lepistö, the applicants had not even alleged that they had been treated less favourably than other clients of the hospital and that, as a result of this failure to meet the burden of proof, the facts set out in the application could not give rise to the result they sought, for which reason the application had to be dismissed. However, this argument is absurd: the applicants expressly stated as a matter of fact that the condition for their admission to the amniocentesis on 23 March 2021 was the wearing of a mask or visor and that they did not, inter alia, have to wear a

mask or visor.

were unable to wear a mask or visor for health reasons, i.e. that they were treated less favourably on the basis of a prohibited ground of discrimination than hospital clients wearing a mask or visor who were admitted to hospital for treatment. Thus, the mere fact that the plaintiffs did not expressly "underline" that they were treated differently from clients who wore a mask is very difficult to see as a sufficient ground for a "manifest" lack of legal basis for the action within the meaning of Article 5:6.2 of the Code.

The purposeful application of the law

Lepistö's bias and the fact that he refers in his reasoning to Article 11(2) of the Non-Discrimination Act by apparently deliberately omitting to quote the rest of the provision also indicates that his reasoning is biased. He states that a difference in treatment is nevertheless justified even in the absence of a provision laying down the grounds on which the treatment is justified, provided that the treatment has an objective which is acceptable from the point of view of fundamental and human rights and that the means of achieving that objective are proportionate. The provision continues, however, that this provision does not apply, inter alia, to the exercise of official authority or the exercise of a public administrative function. Mr Lepistö knew or ought to have known that amniocentesis falls within the scope of the provision of counselling services under Article 15 of the Health Care Act (1326/2010), which falls within the scope of the exercise of a public administrative function within the meaning of Article 11.2(1) of the Equal Treatment Act. This is stated, for example, by Eeva Nykänen in her article "Private service providers as providers of public social and health services" (Lakimies magazine 3-4/2020 p. 8):

> *"... social and health services, which are the responsibility of the public authorities, fall within the scope of public administration. Public service tasks which are considered to be public administrative tasks may be similar in content to services provided by the private sector. The decisive factor in defining the nature of the task is whether the public sector is responsible for organising and financing the services. ... For example, services provided by an undertaking providing health services or housing for the elderly do not therefore fall within the scope of the public service remit, unless the provision of the service is based on a statutory obligation on the part of the - - - municipality to organise the service. If the provision of the service in question is based on such an arrangement, it is a public administrative task which the private service provider is carrying out in this case."*

Based on Nykänen's article, it is clear that the provision of child health services - including amniocentesis - is a public administrative task, as it is based on the statutory obligation of the municipality to provide them under Section 15 of the Health Care Act. Thus, the provision of amniocentesis is subject to the principle of equal treatment under Article 11.1 of the Equality Act.

requirement, and § 11.2, as applied by Lepistö, does not apply to amniocentesis. Consequently, the mask claim made by the amniotic fluid clinic would have had to be based on an Act of Parliament as required by section 11.1 of the Equality Act in order for the claim to comply with the Equality Act and thus be lawful. However, at no time was the use of masks made mandatory by law in Finland, and although the Government proposed such a law in the spring of 2021, it withdrew its proposal on 31 March 2021 and never returned to the issue.

Lepistö's attitudinal use of language

The word "denialism" (a word that was never used by the plaintiffs themselves) used by the plaintiffs in the Lepstein claim is generally associated with phenomena that are particularly socially objectionable, such as climate denialism, Holocaust denialism and vaccine denialism. See, for example, Osmo Pekonen's article of 27 April 2022 "Denialists of many kinds" (https://www.tiedetoimittajat.fi/tiedekeskiviikko/monen-sortin-denialisteja/), which states that *"denialism is the disease of our time"*. See also e.g. Syksy Räsäsäsen and Kari Enqvist's article of 5.5.2014 "Denialism, a collateral damage of scientific progress?" (https://journal.fi/tt/article/view/41570), where already in the title the word "denialism" is associated with "damage", i.e. a negative, undesirable phenomenon. In both articles, the word 'denialism' is associated with a strong sense of disapproval and avoidance, which has been in common parlance for at least ten years.

The applicant considers that Lepistö's use of the word denialism in relation to the applicant's claim in the case must be regarded as the expression of an exceptionally unconditional position, detached from the legal sources, which gives rise to suspicion of a bias that compromises the impartiality of the judge (see above and Tapanila 2007 p. 309, footnote 269).

Based on the above, the applicant considers it clear that the strong language used by Lepistö in the judgment of 10 September 2021 gives rise to a reasonable doubt as to his impartiality in the handling of cases challenging coronary measures involving similar legal issues, as in the present case of Vauhkala v. State of Finland and Fazer, within the meaning of OC 13:7.2.

Since Marko Lepistö has applied the Equal Treatment Act in the aforementioned manner in case L 706/2021/2416 in a manifestly purposive manner, has used strong attitudinal language in relation to the applicant's claims and has dismissed the action in question without issuing a summons on manifestly frivolous and/or questionable grounds, this gives rise to a well-founded suspicion that he is not in breach of Article 13:7.2 of the OC.

in the sense of a bias towards more general cases relating to the interest rate pandemic and questioning interest rate measures. The applicant considers that Lepistö's bias is such that he is unable to act objectively and impartially in Vauhkala v The Finnish State and Fazer.

The district court rejected Lepistö's claim of obstruction by decision of 19 March 2024 (decision number 1016 1641). The district court justified its decision, inter alia, as follows:

> *Vauhkala's view that District Judge Lepistö had made an exceptionally absolute statement, unconnected with the legal sources, was based mainly on the fact that District Judge Lepistö had used the term "denialism" as part of his reasoning.*
> *In this respect, the District Court finds that the mere use of the said expression cannot be regarded as a statement that is detached from the legal sources, let alone as an exceptionally absolute one.*
>
> *The decisive point is that the cases L 706/2021/2416 and L 706/2022/1504 involve different legal issues. In the first case, Judge Lepistö did not express a legal opinion which could lead to a finding of incompetence in the second case. There is no justification for a different assessment of that conclusion on the basis of a single expression used by Mr Lepistö.*
>
> *In summary, the district court states that the party's own perception of the judge's disqualification is not decisive, but the doubt must be objectively justified. Mr Vauhkala has not put forward any evidence in support of his allegation of lack of competence which, viewed objectively, would give rise to a reasonable doubt as to the impartiality of District Judge Lepistö in the case.*
>
> *The claim that District Judge Lepistö was not disqualified must therefore be rejected.*

The district court's assessment that Lepistö's use of the term "denialism" could not be regarded as a statement unconnected with the legal sources, let alone an exceptionally absolute one, is incorrect. The district court's finding that the applicant had not put forward any evidence in support of his plea of lack of competence which, objectively speaking, would give rise to a reasonable doubt as to the impartiality of District Judge Lepistö in the case is also incorrect. The use of the word 'denialism', together with the deliberate application of the law and the dismissal of the action without issuing a summons without sufficient reason, gave rise to objectively well-founded doubts as to Mr Lepistö's impartiality in other cases criticising the corona measures.

Refusal to hear the witness Sanna Marin

We demanded an oral hearing in the district court of Sanna Marin, who was Prime Minister at the time the interest rate passport legislation was drafted, on the subject of *"what the Government has based its view of the necessity of interest rate passport legislation on and how the Government has monitored the necessity of regulating interest rate restrictions in relation to the realisation of fundamental rights"*.

The district court refused to hear Marin as a witness in the case, justifying its decision on 27 February 2024, among other things, as follows:

> *The district court considers that the case involves constitutional and procedural questions of law. The views or opinions of an individual politician, albeit a person who was Prime Minister at the time the legislation in question was enacted, are irrelevant when considering such questions of law.*

Frankly, we don't even understand what the district court means by this. There are undoubtedly at least constitutional issues involved. We also agree with the district court that Mr Marin's personal views or opinions as Prime Minister are irrelevant when considering the legal issues involved - the necessity of the interest rate passport legislation and the fulfilment of the Government's duty to monitor it. Instead, what is relevant are the concrete actions that the Government did or did not take under the leadership of Prime Minister Marin, and it is Sanna Marin, who was in charge of the Government, who is best placed to speak on these matters. In particular, since the defendants have not adduced any evidence to shed light on these legal issues, there is no basis in law for refusing to hear Ms Marin, and thus the hearing of Ms Marin would have been essential to the success of the applicant's action.

According to the view expressed in the case law, the court should apply the limitation provision in OC 17:8 with a certain degree of caution and target limitation decisions to clear-cut cases. It is difficult for a judge to limit the number of witnesses against the will of the party, because the judge cannot draw conclusions about the credibility of the witnesses in advance, unless there are clearly too many witnesses (*Vuorenpää et al.* 2021, Prosessioikeus, Alma Talent 2021 p. 609; see also HE 46/2014 p. 56 and LaVM 19/2014 p. 8).

According to the preamble to OC 17:8, before the court proceeds to reject evidence under this section, it would normally be justified to discuss the extent of the evidence with the parties. As a matter of priority, agreement should be sought, where possible, so that the parties voluntarily

would dispense with unnecessary or otherwise objectionable evidence (HE 46/2014 vp p. 57; see also *Rautio et al*, Todistelu: Kommentarari 17 peatükkun oikeudenkäymiskaari, Edita lakitieto 2020 p. 85).
However, in the present case, the district court did not even attempt to discuss with the parties the necessity or otherwise of hearing Marin, but only unilaterally and without any practical justification stated that his hearing would not be relevant to the case.
It may even be a violation of the European Convention on Human Rights if the decision to restrict evidence is not properly justified (e.g. *Suominen v. Finland* 1.7.2003; see also *Rautio et al.* 2020 p. 85).

The district court has thus apparently misinterpreted our evidence in relation to the Marin hearing; we did not find any answer to the question of our evidence as to how the government had monitored the necessity of the regulation of interest rate restrictions in relation to the realisation of fundamental rights. Thus, there was no legal basis for refusing to hear Mr Marin.

The district court further justified its refusal to hear Marin as follows:

> *According to Chapter 17, Section 8 of the Code of Judicial Procedure, the court must exclude evidence that is irrelevant or otherwise unnecessary.*
>
> *The hearing of the witness Sanna Marin is not relevant in this case, so it is unnecessary to hear her in this case. The Court must therefore refuse to hear her in this case.*

In addition, the District Court stated in its decision of 28 March regarding the hearing of Sanna Marini and Satu Koskela that case law has consistently refused to hear ministers and heads of department of ministries as witnesses in similar or similar cases.

However, the district court did not make any further reference to such established case law, nor did it give any reasoning as to why the Marin hearing would not be relevant in this case. The parties are therefore unable to assess the legal reasoning on which that case law is based. The decision is therefore not sufficiently reasoned in the manner required by the case-law: according to KHO 2019:110, the adequacy of the reasons given for an administrative decision must be considered from the point of view of whether the right of the party concerned to obtain a reasoned decision and to appeal against it can be effectively safeguarded.

Now, the plaintiff's right to appeal or to obtain a reasoned decision on the refusal to hear Marin is not effectively protected, as the district court gave virtually no concrete reasons for the refusal; more precisely, the district court did not provide any concrete reasons for the fact that

why Marin's hearing would not be relevant to the issue we have raised. The district court only responded to the evidence it had invented for which he would have been heard in court: his perception or opinion on the matter. However, as we have already stated, Mr. Marin's perceptions and views are, in our view, irrelevant to the case.

In fact, the district court did not even give any reasons for refusing to hear Marin. For this reason alone, the refusal was unlawful.

Refusal to hear the witness Satu Koskela

We demanded to hear oral evidence from Satu Koskela, Head of Department of the Ministry of Social Affairs and Health at the time of the preparation of the interest rate passport legislation, on the issue of *"what kind of medical research or legal assessment was the basis for the guidance given by the Ministry of Social Affairs and Health to the Regional State Administrative Agencies"*. The District Court refused to hear Koskela as a witness in the case, justifying its decision on 27 February 2024, among other things, as follows:

> *Moreover, the views or opinions of the official who participated in the preparation of the provision in question are, according to the district court, irrelevant when considering questions of law such as those referred to above. Moreover, according to the district court, the evidence in question is always presented in written form in the legislative project in the form of a draft government bill and its preparatory documents, so that the evidence must be replaced by documentary evidence as provided for in Articles 3 to 4 of that provision.*
>
> *... According to Chapter 17, Section 8 of the Code of Judicial Procedure, the court must exclude evidence that is irrelevant or otherwise unnecessary.*
>
> *... The hearing of witness Satu Koskela is irrelevant in this case and the evidence must be replaced by documentary evidence, so the hearing of the witness is unnecessary in this case. The court must therefore refuse to hear her in this case.*

In Koskela's case, our evidence was based on what kind of medical research or legal assessment the STM's guidance to the regional administrative agencies was based on. We agree with the district court that, like Marin, Koskela's personal views or opinions are irrelevant in considering the legal issues involved. However, the issue on which we would have liked to have heard Koskela (the STM's direction to the regional administrative agencies) was not presented in any written material at any stage of the litigation or its preparation; the district court's reference to *"such evidence in the legislative project, always in the government bill and its preparatory documents"* is not

has nothing to do with the administrative guidance given by the STM to the regional administrative agencies, but only with the preparation of legislation.

Thus, Koskela's hearing could not be replaced by substantially less costly or time-consuming and substantially more reliable evidence, and there was no legal basis for refusing to hear Koskela. In any event, the above-mentioned statement in the case law literature that the court should apply the limitation rule in OC 17:8 with a certain degree of caution and only target limitation decisions to clear-cut cases applies.

In addition, the District Court stated in its decision of 28 March regarding the hearing of Sanna Marini and Satu Koskela that case law has consistently refused to hear ministers and heads of department of ministries as witnesses in similar or similar cases.

However, the district court did not make any further reference to such established case law, nor did it in any way explain why the Koskela hearing was irrelevant in this case. The parties are therefore not in a position to assess the legal reasoning on which that case law is based. The decision is therefore not sufficiently reasoned in the manner required by the case-law: according to KHO 2019:110, the adequacy of the reasons given for an administrative decision must be considered from the point of view of whether the right of the party concerned to obtain a reasoned decision and to appeal against it can be effectively safeguarded.

Now, the plaintiff's right to appeal or to obtain a reasoned decision on the refusal to hear Koskela is not effectively safeguarded, as the district court gave practically no concrete reasons for the refusal; more precisely, the district court did not provide any concrete reasons why the hearing of Koskela would not be relevant in the case in relation to the evidence we have submitted.

In fact, the district court did not even give any reasons for refusing to hear Koskela. For this reason alone, the refusal was unlawful.

Oral hearing of legal expert Janne Salminen

The State presented its legal expert Janne Salmi for a written and oral hearing in the proceedings, in addition to giving a written expert opinion for the trial. However, according to established Finnish case-law, legal experts are not heard orally in court proceedings. Even the defendant, the Finnish State itself, through its agent, stated the following in its reply of 31 August 2022 to the District Court:

> *117. The (oral) hearing of legal experts is not part of the Finnish procedure. The key principle is that the court knows the law (jura novit curia). The parties (typically through their agents/attorneys) can of course present their legal arguments in their pleadings, and in particular in the final report, and may refer to and present legal sources and expert legal opinions to the court if they wish.*

We agree with the view expressed in the State's 31.8.2022 reply that legal experts should not, in principle, be heard orally as experts in Finnish court proceedings. We therefore wonder why the State, in complete contradiction to its earlier statement, has nevertheless summoned Salminen to be heard orally, and why the District Court has accepted this.

For the reasons stated above, we are of the opinion that the district court should have refused Salminen's oral hearing under Chapter 17, Section 8 of the Code of Judicial Procedure, as it can be replaced by substantially less costly or time-consuming and substantially more reliable evidence (Salminen's written expert testimony), and as his oral hearing is unnecessary in any event from the point of view of the prevailing Finnish judicial culture. That view was confirmed during the oral hearing of Mr Salminen at the main hearing, since he did not say anything orally at the main hearing that had not already been read in his written expert report; rather, he appeared to be merely reading out extracts from his written report.

The district court should have taken into account the above-mentioned unnecessary oral hearing of Salminen as a matter of course, especially since it refused to hear the applicant's main witnesses, Sanna Marini and Satu Koskela. The mere equality of the parties before the law and the adversarial principle require that the district court should have taken the initiative to consider such fundamental issues of procedural management properly and with respect for the rights of the parties.

Oral hearing of Hanna Nohynek as an expert

The State obtained a written expert report from Hanna Nohynek, the Chief Medical Officer of the THL, and also presented her orally to the district court as an expert, which the district court accepted. In our view, however, Hanna Nohynek could not have been heard as an expert in court, as she was involved in the preparation of the interest rate passport legislation

and, when it came into force, as Chief Medical Officer of the National Institute for Health and Welfare, repeatedly making strong public statements on coronary vaccines and the coronary passport. Moreover, as the State has stated in its response to our request for editing, *"the State has relied on the THL throughout the coronary passport legislation, of which the THL has issued numerous statements on the matter that are available from public sources"* (see, for example, summary of 6 November 2023, p. 43). Since the Government has always relied on the THL in the preparation of the interest rate passport legislation, it is obvious that Nohynek has also been involved in the preparation of the interest rate passport legislation. For these reasons, Mr Nohynek's involvement in the case is such that his impartiality is compromised. For the same reasons, in our view, Mr Nohynek cannot act as an expert for the Finnish State, either in writing or orally. He should therefore have been heard expressly as a witness in the case.
Thus, the written expert opinion given by Nohynek should also have been disregarded.

In its decision of 27 February 2024, the district court stated the following in its decision on the hearing of Nohynek as an expert:

> *The district court finds that the ... Noheneki's status is not covered by Chapter 17, Section 35 of the Code of Judicial Procedure*
>
> *§in the sense of Article 5(1), that they are so related to the case or the party concerned that their impartiality would be compromised or that there is any other objective reason to believe that their impartiality would be compromised.*
> *The matters relied on by the applicant concern the normal assessment of the evidence to be taken into account in expert reports. Thus, they may be heard as experts or, in the absence of a written expert report or in the opinion of the appointing party, alternatively as witnesses.*

However, the district court does not give any reasons for this view. The decision is therefore not sufficiently reasoned in the way required by the case-law: according to KHO 2019:110, the adequacy of the reasons given for an administrative decision must be considered from the point of view of whether the right of the party concerned to obtain a reasoned decision and to appeal against it can be effectively safeguarded.

Now, the plaintiff's right to appeal or to obtain a reasoned decision to hear Nohynek as an expert is not effectively protected, as the district court did not provide any concrete reasons for its decision. For this reason alone, the decision is unlawful.

In addition, it is in our view impossible in the eyes of the law for the same person to be heard in court as both an expert (state witness) and a witness at the same time.

(in the plaintiff's hearing). However, this is what happened at the trial. This is a question which, in our view, deserves a preliminary ruling from the Court of Appeal.

Legislative material in the form of written evidence

The State and Fazer submitted as written evidence the legislative documents V1 and V6, i.e. Government Bill 131/2021 vp and the opinion of the Constitutional Committee PeVL 35/2021 vp. In our view, however, they cannot be written evidence to be examined during the evidence phase of the main hearing, as they are legislative documents and part of the legislation, which the court must know ex officio. This is a question which, in our view, deserves a preliminary ruling from the Court of Appeal.

Ignoring and ignoring the screen

The district court completely ignored, among other things, the testimony of the plaintiff's witness Matti Muukkonen and the legal analysis of the equal treatment approach of the contested interest rate passport legislation. The District Court merely stated, in the exact wording used by the State's lawyer in the main hearing, that *"Muukkonen makes no mention of the right to life and health, which has been the main justification for the interest rate passport legislation by the State and the PeVK."* However, Muukkonen's article - like Vauhkala's complaint - was not a comprehensive critique of the fundamental rights analysis of the interest rate passport legislation, but primarily a critique of the equality analysis of the interest rate passport legislation. In any case, even if Muukkonen had mentioned something about the right to life and health in his article, this would not have refuted the main jurisprudential finding of Muukkonen's article, which was completely ignored by the district court - from the perspective of the fundamental rights system, it would have been a less intrusive interference with the rights of the unvaccinated (including the plaintiff) if they had been offered free testing (Muukkonen article p. 13), and therefore the interest rate passport legislation did not meet the proportionality requirement of the fundamental rights restrictions.

Grounds for an alternative claim:

The district court ignored Article 106 of the Constitution

The decision of the Helsinki District Court proceeds in such a way that, first, the District Court effectively ignores Vauhkala's main grounds for his action and, second, declares that the District Court is not competent to assess the constitutionality of the interest rate passport legislation. In so doing, the district court effectively ignores the jurisdiction conferred on it by Article 106 of the Constitution to assess the constitutionality of the interest-rate passport legislation and its implementation in the present case.
The Helsinki District Court has completely ignored section 106 of the Constitution, stating that the court cannot assess the constitutionality of the Parliament Act because the assessment has already been made by the Constitutional Committee.

The applicant's main plea in law is that the State's interest rate passport legislation has led to the abrogation of his fundamental and human rights and that the interest rate passport legislation has been unconstitutional. According to Article 106 of the Constitution, *"[W]here the application of a provision of law in a case before the court would be manifestly inconsistent with the Constitution, the court shall give precedence to the provision of the Constitution."*

In its judgment, the district court states that *"in the present case, where the Constitutional Committee has assessed the constitutionality of the interest passport legislation, i.e. Section 58i of the Communicable Diseases Act, and thus held that the Act can be enacted by ordinary legislative procedure, the district court does not in principle have jurisdiction to assess its alleged unconstitutionality. The constitutionality of the provision has been assessed in the proceedings before the Constitutional Committee, and neither the Constitutional Committee nor any constitutional expert consulted in the proceedings before the Constitutional Committee has expressed the opinion that the provision is unconstitutional'.*

However, the district court also states that *"the constitutional review practice has taken as a starting point that the priority provision of Article 106 PL can only be applied in situations of statutory interpretation that have not been subject to review by the Constitutional Committee".*

In the present case, the Constitutional Committee has left a pre-condition on how the government should deal with the coronary passport legislation in the light of evolving medical knowledge. Furthermore, the Constitutional Committee has not assessed the coronary passport legislation in relation to Article 124 of the Constitution, on which we will provide legal assessment and evidence later.

As stated in the judgment of the District Court, *"the applicant has argued that the objective of preventing the spread of the disease, which was the basis of the interest rate passport legislation, was not based on up-to-date scientific knowledge, even though the Constitutional Committee had on several occasions stressed the obligation of the Government to closely monitor the need to maintain the regulation on interest rate restrictions and any problems that might arise in its application".*

All the expert opinions submitted to the Constitutional Committee concluded that the interest rate passport legislation was proportionate and necessary in the light of the medical and epidemiological data explicitly presented. The Constitutional Committee, for its part, stated that *"[w]hile the proposal places individuals in a different position, the proposed regulation cannot be*
in the view of the Constitutional Committee, in the light of the medical grounds on which it is based, arbitrary". With regard to written exhibit 8 submitted by the applicant in the district court, it is noted that the Equal Opportunities Commissioner, Mr Stenman, stated that the use of the interest rate passport was, according to Mr Stenman, acceptable if it could alleviate the medical condition.

The pre-condition for coronary passport legislation has therefore been clear: coronary passport legislation has been proportionate and necessary only and only in the light of the medical evidence presented. The logical legal conclusion is that if medical knowledge changes, the legislation and its implementation must change. This is a matter of legal importance in the light of the general conditions of limitation of fundamental rights. According to the doctrine of the limitation of fundamental rights, fundamental rights can only be limited by a lower level of regulation than the Constitution under certain well-defined conditions. These conditions include, inter alia, that the grounds for the restriction must be based on an Act of Parliament, that the restriction must be justifiable and required by an overriding social need, and that the restrictions must comply with the proportionality requirement. The proportionality requirement can be considered to consist of both a requirement of appropriateness and a requirement of necessity; the restriction must be suitable in general to achieve the objective pursued and, in addition, the objective cannot be achieved by means less intrusive to fundamental rights.

<u>The obligation for the Council of State to monitor the effects of regulation and take remedial action</u>

The Government's obligation to monitor the effects of legislation is clear, for example, from the statements of the Constitutional Committee on the interest rate passport legislation:

PeVL 35/2021 vp (regulation on the use of interest certificates) p. 4, point 10:

> (10) The *Government must closely monitor the effects of the regulation and, if necessary, take steps to correct it.*

PeVL 26/2021 vp (border testing and inter alia TTL 16a-16f §) p. 4, point 9:

> (9) *The Committee also stresses the need to closely monitor the impact of the regulation and to introduce legislative changes where necessary.*

PeVL 14/2020 vp (temporary restriction on the operation of restaurants, TTL 58a §) p. 6:

> *The Constitutional Committee stresses that the proposed regulation must also be limited in time to what is necessary. The Government must closely monitor the need for the regulation to remain in force and any problems that may arise in its application and take measures to remedy them.*

In its opinion on the regulation of the use of a jewellery certificate, the Constitutional Committee has made it a condition that the Government must closely monitor the effects of the regulation and, if necessary, take steps to correct it. Thus, if medical knowledge had changed, the regulation (the introduction of the interest certificate and the requirement to obtain it on the basis of decisions by the regional administrative offices) would have had to be amended. According to the applicant, the Council of State failed to do so, which resulted in his being required to obtain a passport at the Fazer Kluuvi café at 9 a.m. on 10 December 2021, unnecessarily and in breach of his fundamental rights.

Former Prime Minister Marini's testimony blocked by district court

Since the Constitutional Committee had held that the Government was obliged to monitor the effects of the regulation and, if necessary, to take steps to correct it, and since the Prime Minister was responsible for the functioning of the Government, the applicant had decided to call the former Finnish Prime Minister, Sanna Marin, as a witness before the District Court. It was during her time that the Government submitted the interest rate passport legislation to Parliament for approval. Ms Marin's testimony was entitled: *'on what the Government has based its view of the necessity of the interest rate passport legislation and how the Government has monitored the necessity of the regulation of interest rate restrictions in relation to the realisation of fundamental rights'*.

A key aim of the coronary passport has been to prevent the transmission of coronary heart disease from one person to another. On the basis of the written evidence submitted by the applicant to the district court and the oral testimony of witnesses, in particular the statements of Hanna Nohynek, a senior physician at the THL, and Asko Järvinen, an infectious diseases physician at HUS, as well as the statements of cardiologist Aseem Malhotra, it was known by the summer of 2021 that coronary vaccines do not prevent the transmission of coronary heart disease from one person to another in more than half of the cases. However, the key information has been that a vaccinated person could also have transmitted coronary heart disease to another vaccinated person. Thus, a coronary passport may have resulted in a vaccinated person who had access to a facility with a green coronary passport being able to infect unsuspecting persons with coronary heart disease.

However, as described above, the district court refused to call Sanna Marin as a witness and the court thus had no first-hand knowledge of how the Government implemented the precondition set by the Constitutional Committee for the adoption of the interest rate passport legislation.

Medical testimonies and medical examinations as written evidence

The witnesses Järvinen and Nohynek - Nohynek also acting as an expert - who were heard in the district court have confirmed the views of the applicant that the coronary vaccines have not prevented the spread of covid 19. According to Järvinen, already in late 2020, when the first coronary vaccines were introduced, it was known to the medical community that they provided only 50% protection against coronavirus infection and that the effect lasted 2-3 months. Each time a new variant of the virus appears, the efficacy and duration of action of the vaccines has decreased. This has meant that by early December 2021, the effectiveness of the coronavirus vaccines will have been significantly reduced.
According to Nohynek's testimony, by 6 months after the coronary vaccine was administered, the protection it provided had dropped to zero.

At trial, the plaintiff has presented both Järvise and Nohynek with Exhibit 13, which was a study conducted in the US state of Wisconsin in July 2021 on how the SARS-CoV-2 virus has spread despite the vaccine at a time when the delta variant was in general use. The study measured similar viral loads in people living in Wisconsin, USA, regardless of vaccination status, during a period when the prevalence of the delta variant was high and rising.
The study data confirmed the notion that vaccinated individuals who contracted Delta variant infection were able to spread the SARS-CoV-2 virus to other people in the same way as unvaccinated individuals. Both witnesses have admitted in court that they were familiar with the results of the study. According to Nohynek, the results of the study have been known for several months before August 2021, when the study was published.

Both Nohynek and Järvinen have said that they have informed the Ministry and, through the Ministry, the Government, that the coronary vaccines have not prevented the transmission of covid-19, even from one vaccinee to another. This information has been passed on since at least the summer of 2021. Both say that the vaccines have only been effective in preventing hospital admissions, and that this, according to Nohynek's statement, has only been the case for frail people, such as the particularly elderly.

Both Nohynek and Järvinen have told us, when questioned, that a single vaccinee entering a room with a large group of vaccinated people has not posed a risk to those vaccinated who are

have been protected from hospitalisation thanks to vaccination. In contrast, the entry of an unvaccinated person into a room with vaccinated persons was not significantly different from the entry of a person who had already been vaccinated, as both the
the vaccinated person may have carried a coronavirus load and may have passed it on to others who, despite vaccination, may well have contracted coronavirus disease.

With regard to the applicant's written evidence, we highlight the following points, which we consider to show that taking the corona mRNA vaccine, which was a condition for obtaining the corona passport, has not fulfilled its intended function of preventing the spread of covid-19, even from one vaccinee to another, nor has it protected against covid-19.

As for Exhibit 14, the survey data suggest that the disease has spread between fully vaccinated individuals. As regards evidence 15, it is concluded that individuals with a breakthrough infection have similar viral loads to unvaccinated individuals and are able to effectively spread the infection under domestic conditions, including to fully vaccinated contacts. With respect to Exhibit 16, many decision makers assumed that vaccinated individuals could be excluded as a source of potential infection. It appears to be grossly negligent to neglect the vaccinated population as a potential and essential source of infection when deciding on public health measures.
The above evidence also shows that by allowing vaccinated individuals into public places with a coronavirus passport, a situation has in fact arisen where individuals who, despite vaccination, have contracted covid-19 have been able to and have spread coronavirus to other - unsuspecting - fellow human beings. In order to respect equality and at the same time - as the government has stated it wanted to do - to protect people from coronavirus, all customers who tried to enter the Fazer Kluuvi café should have been tested for coronavirus.
As for documentary evidence 17, coronavirus vaccines have not prevented the disease, with coronavirus infections being found in Israel (which was at the forefront of the distribution of coronavirus vaccines) in those who received a third dose of the vaccine. Documentary evidence 18 continues the trend in Israel, showing that almost all adults in Israel have been vaccinated, but that coronavirus has only spread.
Vaccination has not prevented the spread of the disease, nor the transmission of the disease among those vaccinated. Exhibit 19 states that a full vaccine series has resulted in coronavirus infections among nurses in Ostrobothnia, Exhibit 20 states that in Pirkanmaa, an increase in vaccination coverage correlates with an increase in the incidence of covid-19 disease, and Exhibit 21 states that in Kainuu Central Hospital, coronavirus infections have occurred among patients and staff who have received coronavirus vaccination. Thus, according to this evidence, the vaccine has not prevented the spread of coronavirus disease; on the contrary, there are indications that it has even accelerated the spread of the disease.

According to Exhibit 31, Nohynek, a senior physician at the THL, says that the studies found that the vaccine only slightly reduced forward transmission, and that the idea behind the solution of the benefits of the vaccine was too black and white and did not even reflect the scientific knowledge at the time. "The vaccine protected against infection, but only moderately and for a short time". According to Exhibit 32, the European Medicines Agency (EMA) stated that the covid-19 vaccine was not intended to prevent the transmission of disease from one person to another and that the vaccine was only intended to protect those vaccinated. The EMEA's statement indicates that even if Vauhkala had taken the vaccine, it would not have protected anyone else from the disease. Therefore, the refusal to allow Vauhkala access to the Fazer café has not protected anyone, has not protected legal interests, but has instead infringed Vauhkala's right to equal treatment and the right of access to the restaurant guaranteed by the European Convention on Human Rights. According to Exhibit 34, the national expert group on vaccination, KRAR, considered, according to THL Kontio, that since vaccination does not completely prevent infections, vaccination would not be the primary means of preventing infections. Further, according to Kontio, herd immunity could not be discussed because it was not achieved.

The district court merely acknowledges the medical assessment of the case by stating the following:

> *"The district court assessed the medical evidence presented as showing that the prevailing medical opinion was that the coronavirus vaccines were effective in protecting the vaccinees from serious forms of disease and that the vaccines also helped to prevent the spread of coronavirus. In addition, the coronavirus passport also protected other fundamental rights of citizens and reduced the burden on the health care system in the face of a challenging disease situation. The purpose of the coronavirus passport legislation was to ensure the widest possible enjoyment of citizens' fundamental rights and to prevent the harm to society caused by a pandemic."*

In light of the evidence presented in the case, we find highly questionable the district court's assertion that coronary vaccines would have helped prevent the spread of coronavirus in the fall and December of 2021.
In any event, limiting fundamental rights solely on the basis of "helpful" utility does not satisfy the proportionality and necessity requirement of the conditions for limiting fundamental rights; here, the district court fails to make this proportionality assessment entirely.

<u>Corona testing performed with an unreliable test</u>

According to the State, Vauhkala was also not discriminated against on the grounds that he could have obtained a negative PCR test result every 72 hours. However, this would have cost 100-200

times, which would have meant an extra €1000-2000 per month just to enable Vauhkala to enjoy his rights under the Constitution and the European Convention on Human Rights. Of course, this would have been considered a violation of fundamental rights in itself.

However, the plaintiff also questions the effectiveness of PCR tests. On the basis of the expert opinion of Astrid Stuckelberger, it must be concluded that the PCR tests used by the Finnish authorities give 97 % false positive results. Consequently, restrictions of fundamental rights based on PCR tests cannot fulfil the general conditions for restrictions of fundamental rights. It should also be noted that the Constitutional Committee - despite relying on medical knowledge - has not assessed the conditions for the use of PCR tests, even though they have played a key role in assessing the incidence of coronary heart disease. It must be held that the Constitutional Committee did not carry out an adequate assessment of the legislation on the coronary passport by failing to assess the possible unreliability of the PCR test. In practice, the spread and extent of Covid-19 has been assessed solely on the basis of the results of PCR tests. It is to be feared that this form of testing has resulted in a very high number of false positives, leading to unnecessary restrictions on the fundamental and human rights of the persons concerned.

The Helsinki Court of Appeal should assess whether the coronary passport legislation is constitutional in relation to the detection of covid-19 almost exclusively by PCR testing.

Stückelberger's expert testimony indicates that the PCR test results have not reliably predicted the health status or infectivity of the person being tested for coronavirus. A coronavirus passport could be obtained with a negative coronavirus test result, in addition to the so-called green coronavirus vaccination and coronavirus disease, even though the coronavirus test did not meet the expectations of the coronavirus passport legislation.

It is undisputed that the infection by Covid-19 is established on the basis of the PCR test result and to this end the applicant has submitted a number of written proofs. It is clear from Mr Stückelberger's statement that the PCR test is not a diagnostic tool and that in any event it cannot be said with certainty whether a positive test indicates the presence of residual antibodies to the virus or to an old infection in the sample. The US Centers for Disease Control and Prevention (CDC) has also stated in its guidelines for the use of PCR that *"the detection of viral RNA does not necessarily indicate the presence of an infectious virus or that 2019-nCoV is the cause of clinical symptoms"*. These facts alone are sufficient to demonstrate that PCR test results, and hence corona statistics, are unreliable.

In the above statement, the State argues, in relation to a domestic sample study in the HUS region, that in that sample study positive PCR test results would have been achieved with relatively low Ct values, which would make the test results reliable. However, our evidence 31 - the HUS diagnostic centre's HUSLAB study document - shows that, according to the HUS diagnostic centre itself, the Ct value does not allow reliable conclusions to be drawn about the viral load of the sampled person and thus his infectivity, and that there are large uncertainties in the clinical interpretation of the samples in general. Because of this high uncertainty, PCR test results therefore do not reliably indicate anything about a subject's morbidity or infectivity to coronavirus.

The high level of uncertainty in the PCR test results highlighted by the HUS diagnostic centre is explained by the scientific facts presented in Stückelberger's statement. PCR technology can identify the genetic material of a virus, but not the whole virus: although PCR technology is good at correctly identifying the genetic material of a virus, it cannot detect whether it is from the whole virus. Therefore, PCR cannot diagnose any viral infection and is not a valid test for detecting infectivity.

COVID patients are infectious for 7-8 days, but an infected person can test positive for PCR even if they are no longer sick or infectious. People with a history of COVID can have a positive PCR test result for 80 days or more, even if they are no longer sick, infected or infectious. Patients who are immune and have never had symptoms can test positive.

In his expert and witness testimony, THL Chief Medical Officer Nohynek has said that PCR tests are very sensitive and do not give the full picture of infectivity. PCR test results can remain positive long after the end of infectivity. A person may excrete traces of the virus but not necessarily be infectious. In fact, in a statement to the Helsinki District Court, Mr Nohynek confirmed Mr Stückelberger's statement.

The district court acknowledges the above evidence as follows (pp. 47 and 51 of the operative part of the judgment):

> *The district court also notes that the interest rate vaccine was not the only condition for obtaining the interest rate passport. If a person has not wanted/has not been able to take a coronary vaccine, such a person has also been able to obtain a coronary passport by obtaining a negative coronary test, or if the person had a coronary disease within the last six months. If Mr Vauhkala did not want to take the coronary vaccines because he considered it against his religious convictions to take the vaccines, he was not*

forced to do so at any time. This must be taken into account when assessing the compatibility of the interest rate passport legislation with Article 9 of the EIS, explicitly from the perspective of the proportionality principle. And in any case, the interest rate passport legislation was only in force for operators that do not provide a so-called 'necessity service'. Thus, for example, pharmacies or grocery stores were not required to have a passport, which is an important consideration when examining whether the proportionality condition of the passport legislation is fulfilled.

The district court thus does not in any way consider the evidence presented in the case regarding the reliability of the corona tests or the fact that the tests were paid for, but merely states that Vauhkala would have had the opportunity to take the tests if he so wished. The district court thus completely ignores and disregards the relevant evidence. This omission of factual reasoning alone renders the judgment unlawful.

Interest rate passport legislation loses Constitutional Committee approval

In the applicant's view, the oral testimonies and the written evidence show that the Council of State did not take medical information into account at the time when the interest rate passport legislation was drafted, that distorted or at least outdated medical information on the benefits of vaccines was most probably communicated to the Constitutional Committee and that the interest rate passport legislation could not have been based on up-to-date medical information.

By 10.12.2021 at the latest, the interest rate passport legislation did not meet the criteria for general restrictions of fundamental rights, because the restriction, i.e. the requirement of an interest rate passport as a condition for access to a catering establishment, was not suitable to achieve the stated objective. That was because the condition for obtaining a coronary passport, namely the taking of a coronary vaccine, did not result in the coronary disease not spreading and the coronary vaccine could only protect at most the person who had taken the coronary vaccine himself. If Mr Vauhkala had taken the coronary vaccine and had obtained a green coronary pass which would have enabled him to enter the Fazer Kluuvi café, the situation with regard to the transmission of coronary heart disease would not have changed in any way for those who had already been in the café and who had not yet been vaccinated.
for any new customers that may come to the site.

Thus, the Constitutional Committee cannot be considered to have assessed the constitutionality of the interest rate passport legislation when the constitutionality of the legislation has changed in the light of changing medical knowledge. The Government should have followed the evolution of medical knowledge. This is not what the Council of State has done. Further, the Council of State should have

take corrective measures to the regulation, as the Constitutional Committee has requested. Since the Government has not taken corrective measures, the interest rate passport legislation has lost the constitutional approval given to it by the Constitutional Committee.

Violations of Article 124 of the Constitution

The state's interest rate passport legislation has also been unconstitutional because it has enabled a significant transfer of public power to a private company, in this case Fazer Restaurants Ltd. The legislation has allowed a private company to decide for itself when to require a passport as a condition of entry to a restaurant.

Fazer Restaurants Ltd has demanded a coupon pass as a condition for access to its premises throughout its opening hours, usually only from 5pm onwards in other restaurants. Article 124 of the Constitution
"A *public administrative task may be entrusted to a person other than a public authority only by law or by virtue of law if it is necessary for the proper performance of the task and does not jeopardise fundamental rights, legal certainty or other requirements of good administration. However, tasks involving the exercise of significant public authority may be entrusted only to a public authority.*" Barring access to a restaurant for the whole day, as an exception to other businesses in the same sector, involved a significant exercise of official authority, which can only be entrusted to a public authority. The purpose of the Communicable Diseases Act is to prevent communicable diseases and their spread and the harm they cause to people and society, not to regulate the opening hours of businesses. The closure of shops is aimed at preventing the spread of covid-19 and, while the closure of shops has an effect on the protection of the health of the population, the closure of shops is not in line with the provisions of Article 18 of the Constitution. §, the right to freedom of trade and industry cannot be transferred to a private undertaking, but such a task involving the exercise of significant public authority could only have been entrusted to a public authority.

The applicant further submits that the fact that an ordinary restaurant employee is entitled to check the interest rate passport through which the restaurant employee has access to Vauhkala's personal health information also constitutes a significant exercise of official authority.

The obvious unconstitutionality of the interest rate passport legislation is evident from the fact that the legislation, namely Section 58i of the Communicable Diseases Act, has not been precise, but has left it to the private operator, in this case Fazer Ravintolat Oy, to choose whether or not to infringe fundamental rights. The representatives of the Fazer group had the option of choosing either to act in a non-discriminatory manner towards the applicant
which would have resulted in financial losses for Fazer, or discriminatory conduct towards the

applicant. The defence of a breach of fundamental rights on the basis of financial loss is not in accordance with the law.

According to Kostilainen, the defendant's CEO, "the material you refer to elsewhere (on the website of the Regional Administrative Office) states that 'it is up to the catering business to determine the times when it will introduce the interest rate pass'.

When the legislation is not precise, i.e. it allows a private company to decide whether or not to prevent an individual from entering its premises based on presumed health information at a certain time of day, the legislation does not comply with the doctrine of restriction of fundamental rights. As the defendant's CEO himself explains in his letter to the applicant, it has exercised the "right" mentioned on the Regional Administrative Office's website to determine for itself the times at which the company has introduced the interest rate pass.

The district court stated the following in response to our arguments above concerning Article 124 of the Constitution (p. 56 of the judgment):

> *"The district court finds that this issue was also clarified in accordance with established practice when the coronet certificate legislation was introduced and that there is no significant exercise of public authority when a cafeteria worker merely checks whether a person has a coronet certificate or not."*

However, it is not clear from the district court's decision what this "established practice" is, and how the case was resolved accordingly. Indeed, this particular question was not addressed in the Parliamentary Papers (HE 131/2021 vp), apart from Mr Hidén's attempt to raise the issue in his opinion. The district court thus simply ignores and disregards the applicant's legal arguments by 'holding' that the case is not as the applicant claims, without giving any reasoning. The parties are thus unable to assess the legal reasoning on which the decision is based. The decision is therefore not sufficiently reasoned in the way required by the case-law: according to KHO 2019:110, the adequacy of the reasons given for an administrative decision must be considered from the point of view of whether the party's right to obtain a reasoned decision and to appeal against it can be effectively safeguarded.

The importance of the matter is also reflected in the fact that the Constitutional Committee has not taken any position on this issue in its opinions, which shows that this is a genuinely open issue on which the Court should take a position on the basis of the Constitution, based on legislation, legal principles and case law. In an ambiguous situation, and especially where the issue has not been properly addressed at the drafting stage, the issue should be interpreted in favour of the applicant.

Preparation of interest rate passport legislation unconstitutional

Furthermore, the district court has not assessed in any way the apparent unconstitutionality in the context of the preparation of the interest rate passport legislation that, when the plaintiff requested the State to provide the preparatory documents for the interest rate passport legislation, the State has stated during the litigation process that it does not have such preparatory documents, but the State has relied only on the statements made by the THL. This is contrary to the position taken by the Constitutional Committee, as the opinion of the Constitutional Committee PeVL 11/2016 vp - HE 13/2016 vp (in relation to the Government Bill to Parliament on the Communicable Diseases Act and certain related Acts) states that*, according to the general explanatory memorandum to the Government Bill, the basic draft of the Government Bill was prepared by a consultant commissioned by the Ministry of Social Affairs and Health. Legislative drafting is one of the main tasks of the ministries. It is clear that it cannot be outsourced. In practice, however, it has been held that this does not prevent external studies or expert advice from being obtained.*

In the present case, however, it is undisputed that, according to the State's statement, the preparation of the interest rate passport legislation was entirely based on the statements and preparation of the THL, not the ministries. We ask the Helsinki Court of Appeal to investigate and determine whether the preparation of the interest rate passport legislation violated the view of the Constitutional Committee that the preparation of legislation is one of the most important tasks of the ministries.

When the State relies in its evidence, inter alia, on the THL's weekly bulletins, it is clear that what is at issue is not the opinions of an impartial expert body, but an organisation directly and obviously centrally involved in the preparation of the interest rate passport legislation, whose bulletins have supported the legislation prepared by the organisation. Consequently, the State's evidence in this respect cannot be considered credible.

Application of Section 28 of the Non-Discrimination Act to the case

Vauhkala also considers that the Helsinki District Court did not assess the meaning of Section 28 of the Equality Act in the case.

When Vauhkala has provided sufficient grounds in the course of the proceedings for his claim that he has been discriminated against by both Fazer and the State, it is for the respondents to prove that there has been no breach of the prohibition, pursuant to Section 28 of the Equality Act.

However, the State has done everything in its power during the legal process to prevent the case from being resolved. Vauhkala, despite his representations, has not succeeded in getting the court to prove

representatives of the state, i.e. ex-Prime Minister Sanna Marini, and not STM department head Koskela. Despite the request for a preliminary ruling, the State has not handed over the above-mentioned preparatory documents for the coronavirus passport legislation, nor the contracts for the supply of coronavirus mRNA vaccines in so far as they concerned the coronavirus vaccines supplied to Finland. The importance of the supply contracts would have been to show whether the vaccines had been guaranteed by the manufacturer to work and whether the vaccines had been tested to ensure that they did work.

Violations of the European Convention on Human Rights

According to Vauhkala, the European Convention on Human Rights and the case law of the European Court of Human Rights apply in the case. The Helsinki District Court has held, with very brief reasoning, that in the Vauhkala case there is no reason to consider that the State has committed a human rights violation in relation to Vauhkala.

The district court's view is based solely on the opinion of Salminen, who gave an expert opinion on behalf of the State, that the jewellery certificate has been assessed in the opinions of the Constitutional Committee as meeting the requirements of admissibility and proportionality for fundamental rights restrictions and further that *"the assessment is in line with the requirements of the EIS for corresponding fundamental rights restrictions and that therefore the fundamental rights restrictions do not violate the obligations of the EIS either".* According to the district court's statement, *"Salminen has stated that it is well established that the bills under review by the Constitutional Committee are also subject to a similar test of compatibility with human rights conventions, and that this has been held to be the correct interpretation of the EIS".* In its judgment, the District Court further relies on Salminen, stating that *"Salminen has also stated that, in addition to the factors mentioned in the PeVL's opinion, and in view of the very short time-limits for the legislation to come into force, he considered it to be clear that the regulation of the coronet certificate fulfilled the proportionality requirements of legislation restricting a fundamental right."*

Further, in the judgment, the district court states that *"the district court will assess the relevance of the report of the plaintiff's witness Muukkonen below, but already states here that Muukkonen has not provided any relevant information in this regard that would affect this assessment."*

For the reasons set out below, Vauhkala's case has a very similar relationship to the ECHR, and the district court's disregard of the ECHR on the basis of Salminen's statement alone also disregards Vauhkala's right to a fair trial. In this regard, we find that the warrant for further proceedings

is essential to ensure that Vauhkala's right to a fair trial under Article 6 of the European Convention on Human Rights is respected.

As the district court refused to assess the case for violations of the ECHR and relied in its reasoning only on Salminen's statement, we recall that already at the beginning of the application for leave to continue the proceedings we stated that the oral hearing of the legal expert appointed by the defendant, Janne Salminen, at the main hearing was contrary to the prevailing case-law for the following reasons:

According to established Finnish case law, legal experts are not heard orally in court proceedings. Even the Finnish State itself, through its agent, stated the following in its reply to the District Court on 31 August 2022:

> *117. The (oral) hearing of legal experts does not form part of the Finnish procedure. The key principle is that the court knows the law (jura novit curia). The parties (typically through their agents/attorneys) can of course present their legal arguments in their pleadings, and in particular in the final report, and may refer to and present legal sources and expert legal opinions to the court if they wish.*

We agree with the view expressed in the State's 31.8.2022 reply that legal experts should not, in principle, be heard orally as experts in Finnish court proceedings. We therefore wonder why the State, in complete contradiction to its earlier statement, has nevertheless summoned Salminen to be heard orally, and why the District Court has accepted this.

For the reasons stated above, we are of the opinion that the district court should have refused Salminen's oral hearing under Chapter 17, Section 8 of the Code of Judicial Procedure, as it can be replaced by substantially less costly or time-consuming and substantially more reliable evidence (Salminen's written expert testimony), and as his oral hearing is unnecessary in any event from the point of view of the prevailing Finnish judicial culture. That view was confirmed during the oral hearing of Mr Salminen at the main hearing, since he did not say anything orally at the main hearing that had not already been read in his written expert report; rather, he appeared to be merely reading out extracts from his written report.

The district court should have taken into account the above-mentioned unnecessary oral hearing of Salminen as a matter of course, in particular because it refused to hear the applicant's main witnesses, Sanna

Marin and Satu Koskela, hearings. The mere equality of the parties before the law and the adversarial principle require that the district court should have taken the initiative to consider such fundamental issues of procedural management properly and with respect for the rights of the parties.

Muukkonen is a doctor of law by training and, as he told the district court, he has offered to write an assessment of the implementation of unvaccinated fundamental rights in relation to the interest rate passport legislation for the Constitutional Committee, an offer that the Ministry of Social Affairs and Health and the Ministry of Education and Culture have not taken up. He is also the author of the only peer-reviewed legal article on the passport and fundamental rights, which is included in the written evidence submitted to the Vauhkala District Court.

Ignoring Muukkonen's opinion without a valid reason

The district court has effectively completely ignored the significance of Muukkonen's testimony and the peer-reviewed legal article he wrote, on the sole basis that Muukkonen would not have assessed the right to life in any way. However, there are many fundamental rights, and no single one of them can be elevated to a level of importance vastly superior to others. Muukkonen has also pointed this out in his witness statement to the district court, stating that fundamental rights form a coherent whole, from which it is not possible to separate the pieces and place them in an unequal position. According to him, fundamental rights are assessed on a case-by-case basis. For example, according to the WHO definition, health is not only the absence of disease-causing elements, such as a virus, but is above all the totality of a meaningful life. If a person is unable to live a full life, for example because of forced medical interventions and restrictions, this in fact and according to research shortens life and negatively affects the quality of life.

In any case, even if Muukkonen had mentioned something about the right to life and health in his article, it would not have refuted the main legal observation of Muukkonen's article, which was completely ignored by the district court - from the perspective of the fundamental rights system, it would have been a less intrusive interference with the rights of the unvaccinated (including the plaintiff) if they had been offered free testing (Muukkonen's article p. 13), and therefore the interest rate passport legislation did not meet the proportionality requirement of the fundamental rights restrictions.

Vauhkala's own view has been left aside

According to Vauhkala, the central problem with the district court's judgment in relation to the fair trial process is that his own views are in practice completely omitted from the judgment. The district court has acknowledged that Vauhkala has religious beliefs, but nothing else is actually apparent from what Vauhkala himself has said about this in court. However, also according to the case-law of the Supreme Court (KKO:2016:20), the assessment of the offence experienced by an individual is based on the feeling of offence experienced by the individual himself, and this cannot be brought out except by hearing the individual and assessing his account. In practice, the district court has not done this at all. The case is also important in the sense that the district court has, throughout the judgment, referred to the case law of the Supreme Court in relation to the conditions for the State to be liable for damages for human rights violations. These are: (i) the violation of human rights has occurred; (ii) the violation can be considered sufficiently serious; (iii) the violation has caused causal damage.

The severity of the injury and the causal damage should therefore be assessed on the basis of the injury and the depth of the injury experienced by Vauhkala himself.

Vauhkala has actively sought to find out

a) whether he or she belongs to a coronary heart disease risk group to which he or she does not belong
b) what the consequences of taking a coronary vaccine might be for him or her. Through her own research, she has concluded that her risk of becoming seriously ill from the coronary was minimal, and she did not want to take the risk that she, in turn, could suffer serious health damage from the vaccine.

Vauhkala has told the court that his religious beliefs have been at odds with the fact that a potentially harmful vaccine could harm the body of Christ, which is made up of believers together. Vauhkala also knew that the coronary vaccine and the medical procedure in general were voluntary and that refusal of a voluntary procedure should not lead to the annulment of fundamental rights.

At Fazer Kluuvi café, Vauhkala has been prevented from entering the café after a short argument because he did not have his interest rate pass. Mr Vauhkala said that customers at the Fazer café had been watching the discussion between him and the employees. Mr Vauhkala felt that he did not belong and that he was an inferior citizen. During the hearing, he said that he had also been prevented from accessing services on several occasions at a later stage. Mr Vauhkala had been subjected to numerous public attacks on the group of people he considered to be the most vulnerable.

represent people who have deliberately - either for ideological or religious or other reasons - refused coronary vaccines. That group of people considered that they had the right to bodily integrity and the right to refuse medical interventions. According to Vauhkala, those attacks included the April 2021 writing by Ilta-Sanomie journalist Manninen about unvaccinated people as kulkus and the October 2021 declaration by Bishop Laajasalo that the unvaccinated are responsible for the death of their fellow human beings. In November, Lasse Lehtonen had called for marketing and propaganda to force people to get coronary vaccinations. Vauhkala saw this action by public figures and decision-makers as demonising and stigmatising her.

Vauhkala told the hearing that public pressure and repeated refusals to serve him made him feel like he was living in an open prison, where he would only be allowed to go to the convenience store, but not much else. He has felt that he was put in this situation through no fault of his own. He said that he had started planning to move away from Helsinki to find a place where he would not feel he was living in open prison conditions. what was particularly painful for Vauhkala was that he did not know how long this situation would last and he even formed an association to fight for the constitutional rights of people like him.

Vauhkala has made the decision not to have coronary heart transplants out of an informed inquiry and religious conviction. He has told the hearing that he had heard in the spring of 2021 about Jari, who had been blinded in one eye due to a Pfizer coronary vaccination and had also received medical compensation for this. Vauhkala had later met this Jari. He had earlier seen a video statement by Kary Mullis, the developer of the PCR test, in which Mullis said that the test had not been developed to detect the disease. Vauhkala knew that international pharmaceutical companies had been repeatedly fined billions of dollars for dishonest practices in the marketing of medicines.
As he continues to investigate the corona issue, he has uncovered a wealth of other information about how coronary vaccines have harmed people. He has also heard from a client who came to his firm's office about a young person whose health had been completely ruined by a so-called "pig shot". In his research, he has discovered that coronary vaccines have been recommended for high-risk groups, which Vauhkala, as an active, healthy person, does not belong to.

Vauhkala went on to say that he had been a Christian since 1994. His faith includes the view that believers are the body of Christ on earth and that this temple of God must be cared for. As Mr Vauhkala was aware of the above-mentioned disadvantages caused by the coronary vaccines and the fact that, in good health and good condition, he could not be given the coronary

risk, he has decided not to take the vaccines. He has also known that by taking the coronary vaccine he could not protect others, but that people at risk had to protect themselves by taking the coronary vaccine themselves.

Vauhkala has belonged to two different groups whose rights have been violated by the state through the constitutional and ECHR interest rate passport legislation and its practical implementation. On the one hand, Mr Vauhkala was a healthy individual who, for ideological reasons, did not wish to take the corona mRNA vaccine and, on the other hand, his religious convictions prohibited him from taking the vaccine, which he considered, on the basis of his own knowledge, based, inter alia, on information from acquaintances and knowledge acquired during his studies, could damage his body, which, on the basis of his faith, is part of the body of Christ, which believers must take the best possible care of. The ideological view of those who do not have a coronary vaccination is also protected by law, since Article 6 of the Patients' Act, Article 5 of the Oviedo Convention and point IV of the Code of Medical Ethics guarantee that no one is obliged to consent to a medical procedure against his or her will.

The case law of the ECtHR in relation to national law

The European Court of Human Rights is above the Finnish court system in human rights matters, and Finnish courts must follow the case law of the ECtHR in their own decisions. In the District Court's view, Salminen's statement that the Constitutional Committee has already assessed the compatibility of the interest rate passport legislation with the ECHR is sufficient to ensure that the state has complied with the ECHR in the Vauhkala case. This is not supported by the case law of the European Court of Human Rights, as it is the task of the ECtHR to assess the compliance of states that have signed up to the EIS with the ECHR. The case law of the ECtHR has shown that even national legislation has directly allowed for a violation of an individual's human rights. In *Norris v. Ireland* (1988), the ECtHR held that Irish legislation has allowed for a persistent interference with an applicant's right to respect for his private life, which the Court has held to be a violation of the ECHR.

The European Court of Human Rights case *I.B. v. Greece* (2013) is directly linked to the Vauhkala case and serves as a precedent for the case. The case of *I.B. v. Greece* concerned the dismissal of an HIV-positive complainant shortly after diagnosis. The appellant's claims for compensation

were partially successful in the lower courts, but the country's highest court rejected the claims on narrow grounds and using a patently false premise about the contagious nature of the disease. According to the ECtHR, the procedure amounted to discrimination under Article 14 of the ECHR in relation to the protection of private life guaranteed by Article 8. The present case is very similar to the ECtHR case, in that the introduction of the interest rate passport was also based on a manifestly false premise about the infectiousness of covid-19: at the time of the dismissal in the ECtHR case, it was widely known that HIV:HIV carrier does not transmit HIV in normal human-to-human contact, and similarly it was already widely known at the time of the preparation of the coronavirus legislation that non-coronavirus persons do not transmit SARS-CoV-2 in normal human-to-human contact in a different way from coronavirus persons.

The case law of the ECtHR attaches considerable importance to the resolutions of the Parliamentary Assembly of the Council of Europe. PACE Resolution 2361 (2021): in paragraph 7.3.2, the Assembly requires its Member States, including the European Parliament, to. In Article 7.3.1, the PACE states that no one should be discriminated against on the grounds of non-vaccination, whether this is due to potential health risks or simply to a lack of willingness to be vaccinated. For this reason, too, non-vaccination - and indirectly non-immunisation - must be seen in the light of Articles 14 and 14 of the ECHR.
as "other status-based grounds" within the meaning of the 12th Additional Protocol. Of particular note is paragraph 13.3.8 of Resolution 2383 (2021) of the Parliamentary Assembly of the Council of Europe, which states that, in order to avoid discrimination in the use of the passport, due attention should be paid to situations where people refuse to be vaccinated for reasons of personal opinion or belief, and that, in particular for this group of people, Member States should ensure that any passport system would not in practice lead to pressure or make compulsory the use of the passport.

The District Court correctly states that the resolutions of the Parliamentary Assembly of the Council of Europe are not directly legally binding, but in fact the European Court of Human Rights gives them considerable importance in its case law, and since Finnish courts should also apply the case law of the ECtHR in their judgments, the Helsinki District Court should have done the same.

The following extract from the grounds of the judgment is particularly noteworthy (p. 52):

> *The district court notes, however, that both of the sections of the PACE Resolution cited by the plaintiff (7.3.1 and 7.3.2) mention that while ensuring that no one is pressured or discriminated against for not being vaccinated, it is nevertheless necessary to*

> *also ensure high vaccination coverage. The statements also show that the epidemiological situation and estimates within a country are best assessed by local authorities. Furthermore, the PACE resolution is not legally binding on an EU Member State.*
>
> *The district court considers that the applicant has also failed to show that the PACE Decision was breached by the State in this case.*

The applicant has already shown that the interest rate passport legislation was oppressive and/or discriminatory towards non-interest rate borrowers. The PACE resolution states that in *addition to* ensuring that no one is pressured or discriminated against for not being vaccinated, high vaccination coverage must be ensured. In other words, vaccination coverage should not have been ensured by pressuring or discriminating against the unvaccinated, as was done in Finland. In addition, the objective of increasing vaccination coverage was not formally raised in Finland at any stage of the preparation of the interest rate passport law. Despite this, however, the district court ultimately held, contrary to the logical conclusion of its reasoning, that the applicant had *not* shown that the resolution had been breached by the State. The district court's reasoning does not follow the rules of logical syllogism, and is thus internally inconsistent with itself.

The ECtHR case of Vavricka and others v. Czech Republic

The State argued that the case of *Vavricka v. Czech Republic* (2021) would have been applicable as a preliminary ruling also in the present case. The case concerned compulsory polio vaccinations for children and the discretionary power of the State to impose such obligations on its administrative subjects. However, the applicant gave full and detailed reasons in the Helsinki District Court why that case was inapplicable to the case as a matter of law in any respect:

1) The case concerned traditional vaccines that had been in use for decades and whose safety profile and potential short- and long-term adverse effects had become very clear to the scientific community and the public (see, for example, paragraph 290 of the Vavricka judgment: *'The vaccination duty concerns nine diseases against which vaccination is considered effective and safe by the scientific community'*). In contrast, most of the coronavirus vaccines used in Finland were new-technology mRNA vaccines that had never been used in humans before the coronavirus era, and whose mechanism of action is completely different from that of conventional vaccines, as our Exhibits 23-26 show. Moreover, there was no consensus in the scientific community on the safety and efficacy of mRNA vaccines.

2) The Vavricka case was largely based on the fact that sufficiently high vaccination coverage (polio and other traditional vaccines) creates a so-called "*herd protection*" or "*herd immunity" effect*, which is in the public interest of the Member States and may justify some restriction of the privacy of individual citizens (cf. See paragraph 276 of the ECtHR judgment, and e.g. the opinion of the Czech State General Health Authority in paragraph 153 of the Vavřička judgment; the French intervention, in particular paragraphs 213 and 215, and the Polish intervention, in particular paragraph 223). However, as is clear from our evidence, the coronary vaccines did not cause such a herd immunity effect, i.e. the coronary vaccines did not prevent the spread of the disease, or even the contracting of the disease, and this was already known in the autumn of 2021 (see, for example, the applicant's written Exhibit 34, in which Mia Kontio, a leading expert at the THL, stated in November 2021 that there could be no question of herd immunity in the case of coronary vaccines).

3) A key finding of the ECtHR was also that Czech law allowed for a derogation from the vaccination requirement without the threat of sanction if the party concerned presented a "permanent contraindication" to vaccinating his child (paragraph 291 of the judgment, *"a permanent contraindication to vaccination"*). A contraindication is a reason or obstacle to the use of a medicine or other treatment (source: https://www.terveyskirjasto.fi/ltt03681). In Finland, in order to avoid the strong pressure to vaccinate imposed by the coronavirus passport, the applicant Vauhkala had practically no alternative but to contract coronavirus disease or to pay between €100 and €200 every three days.

4) The applicant further submitted that the Vavřička case's legal ruling that compulsory vaccination interferes with the right under Article 8(1) ECHR must be interpreted, in particular in the light of the aforementioned PACE resolution, as meaning that strong political and social pressure, in particular to take mRNA vaccines previously unused in humans, which were available under conditional marketing authorisations, also interferes with the right under Article 8(1) ECHR.

The district court rebutted all of the above arguments in the Vavricka case as follows (judgment pp. 47-48):

> *The District Court also considers that the case of Vavricka v Czech Republic, decided by the ECtHR, leads to the conclusion, as interpreted by the respondent, that the State has a wide discretion to protect the sustainability of health and health care at the population level and*

> *a strong right to protect and adopt appropriate measures to protect the life and health of persons and that it is proportionate to require those for whom vaccination represents a remote health risk to accept this universal safeguard in the name of social solidarity for the benefit of those who for health reasons are unable to obtain vaccines.*

The district court thus once again completely ignored and disregarded the arguments put forward by the plaintiff; even the concept of social solidarity used by the district court was based on the herd protection effect of traditional vaccines, which, according to Mia Kontio, a leading expert at the THL, could not be mentioned in the case of coronary vaccines. In fact, the rest of the district court's reasoning is a direct quotation from the State's statement of objections of 31 August 2023 (paragraph 47, p. 16):

> *Furthermore, the ECtHR stated that it cannot be considered disproportionate to require those for whom vaccination represents a remote health risk to accept this generally applicable safeguard in the name of social solidarity for the benefit of those who, for health reasons, are unable to obtain vaccines.*

The district court thus completely ignores the extensive arguments put forward by the plaintiff, and merely copies directly the defendant's old written statement (which was not even presented at the main hearing, and on which the judgment should therefore not even be based), which is not, however, applicable as a legal guide in the present case, since the coronary vaccinations were not even capable of producing a herd protection effect, and could therefore not be demanded from anyone "in the name of social solidarity". The reasoning of the district court therefore does not in any way respond to the arguments put forward by the applicant and the judgment is, for that reason alone, inadequately reasoned and therefore unlawful.

The position of healthy unvaccinated people in relation to the interest rate passport legislation has not been assessed at all

We ask the Helsinki Court of Appeal to assess to what extent the state should have guaranteed the right of healthy unvaccinated persons and persons who refused coronary vaccines on religious grounds to the exercise of their fundamental and human rights.

Vauhkala called Matti Muukkonen, PhD, who has published the only peer-reviewed legal article on the implementation of fundamental rights in the context of interest rate passport legislation, to testify at the main hearing of the district court.

Muukkonen's legal article and his oral hearing considered the question of the circumstances in which a restriction of fundamental rights should be considered a 'basket case'.

the restrictions associated with. According to Mr Muukkonen, the starting point should be the normal situation, i.e. a situation where there are no restrictions, because if the starting point were the existing factual situation, this would in practice mean accepting the idea that one could first restrict fundamental rights on certain grounds and then impose new restrictions by comparing them with the existing restrictions. However, the government had chosen to do otherwise, i.e. to compare the situation created by the interest rate passport legislation with an already restricted society.

According to Muukkonen, no equality assessment of healthy unvaccinated persons was carried out in the Constitutional Committee. The result was that the access of the two healthy persons to the enjoyment of their rights depended entirely on whether or not they had a valid interest rate passport. Mr Muukkonen pointed out that the comparative situation was wrong because vaccination was voluntary and it could not be right that the enjoyment of fundamental rights should be based on consent to a voluntary medical procedure. In fact, even a person who has contracted coronavirus but has obtained a green coronavirus passport would be in a better position than a healthy person who has not obtained a coronavirus passport to enjoy his rights. Nor would this be the correct perspective from the point of view of the fundamental right to life, since a sick person who has obtained a card would most likely spread his disease elsewhere in the space to which he could gain access with a card. According to Muukkonen, the undeclared but de facto aim of the passport legislation has been to increase vaccination coverage, which may be considered highly questionable in the light of the 'overriding social need' criterion of the doctrine of restriction of fundamental rights.

Interest rate testing should have been free of charge to ensure equality

According to Muukkonen, the proportionality principle would have been best fulfilled if the corona test had been free of charge also for persons who did not take coronary vaccines for ideological or other non-health reasons. Article 6.2 of the Constitution requires an acceptable reason for unequal treatment: whether it was acceptable that two healthy people should be placed in an unequal position because one had taken a voluntary action, i.e. had taken the coronary vaccine, and the other had not; on the other hand, a sick and infectious person who had taken the action was placed in a better position versus a healthy and uninfectious person who had not taken the action. And this inequality of treatment in a situation where vaccination was justified precisely on the grounds of preventing infection and reducing the burden of disease. And as we have seen in Muukkonen, Järvinen, Nohynek and Malhotra

expert testimony, it was not necessary or even possible, at least not in principle, to protect the vaccinated group by avoiding the presence of the unvaccinated.

According to Muukkonen, healthy unvaccinated people were also under political and social pressure to get vaccinated: the logic was that you either give up your equal right to services, or you take a full series of vaccinations to validate your passport, or you get sick, or you pay €100-200 every 72 hours for a PCR test. However, PACE Resolution 2361 of 2021, paragraph 7.3.1 of the Parliamentary Assembly of the Council of Europe (PACE) prohibited any political or social pressure on people who refuse coronary vaccination for any reason. In addition, the second PACE Resolution of 2021, number 2383, states in paragraph 13.3.8 that, in order to avoid discrimination in the use of the passport, due attention should be paid to situations where people refuse to be vaccinated for reasons of personal opinion or conviction, and that, in particular for this category of people, Member States should ensure that any passport system would not in practice lead to pressure or effectively make vaccination compulsory.

In his oral hearing, Mr Muukkonen said that he had approached the Ministry of Social Affairs and Health on his own initiative, offering the possibility of "acid testing" the interest rate passport legislation. The STM directed Muukkonen to contact the Ministry of Education and Culture, but there, too, Muukkonen's offer was not taken up. Mr Muukkonen therefore offered to provide a legal assessment of the equal treatment provisions of the passport legislation to the ministries, but they were not interested in this offer. This lack of interest on the part of the ministries has contributed to the fact that Vauhkala, as a healthy unvaccinated person, has been subjected to unequal treatment for no acceptable reason. If the ministries had exercised the duty of care imposed on them by the Constitutional Committee by accepting Mr Muukkonen's legal assessment, the discrimination against Mr Vauhkala would probably not have occurred.

Mr Muukkonen could not explain the reasons for this lack of interest and enthusiasm in the ministries to receive top-quality legal evaluation. On the other hand, Asko Järvinen said in his oral hearing that the interest rate pandemic was "the first political pandemic". By this, Mr Järvinen meant, among other things, that infectious disease doctors, for example, have disagreed with the ministries on measures relating to interest rate restrictions. On the other hand, increasing vaccination coverage was apparently an unspoken goal of the ministries and authorities at large, and perhaps the lack of enthusiasm for Muukkonen's assessment was due to the fact that an objective assessment would have led to it,

that the chosen pressure procedure, which would have led to the desired increase in vaccination coverage, could not have been justified in a transparent and legally sustainable way.

Nor has the position of those who have refused coronary vaccines for religious reasons been assessed in any way during the preparation of the coronary passport legislation.

The enjoyment of fundamental rights cannot depend on wealth

The coronary passport legislation meant that if you refused to take a voluntary coronary vaccine, you either had to contract a common infectious disease or undergo a corona test every 72 hours, which cost €100-200 each time, or around €1000-2000 per month. However, the enjoyment of basic and human rights cannot depend on wealth.

We respectfully ask the Helsinki Court of Appeal to assess this case as well. For the future interpretation of the law, it must be made clear whether, on a fundamental and human rights basis, it is legitimate for the state to require people to pay in order to enjoy their fundamental and human rights.

The judgment of the district court is also unfounded in its assessment of the individual provisions

The logic of the Helsinki District Court's decision has thus been to first prevent the applicant from calling its key witnesses to the main hearing, not to grant the applicant's requests for redaction, even though these were essential documents of evidence, and then to declare, on very light legal grounds, that the Court has no jurisdiction to assess the constitutionality of the interest rate passport legislation and that the Court does not consider that the State has breached its obligations under the ECHR.

Even if one accepts - and the plaintiff does not accept - the above premises of the court, the district court's assessment still leaves a considerable number of legally essential elements missing.

The district court unlawfully refused to call the applicant to give evidence against the Head of the Department of the Ministry of Social Affairs, Mr Koskela

The most important of these is that the interest rate passport legislation did not directly lead to the submission of an interest rate passport claim in the Fazer Kluuvi café on 10.12.2021, but it still required a separate application in the South of Finland.

A decision by the Finnish Regional Administrative Board that Fazer Ravintolat Oy could have required its customers to present a coupon pass as a condition of admission to the Fazer Kluuvi café at 9 a.m. The applicant's Exhibit 7 is linked to this case. It states that in October the Regional State Administrative Agencies sent a questionnaire to the Ministry of Social Affairs and Health on the grounds on which restrictions should be imposed. In a reply signed by the Head of Department, Mr Koskela, the STM stated that restrictions should be set at a low threshold.

According to the written evidence, the Regional State Administrative Agencies have requested clarification of the guidance issued by the Ministry of Social Affairs and Health on the setting of restrictions using the risk potential assessment table of the National Institute for Health and Welfare, given that

a) According to THL, the table is indicative and

b) according to information from local and regional experts, infections do not currently originate from events that are particularly high risk.

The Regional Administrative Agencies asked:

1. In the event of an epidemic situation where no infections have been estimated to come specifically from public events, will the STM advise to consider imposing restrictions on public events or the use of premises more generally and in spite of the above?

2. If the STM directs that restrictions should be considered more generally, does the STM consider that they should be set at.

- all public events of significant risk mentioned in the THL risk potential assessment table (taking into account that the table is only indicative)?
- for all public events and general meetings?
- all premises covered by § 58d (including premises where low-risk activities according to the THL risk potential assessment table are carried out), if the conditions for the application of § 58d TTL are met?
- in some other way?

3. How can decisions in the above-mentioned situations be justified in a legally sound way?

It is therefore clear from the Regional State Administrative Agencies' question to the STM that the restrictions have been based on an indicative assessment table provided by the THL, which has not been exact, and most obviously not based on medical knowledge, as we will see in the future. Moreover, the regional administrative agencies were aware at the time (the letter was dated 1 November 2021, less than 1.5 months before the discrimination against Vauhkala) that, according to information from local and regional experts, infections do not currently originate from high-risk events in particular.

As is clear from the reply signed by Mr Koskela, the letter does not answer any of the questions raised by the regional administrative agencies. The letter is full of generalities, leaving the Regional Administrative Agencies in the dark as to how to react to the fact that the infections did not originate from high-risk events at the time, and how the AVI's decisions should be legally justified.

Based on this unanswered letter, the Southern Finland AVI imposed a restriction in early December for the Helsinki region, among others, on the basis of which the interest rate passport has been requested from the applicant Vauhkala on 10 December 2021 at 9.00 a.m. at Fazer Cafe (Kluuvikatu 3, Helsinki).

According to Article 107 of the Constitution, "*If a provision of a decree or other subordinate legislation is contrary to the Constitution or other law, it may not be applied by a court or other authority.*" The whole episode of Vauhkala's discrimination has started from a restriction decision by ESAVI, based on STM guidelines, which were not based on legal, nor medical grounds. ESAVI's restriction decision was in itself manifestly contrary to the Constitution or other law and should not be applied in court. Thus, the state authority's action was already discriminatory from the outset, even before Vauhkala sought to enter the cafeteria on 10 December 2021 at 9 a.m.

The applicant would have liked to call the STM's Head of Department Koskela to testify in court on the following topic: *'on what medical research or legal assessment has the STM's guidance to the regional administrative agencies been based'.* The district court refused to allow Vauhkala to call Mr Koskela, even though no written or oral evidence on the subject was otherwise available.

According to Vauhkala, the reply given by the Ministry of Social Affairs and Consumer Protection to the Regional State Administrative Agencies was not based on a medical or legal assessment of the need to require a coupon pass in catering establishments such as Fazer Kluuvi, but it nevertheless led the Regional State Administrative Agency for Southern Finland to issue a restriction decision which discriminated against Vauhkala.

10.12.2021 at 9 am. Thus, the decision of the Regional Administrative Office was not necessary from the point of view of interest rate passport legislation and did not lead to the desired result of preventing the spread of covid-19. Furthermore, the objective would have been achieved by less restrictive means, such as asking people to wash their hands thoroughly before entering a café.

It is clear that the decision of the Regional State Administrative Board of Southern Finland to allow the application for an interest rate passport was contrary to the Constitution and the general conditions for limitation of fundamental rights, and therefore cannot be applied before a court or other authority. Further, the decision of the Regional Administrative Agency was contrary to Article 124 of the Constitution in that it allowed the catering establishment, Fazer Kluuvi café, to decide at what time of day it would begin to require its customers to obtain an interest rate pass.

The district court's assessment of the significance of the OKV's report was manifestly erroneous

The defendant State of Finland submitted as written evidence the decision of the Chancellor of Justice V4 of 12 April 2023 concerning a complaint about coronary vaccinations of health care personnel. The applicant submits that this decision has no connection with the case at issue. The District Court states the following (p. 48 of the judgment):

> *"... on 2 December 2022, the Chancellor of Justice's Office (hereinafter referred to as the "OCA") requested a report from the Ministry of Social Affairs and Health (hereinafter referred to as the "MOH") on how the Ministry has monitored the fulfilment of the constitutional requirements of Section 48a of the Communicable Diseases Act (which concerned the coronary vaccination of nurses) and ascertained the existence of those requirements.*
>
> *... On the basis of its subsequent investigation, the OCR has come to the conclusion that it has not found any unlawful conduct or breach of duty on the part of the STM with regard to the monitoring and assessment of the constitutional or medical-epidemiological conditions for the validity of the provision in question.*
>
> *The District Court considers that the decision of the OKV shows that the STM's procedure for ensuring the constitutionality of the measures taken during the interest rate pandemic was fully acceptable and sufficient."*

The district court's interpretation is completely untenable and, in the plaintiff's view, an obvious sign of bias and/or unprofessionalism on the part of the judges.

First of all, from the OKV's analysis of Article 48a of the MLO, no conclusions or interpretations can be drawn (at least not by means of traditional logical syllogism) that the STM's conduct in ensuring the constitutionality of measures other than the interest rate passport legislation during the interest rate pandemic was also acceptable and sufficient, let alone "fully" acceptable and sufficient, as the district court put it. The argument is logically equivalent to the following syllogism:

> "The building inspector inspected the plumbing in the house and found no wrongdoing or neglect of duty."
>
> ➔ "According to the building inspector, the measures taken by the developer to ensure the safety and compliance of the building's structures were otherwise fully acceptable and adequate."

Such a "conclusion" is a clear indication of bias and/or unprofessionalism on the part of the judges, which renders them either unqualified within the meaning of Chapter 13 of the Code of Judicial Procedure or otherwise unfit to perform their duties.

Secondly, the OMC practically never gives decisions, but mainly solutions. This is another obvious sign of incompetence and/or indifference on the part of the author of the judgment.

Role of the district court in the case

According to the decision of the District Court (p. 45), *"[t]he District Court's task is to decide whether the interest rate passport legislation, in the light of the information available to the legislators at the time of its entry into force, was a justified and acceptable measure to achieve the benefits it sought to achieve, i.e. whether the interest rate passport legislation was, inter alia, in compliance with the EIS binding Finland."*

However, it was not for the district court to decide whether the interest rate passport legislation was, in the light of the information available to the legislators at the time of its enactment, a justified and acceptable measure to achieve the benefits it sought. It was for the district court to determine whether the interest-rate passport legislation was a justified and acceptable means of achieving the benefits it sought in the light of the information that was or should have been known to the diligent legislators.

The applicant has repeatedly and consistently stressed this point of view: according to the opinions of the Constitutional Committee, the Council of State must have carefully assessed the necessity for the regulation to remain in force and, even if that necessity ceased to exist, it should have

the Council of State should have amended or repealed the regulation to that extent. Now, in setting and describing its task, the district court completely ignores this position, which has been repeated several times by the Constitutional Committee. In the applicant's view, this is further evidence of the apparent bias and/or unprofessionalism of the judges.

Decision of the district court on the request for a preliminary ruling

The applicant asked the District Court to order the Finnish State to produce the following documents:

1) copies of contracts between the EU and/or the Finnish state and the various coronary vaccine manufacturers for the procurement of coronary vaccines. From these documents, we seek information on whether the EU and/or the Finnish state has any specific requirements for the functionality or usefulness of the coronary vaccines, e.g. in preventing the contracting or spreading of covid 19, or whether the EU and/or the Finnish state has any other quality requirements for the ordered coronary vaccines. Alternatively, other documents that provide the above information
2) the medical reports on which the so-called "coronary passport" legislation, which was temporarily in force from 2021 to 2022, was based. In particular, the precise details of the medical and other scientific data and studies on which the claim and assumption that the use of the coronary passport would have prevented the spread of covid-19 was based.

The applicant considered that the information requested is relevant as evidence, since the trial is partly about whether the State authorities should have been aware in December 2021 of the scientific knowledge, widely held in the scientific community at the time, that the use of the corona passport did not prevent the spread of covid-19 to a significant extent or even at all. During the parliamentary debate, several expert opinions considered the interest rate passport legislation to be constitutional if its introduction would be beneficial in preventing the spread of covid-19.

The issue in this case is whether the Government has fulfilled its obligation, as emphasised by the Constitutional Committee, to monitor the necessity of the interest rate passport legislation and whether the Government should have taken steps to remedy the regulation before the events at issue in this action on 10 December 2021.

Since the case also concerned coronary vaccines and their role in preventing the spread of coronavirus and the harm they cause as part of the effects of the coronary passport legislation, these agreements may have been relevant as evidence in the case.

In its decision of 27 February 2024, the District Court responded to our request for a preliminary ruling as follows:

> *In the interpretation of Chapter 17, Section 40 of the Code of Judicial Procedure, case law has considered it sufficient that the documents requested may have evidentiary value for some relevant matter requiring evidence (e.g. KKO 2019:7).*
>
> *With regard to the documents required from the Finnish State in paragraph 1, the District Court considers that these contractual documents or other documents referred to and relied on cannot be relevant as evidence in the case. The issue in the case is not the effectiveness or efficiency of the interest rate subsidies, but whether there was a legal basis for the interest rate pass legislation and whether that legislation complied with the EIS and the Equal Treatment Act. Therefore, whether the contractual documents stipulate any requirements for the effectiveness or efficiency of the coronary injections is irrelevant for the resolution of the case. Nor could anything have been inferred from them or from the other documents relied on as to the legality of the Government's actions in relation to the obligation to monitor the necessity of the regulation relied on by the applicant in the autumn of 2021 before 10 December 2021.*
>
> *With regard to the documents required from the Finnish State in paragraph 2, the District Court considers that the medical reports on which the Corona Pass legislation was based are, on the other hand, in the public domain, i.e. a preliminary injunction is not required. These reports are listed in the references to the Government Bill on the Coronary Passport Legislation (131/2021 vp) and can still be found online at the links provided by the defendant*

The reasoning of the district court's decision is absurd and does not stand up to scrutiny: the interest rate passport legislation was based, to a large extent, on the legal question of whether interest rate vaccines were effective or efficient in achieving the objectives of the legislation - preventing the spread of the coronavirus and reducing the burden of disease - and whether the interest rate passport legislation thus met the proportionality and necessity requirements for the restriction of fundamental rights. The applicant has expressly demonstrated by its evidence that the coronary vaccines could not even achieve those objectives, and that this was already known by autumn 2021 at the latest.

The applicant further requests the State to provide the following documents:

1) copies of contracts between the EU and/or the Finnish state and the various coronary vaccine manufacturers for the procurement of coronary vaccines. From these documents, we seek information on whether the EU and/or the Finnish government have any specific

requirements for the functionality or usefulness of the coronary vaccines, e.g. in preventing the contracting or spreading of covid 19, or whether the EU and/or the Finnish government have any specific requirements for the functionality or usefulness of the coronary vaccines, e.g. in preventing the contracting or spreading of covid 19.

or the Finnish government has some other quality requirements for the coronary vaccines ordered. Alternatively, other documents which provide the above information
2) the medical reports on which the so-called "coronary passport" legislation, which was temporarily in force from 2021 to 2022, was based. In particular, the precise details of the medical and other scientific data and studies on which the claim and assumption that the use of the coronary passport would have prevented the spread of covid-19 was based.

Infringement of the Equality Act by Fazer Ravintolat Oy

Fazer Ravintolat Oy has, in the applicant's view, infringed the Non-Discrimination Act. For the application of the law in other similar cases, it is important to grant leave for further proceedings in the case, because the issue is the interpretation of whether Fazer Ravintolat Oy's conduct was based on a law which - even if, from the applicant's point of view, it was unconstitutional and contrary to the European Convention on Human Rights - Fazer Ravintolat Oy was obliged to comply with.

According to the applicant, the company discriminated against Vauhkala by directly preventing her from entering the Fazer Kluuvi café at 9 a.m. on 10 December 2021, and Fazer Ravintolat Oy's conduct was not based on law. According to Section 11 of the Non-Discrimination Act, different treatment does not constitute discrimination if it is based on law.

According to the applicant, the Court of Appeal should assess whether Fazer Ravintolat Oy should have complied with the law on communicable diseases in its entirety. The judgment of the District Court (p. 56) states, inter alia, that *'the District Court also considers that the infringement of those provisions (Sections 58j and h of the TTL) could not in any event give rise to a compensatory sanction under Section 13 of the Equality Act, but that they are essentially procedural provisions assessed by means of administrative sanctions'.*

The applicant considers that, especially in a situation where the interest rate passport legislation undeniably violates Vauhkala's fundamental and human rights, the entire legislation must be strictly observed. The core of the passport legislation arises from Articles 58h, 58i and 58j of the Communicable Diseases Act and they form a whole which the caterers who requested the passport had to comply with strictly in order to ensure that the fundamental rights of the caterers' clients were not violated.

Fazer Ravintolat Oy has failed to comply with Sections 58 h and i of the Communicable Diseases Act in that it has not drawn up a written plan on how it will implement the obligations and restrictions imposed by the AVI's decision, and Section 58 j in that it has not informed Vauhkala regarding the processing of personal data in the interest rate bag. Pursuant to Article 58 h.3 of the Communicable Diseases Act, the Fazer café should have made the plan required by that article

available to customers and other participants in its activities, and that plan should have included, in accordance with Article 58 i.4 TTL, the following information

that Fazer requires customers and participants to present an interest rate pass. Furthermore, Article 58h of the TTL stipulates that a business requiring a passport must have a written plan on how it will implement the obligations and restrictions laid down in the decision referred to in Article 58d(1) of the TTL.

The plaintiff Mika Vauhkala and his friend Mika Jantus, who accompanied Vauhkala to the Fazer Kluuvi café on 10 December 2021 at 9 a.m., were heard in the district court hearing, and according to them, the written plan on how the café would implement the obligations and restrictions imposed by the AVI decision was not available, although the law requires it. Neither had been informed by the café's employees about the processing of personal data on the coupon bag. The district court did not give any consideration to Vauhkala's and Jantunen's account of the matter, but relied solely on the witness Tuominen of Fazer Ravintolat Oy, who at the time of the incident was the manager in charge of the Fazer Kluuvi café. Mr Tuominen confirmed that a self-monitoring plan had been drawn up. He also said that he had not been able to find such a plan.
When asked what he thought was in the plan, Mr Tuominen did not recall putting information in the plan that Fazer would require customers to show an interest rate passport, nor how Fazer Kluuvi would implement the obligations and restrictions imposed on it. According to the district court's judgment, *"the witness (Tuominen) had drawn up a self-monitoring plan for Fazer Kluuvi's café and it had been duly updated. Unfortunately, after the witness had moved on to other tasks, it was not later found for documentation, but it had certainly been drawn up and was also visible on the wall of the café at the time'.*

It remains unclear on what the district court's certainty about the self-monitoring plan and its actual updated content is based. The district court should act impartially and assess the legal dispute impartially. This has not happened in the present case, but the district court has assessed the case one-sidedly from the defendant's point of view, relying without any apparent basis on what the defendant's witness has said, without taking into account the fact that the witness is employed by the defendant and thus dependent on the defendant, and without taking into account what the defendant has actually said. He has not even been able to explain what the plan says about the requirement for an interest rate passport, even though the law is clear: the written plan should have contained information on how the café/Fazer Ravintolat Oy would implement the obligations and restrictions imposed by the AVI decision.

The applicant has made every effort to clarify the matter by requesting to see the written plan in question, but the plan has not been sent to the applicant. The district court merely notes that, unfortunately, since the witness has moved on to other tasks, the written

The plan was never found to be documented, but it was certainly drawn up and was on display on the wall of the café at the time.

In the applicant's view, the fact that no plan has been found indicates only that there was no plan. The court has not explained why it unilaterally believed the defendant's witness's affidavit without any further explanation. Moreover, the district court's use of the phrase *"it was drafted with certainty"* above is, in plaintiff's view, another blatant example of the judges' apparent bias and/or unprofessionalism.

Customers have not been informed in accordance with the Communicable Diseases Act

Vauhkala and Jantunen, who have been heard in the case, have said that they have not been informed at Fazer Kluuvi cafeteria about how the personal data in the coupon bag will be processed. The witness for Fazer Ravintolat Oy, Tuominen, has also been unable to say how he would have informed Vauhkala and Jantunen at the café about the processing of the personal data on the coupon bag.

What does the information referred to in the law include? Government Bill 226/2021 clarifies that the content of Section 58j will be clarified in Government Bill 131/2021, which states the Government's position that the processing of personal data would require informing the customer.

Fazer's argument that Vauhkala's dealings would not have progressed to the level of the information obligation under Article 58j(1) of the TTL because he did not have an interest rate passport is, in our opinion, incorrect. According to the provision:

> *... The processing of the personal data included in the certificate also requires the client and the participant to be informed. ...*

According to the preamble of the provision (HE 131/2021 vp, p. 52):

> *... the processing of personal data on the certificate would also require informing the customer and the participant in the activity, in accordance with the GDPR, that the personal data would only be processed to verify the validity of the certificate, to check the name of the person and to check whether the conditions for accessing the facility are met. In addition, it should be informed that the data on the certificate should not be registered or stored under this Act, as set out in paragraph 3 above, or processed for any other purpose. Pursuant to Section 58j(3) TTL, the data on the certificate may not be registered or stored or processed for any other purpose.*

We argue that it is not even possible to apply the GDPR or to provide information under the GDPR. Information within the meaning of the GDPR means specifically informing the data subject. On the other hand, according to Article 58j(3) of the TTL, no registration of data at all was allowed. Since no one can become a 'data subject' within the meaning of Article 58j(3), it is not possible to provide information within the meaning of the GDPR in the first place. Thus, the reference to information 'in accordance with the GDPR' is obviously mistakenly or inadvertently ended up in a government bill. Thus, the legal text and its preamble, which refers to the provision of information to "the customer and the participant", must be applied.

Vauhkala was a customer of Fazer or a participant in Fazer's activities within the meaning of Article 58j(1) TTL when he tried to buy breakfast from Fazer Cafe Kluuv. According to the preamble to the provision, he should have been informed, as a precondition for claiming the coupon pass, that his personal data would be processed only for the purposes of checking the validity of the certificate, verifying the person's name and checking whether the conditions for access to the premises were met. This information should have been provided in advance, before the passport was even required to be shown, because if the information had been provided afterwards, the customer would not have been able to be sure, for example, that the data collected from him would not be registered or stored in any way within the meaning of Article 58j(3) of the TTL.

When questioned, witness Tuomis said that he and another café employee had only informed Vauhkala and his friend that they had to present their interest rate passport as a condition of entry to the café. Thus, the customer was not informed in the manner required by law.

Since the preamble to the provision states that the customer or participant must be informed that *"personal data would only be processed for the purposes of checking the validity of the certificate, verifying the name of the person and checking whether the conditions for access to the facility are met"*, and since this has not been done, Fazer has therefore, in our view, directly infringed Article 58j(1) of the TTL.

The applicant submits that Fazer should have complied with the legislation in its entirety and that the lack of a written plan and the lack of information caused Fazer to act in breach of the Communicable Diseases Act by refusing Vauhkala access to the café, thus not discriminating on the basis of the law.

<u>Unequal treatment of Vauhkala</u>

The core of the district court's judgment with regard to Fazer Ravintolat Oy's obligation to pay compensation has thus been dealt with. Fazer Ravintolat Oy's conduct, as we have interpreted and testified, was not based on law, so that discrimination was not justified. Next, we discuss how Vauhkala has been treated differently from how other persons would have been treated in a comparable situation.

Fazer Ravintolat Oy, a traditional, financially strong and wealthy company, part of the Fazer Group, is committed to respecting human rights, as shown in the applicant's Exhibit 10: Fazer does not tolerate restrictions on movement and Fazer respects the dignity, privacy and fundamental rights of individuals and does not tolerate discrimination of any kind.

Despite this statement, Miika Kostilainen, the defendant's managing director, has replied to the applicant's letter, in which the applicant has demanded that the company compensate him for his infringement, as follows:*Also on the website of the Council of State to which you refer, it is very clearly stated that "if a restaurant requires its customers to have a coupon pass, it does not have to comply with the stricter than usual restrictions imposed on the area in terms of opening and serving hours, the number of customers allowed or the requirement that each customer be seated indoors." The material you refer to elsewhere (on the website of the Regional Administrative Office) states that "it is up to the catering establishment to determine the times at which it adopts the pass."*

In Fazer's case, it was therefore a method by which it managed to avoid the restrictions on the admission of customers that would otherwise have been imposed on it. It is a question of obtaining a higher profit by restricting Vauhkala's fundamental right to privacy. In several other cafés, there was no such practice restricting the fundamental right, nor in some other Fazer cafés. Fazer has not demonstrated any justification, other than the increase in financial profit, for restricting Vauhkala's access to the restaurant on the morning of 10 December 2021 in relation to Fazer's own policy of respecting the dignity, privacy and fundamental rights of individuals.

Fazer Restaurants Ltd has decided to start requiring its café customers to show a coupon pass throughout the day, although normally the coupon pass is not required in food outlets until after 5pm. This has been done on the basis that it has allowed Fazer Restaurants Ltd to attract customers to its premises without the need to comply with any restrictions on its premises, thereby maximising its profits.

The denial of access to the restaurant violated the constitutional right to equal treatment and protection of private life with regard to the disclosure of health information, as well as the right to respect for private life and freedom of religion or belief, as guaranteed by the European Convention on Human Rights.

freedom of conscience and the right to non-discrimination, and the right not to be arbitrarily prevented from entering a restaurant, as guaranteed by Article 1 of Protocol No. 12 to the ECHR. Fazer Ravintolat Oy has thus failed to comply with its human rights obligations, according to which it does not tolerate restrictions on movement and Fazer respects the dignity, privacy and fundamental rights of individuals and does not tolerate any form of discrimination.

As can be seen from the written evidence 9, 11 and 12 submitted by the applicant, the applicant had the opportunity to eat at Hotel Kämp immediately after the Fazer Kluuvi episode and, on subsequent days, at other restaurants and even at other Fazer cafés. There was therefore nothing to prevent the Fazer café from actually allowing Vauhkala to have breakfast on 10 December 2021. The situation on the other days and in other places was comparable under the Equal Treatment Act. Section 10 of the Equality Act provides:

> *Discrimination is direct if someone is treated less favourably on a personal ground than someone else has been, is or would be treated in a comparable situation.*

Dining in other places under the same legislation and the same ESAVI restriction decision has been a comparable situation as defined by law. In other words, in the applicant's view, he was treated in a comparable situation in Fazer Kluuvi at 9 a.m. on 10 December 2021 in a discriminatory manner in relation to other cafés/restaurants both outside Fazer Ravintolat Oy and in the company's other establishments. The discrimination has been based on the presumption of Vauhkala's medical condition, as he has not been able to present a passport for interest. However, Vauhkala was in perfect health when he went to the café.

On the obligation to reimburse costs

The applicant considers, in principle, that the time-limit for lodging a precise statement of claim, as announced by the Court on Friday 12 April 2024, expired at 23.59 on Monday 15 April 2024, and that claims lodged after that date cannot even be taken into consideration. The State is not entitled to separate treatment, particularly in view of the fact that the other parties to the proceedings have complied with the time-limit set by the court.

In support of its application, the State has submitted the following pleas in law:

The State of Finland's claim for costs (EUR 121 284,82) consists of the work done by the lawyers and other legal professionals of Merilampi Attorneys-at-Law Oy in the case, as set out in the attached document.

in accordance with the fee breakdown (total fees EUR 113.960) and the costs of the mandate (EUR 7.324,82). The responsible partner for the mandate was Teemu Taxell until 2022 and Jussi Ikonen from February 2023. The assistant lawyer, Iiris Paavola, OTM, has been involved in the case throughout. The costs of the assignment consist of the fees of the expert Janne Salminen and the taxi costs of the agents.

For this we accept taxi fares.

Using several different lawyers and officials

The State has stated at the preparatory hearing that it will charge exclusively for the use of one assistant, as will the applicant.

However, the bill for legal costs includes the use of two different lawyers, plus the use of STM officials.

The court must only approve the use of one legal adviser for the State.

The number of hours used is totally unreasonable

In its invoice, the State has indicated that it spent 382 hours on the case. This is an exceptionally high number for the following reasons:

a) the State has stated, in its own opinion, that the action is, in principle, without foundation in fact. However, the State has spent considerably more hours on the case than the applicant, which is at the very least strange in view of the State's view that the action is completely unfounded. It is obvious that the State has stretched the number of hours completely unnecessarily and solely in order to harm the applicant with its claims.
b) the applicant's claim for costs is 216,85 hours and it is quite exceptional that the defendant's hours are almost double that amount. Furthermore, the applicant has also spent time on the action against Fazer Ravintolat Oy. We consider that a reasonable amount for the State would be approximately 70% of the hours spent by the claimant. This would be a realistic number of hours for the State to spend on the action.
c) we will go into more detail on the number of hours we have agreed to later.

The level of hourly billing by the State is disproportionate taking into account the following:

a) the State's agent has focused heavily on defaming the opponent in the proceedings by making disparaging and even derogatory remarks about the applicant and his agent, our legal expert Muukkose and our medical expert Malhotra. This is contrary to the Finnish Bar Association's Guidelines on Good Lawyers' Conduct:
   Section 8.4: A lawyer shall not make statements which are likely to bring the witness into contempt, unless such statements are necessary for the conduct of the case or otherwise in the best interests of the client. The above provisions on witnesses also apply to experts and other witnesses.
   Clause 9.1: A lawyer shall, without prejudice to the client's interests, show courtesy and respect to other members of his profession and shall not make inappropriate criticism of them. Disputes between lawyers in connection with their professional activities shall be settled amicably as a matter of priority
b) The State's Agent has focused his opening statement on the information provided by the applicant in relation to the ongoing litigation. At the same time, the State Counsel has explained that they have collected a large number of posts from the applicant on social media. This is obviously not part of the litigation process and shows poor professionalism.
c) during the judicial process, the State agent has shown poor expertise international human rights treaties and their history, the role of witnesses and experts (e.g. former Prime Minister Marin has been considered as an expert witness).

For these reasons in particular, we consider that the Court can accept the State's hourly rate for its claim for costs up to the amount claimed by the applicant and Fazer Ravintolat Oy, namely EUR 200 per hour (excluding VAT, which the State had not claimed by the deadline).

<u>From the expert opinion of Janne Salminen</u>

We reject in its entirety the State's claim for compensation for the expert opinion of Janne Salminen.

First, we rely on our assessment, already made before the main hearing, that, in accordance with the principle of *jura novit curia, the* court must, in principle, know the law, and that there was no reason to call a legal expert to give his opinion on the matter.

Secondly, we consider that Janne Salminen's expert opinion is based solely on a statement he has already made to the Constitutional Committee, so that his hearing could have been replaced by a full documentary evidence.

Thirdly, we consider that Janne Salminen, when questioned in court, merely read the written statement he had already submitted to the court, so that his summoning to the main hearing was unnecessary and the State should have been aware of this.

The Finnish State's application to intervene

We reject in its entirety the claim for costs made by the Finnish State on the sole ground that the applicant had only one agent to be charged and that the State has alleged that our action is completely unfounded. If the action had been completely unfounded, it would not have been necessary to use the services of STM officials in particular, let alone two legal advisers.

In addition, these are monthly paid officials of the Ministry of Justice who are not specifically recruited to deal with a case against the State. The State cannot require the applicant to pay the salaries of the STM officials.

Detailed treatment

Although the State has stated in the preparatory meeting that there will be no invoice for the second legal adviser, Iiris Paavola's work will be invoiced from 8 May 2023. The State has indicated that its counsel is Jussi Ikonen, not Iiris Paavola, who nevertheless seems to have done the key work in the case.
In principle, the State is not entitled to charge for the use of more than one assistant, unless the purpose of the charging is to deliberately harm the applicant by creating additional costs through excessive work, despite the State's claim that the action is completely unfounded.

With respect to the first 33.75 billable hours of attorney work submitted by the State, we find that either the State has

a) by working hard, has in fact acknowledged the relevance of the claim in principle

or

b) deliberately created additional costs for the claimant by working excessively, which must be regarded as chicanery.

We accept up to 15 hours of the State's claim for legal aid until 14 March 2023.

For the above reasons (in principle, the State could have used only one assistant in the present case), we do not accept the use of Iiris Paavola's work as a basis for invoicing. As regards the work of Iiris Paavola, the State has submitted a claim for expenses totalling 188,75 hours, which we therefore request to be excluded from the assessment of the claim for costs.

Furthermore, the State agent did not take into account the meal breaks during the main hearings, which together lasted 3 hours, which we therefore do not accept in the application.

Sylvia Laulaja's use of 2.5 hours to clarify case law on interest rate restrictions is not related to the present case, so we do not accept this part of the legal claim.

Our acceptance of the State's share of the legal claim

We accept the amount, but obviously not the basis, of the State's claim for costs as follows:

382 hours must be deducted from the original requirement:

a) Iiris Paavola's contribution 188,75 hours
b) Sylvia Singer's work 2,5 hours
c) until 14.3.2023, 18,75 hours to be deducted from the legal claim
d) 3 hours to be deducted from the billing of the main hearing's

meal hours Total deductions: 213 hours

The total number of eligible hours is 169 hours.

Considering that, on the basis of the above, the hourly rate cannot exceed EUR 200 and that the VAT rate cannot be accepted because the claim is out of time, we accept the amount of the legal costs as 169 hours x EUR 200 = EUR 33800.

Grounds of appeal against Agent Nummelin

Annul the judgment of the Helsinki District Court, according to which 'Mr Nummelin must be ordered to share jointly and severally with Mr Vauhkala in the claim for costs in the amount of EUR 20 000'.

a) contrary to the Code of Judicial Procedure and the Code of Good Practice for Lawyers

b) as not being based on the claimant's, i.e. the State's, grounds.

As stated on page 59 of the judgment, *"Pursuant to Article 6 of Chapter 21 of the Code of Civil Procedure, a representative, agent or assistant of a party who, intentionally or negligently, within the meaning of Article 4 or 5, has caused another party to incur the costs referred to in this Chapter may, after having been given an opportunity to be heard, be ordered to bear those costs jointly and severally with the party concerned."*

The judgment further states: *'The District Court notes that in case law and literature the liability of an assistant or agent has been considered exceptional and the threshold for personal liability has been considered high. An attorney's liability for expenses is a sanction for his conduct in violation of the rules of procedure (Jokela 1995, p. 162). In contrast to normal liability for expenses, the liability of a lawyer requires a subjective basis, i.e. he must have acted intentionally or negligently in breach of the rules of procedure (reference to § 21:6 of the Code of Conduct 21:4 and 21:5 §). The types of conduct referred to in Article 5 of Chapter 21 OC include, inter alia, making an objection which the person making it knew or ought to have known to be unfounded, or failing to comply with a court order, or otherwise breaching a duty to prolong the proceedings. The conduct referred to in Article 4 of Chapter 21 of the OC is, for example, the commencement of unnecessary legal proceedings."*

On page 60, the district court states, *"The district court finds that the attorney's actions described above were in themselves lawful means to protect the client's position and interests and to secure a fair trial, but that the making of statements in violation of and in excess of the requests for statements was a breach of duty that prolonged the trial."*

According to the district court itself, therefore, the agent's actions were lawful means of acting on behalf of the client. According to the Bar Association's Guidelines on Good Lawyer Conduct:

> a) Paragraph 5.8. defines the obligation to resign. This obligation arises if, after accepting the post, a circumstance arises which makes the lawyer incompetent or disqualified. The lawyer is also obliged to resign if: 1. a legal impediment or a comparable compelling reason prevents the lawyer from performing the task

2. the client requires the lawyer to act in a manner contrary to law or good legal practice and, despite being warned, does not waive the requirement.

b) point 3.1 requires a lawyer to be loyal to his client

c) 3.2 requires that, in the performance of his duties, a lawyer must be free from any outside influence which might impair his ability to control fully the interests of his client. A lawyer shall not allow embarrassing circumstances or other such factors to influence the performance of his duties. The lawyer shall maintain his independence in his activities, even if this requires actions or solutions which are not to the liking of his client, his opponent, the authorities or others.

d) point 2.2 states that the defence of fundamental and human rights and the maintenance of the rule of law require the independence of the legal profession from the public authorities.

These guidelines define the scope of the agent's duty to act as Nummelin. According to the district court itself, Nummelin acted precisely in accordance with these instructions. Consequently, the district court's decision to order Mr Nummelin to contribute jointly and severally to the costs of the State for the sum of EUR 20 000 must be regarded as contrary to the Code of Procedure and the Code of Good Legal Practice.

Further, the district court found that some unspecified portion of the liability was incurred as a result, that *"the action, in its original and amended form as described above, in so far as it has been abandoned, is based on a manifest error of law and shows clear negligence on the part of the agent, in so far as the applicant knew or ought to have known that the action was unfounded."*

Chapter 14 of the Code of Judicial Procedure lays down the procedure in court as follows:

2 § (22.7.1991/1052)

You may not amend the statement of claim in the course of the proceedings. However, the plaintiff has the right to

...

3) claim interest or make any other secondary claim or even a new claim, if it is based on essentially the same grounds.

> *If the application referred to in paragraph 1(2) or (3) is made only at the main hearing, the application shall be inadmissible if its examination would delay the proceedings. Such a claim cannot be made in a higher court.*
>
> *The submission of new facts in support of an action shall not be deemed to be an amendment of the action, unless it changes the case.*

According to the Code of Procedure, the plaintiff is therefore entitled to make another, or even a new, side claim, provided that it is based on essentially the same plea.

In the present case, it is a question of making new claims, supported by a supplementary statement and by the abandonment of some of the grounds of the old claims. Therefore, since the applicant has exercised the rights conferred on him by the Code of Procedure and the applicant's lawyer has assisted him in this case in accordance with his obligations, the applicant's legal adviser cannot be penalised.

Negligence is not a sufficient ground for extending liability to the agent

The district court bases its decision to extend liability to the agent on the agent's alleged negligence.

Protecting lawyers from outside influence is a time-honoured tradition and has been seen as a way of ensuring that those who come before the courts have access to expert legal support to make their case. If a lawyer had to think all the time about whether to take on a case or to fear having to pay his client's costs, at some point it would become too difficult to obtain justice.

Thus - as the district court rightly points out - in case law and in the literature, the liability of an assistant or agent has been considered exceptional and the threshold for personal liability has been considered high. In decision No 1699 of the Helsinki Court of Appeal of 22 December 2021, an agent was held liable, along with his client, for costs in connection with the pursuit of a claim for protective measures based on a manifestly unfounded and manifestly erroneous legal assessment. The action was therefore manifestly wrongful, i.e., in legal terms, intentional.

The Helsinki District Court has based its decision on the agent's liability for costs on the agent's alleged negligence, not on intent. The District Court itself states that "the measures taken by the agent described above were in themselves lawful means of protecting the position and interests of the client and of ensuring a fair trial". Thus, when the agent has used lawful means

to promote his client's position, interests and right to a fair trial, then where is the intent other than in the attorney's efforts to promote his client's interests in accordance with the standards of good legal conduct?

The decision is not based on a claim by the State

The court cannot take up the legal responsibility of a legal adviser under Chapter 21, Articles 4-6 of the Code of Judicial Procedure on its own initiative, but only at the request of a party to the proceedings. The grounds on which the State claimed that Mr Nummelin should be liable for costs are described in the judgment as follows:

"The State has considered that when it has become clear that the State cannot be obliged to pay compensation to Vauhkala for the violation of the European Convention on Human Rights, and when the applicant and his agents have nevertheless continued to pursue the case and to inflate the case by presenting yet another argument relating to freedom of religion, this has been negligent and careless conduct of the case. In this respect, the proceedings are unnecessary. Accordingly, Mr Nummelin, the applicant's agent, must be ordered to pay the costs incurred by the State, together with his client, in the event of the applicant's defeat.'

The State's application therefore seeks an order that Agent Nummelin pay the costs incurred by the State, because:

a) it should have become clear to the Ombudsman that the State cannot be required to pay compensation to Vauhkala for the violation of the European Convention on Human Rights

b) the applicant and his agents have continued to pursue the case and to inflate it further, putting forward a new argument relating to freedom of religion.

c) for the reasons set out above, Mr Nummelin's conduct of his case was negligent and careless.

The question of the attorney's liability should be based on the claim made by the party, but the district court's decision is not based on the claims made by the state. Thus, the district court's finding that Mr Nummelin should be jointly and severally liable for the State's claim for EUR 20 000 is not in accordance with the law.

In any case, we will also respond to the arguments put forward by the State:

The State's view that the action would be manifestly unfounded has been based from the outset on the State's desire to prevent an embarrassing action from coming to trial. We discuss the grounds of the action at length in the application for leave to proceed and in our appeal, so it is unnecessary to revisit those grounds here other than to state that our action was based on a strong legal assessment, a large number of witnesses consisting of medical and forensic experts, a large number of medical examinations, and undisputed evidence of the events at the Fazer Kluuvi café on 10 December 2021 at 9 a.m.

In order to accept the State's view that the action was completely unfounded, the Ombudsman would have to reject the legal reasoning in the case in its entirety, to consider that Vauhkala would not have had the right to eat in the restaurant in principle, even though Article 12 of the European Convention on Human Rights (ECHR) does not apply. Additional Protocol 1 to the ECHR expressly requires the State to prevent arbitrary denial of access to a restaurant, consider the significant medical studies and the views of the medical representatives who gave oral testimony on the matter to be wrong, and reject as nonsense the article by Dr Muukkonen, the only Finnish legal expert to have written an article on the subject. However, it is absolutely impossible to reach such a conclusion - from the point of view of common sense and legal perception. Nohynek, a senior physician at the THL, and Järvinen, an infectious disease specialist at the HUS, have testified in the district court that the vaccines did not prevent the spread of coronavirus except in a small way, and that the vaccines did not protect anyone except the person who took them, so that Vauhkala could not have posed any danger to anyone at the Fazer Kluuvi café on 10 December 2021 at 9 o'clock in the morning. As this is what medical experts have told us, there is no way that the agent, with his totally inadequate medical training, could have refuted their views - let alone that the agent could have refuted the results of numerous medical studies.

We further recall that the State has already in September 2022 exercised its right to request the district court to dismiss the case as unfounded, and the district court has not agreed. Accordingly, the district court also found that the action was sufficiently meritorious to proceed.

The district court's ruling also leads to difficulties for citizens pursuing claims against the state, especially on human rights grounds, to find an agent. An agent would have to consider the possibility that, in having to specify the grounds of the action and in facing the State's arguments that "the State cannot violate human rights", the agent would run the risk of having to bear part of the costs of the proceedings himself.

In order to be independent of the public authorities, in line with the Good Lawyers' Code of Conduct, a lawyer must be able to work without fear of having to pay his or her client's legal costs. The decision of the Helsinki District Court is a serious breach of the protection traditionally afforded to lawyers, which has enabled citizens to have access to professional legal assistance in actions against the State.

Evidence:

Oral evidence:

1) Mika Vauhkala

subject: treatment and suffering at Fazer Cafe Kluuvi

2) Matti Muukkonen, Doctor of Administrative Sciences

topic: basic rights of the unvaccinated not protected

3) Satu Koskela, Head of Department, STM

topic: on what medical research or legal assessment has the STM's guidance to the Regional Administrative Agencies been based?

4) Mika Jantunen, who was with the applicant at the Fazer café

subject: the treatment of the applicant in the Fazer café on 10 December 2021, the information provided to the customer by the Fazer café staff and the documents on file. Events after the turn away from the Fazer Café

5) Miika Kostilainen, Managing Director of Fazer Retail Finland

subject: grounds for the treatment of the applicant. Fazer Group's commitment to human rights

6) Asko Järvinen, HUS Infectious Diseases Physician

topic: what the international medical community knew about the role of vaccines in the fight against covid 19 before December 2021

7) Hanna Nohynek, Senior Physician, THL

topic: what the international medical community knew about the role of vaccines in the fight against covid 19 before December 2021

8) 10.1.2021 Prime Minister Sanna Marin at the head of the Government

Theme 2: on what the government has based its view on the need for interest rate passport legislation and how the government has monitored the need for interest rate regulation in relation to the realisation of fundamental rights.

Written evidence:

1) Fazer Retail Finland's reply

Subject: Defendant's justification for the infringement of the applicant's rights

2) National preparedness plan for pandemic influenza (Sosiaali- ja terveysministeriön julkaisuja 2012:9)

Subject: Coronavirus does not even meet the STM's definition of a mild pandemic

...

6) Peer-reviewed article The Corona Pass, the Constitution and a critique of the equality approach

Subject: Interest rate passport in breach of equality

7) Ministry of Social Affairs and Health's response to the request for clarification from the Regional State Administrative Agencies regarding guidance on the imposition of restrictions under the Communicable Diseases Act

Subject: STM's guidance to regional administrative agencies not based on medical studies or legal assessment

8) Yle news 19.11.2021

Theme: the Equality Commissioner says that the use of the interest rate passport is acceptable if it can alleviate the situation of illness

9) Dinner receipts from Fazer

Subject: inconsistent treatment of the applicant in the Fazer Group's cafés, leading to a presumption of 10.12.2021 discrimination

10) Fazer's human rights commitment

Subject: Fazer has declared its commitment to opposing movement restrictions and respecting privacy and fundamental rights

11) Hotel Kämp restaurant receipt

Theme: Hotel Kämp has allowed the plaintiff to eat breakfast after she was turned away from the Fazer café. Fazer cannot claim that it had no choice but to prevent the plaintiff from entering its restaurant

12) Dining in three other cafés

Subject: Fazer cannot claim that it had no choice but to prevent the plaintiff from entering its restaurant

13) US study on the impact of coronary vaccines on the spread of coronavirus (August 2021)

Theme: people who received the full coronavirus vaccine series had similar coronavirus loads as unvaccinated people & vaccinated people also spread coronavirus

14) Vietnamese study on the impact of coronavirus vaccines on the spread of coronavirus (October 2021)

Subject: care workers who received the full vaccine series contracted pervasive coronavirus infections in June 2021

15) British study on the impact of coronary vaccines on the spread of coronavirus (October 2021)

Theme: fully coronavirus-vaccinated individuals infected fully vaccinated contacts, and a full coronavirus vaccination series did not reduce coronavirus transmission within households

16) German study on the impact of coronary vaccines on the spread of coronavirus (November 2021)

Subject: coronavirus spread by coronavirus vaccinated as well as unvaccinated

17) News from Ilta-Sanomien 12.8.2021

Theme: coronary vaccines do not prevent the disease from developing or spreading

18) News from Iltalehti 27.8.2021

Subject: Full coronary vaccination series does not prevent covid-19 and the spread of the disease

19) News from Ilkka-Pohilainen 22.9.2021

Subject: Finnish nurses who received a full series of coronary vaccines contracted covid-19

20) News from Ilta-Sanomien 9.9.2021

Subject: Increase in coronary vaccination coverage did not reduce the incidence of the disease in Tampere in September 2021, but on the contrary, the number of infections increased as vaccination coverage increased

21) Kaleva news 31.10.2021

Subject: Coronary vaccination did not protect carers or patients from coronavirus infection or spread

23) The Frequently Asked Questions section of the Rokote.fi website, subsection "How do vaccines work?". Available at: https://rokote.fi/tietoa-rokotteista/usein-kysyttya/ (accessed 20.9.2023).

Theme: difference between traditional vaccines and mRNA vaccines

24) Glossary on the vaccine-protection.fi website. Available: https://www.rokotesuoja.fi/sanasto (accessed 20.9.2023)

Theme: difference between traditional vaccines and mRNA vaccines

25) Pfizer website, section Vaccines - a medical success story. Available: https://www.pfizer.fi/tutkimus/terveytesi-tahdet/rokotteet-laaketieteen-menestystarina (accessed 20.9.2023)

Theme: difference between traditional vaccines and mRNA vaccines

26) National Institute for Health and Welfare website, Frequently asked questions about mRNA vaccines. Available: https://thl.fi/fi/web/infektiotaudit-ja-rokotukset/ajankohtaista/ajankohtaista- coronavirus-covid-19/vaccines-and-coronavirus/mrna-vaccines (accessed 20.9.2023)

Theme: difference between traditional vaccines and mRNA vaccines

27) THL website (archived version 10.10.2021). Available at: https://web.archive.org/web/20211010193639/https://thl.fi/fi/web/infektiotaudit-ja-vaccines/diseases-and-prevention/diseases-and-pathogens-a-o/coronavirus-covid-19

Theme: corona infection can only be detected by PCR or antigen test.

28) Ilta-Sanomien news 24.10.2021, "Marin Yle: "It is very possible that the entire population will be vaccinated with the third vaccine dose". Available at: https://www.is.fi/politiikka/art-2000008355719.html

Theme: strong public pressure on unvaccinated people

...

31) Helsingin Sanomat article "Korona's after-wipe", published on 1 April 2023, pdf-file, in particular s. 10.

Subject: according to Hanna Nohynek, Chief Medical Officer of the THL:

a) the exclusion of the unvaccinated from many events and restaurant meals by means of the passport legislation was not based on the scientific evidence available at the time;

b) The ability of coronary vaccines to prevent the spread of infection was not studied initially, and subsequent studies found little such effect.

32) Opinion of the European Medicines Agency (EMA) of 18.11.2023

Subject: According to the EMA, the only approved use of coronary vaccines that have been on conditional marketing authorisation is to protect the vaccinated individual, and not, for example, to prevent the spread of infection.

33) HUS research note *"Interpretative challenges of Ct values in virological nucleic acid immunoassays of respiratory specimens"*

Theme: the Ct value does not allow reliable quantitative conclusions to be drawn about the amount of virus in the sample or the patient's body.

34) Uuden Suomen Nachrichten 25.11.2021, *"THL's Mia Kontio: "We have leaking vaccines", there can be no talk of herd immunity"*.

Theme: Coronary vaccines did not prevent coronavirus infections, nor did they build up herd immunity in the population, and this was known by the THL by 25 November 2021.

Expert opinions:

1) Astrid Stückelberger

Theme: The invalidity of corona tests; social and individual consequences

2) Aseem Malhotra

Theme: the scientific community knew by December 2021 that:

a) coronavirus vaccines did not prevent the development of severe coronavirus disease or the transmission of coronavirus to other people;

b) coronary injections can cause severe disability or even death;

c) the risk of serious adverse events from the vaccine was higher than the risk of hospitalisation for coronary heart disease.

Sincerely, Aki

Nummelin OTM