

Subject-matter concerned	<input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to which article of the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	06.02.2017
Deciding body (in original language)	<i>Korkein hallinto-oikeus / Högsta förvaltningsdomstolen</i>
Deciding body (in English)	Supreme Administrative Court
Case number (also European Case Law Identifier (ECLI) where applicable)	KHO:2017:19; 2350/3/15; 424 ECLI:FI:KHO:2017:19
Parties	X v S-Bank Ltd [<i>S-Pankki Oy/S-Banken Ab</i>]
Web link to the decision (if available)	www.finlex.fi/fi/oikeus/kho/vuosikirjat/2017/201700424
Legal basis in national law of the rights under dispute	Act on Strong Electronic Identification and Electronic Signatures (<i>laki vahvasta sähköisestä tunnistamisesta ja sähköisistä luottamuspalveluista/lag om stark autentisering och betrodda elektroniska tjänster</i>) no. 617/2009 Non-Discrimination Act (<i>yhdenvertaisuuslaki/lag om likabehandling</i>) no. 21/2004 (in force when the case was initiated in 2014; the new Non-Discrimination Act 1325/2014 came into force on 1.1.2015)
Key facts of the case	Note that this executive summary has the purpose to make us understand:

<p>(max. 500 chars)</p>	<ol style="list-style-type: none"> 1. the facts of the case (so the “real life story”) 2. the legal background against which the case unfolded (what are the relevant legal norms that are applied) <p>An Estonian citizen, who lived in Finland and had a Finnish personal identity code, had applied for netbank access codes at S-Bank and had shown his Estonian passport to prove his identity. However, the bank required that the applicant also presents an identification document issued by the Finnish authorities. The bank referred to its identification principles and risk-based procedures and claimed that in case of non-Finnish customers there was a greater risk of money laundering and terrorist financing. In order to address that risk the bank required identification documents issued by Finnish authorities. Also, a foreign passport does not include data on a Finnish personal identity code. The National Non-Discrimination and Equality Board found that the bank’s conduct amounted to indirect discrimination under the Non-Discrimination Act. The administrative court and the Supreme Administrative Court agreed with the Board.</p> <p>According to the Act on Strong Electronic Identification (617/2009) the identification service provider shall carefully check the identity of the identification device applicant, as evidenced by a valid passport or identity card issued by a government official of an EEA Member State. If the identity of an applicant cannot be reliably established, the police will perform the initial identification for the application.</p> <p>The Non-Discrimination Act prohibits discrimination on the basis of, e.g., nationality. There is also a general non-discrimination clause in the Constitution Act.</p>
<p>Main reasoning / argumentation</p> <p>(max. 500 chars)</p>	<p>According to the Act on Strong Electronic Identification (617/2009) and the Government Bill to the Act, the identification service provider must accept as proof of identification a passport or identity card issued by a government official of an EEA Member State, unless the consideration of the matter has disclosed factors owing to which the applicant’s identity cannot be reliably established.</p> <p>A passport issued by the Estonian authorities is a valid travel document within the EU and its reliability as proof of identity is equal to a passport issued by the Finnish authorities. The bank had not shown any particular risk-based factor which would have given justified cause to doubt the authenticity of the applicant’s Estonian passport. Bearing in mind the harmonized EU standards for issuing passports, the court found that the bank had, without an acceptable aim, put the applicant at a disadvantage as compared to persons holding a passport issued by the Finnish authorities.</p>
<p>Key issues (concepts, interpretations) clarified by the case</p> <p>(max. 500 chars)</p>	<p>An identification service provider, such as a bank in case of netbank access codes, has a duty to carefully check the identity of the customer and may also apply its own identification principles and procedures. As a rule, a valid passport or identity card issued by a government official of an EEA Member State suffices as proof of identity. For the identification service provider to apply more rigorous identification</p>

	procedures in an individual case it is required that there is a particular reason to doubt, e.g., the authenticity of an identification document or that the customer is involved in money laundering or terrorist financing.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The Supreme Administrative Court upheld the decisions of the administrative court and the Non-Discrimination and Equality Board. The Board had order S-Bank not to continue or repeat the conduct which had been found discriminatory and had imposed a conditional fine (EUR 5,000) in order to enforce the decision. After the decision of the Board the bank had issued the applicant with netbank access codes and had also amended its identification principles and procedures. Nevertheless, the Supreme Administrative Court did not annul the conditional fine.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>(pp. 19-20 of the decision): S-Pankki Oy on perustellut vaatimustaan Euroopan talousalueen kansalaiselta edellytettävästä suomalaisen viranomaisen myöntämästä tunnistusasiakirjasta sillä, että ulkomailta tuleviin henkilöihin kohdistuisi sen arvion mukaan lähtökohtaisesti korkeampi rahanpesun ja terrorismin rahoittamisen riski. S-Pankki Oy:n mukaan korkeampi riski ei tarkoita yksittäiseen henkilöön kohdistuvaa epäilyä, vaan kyse on kokonaisvaltaisesta S-Pankki Oy:n asiakkaisiin ja tuotteisiin liittyvästä riskistä.</p> <p>Pankin menettelylleen esittämä perustelu merkitsee, että pankin käsityksen mukaan muilla kuin suomalaisen viranomaisen myöntämillä asiakirjoilla henkilöllisyytensä todentavat asiakkaat olisivat rahanpesun ja terrorismin rahoittamisen riskin kannalta korkeariskisempiä asiakkaita. Pankin perustelu osoittaa pankin menettelyn yhdenvertaisuuslain 6 §:ssä tarkoitetun syrjinnän kiellon vastaisuutta ja osoittaa myös, että pankki on hyväksynyt verkkopankkitunnusten saamiseksi vain Suomen viranomaisen myöntämän passin tai henkilökortin.</p> <p>Korkein hallinto-oikeus katsoo, kuten hallinto-oikeus, että S-Pankki Oy on ilman asianmukaista perustetta asettanut T:n Euroopan unionin yhdenmukaistetut passien myöntämissäännökset huomioon ottaen epäsuotuisempaan asemaan kuin vastaavat Suomen viranomaisen myöntämien passien haltijat.</p> <p>As grounds for the requirement that citizens of EEA Member States shall present an identification document issued by the Finnish authorities, S-Bank has stated that, based on its own evaluation, foreign clients per se present a greater risk of money laundering and terrorist financing. S-Bank notes that this presumption does not mean doubts targeted at a single individual, but rather, a risk relating to the bank's clients and products overall.</p>

	<p>The grounds presented by the bank indicate that in the bank's opinion customers who prove their identity by presenting other identification documents than those issued by the Finnish authorities would be high-risk customers as far as risk of money laundering and terrorist financing is concerned. This shows that the bank's conduct was in violation of the prohibition of discrimination as provided for in section 6 of the Non-Discrimination Act. It also shows that as a condition for obtaining netbank access codes the bank only accepted a passport or identity card issued by the Finnish authorities.</p> <p>The Supreme Administrative Court finds, as the administrative court had done, that bearing in mind the harmonized EU standards for issuing passports, S-Bank had, without an acceptable aim, put the applicant (T) at a disadvantage as compared to persons holding a passport issued by the Finnish authorities.</p>
<p>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</p>	<p>No.</p>