



European
Social
Charter

Charte
Sociale
Européenne



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

DECISION ON ADMISSIBILITY

7 December 2011

**Association of Care Giving Relatives and Friends
v. Finland**

Complaint No. 71/2011

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 254th session attended by:

Messrs Luis JIMENA QUESADA, President
Colm O’CINNEIDE, Vice-President
Mrs Monika SCHLACHTER, Vice-President
Mr Jean-Michel BELORGEY, General Rapporteur
Mrs Csilla KOLLONAY LEHOCZKY
Messrs Andrzej SWIATKOWSKI
Lauri LEPPIK
Rüçhan IŞIK
Petros STANGOS
Mrs Jarna PETMAN
Mr Giuseppe PALMISANO
Mrs Karin LUKAS

Assisted by Mr Régis BRILLAT, Executive Secretary

Having regard to the complaint dated 25 June 2011, registered on 6 July 2011 as number 71/2011, lodged by the Association of Care Giving Relatives and Friends and signed by its Chairperson, Mrs Anneli Kiljunen and its Executive Manager, Mrs Merja Salanko-Vuorela, requesting the Committee to find that the situation of Finland is not in conformity with Articles 13, 14, 16 and 23 of the Revised European Social Charter (“the Charter”);

Having regard to the documents appended to the complaint;

Having regard to the observations of the Government of Finland (“the Government”) received on 7 October 2011;

Having regard to the Charter, and in particular to Articles 13, 14, 16 and 23 which read as follows:

Article 13 – The right to social and medical assistance

Part I: “Anyone without adequate resources has the right to social and medical assistance.”

Part II: “With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

- 1 to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
- 2 to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
- 3 to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
- 4 to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.”

Article 14 – The right to benefit from social welfare services

Part I: “Everyone has the right to benefit from social welfare services.”

Part II: “With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:

- 1 to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;
- 2 to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.”

Article 16 – The right of the family to social, legal and economic protection

Part I: “The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.”

Part II: “With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.”

Article 23 – The right of elderly persons to social protection

Part I: “Every elderly person has the right to social protection”

Part II: “With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

- to enable elderly persons to remain full members of society for as long as possible, by means of:
 - a adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;
 - b provision of information about services and facilities available for elderly persons and their opportunities to make use of them;
- to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:
 - a provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;
 - b the health care and the services necessitated by their state;
- to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution”.

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints (“the Protocol”);

Having regard to the Declaration made by Finland with respect to the Protocol;

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201st session and revised on 12 May 2005 at its 207th session, on 20 February 2009 at its 234th session and on 10 May 2011 at its 250th session (“the Rules”);

Having deliberated on 7 December 2011;

Delivers the following decision, adopted on the above-mentioned date:

1. The Association of Care Giving Relatives and Friends alleges that the situation in Finland is not in conformity with Articles 13, 14, 16 and 23 of the Charter on the grounds that, the lack of law-based fees of charges of living in municipal-based or municipal provided service houses prevents elderly people to reach the inhabitation type that his/her condition would require. It alleges that, by neglecting to set these rules, Finland violates the provisions of the Charter.

2. The Government does not contest that the complaint meets the conditions for admissibility laid down in Article 2 and Article 4 of the Protocol. This is without prejudice to its views on the merits.

THE LAW

3. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Finland on 17 July 1998 and entered into force for this state on 1 September 1998, the complaint has been submitted in writing and concerns Articles 13, 14, 16 and 23 of the Charter, provisions accepted by Finland when it ratified this treaty on 21 June 2002 and to which it is bound since the entry into force of this treaty in its respect on 1 September 2002.

4. Moreover, the grounds for the complaint are indicated.

5. The Committee also observes that the Association of Care Giving Relatives and Friends is a national non-governmental organisation, registered in the Register of Associations, within the jurisdiction of Finland. It notes that, in a declaration dated 21 August 1998 and entered into force on 1 September 1998 for a indefinite period, Finland recognised the right to any representative national non-governmental organisation within its jurisdiction which has particular competence in the matters governed by the Charter to lodge complaint against it.

6. As regard the requirement of “representativity” laid down by Article 2§1 of the Protocol, the Committee refers, *mutatis mutandis*, to its interpretation of the same word in the context of Article 1 c) of the Protocol. It recalls that, for the purposes of the collective complaints procedure, representativity of trade unions is an autonomous concept, which does not have the same significance as the notion of representativity at national level. This is all the more relevant in the case of associations. It is therefore up to the Committee to progressively define a range of criteria allowing it to determine the representativity of national organisations, taking into consideration, *inter alia*, their social purpose, as well as their scope of activities. In this instant case, it is not contested by the Government. Having made an overall assessment, the Committee considers that the Association of Care Giving Relatives and Friends is representative within the context of the collective complaint procedure.

7. As regards the particular competence of the Association of Care Giving Relatives and Friends in the matter of the complaint, according to its rules, the purpose of the association is to act for the promotion and support of the status of informal carers and of elderly people, people with disabilities and people with long-term illnesses, and to develop the services and support functions for informal carers and of elderly people, people with disabilities and people with long-term illnesses. The Committee considers therefore that the Association of Care Giving Relatives and Friends has particular competence within the meaning of Article 3 of the Protocol, as regards the instant complaint.

8. The complaint submitted on behalf of the Association of Care Giving Relatives and Friends is signed by Mrs Anneli Kiljunen, Chairperson and Mrs Merja Salanko-Vuorela, Executive Manager of the association who, according to its rules, are both entitled to represent the association. The Committee therefore considers that the complaint complies with Rule 23.

9. For these reasons, the Committee, on the basis of the report presented by Mr Lauri LEPPIK and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE

In application of Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the Respondent State of the present decision, to transmit it to the parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter, and to make it public.

Requests the Executive Secretary to publish the decision on the Internet site of the Council of Europe.

Invites the Government to make written submissions on the merits of the complaint by 3 February 2012.

Invites the Association of Care Giving Relatives and Friends to submit a response to the Government's submissions by a deadline which it shall determine.

Invites parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter to make comments by 3 February 2012, should they so wish.

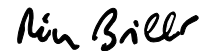
In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the Charter to make observations by 3 February 2012.



Lauri LEPIIK
Rapporteur



Luis JIMENA QUESADA
President



Régis BRILLAT
Executive Secretary