



# **European Social Charter**

European Committee of Social Rights

Conclusions XVII-1 (Finland)



## Introduction

The function of the European Committee of Social Rights is to judge the conformity of national law and practice with the European Social Charter. In respect of national reports; it adopts “conclusions” in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as general comments formulated by the Committee figure in the General Introduction to the Conclusions<sup>1</sup>.

*The European Social Charter and the 1988 Additional Protocol were ratified by Finland on 29 April 1991 and the Revised European Social Charter on 21 June 2002. The time limit for submitting the 9th report on the application of this treaty to the Council of Europe was 30 June 2003 (reference period: 1 January 2001 to 31 December 2002) and Finland submitted it on 20 January 2004.*

This report concerned the rights forming part of the “hard core” provisions of the Charter:

- the right to work (Article 1),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to social security (Article 12),
- the right to social assistance (Article 13),
- the rights of the family (Article 16),
- the rights of migrants (Article 19).

Finland has accepted all of these articles.

The present chapter on Finland contains 26 conclusions<sup>2</sup>:

- 18 cases of conformity: Articles 1§3, 5, 6§1, 6§2, 6§3, 12§1, 12§2, 13§1, 13§2, 13§3, 13§4, 16, 19§1, 19§2, 19§3, 19§5, 19§7, 19§9
- 4 cases of non-conformity: Articles 1§2, 6§4, 12§4, 19§8

In respect of the other 4 cases, that is Articles 1§1, 12§3, 19§4, 19§6, the Committee needs further information in order to assess the situation. It asks the Finnish Government to communicate the answers to these questions before the 30 June 2005.

The next Finnish report will concern the following provisions of the Revised Charter:

- Article 7 (prohibition on employment of children under the age of 15 and the right of young persons between 15 and 18 years to appropriate working conditions),
- Article 8 (right of employed women to protection),
- Article 11 (right to protection of health),
- Article 14 (right to benefit from social welfare services),
- Article 17 (right of mothers and children to social and economic protection),and

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<sup>1</sup> The conclusions as well as states reports can be consulted on the Council of Europe’s internet site ([www.coe.int](http://www.coe.int)) under Human Rights

<sup>2</sup> The 26 conclusions correspond to the paragraphs of the articles forming the hard core accepted by Finland, with the exception of Article 1§4, which is examined with Articles 9, 10 and 15 due to the links between these provisions.

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- Article 18 (right to engage in a gainful occupation in the territory of other Contracting Parties of the European Social Charter<sup>1</sup>).

It concerns the reference period 1 January 1999 to 31 December 2002.

The report will also concern two Articles of the Additional Protocol of 1988 (reference period 1 January 1999 to 31 December 2002).

- Article 1 (right to equal opportunities and treatment in matters of employment and occupation without discrimination on grounds of sex), and
- Article 4 (right of elderly persons to social protection).

The report should be submitted to the Council of Europe before 31 March 2004.

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<sup>1</sup> It concerns the provisions of the second part of the “non-hard core” articles accepted by Finland.

## Article 1 – Right to work

### *Paragraph 1 – Policy of full employment*

The Committee takes note of the information contained in the Finnish report.

### *Employment situation*

The report states that economic growth slowed during the reference period, according to Eurostat GDP increased by 0,6 % in 2001 and by 1,6 % in 2002 (compared to 5,5 % in 2000). Nevertheless, the employment rate increased and reached 67,7 % in 2002. The unemployment rate decreased to 9,1 % in 2001 (an average of 238 000 persons) and the situation remained unchanged the following year. Youth unemployment is still high at 21 % although this figure represents a very modest improvement compared to the previous reference period. The long-term unemployment rate fell from 29,1 % in 2000 to 24,9 % in 2002. Unemployment among immigrants is very high at 29 % in 2002, but this was down from almost 32 % in the previous year.

From an appendix to the report, the Committee notes that “Finland had some 175 000 long-term and recurrently unemployed in 2002”. This constitutes a very large proportion of the total number of unemployed (238 000) and does not match the number of long-term unemployed given in the text of the report proper (77 700 persons) nor does it to correspond to the “official” Eurostat long-term unemployment rate of 24,9 %. The Committee therefore asks how the figure of 175 000 is arrived at.

In reply to the Committee’s question concerning employment and unemployment among disabled persons, the report states that in 2001 there were 84 552 disabled jobseekers of which 68 600 were unemployed. Their share in overall unemployment was about 13 %. Close to 20 % of the disabled jobseekers were enrolled in labour market policy measures, which is just under the activation rate for all unemployed persons.

### *Employment policy*

The Committee notes the detailed information on the various specific labour market policy measures, including on the number of participants, expenditure and on their effects.

The Committee notes that the average number of participants enrolled in active labour market measures dropped further in absolute terms during the reference period (from 91 893 persons in 2000 to 80 360 in 2002). Due to the decrease in unemployment the activation rate only dropped about one percentage point to 21 %. Nevertheless, as stated in the previous conclusion (Conclusions XVI-1 pp. 195-197), the Committee considers the activation rate to be rather low, especially in view of the level of unemployment. It notes that in September 2002, the Government appointed a working group with a view to presenting proposals for reducing structural unemployment and increasing the employment rate from the current 67-68 % to 75 % by the end of the decade. Among the proposals put forward in the working group’s final report of 31 March 2003 is to expand the use of the employment subsidy, including making employment subsidies available to young people after only 100 days of unemployment. The Committee asks that the next report contain information on the implementation of these proposals and on any measures taken to ensure that a larger proportion (on average) of the unemployed, in particular the young unemployed, are offered participation in active labour market programmes.

According to Eurostat information, public expenditure on passive and active labour market policies corresponded to 2,8 % of GDP in 2001 compared to 3,6 % in 1998. The report explains that the decrease expenditure reflects the fall in the number of unemployed

persons. The Committee notes that the share of expenditure on active measures in total expenditure has also fallen slightly, from 27 % in 1998 to just under 25 % in 2001. The Committee requests information on the impact on expenditure of the policy proposals outlined in working group report mentioned above as well as in Finland's national action plan for employment.

Pending receipt of the information requested, the Committee defers its conclusion.

*Paragraph 2 – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

The Committee notes the information in the Finnish report.

The previous conclusion (Conclusions XVI-1, pp. 211-218) contains a general description of the situation in law, and in particular the ground for the Committee's finding of non-compliance, as well as the questions to the Government about specific aspects of the right to earn one's living in an occupation freely entered upon. The report describes a number of legislative changes and answers the Committee's questions.

1. Prohibition of discrimination in employment

The Committee notes that since its previous conclusion the Contracts of Employment Act has been replaced by a revised version dated 1 June 2001. The new Act reinforces the anti-discrimination provisions relating to the different grounds and forms of discrimination, in particular by prohibiting discrimination against part-time workers and workers on fixed-term contracts, but also takes a step backwards in relation to the previous situation under the 1970 Act, insofar as it no longer provides for the possible reinstatement of victims of discriminatory dismissal.

Under the new Act, employees who suffer discrimination, including discriminatory dismissal, are entitled to compensation in full for pecuniary and non-pecuniary damage suffered up to a ceiling of 24 months' wages for ordinary employees and 30 months' wages for staff representatives.

In the Committee's view the penalty in domestic law for breaching the ban on discrimination must sufficiently deter employers and adequately compensate workers, and cannot do so if the compensation awarded to victims of discriminatory dismissal is subject to a predefined ceiling. The Committee therefore asks whether there are any rules in ordinary law whereby employees able to prove that they have suffered damage in excess of the lump-sum compensation provided for by the Contracts of Employment Act can obtain compensation proportionate to the actual damage suffered.

The Committee also notes that Finland is preparing to transpose Community Directives 2000/78/EC<sup>1</sup> and 2000/43/EC<sup>2</sup> and asks to be kept informed of progress in this.

Lastly, in its previous conclusion, the Committee considered the situation in Finland to be contrary to the Charter in that foreigners were excluded from working on board Finnish merchant vessels. According to the report, none of the relevant collective agreements in this context contain any clauses prohibiting the employment of foreign seafarers, whether EU or non-EU nationals. Moreover, any such clauses would be contrary to the Employment Contracts Act.

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<sup>1</sup> Directive 2000/78/EC of the Council of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Official Journal L 303 of 02/12/2000 pp. 0016-0022.

<sup>2</sup> Directive 2000/43/EC of the Council of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Official Journal L 199 of 05/08/2000 p. 0086-0086.

The Committee notes the information in the Finnish report and asks that the next report provide detailed evidence that there are no *de jure* or *de facto* obstacles to the employment of nationals of states party to the 1961 Charter or the Revised Charter on board Finnish merchant vessels.

## 2. Prohibition of forced or compulsory labour

In reply to a question from the Committee concerning prison work, the report states that prison work inside prisons for the prison service is compulsory and that work for private employers is possible but does not happen in practice.

Under the Prison Administration Act, prisoners who work for the prison service enjoy the same working conditions as other workers, in particular with respect to working hours, health and safety. Depending on their status (i.e., whether they work inside or outside the prison) they are entitled to remuneration ranging from 0,40 € to 4,41€. The Act also provides that any prisoners authorised to work for private employers must be employed on an ordinary contract of employment.

On the basis of this information, the Committee finds no ground of non-conformity.

## 3. Other aspects of the right to earn one's living in an occupation freely entered upon

### *Service required to replace military service*

In reply to a question by the Committee in its previous conclusion, the report states that the majority of conscripts perform 180 days' compulsory military service (64,2 % of conscripts in 2000), and that only officers serve for a longer period of 362 days (28,7 % of conscripts in 2000).

In its previous conclusion, the Committee noted that conscientious objectors are required to perform 395 days' alternative service. On the basis of the information given in the present report, it notes that this period is more than double the compulsory military service performed by the majority of conscripts and therefore constitutes a disproportionate restriction on workers' right to earn their living in an occupation freely entered upon.

### *Acceptance of a job offer or a training offer as a condition for the maintaining of unemployment benefits*

The Unemployment Security Act 602/1984 provides that for the first three months of unemployment jobseekers may refuse offers of employment if they do not match their vocational skills, or for other "valid reasons", without running the risk of losing their entitlement to unemployment benefit.

It is possible to appeal against any administrative decisions on unemployment benefits to an ad hoc board of appeal, whose decisions can themselves be appealed to the courts.

The Committee considers that this system is in conformity with Article 1§2 of the Charter, because the unemployed are entitled, for a reasonable period, to refuse job offers that do not correspond to their vocational skills and because they have an effective right of appeal in cases where their unemployment benefits are suspended.

### *Part-time work*

The principle of non-discrimination is explicitly established in Article 2 of the Employment Contracts Act. Part-time workers are entitled to the same pay and working conditions as full-time workers. According to the report, any hours worked in excess of the hours stipulated in the employment contract or relevant collective agreement are regarded as

“extra” and only those hours worked in excess of statutory working hours are treated as overtime.

The Committee asks what the difference is between “extra” hours and overtime and whether “extra” hours are paid at a higher rate than the hours stipulated in the employment contract or relevant collective agreement.

#### 4. Conclusion

The Committee concludes that the situation in Finland is not in conformity with Article 1§2 of the Charter in that the alternative service conscientious objectors are required to perform is more than double the compulsory military service performed by the majority of conscripts and is thus a disproportionate restriction on workers’ right to earn their living in an occupation freely entered upon.

#### *Paragraph 3 – Free placement services*

The Committee notes from the Finnish report the up-dated information on the placement rate. In 2002, 327 600 vacancies were notified of which 303 700 were filled corresponding to a placement rate of almost 93 %. The Committee requests an estimate of the extent to which the placements result directly from the mediation efforts of the employment services.

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 1§3 of the Charter.

## **Article 5 – Right to organise**

The Committee takes note of the information in the Finnish report.

The report states that the new Contracts of Employment Act (Chapter 13, sections 1 and 2) clarifies the provisions of Act No. 320/1970. The Committee notes that Section 1 of Chapter 13 safeguards both positive and negative freedom of association for employers and employees and stipulates that any agreement in contravention of such freedom is unlawful. Section 2 of the same chapter authorises employees and their organisations to use work premises during breaks and outside working hours, freely and without charge in order to consider matters relating to their work or union business. The Committee notes that the situation is similar to the previous arrangements which it considered to be in conformity with the Charter (Conclusions XIV-1, Finland, p. 214-215).

The Committee notes that Section 3 of Chapter 13, on elected trade union representatives, stipulates that employees who do not have a trade union representative in their place of employment under the relevant collective agreement, in accordance with the Collective Agreements Act, may elect their own representative. The Committee asks the next report to contain detailed information as regards the situation in law and practice. It also asks how Act No. 55/2011 redefines the criteria of representativity.

The Committee concludes that the situation in Finland is in conformity with Article 5 of the Charter.

## **Article 6 – Right to collective bargaining**

### *Paragraph 1 – Joint consultation*

The Committee notes from the Finnish report that there have been no changes to the situation, which it has previously found to be in conformity with the Charter. It therefore concludes that the situation in Finland is in conformity with Article 6§1 of the Charter.

### *Paragraph 2 – Negotiation procedures*

The Committee takes note of the information in the Finnish report and in particular of the conclusion of the national incomes policy agreement which was signed on 2 December 2002 and which will be in force between 1 February 2003 and 15 February 2005<sup>1</sup>.

The Committee notes that there have been no changes to the situation, which it has previously found to be in conformity with the Charter. It therefore concludes that the situation in Finland is in conformity with Article 6§2 of the Charter.

### *Paragraph 3 – Conciliation and arbitration*

The Committee recalls that the situation regarding conciliation and arbitration was examined in Conclusions XIII-3, p. 277-278. The report states that no modification regarding the situation occurred during the reference period. The Committee asks that the next report, in the light of previous reports, provide information on cases of labour disputes in which the national conciliator and the district conciliators were involved.

In its previous conclusion (Conclusions XVI-1, p. 207-208), the Committee noted that the two main employers' confederations in Finland, the Confederation of Finnish Industry and Employers (TT) and the Employers' Confederation of Service Industries (PT) issued a joint statement in May 2000 calling on the Government to set up a tripartite preparatory body with the task of identifying central problems in the industrial peace system and drawing up new "rules of the game" in order to resolve them. The Committee recalls that it wished to be informed of any developments in this respect and repeats its request for information.

The Committee concludes that the situation in Finland is in conformity with Article 6§3 of the Charter.

### *Paragraph 4 – Collective action*

The Committee takes note of the information in the Finnish report.

### *Permitted objectives of collective action*

In its previous conclusion, the Committee noted that sympathy strikes could in practice be legal under the system of collective agreements for state civil servants and that the situation appeared to be the same for municipal officials. It asked for observations on the claim that the limitations on the right to strike for civil servants who merely exercised technical functions effectively prevented them from taking protest action against the Government's economic or social policy or against the budget policy of municipalities aiming at savings in personnel costs. As the report contains no information on this point the Committee repeats its question.

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<sup>1</sup> "New national incomes policy accord", European Industrial Relations Review, January 2003, n° 348, p. 24-26.

In its previous conclusion, the Committee considered that the situation was not in conformity with this provision on the ground that collective action was prohibited for state and municipal civil servants in cases where it supported, even partially, aims which could not be the subject of a collective agreement.

Firstly, the report specifies firstly that a strike, which pursues objectives which are not covered by a collective agreement, is lawful provided that the aim of a strike is not to conclude a new collective agreement. Secondly, the report confirms that strikes are prohibited if they pursue objectives which are not covered by the collective agreement.

The Committee recalls that restrictions which meant that in practice civil servants could only take collective action in order to obtain a collective agreement were not in conformity with this provision of the Charter (see *inter alia* Conclusions XV-1, Iceland, p. 335). Therefore, the Committee concludes that the situation is not in conformity with the Charter on this point.

#### *Who is entitled to take collective action?*

The Committee notes that under the legislation on collective agreements for state civil servants and municipal officials, these employees may only take part in strikes that have been called by trade unions. The Committee considers that a decision to call a strike can be taken by a trade union provided that forming a trade union is not subject to undue formalities. Therefore, it requests for the next report to specify in detail, what the requirements are for the constitution of a trade union. Pending receipt of this information, the Committee reserves its position on this point.

#### *Conclusion*

The Committee concludes that the situation in Finland is not in conformity with Article 6§4 on the ground that civil servants cannot call a strike in pursuance of objectives which are not covered by the collective agreement.

## Article 12 – Right to social security

### *Paragraph 1 – Existence of a social security system*

The Committee takes note of the information in the Finnish report.

According to the report there have been no significant changes to the system of social security. However, an agreement was reached on certain major changes to be made but they have not been implemented during the reporting period. The Committee wishes to be kept informed of these and other changes.

Furthermore, the Committee asks that the next report contain details and up-dated information on the level of social security benefits, particularly income-replacement benefits, indicating average as well as minimum levels.

The Committee also asks that the next report give up-dated details on the unemployment insurance benefit branch paying special attention to level of benefits, the qualifying conditions and the duration of benefit periods. Finally, in order to assess certain aspects of the personal scope of the social security system, it asks to receive information on the total number of persons receiving old-age pensions and the total number of beneficiaries of maternity benefits.

The Committee concludes that the situation in Finland is in conformity with Article 12§1 of the Charter.

### *Paragraph 2 – Maintenance of a social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention No. 102*

The Committee takes note of the information contained in the Finnish report.

On the basis of this information as well as information provided in previous reports, the Committee considers that the Finnish social security system is still at a level at least sufficient for ratification of ILO Convention No. 102.

The Committee notes from another source<sup>1</sup> that concern has been expressed over the impact of changes adopted to the pension scheme, in particular disability pensions. Like the ILO the Committee wishes to be supplied with more detailed information on the incidence of such changes, as well as statistical information.

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 12§2 of the Charter.

### *Paragraph 3 – Development of the social security system*

In its previous Conclusion the Committee noted that the situation in Finland was in conformity with Article 12§3 of the Charter. It, however, put several questions to the Finnish government.

As requested the report provides information on the financing of unemployment insurance benefit, which was revised as of 1 January 1999. The central unemployment insurance fund financed by employers' contributions and the unemployment funds financed by membership fees and wage earners' contributions, finance the earnings-related part of unemployment benefits, child supplements and additional days. The part of the wage earners' contribu-

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<sup>1</sup> Report of the ILO Committee of Experts, Report III (Part 1A), Individual Observation on ILO Convention 128 (Finland).

tions, which is based on the contributions of such persons not members of an unemployment fund is used for the financing of the basic part of benefits in order to reduce the State's financial burden.

The Committee further asked whether the reduction in expenditure on unemployment benefits continued to be accompanied by a substantial increase in expenditure on labour market support. The report states that the reform entailed an improvement to the effect that the period of time during which the required length of employment may accrue, was extended to 24 months also for those situations where fulfilment of the condition of employment gave a new right to the daily unemployment benefit (whereas the period of time was earlier 8 months). Furthermore, work performed before the completion of the maximum period of unemployment insurance may now be included in the required 10-month length of employment. As a result, unemployed persons have increasingly accepted even short-term jobs. The number of persons passing on to the labour market subsidy has therefore significantly decreased.

In response to a question concerning the 7-day qualifying period for unemployment benefit, the report mentions that new provisions require the completion of a new qualifying period where the maximum period of unemployment insurance of 500 days starts to run again. Due to this change, a new qualifying period is only seldom required. In respect of labour market subsidy, the qualifying period is still five working days. The Committee observes that since the waiting periods are now less frequent, this can be considered as an improvement of the situation.

The report provides no information, in respect of the Committee's question, as to what impact increased fees in health care have had on persons with low incomes. The Committee therefore repeats its question.

The Committee furthermore notes that the Family Pension Act was amended on 17 August 2001. It requests that the next report provide information on the practical effects of these changes.

The Committee notes that on 1 April 2002, the National Pension Act (347/1956) and the Disability Allowance Act (124/1988) were amended to raise the minimum age for disability pension, to be paid without assessment of possibilities for rehabilitation, to 20 years (from the earlier age of 18 years). This amendment was part of a plan to improve the opportunities for disabled persons for rehabilitation and employment. The disability pension shall be suspended if the beneficiary earns more than 588,66 € per month. The Committee notes that this amount is not tied to the cost-of-living index, and in order to assess this situation fully, it requests more details with regard to the suspension of the disability pension for beneficiaries who have a partial working capacity and for those who have no working capacity.

The Committee finally notes that a major pension reform was introduced outside the reference period. It wishes to receive full details of this reform in the next report.

Pending receipt of the information requested, the Committee defers its conclusion.

#### *Paragraph 4 – Social security of persons moving between states*

On the basis of the information in the Finnish report, the Committee considers that Finland meets the requirements of Article 12§4 in respect of Contracting Parties which are also European Union member states. It further notes that only some Contracting Parties not belonging to the European Union have bilateral social security undertakings with Finland.

In its previous conclusions, the Committee held that nationals of Contracting Parties not belonging to the European Union or not having bilateral agreements with Finland suffered indirect discrimination because family benefits were subject to a residence requirement for dependent children. The Committee observes that the situation has not changed and is therefore still not in conformity with the Charter.

In its previous conclusion, the Committee requested that the Government substantiate that nationals of Contracting Parties not belonging to the European Union and not having bilateral agreements with Finland were entitled to retain advantages acquired under Finnish legislation. From the report it appears that whereas employment pensions are paid abroad without restrictions, certain benefits provided for under the national pension scheme (old-age pension, disability pension, unemployment pension, widower's pension and disability allowance) may be paid to persons residing abroad for no more than one year. The Committee considers the principle of retention of accrued rights to apply naturally to old-age, invalidity and survivor's benefits and it therefore asks that the next report provide full clarification on the restrictions applying to the payment of accrued benefits.

The Committee notes again that for nationals of Contracting Parties not belonging to the European Union and not having entered into a bilateral agreement with Finland, aggregation of periods of insurance is not guaranteed.

### *Conclusion*

The Committee concludes that the situation in Finland is not in conformity with Article 12§4 of the Charter, on the grounds that:

- the payment of family benefits is subject to a residence requirement for dependent children;
- Finnish legislation does not provide for aggregation of the periods of insurance or employment completed by nationals of those Contracting Parties not belonging to the European Union or not having entered into a bilateral agreement with Finland.

In accordance with Article 17§4 of the Committee's Rules of Procedure, a dissenting opinion of Mr. M. MIKKOLA is appended to these conclusions.

## Article 13 – Right to social and medical assistance

### *Paragraph 1 – Adequate assistance for every person in need*

The Committee takes note of the Finnish report which provides information in response to questions posed by the Committee in its previous conclusion.

#### *Social Assistance*

The report mentions that homeless persons have equal access to social assistance. They may, to the extent possible, be provided with special support or help for independent living. The Committee repeats its question from the previous conclusion concerning the effectiveness of the rules applicable and the support available to homeless persons. The Committee asks whether the absence of a permanent residence excludes them from certain forms of social assistance.

The basic income allowance of single persons is 374,92 €/month in level I municipalities and 358,79 €/month in level II municipalities. Having noted from Eurostat that 50 % of median equivalised income corresponded to about 619 € on a monthly basis in 2001, the Committee considers the level of this allowance to be very low and not in itself adequate under this provision of the Charter. It therefore asks that the next report contain information on any supplementary benefits, for instance to cover housing costs, as well as estimates of the total value of benefits provided monthly to recipients of social assistance.

The report makes reference to case No. 147/01 of the Supreme Administrative Court where the court decided that a 20 % reduction to the basic income allowance was not found to endanger the necessary subsistence required for a human life. The Committee asks whether further reductions are possible and it also wishes to receive more examples of relevant case law.

The amended Income Allowance Act allows for a preventive income allowance. Local authorities reserve adequate funds and may grant the allowance where there is no right to income allowance as such, e.g. for housing or alleviation of some financial difficulties. The allowance was granted to 17 081 households and 38 452 persons in 2001, and in 2000, 10 471 households and 24 772 persons<sup>1</sup>. The Committee notes that the use of preventive income allowance significantly increased. It asks what the level of this allowance is and refers to its questions above on the basic income allowance.

The Vocational Rehabilitation Act (189/2001), and certain related Acts (amending existing legislation), entered into force on 1 September 2001. The legislation aims to improve the position of the long-term unemployed, entitled to income allowance. These persons shall be provided with an activation plan in cooperation between the beneficiary, the employment agency and the local authorities. The plan provides for measures enhancing employment and for vocational rehabilitation. The Committee wishes to be kept informed on the practical effects of the mentioned acts.

The report does not respond to a question put by the Committee in its previous conclusion concerning the Rehabilitative Work Act (181/2001). Under this Act, rehabilitation work could be compulsory for welfare benefit recipients aged under 24. The Committee repeats its request for information on this subject

As regards the right of appeal, the report states that a request for the amendment of a decision on income allowance may first be made to the local social welfare board within 14

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<sup>1</sup> National Research and Development Centre for Welfare and Health (STAKES), [www.stakes.fi](http://www.stakes.fi)

days from the date of the decision. Thereafter, an appeal may be made to an administrative court within 30 days, and further to the Supreme Administrative Court if the latter grants leave to appeal.

Finally, the Committee notes that in 2001, gross spending on income allowance was 463 million €, an increase by some 35 million € over the previous year.

#### *Medical assistance*

On 13 September 2001, the Government initiated a project for future guarantees of health care, the aim of which was to ensure the availability, quality and adequacy of health care services. As a result of the project, the Government gave a decision in principle in April 2002, on guarantees of health care, with a view to developing the health care services in cooperation among the local and state authorities, taking into account the possibilities offered by the private and third sectors.

In an additional budget for 2002, 25 million € was allocated to decrease the number of persons waiting for medical examinations or treatment. The number of persons within the health care district and the need for subsidies is taken into consideration when assessing the criteria for the granting of the subsidy (Decree 576/2002). By 31 December 2002, nearly 3 million € of the granted subsidies had been used, helping nearly 14 000 patients. More than 3 500 patients were subject to medical examination or surgery, 1 100 underwent eye surgery. There has been a decrease in numbers of patients waiting for medical examinations or treatment.

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 13§1 of the Charter.

#### *Paragraph 2 – Non-discrimination in the exercise of social and political rights*

The Committee notes from the Finnish report that there have been no changes to the situation which it has previously found to be in conformity with the Charter. It therefore concludes that the situation in Finland is in conformity with Article 13§2 of the Charter.

#### *Paragraph 3 – Prevention, abolition or alleviation of need*

On the basis of the information contained in the Finnish report the Committee notes that there have been no changes to the situation concerning the prevention, abolition or alleviation of need, which it found to be in conformity with the Charter.

In addition, the Committee notes that in 2001, 45 million Finnish Markka (FIM; 7,6 million €), was earmarked for supporting the mental development of children and young persons, preventing mental disturbances and ensuring psychiatric treatment services.

The Committee notes that amendments have been made to the Rehabilitation Allowance Act (611/1991), with a view to encouraging insured persons to attend rehabilitation and to better ensure the access of young disabled persons to vocational rehabilitation instead of retirement on disability pension.

The Committee concludes that the situation in Finland is in conformity with Article 13§3 of the Charter.

#### *Paragraph 4 – Specific emergency assistance for non-residents*

On the basis of the information contained in the Finnish report, the Committee notes that there have been no changes to the situation concerning social and medical assistance for

nationals of Contracting Parties lawfully present in Finnish territory, which it has previously considered to be in conformity with the Charter.

In its previous conclusion the Committee asked the Finnish to furnish up-dated information on the type of assistance provided and on the number of nationals of Contracting Parties benefiting from it annually. The report provides no such information. It states that no statistical data is available, nor is it possible to give account of the users of the services. The Committee stresses that this information is necessary in order to assess the situation under this paragraph. It therefore repeats its request.

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 13§4 of the Charter

## Article 16 – Right of the family to social, legal and economic protection

The Committee takes note of the information in the Finnish report and also refers to its previous conclusions (Conclusions XVI-1, p. 221 and XV-1, p.218) for a description of the social, legal, and economic protection of the family. It also asks whether Roma families are guaranteed the same social, legal and economic protection.

### *Legal protection of the family*

The Committee notes that the situation regarding the legal protection of the family, which it had previously considered to be in conformity with the Charter, has not changed. It also notes from another source<sup>1</sup> that, in 2001, legislation was passed on the registration of homosexual couples.

The Committee interprets Article 16 as covering the issue of domestic violence. Accordingly, it examines whether in this respect protection exists in law (legislation or other provisions) and in practice (services devoted to prevent the risk of ill treatment, to support and rehabilitate victims). It notes from another source<sup>2</sup> that a five-year project (1997-2002) for eliminating violence against women was carried out by the National Research and Development Centre for Welfare and Health. Therefore, it asks the next report to indicate what results have been achieved through this project and whether legal protection is also envisaged.

### *Economic protection of the family*

The report indicates that no change occurred as regards family benefits during the period of reference. They still consist of child allowance, parental allowance (during parental leave), child home-care allowance and private child-care allowance (for children who do not attend municipal day-care), and maternity grant.

The amount of the universal child allowance, paid up to 17 years, depends on the number of children in the family and varies between 90-172 € per child per month. Single parents receive an increase of 33 € per child (single parents constituted 19 % of all families in 2000). The basic amount of the child home-care allowance is 252 € per month and that of the private child-care allowance is 118 € per month. Both are supplemented for low-income families.

Regarding the adequacy of family benefits, the Committee considers that the basic child allowance is an adequate income supplement when it represents a significant percentage of the monthly mean equivalised net income. In Finland child allowance represented, in 2001, 8,1 % of this income as calculated by Eurostat<sup>3</sup>. Taking into consideration the other family benefits, the Committee considers this figure to be adequate.

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<sup>1</sup> S. Taskinen, The situation of families in Finland in 2001, reports prepared by the experts of the European Observatory on the Social Situation, Demography and Family, in [www.europa.eu.int/comm/employment\\_social/eoss/research\\_en.html](http://www.europa.eu.int/comm/employment_social/eoss/research_en.html).

<sup>2</sup> S. Taskinen, cit.

<sup>3</sup> Last data available are for 2000. Eurostat definitions are as follows : **Income**: Total household income is taken to be all the net monetary income received by the household and its members at the time of the interview (t) during the survey reference year (t-1). This includes income from work (employment and self-employment), private income (from investments, property and private transfers to the household), pensions and other social transfers directly received. No account has been taken of indirect social transfers, transfers paid to other households, loans interest payment, receipts in kind and imputed rent for owner-occupied accommodation. **Mean equivalised income**: In order to take into account differences in household size and composition in the comparison of income levels, the amounts given are per "equivalent adult". The

However, it also observes from another source<sup>1</sup> that no changes have been made to child allowance payments since 1995 and that the purchasing power of such allowance fell by 11 % between July 1995 and July 2001. Though the at-risk-poverty rate among children is effectively reduced through family benefits<sup>2</sup>, the Committee asks whether changes in the family benefits system are planned.

### *Social protection of the family*

As regards childcare, the report does not provide any new information on the situation, which was held to be in conformity with the Charter. The Committee notes from another source<sup>3</sup> that the combined system of parental allowance, child home-care allowance, private child-care allowance and municipal day-care ensures almost universal coverage of the 0-6 age group. While children under three are primarily taken care of at home, the majority of those between 3 and 6 are in municipal day-care. Client fees for childcare cover about 15 % of the total cost.

Since the focus of Article 16 is the maintenance of family's ties, the Committee will deal here with housing only from the family perspective – which includes households composed of parents with children, including single parents and young couples that may have children. This means, *inter alia*, considering the availability of family-size dwellings in states' construction and social housing policies; and the availability of housing benefits specifically targeted at families (e.g. grants or subsidies for the purchase or construction of family home, tax relief on mortgage repayments, subsidised loans for acquiring the first home, subsidised rent for families, housing allowances, etc.).

The report does not provide any information about housing policy measures favourable to families. The Committee notes from other sources<sup>4</sup> that the Finnish housing policy has been evaluated as successful in 2002. Housing and housing construction are supported through housing allowance, interest support (government subsidies and subsidised loans), grants and tax relief. Government-subsidised rental flats are also available, but are few in number. The means-tested general housing allowance targets low-income households and aims at helping them meeting housing expenditure to a maximum ceiling of 80 %. In 2001, 46 % of the beneficiaries of this allowance were families with children (around 70 000). The Committee asks the next report to indicate the extent to which the measures other than housing allowance target households with children.

The Committee notes that, as regards counselling services and family representation the situation, which it had previously considered as being in conformity, has not changed.

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household's total income is divided by its 'equivalent size', using the modified OECD equivalence scale. This scale gives a weight of 1,0 to the first adult, 0,5 to the second and each subsequent person aged 14 and over, and 0,3 to each child aged under 14 in the household. The mean equivalised income is the average of the equivalised income over all persons (adults and children).

<sup>1</sup> Ministry of Social Affairs and Health, Trends in social protection, Finland 2002, 2002 :16, p.99.

<sup>2</sup> Eurostat, Income, poverty & social exclusion, 2003, p.145, in [www.europa.eu.int/comm/eurostat/Public/datashop](http://www.europa.eu.int/comm/eurostat/Public/datashop).

<sup>3</sup> Ministry of Social Affairs and Health, Trends in social protection, Finland 2002, 2002 :16, p.99.

<sup>4</sup> Ministry of the Environment, [www.environment.fi](http://www.environment.fi), Housing; Ministry of Social Affairs and Health, Trends in social protection, Finland 2002, 2002 :16, p.128.

*Conclusion*

The Committee concludes that the situation in Finland is in conformity with Article 16 of the Charter.

## **Article 19 – Right of migrant workers and their families to protection and assistance**

### *Paragraph 1 – Assistance and information on migration*

The Committee takes note of the Finnish report.

Regarding assistance and information services, the Committee notes that there have been no changes in the situation it previously found to be in conformity with the Charter.

The Finnish report mentions that both nationals and employers in other EEA states may get information on the Finnish labour market, including remuneration and conditions of work, through the EURES employment exchange system.

The Committee asks whether there are similar services available for all migrant workers.

Furthermore, the Committee observes that the Finnish report does not contain any information on legislation to the combat of misleading propaganda. The report mentions that the labour authorities may intervene in misleading information by correcting the information in public. In this regard, the Committee notes from another source<sup>1</sup> on Finland that there still appears to be a certain level of prejudice and intolerance among the Finnish population towards those who are different from the majority. There is a need to intensify training and awareness-raising among key officials and further efforts to combat manifestations of discrimination in daily life. In this regard, the Committee asks whether public servants who are in contact with immigrants are given appropriate training in the fight against racism and xenophobia.

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 19§1 of the Charter.

### *Paragraph 2 – Departure, journey and reception*

The Committee notes from the Finnish report that there have been no changes to the situation which it has previously found to be in conformity. It therefore concludes that the situation in Finland is in conformity with Article 19§2 of the Charter.

### *Paragraph 3 – Co-operation between social services of emigration and immigration states*

The Committee takes note of the Finnish report.

In its previous conclusion, the Committee asked for information as to whether co-operation between social services is such as to assist migrant workers wishing to avail themselves in Finland of rights accrued in another country, or vice versa.

The Finnish report mentions that in their respective sectors of administration, the Ministry of Labour and the Ministry of Social Affairs and Health cooperate with both regional and local authorities in other countries, for the purpose of providing such assistance.

The Committee asks that the next report provide information on the existence of public as well as private social services related to migration.

The Committee concludes that the situation in Finland is in conformity with Article 19§3.

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<sup>1</sup> ECRI (European Committee against Racism and Intolerance) Second report, CRI (2002)20, adopted on 14 December 2001, in [www.coe.int/T/E/human\\_rights/ECRI](http://www.coe.int/T/E/human_rights/ECRI) .

*Paragraph 4 – Equality regarding employment, right to organise and accommodation*

On the basis of the information contained in the Finnish report, the Committee notes that there is no change in the situation regarding remuneration, membership of trade unions and accommodation, which it found to be in conformity with the Charter.

The report mentions that the wage earners' and employers' rate of organisation is about 80 % in Finland. Trade unions increasingly define migrant workers as members deserving special attention.

The report mentions that the Finnish labour authorities also monitor conditions of work in respect of employees who are not members of any trade union. The Committee asks the next report to indicate migrant workers' rate of organisation. In the Government Bill, for the enactment of a new Equality Act, submitted to Parliament in December 2002, the status of migrant workers and the principle of equal treatment have been strengthened. The Committee wishes to be kept informed of any developments with regard to this bill.

The Committee furthermore wishes the next report to provide details on how all migrant workers are secured treatment not less favourable than that of Finnish nationals in law and in practice with regard to employment and working conditions.

Pending receipt of the information requested, the Committee defers its conclusion.

*Paragraph 5 – Equality regarding taxes and contributions*

On the basis of the information contained in the Finnish report and earlier reports, the Committee notes that there is no change in the situation regarding equal treatment with regard to taxes, dues and contributions, which it found to be in conformity with the Charter.

The Finnish report mentions that the amount of contributions paid to the pensions' scheme is not tied to the workers nationality. Public legal aid is also available, in the context of appeal, to all migrant workers. Under the new Legal Aid Act (257/2002) which entered into force on June 2002, the granting of legal aid shall release the recipient from liability for fees and reimbursements.

The Committee concludes that the situation in Finland is in conformity with Article 19§5 of the Charter.

*Paragraph 6 – Family reunion*

In its previous conclusion, the Committee asked for further information with regard to Article 19§6 of the Charter.

In answer to a question put in the previous conclusion, the Finnish report indicates that there are no requirements concerning level of income for family reunion, insofar as the person residing in Finland is a Finnish national, a national of another Nordic country, has refugee status or a permit issued on the basis of protection, or is of Finnish origin coming from the Former Soviet Union. In respect of other migrant workers, both the migrant worker and his or her family members must have a guaranteed means of support. This is generally the case if there is a regular job providing adequate means of support. The report mentions that the average time period necessary for an application for family reunion to be accepted is sixty days.

The Committee is of the opinion that the level of means required to bring in the family, should not be so restrictive as to prevent any family reunion. The Committee wishes to

know whether a migrant worker who receives welfare support is prevented from exercising the right to family reunion.

The Committee observes that under section 8 of the Aliens Act, family reunion may be refused, if the alien who enters the country jeopardises public health. The Committee recalls that refusal of family reunion for health reasons is possible in case of specific illnesses requiring quarantine stipulated in the World Health Organisation's International Health Regulations of 1969 (which replaced the International Sanitary Regulation No. 2 of 25 May 1951)<sup>1</sup>. These diseases are, as mentioned in the Health Regulations; cholera, including cholera due to the *eltor vibrio*, plague and yellow fever. Refusal for health reasons is also possible, in case of serious contagious or infectious diseases such as tuberculosis or syphilis. If, on a case by case basis, it is established that very serious drug addiction or mental illness poses a threat to public order or security, then this could justify refusal of family reunion.

The Committee requests information from the Finnish government as to which diseases are considered as jeopardising public health.

### *Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

#### *Paragraph 7 – Equality regarding legal proceedings*

The Committee takes note the Finnish report.

The report states a new Legal Aid Act (257/2002) entered into force on 1 June 2002, repealing the earlier Act on the provision of public legal aid. As to its contents, the new Act does not differ from the Act described in the previous report. Public legal aid is still given to a party to legal proceedings where the case is before a Finnish court of law, and it may also be paid in other circumstances.

The Committee concludes that the situation in Finland is in conformity with Article 19§7 of the Charter.

#### *Paragraph 8 – Guarantees concerning deportation*

On the basis of the information contained in the Finnish report, the Committee observes no change in the rules on expulsion of migrant workers, which it previously found not to be in conformity with Article 19§8.

The Committee notes that Article 19§8 restricts the grounds for expulsion and provides for safeguards in this context. This paragraph is to be interpreted restrictively, in the sense that the sole grounds for expulsion permitted by this paragraph are the threat to national security or an offence against public interest or morality provided that the offence constitutes a breach of the criminal law and is punishable as such and aspects of behaviour or individual circumstances are taken into consideration. Furthermore, the wording of paragraph 8 makes no explicit mention of the expulsion of the family members of a migrant worker as a consequence of his or her expulsion.

It is the opinion of the Committee that such an expulsion is contrary to paragraph 8, since this paragraph does not allow for the expulsion for any other reason than the threat to national security. If the family members do not pose a threat to national security they may

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<sup>1</sup> The 48th World Health Assembly expresses the need for further substantial revision in view of the resurgence of infectious diseases and the risk of international spread.

not be expelled, for the simple reason, that the migrant worker is expelled. Therefore, the Committee reiterates that migrant workers' family members, *in casu* minor children, cannot be expelled in connection with his or her own expulsion.

The Committee recognises that the expulsion of a migrant worker could result in the minor children staying in the host country. The Committee, however, does not share the Finnish Government's point of view that in such cases expulsion should take effect so as to respect the unity of the family even if the deportee has sole custody of the minor(s). As stated in Article 19§6 the Parties undertake to guarantee the reunion of the family of a foreign worker permitted to establish himself in the territory. The Committee is of the opinion that family reunion should be provided for by State Parties for persons staying in its territory. There is no obligation for State Parties to provide for family reunion when migrant workers leave the territory. In any case, family reunion should in no way be forced upon a family. The family members are free to choose whether they want to be united with the deportee in his or her country of origin, but should in no way be expelled themselves.

The Committee therefore concludes that the situation in Finland is not in conformity with Article 19§8, on the grounds that a migrant worker's minor children who have settled on Finnish territory as a result of family reunion may be expelled when the migrant worker is expelled.

#### *Paragraph 9 – Transfer of earnings and savings*

The Committee notes from the Finnish report that there have been no changes to the situation which it has previously found to be in conformity. It therefore concludes that the situation in Finland is in conformity with Article 19§9 of the Charter.

### Dissenting opinion of Mr. M. MIKKOLA on Article 12§4

In most European countries child allowances are paid, irrespectively of any contributions, for children to compensate the costs they give rise to for their parents or guardians. The recipient is no longer the working parent as was often the case in the past, but the factual carer of the child. Instead of being conceived as an income supplement for the worker, the child allowance/family benefit has become a universal means of support for children or child families or – as in France - for families with several children.

If the child moves from one country to another, so will also the responsibility for paying the allowance move, i.e. the new country should treat the migrant child and her family on an equal footing with those already residing in the country. And vice versa, when leaving the country the expiration of the payment is justified, at least after some time. A short co-ordination period may be necessary to avoid double payment but even here the nationals, returning ex-nationals and nationals of other Contracting Parties should be treated equally.

Following decisions by the European Court of Justice,<sup>1</sup> the EU member states have been obliged to export family benefits as “social security benefits for workers” irrespectively of the nature of the benefit. This has been justified with reference to the principle of free movement of the workers in a common labour market. The work-related way of thinking has also inspired the majority of the members of the European Committee of Social Rights and I have expressed my dissenting opinion in this respect ever since Conclusions XIII-4 (pp. 453-457) and I continue to dissent.

In the case law of the Committee the child allowance is:

- defined as a family benefit,
- considered as part of social security,
- understood to be paid for the working parent,
- understood to be exportable so as to ensure equal treatment of workers in the same sense as under EU law.

The case law is further characterised by the fact that no particular attention has been paid to differences of the national systems. So strong has been the drive to reach a single harmonized model throughout the continent.

My main argument against the majority opinion has been, that in most of the countries concerned child allowance is not a benefit for the worker and the Charter does not establish any common labour market as in the EU. The exportability principle should therefore not be adopted wholesale from the EU. Furthermore, the wording itself of Article 12§4 does not provide any express support for this principle. In the *travaux préparatoires* to the Charter it is in fact possible to find a more “tolerant” point of departure for the interpretation of this paragraph which respects the principle of universality and of assuming responsibility for those children who are resident in the country (the Danish view in the *travaux préparatoires*).

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<sup>1</sup> See for instance ECJ, 12/07/1979, Case 237/78, *Caisse Régionale d'Assurance Maladie, Lille v. Palermo*, Rec.1979, p.2645 and ECJ, 15/01/1986, Case 41/84, *Pinna v. Caisse d'Allocations Familiales de la Savoie*, Rec.1986, p. 1.

Unfortunately, the Committee has not accepted the idea of universalism, but has considered a residence requirement in respect of children to be an unacceptable restriction. This has led the Committee to conclude that the situation is not in conformity with the Charter on this point in most of the countries concerned. On the contrary, for certain countries operating work-related child allowance systems with no residence requirement, including systems based on means testing, it has concluded that the situation is in conformity with the Charter. In effect this means that the countries in which the child allowances are not paid to all children are met with approval, while the countries where personal coverage is total (universal) are criticised. And all this in the name of equal treatment.

Instead of trying to harmonise the child benefit systems back to 1950s, the Committee should seek to find common minimum denominators for child allowance and family benefit systems respecting to a higher degree the different national goals and purposes of the individual systems. In most of the above-mentioned conclusions of non-conformity, I do not consider that there has been any violation of the Charter. This applies in particular to the cases where the allowance is paid for all children resident in the territory and where the recipient of the payment is the parent or the factual carer of the child.