

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**



19 December 2016

**Case Document No. 1**

**Central Union for Child welfare (CUCW) v. Finland  
Complaint No 139/2016**

## **COMPLAINT**

**Registered at the Secretariat on 14 November 2016**



## COLLECTIVE COMPLAINT

### Secretary General of the Council of Europe

Executive Secretary of the European Committee of Social Rights

#### Parties

a. *Complainant:* Central Union for Child Welfare (CUCW)

Representation and field of operation: The Central Union for Child Welfare, founded in 1937, is a *central organisation in the field of child welfare that works in matters relating to children's rights* on a national and European level. The CUCW has 94 organisations and 37 municipalities or joint municipal authorities as its members. It aims for a situation in society where the children's needs are genuinely a priority in decision-making and the rights of the child are implemented in full. The CUCW compiles an alternative report of Finnish non-governmental organisations for the periodic review of the UN Convention on the Rights of the Child. The Central Union also coordinates cooperation in matters related to the children's rights on a national level.

The right to sign the name: According to the rules of the Central Union for Child Welfare, its Board, assisted by the Chief Executive and the Central Office, shall be responsible for its operation. The President of the Board (Professor emer. Pentti Arajärvi) and the Chief Executive (Ms. Hanna Heinonen) jointly have the right to sign the name of the organisation.

#### Contact information:

Lastensuojelun Keskusliitto  
Armfeltintie 1, 00150 Helsinki, Finland  
tel. +358 9329 6011  
email: [toimisto@lskl.fi](mailto:toimisto@lskl.fi)

b. *Contracting State:* The State of Finland, which is a Contracting State of the Revised European Social Charter (ESC) and has ratified each of its articles concerning the supporting of children, young people and families.

c. *Declaration according to Article 2(1) of the 1995 Additional Protocol*

Finland has, by notification addressed to the Secretary General of the Council of Europe in accordance with Article D of the ESC, provided representative national non-governmental organisations with the right to file collective complaints in matters concerning their field of operation.

### Subject matter of the complaint and legal grounds

A new Act on Early Childhood Education and Care entered into force in Finland on 1 August 2015. The Act emphasises the entitlement of the child to early childhood education and care instead of the service provided for parents, and it is based on decisions made two decades earlier, according to which daycare/early childhood education and care was a universal right and an individual entitlement of every child and family.

As part of the State's austerity policy, the Government of Finland has afterwards decided to save, according to its estimation, 62 million euros in the annual costs of daycare and early childhood education and care of children, which has been implemented by means of the amendments to the Act on Early Childhood Education and Care that entered into force on 1 August 2016 and restrict the individual entitlement to early childhood education and care to 20 hours per week where a parent is unemployed and where one parent is taking care of another child of the family on a maternity, paternity or parental leave, the impact of which is that a child whose entitlement to full-time early childhood education and care has been restricted will be left without more comprehensive educational support as well as without healthy nutrition offered under the Act on Early Childhood Education and Care.

According to a survey<sup>1</sup> carried out in February 2016, a total of 42 municipalities had decided to restrict the entitlement to early childhood education and care as allowed by the Act. There were 16 municipalities that had not adopted the austerity measures under the Act. A majority of the municipalities, 151, had not discussed the restriction of the entitlement at all. According to the Act, municipalities do not need to decide separately on the restriction of the entitlement. No up-to-date statistics are available on the situation, which can be considered a major shortcoming.

The austerity measures are directed at groups which are also otherwise in a more vulnerable situation. This violates

- 1) *the rights of the child* of unemployed parents and of parents on a maternity, paternity or parental leave contrary to Articles 16, 17, 27(1c) and E of the ESC, and

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<sup>1</sup> Lahtinen & Selkee 2016: Survey report on early childhood education and care I: individual entitlement and ratios. Helsinki: Association of Finnish Local and Regional Authorities  
<http://www.kunnat.net/fi/Kuntaliitto/media/tiedotteet/2016/201603varhaiskasvatusselvitys/Varhaiskasvatuskyselyraportti%20maaliskuu%202016.pdf>. The information of the survey concerns the situation in February 2016, after which no comprehensive information is available. A concern is that the situation has changed for worse in respect of children and families.



- 2) *the rights of the parents* referred to in paragraph 1 contrary to Articles 16, 27(1c) and E of the ESC, and
- 3) puts *children and their parents* in a regionally unequal position depending on the municipality where they live, which discriminates, in particular, against the children in the economically least advantaged municipalities contrary to Articles 16, 27(1c) and E of the ESC.

The (UN) Committee on the Rights of the Child recommended in 2011 that Finland prepare a new general act on early childhood education and care. The Committee recommended to **increase the coverage of early childhood education and care** and to improve its quality by increasing the number of personnel, by limiting the size of day care groups and **by ensuring better continuity in care relationships**.<sup>2</sup>

Participation in early childhood education and care is lower among children in Finland than in other EU countries. In 2014 the participation rate of 4-year-old children in the EU was on average 87 per cent (EU 22 average, ISCED 02), while in Finland it was 74 per cent.<sup>3</sup> Only 63 per cent of children aged between 1 and 6 years participated in early childhood education and care.<sup>4</sup> The objective of a threshold set by the EU for participation in early childhood education care is to bring at least 95 per cent of at least 4-year-old children within early childhood education and care by 2020.<sup>5</sup> The current decisions will take Finland even further away from this objective.

## Regulation of early childhood education and care in Finland

### A. Act on Early Childhood Education and Care and its objectives

According to the Finnish Act on Early Childhood Education and Care (No. 36/1973; Section 2(1)), children who have not reached the compulsory school age are eligible for children's daycare. Children older than this can also be considered if required by special circumstances and their care has not been organised otherwise. Children's daycare (Section 2(2)) should be organised so as to provide a suitable facility for the child's care and education as well as *constant care* during the time of the day care is needed.

The Act aims at ensuring comprehensive mental and physical growth of children. It sets the following objectives for early childhood education and care (Section 2a):

- 1) to promote comprehensive growth, development, health and well-being of each child according to their age and maturity;

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<sup>2</sup> Concluding observations and recommendations to Finland by the UN Committee on the Rights of the Child, (2011) CRC/C/FIN/CO/4, paragraph 57.

<sup>3</sup> Education at a Glance 2016 OECD Indicators <http://www.oecd-ilibrary.org/docserver/download/9616041e.pdf?expires=1478679575&id=id&accname=guest&checksum=D988DA3639B1465199FD1307EC5CF7FD>.

<sup>4</sup> Daycare of children 2014. Statistics report. The National Institute for Health and Welfare. [http://www.julkari.fi/bitstream/handle/10024/129632/Tr28\\_15.pdf?sequence=5](http://www.julkari.fi/bitstream/handle/10024/129632/Tr28_15.pdf?sequence=5)

<sup>5</sup> Communication from the Commission. Early Childhood Education and Care: Providing all our children with the best start for the world of tomorrow (COM(2011)) 66.

- 2) to support the conditions for the child's learning and to promote life-long learning and realisation of educational equality;
- 3) to implement varied pedagogic activities related to children's play, sports, arts and cultural heritage and to enable positive learning experiences;
- 4) to ensure educative, healthy and safe early childhood education and care environment that promotes learning;
- 5) to ensure practices that respect the child and as stable as possible interaction between the children and the personnel of early childhood education and care;
- 6) to give all children equal opportunities for early childhood education and care, to promote gender equality and to prepare children for appreciating and respecting the common cultural heritage as well as the linguistic, cultural, religious and belief-based background of every person;
- 7) to recognise the child's need for individual support and organise appropriate support in the context of early childhood education and care after the need has arisen, if necessary in multi-sectoral cooperation;
- 8) to develop the child's cooperation and interaction skills, to promote the child's action in a peer group and to guide the child into acting in an ethically responsible and sustainable manner, respecting other people and becoming a member of society;
- 9) to ensure that the child has the possibility of participating in and influencing matters concerning himself/herself;
- 10) to cooperate with the child and the child's parent or other guardian for the child's balanced development and comprehensive well-being and to support the child's parent or other guardian in education work.

Children shall also be provided with necessary and healthy nutrition (Section 2b), including one warm meal and snacks, the number of which depends on the length of the care day.

The municipality shall be responsible for organising daycare (Section 4), where the focus shall be on the needs of the child, even on the consideration of the child's own opinions (Section 7b). This child-sensitive approach is also stressed in the provision concerning the scope of the obligation to organise daycare (Section 11), according to which "The municipality shall take care that children's daycare is available, organised or controlled by the municipality, to the extent and in the forms required by the need existing in the municipality. The best interests of the child shall be considered in the planning and organisation of daycare."

#### B. Legislative amendments related to restricting the entitlement to early childhood education and care

According to Section 11a of the Act in force until 31 July 2016, the child had an entitlement to early childhood education and care as follows:

"In addition to what is provided in Section 11, the municipality shall take care that the child receives early childhood education and care in a facility organised by the municipality as referred to in Section 1(2) or (3) after a period has ended for which maternity and parental allowance or partial parental allowance



referred to in the Health Insurance Act is payable, excluding a period for which paternity allowance referred to in Chapter 9, Section 7(1) of the Health Insurance Act is payable outside of the maternity and parental allowance period, and that the child may remain within early childhood education and care until he or she reaches the compulsory school age referred to in the Basic Education Act and begins basic education. Early childhood education and care must, however, be organised on a part-time basis where the child, before the compulsory school age referred to in the Basic Education Act, participates in pre-primary education under the Basic Education Act or where the child, in accordance with Section 25(2) of the Basic Education Act, begins in basic education one year earlier than provided in Subsection 1 of the same Section. Early childhood education and care shall, as far as possible, be organised in the form wished by the child's parents or other guardians."

Families have had the above-mentioned individual entitlement to the child's full-time early childhood education and care since 1996, and it was applied to all children. According to the Act that entered into force at the beginning of August 2016, the entitlement to early childhood education and care is regulated as follows (Act on Early Childhood Education and Care, Section 11a(1) and 11a(2)):

"In addition to what is provided in Section 11, the municipality shall take care that the child receives 20 hours of early childhood education and care in a facility organised by the municipality as referred to in Section 1(2) or (3) after a period has ended for which maternity and parental allowance or partial parental allowance referred to in the Health Insurance Act is payable. However, it is not necessary to organise early childhood education and care during a period for which paternity allowance referred to in Chapter 9, Section 7(1) of the Health Insurance Act is payable outside of the maternity and parental allowance period.

By way of derogation from Subsection 1, early childhood education and care shall be organised on a full-time basis if the child's parents or other guardians work full-time or study, act as entrepreneurs or work full-time as self-employed as referred to in the Unemployment Security Act ([No. 1290/2002](#)). After the above-mentioned situation has ended, early childhood education and care must still be organised in accordance with this Subsection for a period of two months, unless the child's parent or other guardian stays at home to take care of another child living in the family or retires."

Taken as a whole, the legislative amendment thus means that children are put in an unequal position on the basis of their parents' social and socioeconomic status and entails losses for the child both in terms of access to early childhood education and care and in terms of meals. Furthermore, the legislative amendment leads to an unequal treatment of children and families on the basis of their municipality of residence.

A provision has been added to Section 11a of the Act, providing that:

"Early childhood education and care shall, however, be organised on a full-time basis for a child if it is necessary because of the child's development, need for support or circumstances of the family or if it is otherwise in the best interests of the child."

The provision seeks to address social problems. However, the provision means that a child will be stigmatised twice: first, for example, as a child of an unemployed parent and then as a child of a family with social problems. This is about a fundamental deviation from the way of thinking related to the Nordic social security system, which is based on universal services and thus involves no stigmatisation.

This legislative amendment discriminates against the children of the above-mentioned families, which are already otherwise in a vulnerable situation, and makes their situation even worse.

### C. Regional inequality

Municipalities are entitled to offer better services than those guaranteed by the Act to their residents, and if they so decide, they can also treat children of unemployed parents and of parents on a maternity, paternity or parental leave in an equal manner. Many municipalities have actually decided to act this way, which has resulted in an unequal treatment of children depending on their municipality of residence<sup>6</sup>.

In the capital region, for example, the two largest cities, i.e. Helsinki and Espoo, have decided to continue the practice followed before the legislative amendment, which treats children in an equal manner, while the third large city in the capital region, Vantaa, has removed the entitlement to full-time early childhood education and care from children of unemployed parents or of parents on a maternity, paternity or parental leave. The legal status of children is literally determined according to which side of the river separating Helsinki from Vantaa they live on.

### D. Impacts of the legislative amendment

The Scandinavian countries as well as Finland have based their social policy on highly subsidised or free public services and at the same time sought to achieve as equal a society as possible. Public services have promoted equality both between the rich and the poor and between the genders, while they have also played an important role in equitable income distribution. The present legislative amendment means a change in the course of this development. It puts children and families in an unequal position according to their social status.

Studies show that high-quality early childhood education and care promotes the well-being of children and prevents social exclusion as well as balances the risks caused by poverty and social deprivation in children's lives. High-quality and non-discriminatory early childhood education and care services that promote inclusion can reduce inequality, social exclusion and stigmatisation of children regardless of their parents' situation. In particular, it is necessary to ensure that children from more disadvantaged backgrounds have access to early childhood education and care services.<sup>7</sup> It is known on the basis of the *1987 Finnish Birth*

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<sup>6</sup> According to the information provided by the Statistics Finland, in 2014 there were a total of 12,425 unemployed families with children under the school age living in those 42 municipalities that have restricted the entitlement to early childhood education and care. The share of these unemployed families with children varied between the municipalities from 2.6 to 17.3 per cent, while the median was 10.1 per cent. The figures show that the restriction affects a considerable number of families with children.

<sup>7</sup> Investing in children: Breaking the cycle of disadvantage (2013/112/EU); Karila, K. (2016), Effective Early Childhood Education and Care; Lazzari, A. & Vandenbroeck, M. (2014), Accessibility of early childhood education and care: a state



*Cohort Study* that problems and deprivation passed on from one generation to another are a large and multifaceted social problem in today's Finland. The inherited childhood circumstances in respect of the parents' socioeconomic status, education and financial situation, for example, have a considerable influence on the well-being later in life.<sup>8</sup>

Several studies as well as a survey on a European pillar of social rights published recently by the EU Commission have also come to similar conclusions about the significance of early childhood education and care for the child's development and future life<sup>9</sup>:

“At an early stage in life, unequal access to childcare, education and health are the main barriers to equal opportunities. They are later reflected in terms of labour market participation and productivity and are often reinforced by gaps in access to life long-learning.

Early intervention has the potential to mitigate the impact of socio-economic background on the future skills of children and their future academic and labour market outcomes. Children who attend pre-primary education are more likely to be successful at school when they get to 15 and in the years beyond.”

Unemployment of a parent as such is already a factor that has a harmful impact on children, too. Exclusion of this group of children from early childhood education and care makes their position even more difficult. The new Act, however, provides for the possibility of acting otherwise in individual cases, but not even a client relationship with child welfare services necessarily guarantees its application. The entitlement of a child to more than 20 hours of early childhood education and care is not determined on the basis of his or her equal rights but firstly on the basis of the status of his parents and secondly on the basis of a needs assessment carried out by the municipality. Since the assessment process is not clear, there is a risk that, as a result of the amendment, practices will vary considerably across Finland.

Putting children in an unequal position was not assessed at all in respect of the commitments under Articles 16, 17 and 27 of the Revised European Social Charter upon enactment of legislation, even though in its preamble the states undertake to maintain and further realise human rights and fundamental freedoms. The fulfilling of the minimum requirements of the Charter cannot, in this case, be regarded as adequate under Article H of the Charter.

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of affairs; Early Childhood Education and Care: Providing all our children with the best start for the world of tomorrow (COM 2011); also according to the OECD's Pisa assessments, for example, longer-term participation in early childhood education and care is clearly reflected in the learning results of 15-year-olds, especially in respect of children in a less favourable position, see e.g. Education Today 2013 and Education at a Glance 2016.

<sup>8</sup> Ristikari, T. Törmäkangas, L. ym. (2016), Finland as a growth environment for young people. 25-year follow up of those born in Finland in 1987.

<sup>9</sup> European Commission staff working document 8.3.2016 SWD (2016) 51 final: Key economic, employment and social trends behind a European Pillar of Social Rights Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Launching a consultation on a European Pillar of Social Rights, p. 18. <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52016SC0051>

Finland is also committed under Article 4 of the UN Convention on the Rights of the Child to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the Convention. In this case, it is assumed that an assessment of the impact on the rights of the child can predict how legislation affects children and families with children. According to General Comment No. 14 of the UN Committee on the Rights of the Child, an impact assessment must be included in government actions on all levels and it should be employed as early as possible to ensure the rights of the child<sup>10</sup>. Neither the real long-term cost savings associated with the restriction of the entitlement to early childhood education and care nor its impact on children were assessed in the preparation process of the Act on Early Childhood Education and Care<sup>11</sup>.

## Early childhood education and care under the European Social Charter (1996)

### A. Provisions

#### *Article 16 of the ESC*

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.

Appendix: It is understood that the protection afforded in this provision covers single-parent families.

#### *Article 17(1) of the ESC*

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

a) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose.

#### *Article 27(1c) of the ESC*

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

1. to take appropriate measures:

c) to develop or promote services, public or private, in particular child daycare services and other childcare arrangements.

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<sup>10</sup> General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) CRC/C/FIN/CO/14).

<sup>11</sup> Statement by the Parliamentary Deputy Ombudsman on a Government draft proposal to Parliament for an Act on Early Childhood Education and Care and for a Decree Amending the Children's Daycare Decree, 25 September 2015, record no. 3813/5/15.



### Article E of the ESC

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

### B. Case law

The obligation of a state to practise an economic policy which respects, protects and implements human rights obligations binding on the state originates from the human rights system. Taking care of the most vulnerable groups is one of the fundamental principles of the rule of law. In the case law of the European Social Charter it has been emphasised the state's obligation to direct *per se* acceptable weakening of fundamental rights at groups other than the most disadvantaged groups of society (*IKA-ETAM v. Greece*, CC 76/2012).

According to *Article 16 of the ESC*, states shall guarantee availability and good quality of daycare and a fee that does not prevent people from accepting a daycare placement. Good quality is measured through the number of children and the number of carers per a child as well as through the education of carers (*C XVII-1, 2004, Turkey*).

The European Committee of Social Rights has so far collected information especially on the number and education of personnel and on group sizes but has still not defined minimum standards. In principle, the ESC does not allow differentiated practices in these respects for the rich and the poor or for families representing different cultures or ethnic groups. All assessment must aim at the realisation of the interests of the child, both directly and indirectly (*DCI v. The Netherlands*, CC 47/2008, §29).

The educational requirements of *Article 17 of the ESC* also apply to children's daycare and early childhood education and care. According to the Article, well-functioning daycare and early childhood education and care must ensure the right of children to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities.

States can define daycare fees either according to the financial standing or as equal fees, provided that the fees do not violate the equal opportunity of access to daycare. In so far as basic education (pre-primary school) is concerned and where a state has ratified Article 17(2) of the ESC, as Finland has done, no fee shall be collected for the actual care, although reasonable fees for food and clothing are allowed.

According to *Article 27(1c) of the ESC*, children's daycare and early childhood education and care can be organised at a daycare centre or in private family daycare, or as care arranged by several families together or in a family's own home. It can also be organised in the form of early school starting. Care can be public or private, and support for families can be provided either as a service or as an adequate allowance for the purpose concerned (e.g. as a voucher). Any fee set for the service shall not prevent hard-up families from using options available in an equal manner with other families. The group sizes and content of daycare



should be such that they encourage the growth of children's personality and balanced development of their physical and mental capacities (C XVII-1, Turkey, p. 490).

The list of forbidden grounds for discrimination in *Article E* is not exclusive as the European Committee of Social Rights has forbidden discrimination in all its forms in its case law.

## EVALUATION OF THE FINNISH ACT

In Finland children's daycare can be organised 1) in the context of municipal early childhood education and care, 2) by means of parental allowance and child home care allowance as an alternative for municipal care until the child is 3 years old, 3) by means of private daycare allowance and 4) as a combination of the above. In this respect the system also in general fulfils the requirements of Articles 16 and 27(1c) of the Charter, although in such a manner that the UN monitoring body has issued observations to Finland. The new Act, however, leaves the children of unemployed parents and of parents on a maternity paternity or parental leave *due to their social and socioeconomic status* without the support to which others are entitled. With a view to the requirements of Article E, this fulfils the characteristics of direct discrimination as the child of an unemployed parent or of a parent on a maternity, paternity or parental is left without the care offered to other children.

The municipal and private early childhood education and care of children are controlled, and in general they fulfil the educational requirements set forth in Article 17(1c), but early childhood education and care is not realised in an equal manner in respect of those children who remain outside the system. Consequently, the new Act discriminates against children of unemployed parents or of parents on a maternity, paternity or parental leave also in terms of early childhood education and care contrary to Article E as it leaves these children without the educational support provided by early childhood education and care.

By introducing these cut backs, the Government of Finland has sought to reduce the costs of early childhood education and care and to restore the country's public finances. Economic grounds are not alone valid grounds under Article G of the ESC for reducing the benefits in accordance with Articles 16 and 17, and this is not even necessary in a democratic society, especially since the reductions are directed at a group of children who are already otherwise in a vulnerable situation.

Considering the different practices in the municipalities, the situation is analogous to that in the decision (*CACF v. Finland, CC 70/2011*) issued by the European Committee of Social Rights to Finland in relation to support for informal care of the elderly. The Committee did not approve the fact that elderly persons were "left by the wayside" without the care they needed and were treated in a regionally unequal manner depending on the municipality where they lived (p. 15):

"The Committee therefore holds that, the lack of uniformity in the services provided for elderly persons throughout Finland resulting from the lack of uniformity in the funding of such services by municipalities does not as such violate Article 23 of the Charter. However, the fact that the legislation allows practices

leading to a part of the elderly population being denied access to informal care allowances or other alternative support constitutes a violation of this Article.”

In the present case, children and their parents are put in an unequal position in respect of children's early childhood education and care depending on the municipality where the family lives. This is a repeat of what already happened in the case of the elderly, i.e. the new Act does not treat children and their parents in a regionally equal manner.

## CONCLUSIONS

The Central Union for Child Welfare considers that the State of Finland has, through the amendment of the Act on Early Childhood Education and Care that entered into force on 1 August 2016,

- 1) violated the rights of the child of an unemployed parent or of a parent on a maternity, paternity or parental leave contrary to Articles 16, 17, 27(1c) and E of the ESC, and
- 2) violated the rights of the parents referred to in paragraph 1 contrary to Articles 16, 27(1c) and E of the ESC, and
- 3) put children and their parents in a regionally unequal position depending on the municipality where they live, which discriminates, in particular, against children and their parents in the economically least advantaged municipalities contrary to Articles 16, 27(1c) and E of the ESC.

In Helsinki on November 10<sup>th</sup> 2016

LASTENSUOJELUN KESKUSLIITTO RY

Central Union for Child Welfare

  
Pentti Arajärvi

President

  
Hanna Heinonen

Chief Executive