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

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Case Document No. 4

Central Unit for Child Welfare v. Finland
Complaint No. 139/2016

**RESPONSE OF CENTRAL UNION FOR CHILD WELFARE
(CUCW) TO THE GOVERNMENT'S SUBMISSIONS
ON THE MERITS**

Registered at the Secretariat on 29 September 2017



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

Sir,

With reference to the observations of the Government of Finland of 18 July 2017 to our complaint (139/2016), we have the honour to submit the following comments on the observations:

BEST INTERESTS OF THE CHILD AND NON-DISCRIMINATION

The premise of the complaint is that it is not in the best interests of any child to be left without mainstream educational or educative services. If a child or a group of children is excluded from services by law, the law can be regarded as discriminating unless there is an objective, reasonable and acceptable justification for different treatment.

On the other hand, the CUCW considers that the provisions of the ESC for the protection of children and family and for the reconciliation of work and family life concern all children and families under the jurisdiction of a state and require equal treatment of all children and families .

COMMENTS ON THE SITUATION IN THE COUNTRY

The CUCW agrees with the Government's view that the Government has the right to decide on the direction and contents of its family policy but emphasises that it may thereby not violate the human rights defined in the ESC and the UN Convention on the Rights of the Child.

The CUCW also agrees with the Government's view that the Finnish system of early childhood education and care is of good quality, whereas the organisation does not completely share the Government's view on affordability, availability and accessibility of services. The monthly fee may be too hefty even for average-income families to cover, especially for large families, and the legislative amendment (Act No. 108/2016) excluded two categories of children from the comprehensive system.

According to the statistics, the participation rates in early childhood education and care in the age group of 3- to 5-years old are high in many European countries, close to or above 90%. In Sweden, approximately 95% of 3- to 5-year old children participated in early childhood education and care in 2014. In Finland the corresponding rate was 73.8%.¹According to the OECD's report², the participation rate in early childhood education and care is exceptionally low in Finland in international comparison. The difference to the other Nordic countries is particularly significant.

The CUCW also agrees with the Government's understanding that municipalities have a key role in the organisation of early childhood education and care. More precisely, however, it is the duty of the municipalities to organise early childhood education and care services and to ensure their adequacy as well as to pay the associated costs, for which they receive support from the state and collect client fees from families. The municipalities do not, however, decide in principle who are entitled to early childhood education and care. The criteria for access to services are decided by the state, which is the primary subject of this complaint. Ultimately parents have the power to decide whether they use the services of early childhood education and care or not. Furthermore, the parents of under 3-year-old children have the statutory right of choice: they can decide whether they use the services or take care of their children by themselves and their own means, in which case they receive child home care allowance until the child turns three years old. For the unemployed parents, however, this right of choice is virtually meaningless since the coordination of this allowance with the unemployment benefit removes its payment.

The Government's legislative amendment of 2016 reduced, as an austerity measure, the individual entitlement to full-time early childhood education and care, which was a universal right of all children and families, to 20 hours a week. The Government adopted this approach in order to make the amendment appear as if it treated all family types in an equal manner. While the children of employed persons and students were still guaranteed the right to full-time early childhood education and care, the children of unemployed persons and families where one child is taken care of by means of parental benefits were left without this right. This was clearly discrimination based on the socioeconomic status.

The discriminatory outcome was a result of two-stage regulation. When the Act entered into force, many children who were excluded from early childhood education and care were forced to leave their familiar

¹Ikarila Kirsti, Ikonen Tuomas and Jarvenkallas Satu: Varhaiskasvatuksen kehittämisen tiekartta vuosille 2017-2030. Opetus- ja kulttuuriministerion julkaisu 2017:30. (Roadmap on the development of early childhood education for 2017-2030. Publications of the Ministry of Education and Culture).

² Education at a Glance 2017.

group and friends as they needed to move to a new group or even to another daycare center. No attention whatsoever was paid to the children's educational or social needs.

Following the restriction, the discriminated children no longer receive the meals included in full-time early childhood education and care. A child in early childhood education and care is offered, in accordance with nutritional recommendations, the meals and snacks that are normally eaten at a given time of the day, such as breakfast, lunch and snack. In full-time care, the meals cover approximately two-thirds and in part-time care approximately one third of the child's daily energy need. The children entitled to full-time early childhood education and care receive all the meals included in a care day. Children whose entitlement has been restricted have had to settle to a short day and in many municipalities to one meal. The issue is particularly problematic in the lowest-income families.

The Children's Daycare Decree (16 March 1973/239) defines the ratios between persons with care and education duties and children in early childhood education and care groups, which vary for children in full-time and in part-time early childhood education and care. As a result of this, the groups with children participating part-time are larger and less stable than the groups with children participating full-time. If the parents' situation changes, children may need to change groups, which makes the grouping and social interaction of children as well as the realisation of good-quality early childhood education and care more difficult.

In trying to justify the legislative amendment and its reasonableness and acceptability, the Government has in its reply comprehensively dealt with the provisions of the Constitution of Finland and the positions taken by the Constitutional Law Committee on the issue. In this respect it can be noted that in the internal proceedings of Parliament, the majority Government has the majority in all parliamentary bodies.

In its observations, the Government does not bring forward the fact that the supreme guardian of the law and legal adviser of the Government, i.e. the Chancellor of Justice, gave his statement to the Government before the government bill was submitted to Parliament. In his statement, the Chancellor noted that the government proposal "is problematic in respect of Section 6 of the Constitution which relates to equality and equal treatment of children". In other words, the Government intentionally drafted a proposal which violated equality and pushed it through as such at Parliament.

According to the Constitution, the Constitutional Law Committee has the obligation to examine whether legislation is consistent with human rights, in this case e.g. with the Convention on the Rights of the Child and the ESC, but it makes no reference at all to these conventions.

RELATION TO THE ESC

In its observations, the Government has dealt with all three provisions of the European Social Charter relating to the matter, i.e. Articles 16, 17 and 27 as well as Article E, which prohibits discrimination. For

some reason, the Government has used the expression "or Article E". The complaint filed by the CUCW, however, uses the expression "and Article E" to emphasise the fact that discrimination may take place in relation to all three material articles.

The Government implemented the legislative amendment as an austerity measure, justifying it by the difficult fiscal situation. According to the Committee's established practice, economic grounds, not even an economic recession, have not been regarded as the justified reasons required in Article E for making exceptions to equal treatment. In its reply to the CUCW's complaint, the Government no longer addresses this but simply refers to the different needs of different families and to the fact that in any case everybody receives something. This general statement, which is virtually arrogant, is not sufficient for substantiating why it would be objective, reasonable and acceptable to exclude two groups of children from full-time early childhood education and care.

Neither the real long-term cost savings associated with the restriction of the entitlement to early childhood education nor its impact on children were assessed in the preparation process of the amendment of the Act on Early Childhood Education. A preliminary study has been carried out on the impact of the amendment of the Act on Early Childhood Education and Care (VakaVai). The study concludes that along with the different solutions adopted by municipalities, a service system of early childhood education and care has emerged in Finland where the conditions of daily life of children, parents and employees vary between municipalities. Furthermore, most of the early childhood education and care directors in the municipalities that had restricted the individual entitlement estimated that the restriction has no significant cost impact (77 per cent of the respondents).³

In order to justify unequal treatment, the Government has referred to the positive treatment of Sweden's country report in respect of Article 27§1 and alleged that the Finnish system of early childhood education and care is based on similar principles as the Swedish system. By using this argument, the Government has sought to be treated as favourably as Sweden, whose legislation was considered to be in compliance with the requirements of the ESC. Consistency would, in other words, necessitate a similar decision in respect of Finland. However, the Government's argument is not based on facts.

In Sweden, parents' possibilities of reconciling work and family responsibilities continue long beyond children go to school, and their use is considerably more flexible than in Finland. Starting from the age of three, all children in Sweden are entitled to early childhood education and care, with no child being discriminated against on the basis of the parents' labour status or the birth of new siblings.

Drawing a parallel between the situation in Finland and the situation in Sweden is even misleading and constitutes a mixed argument on the level of principle. Furthermore, the situation in Finland involves dismantling of an existing system contrary to the letter and spirit of Articles 16, 17 and 27§1 of the ESC.

³ Selvitys varhaiskasvatustilanteen kokonaisvaikutuksista (2016-2017); Exploring the influences of new legislation of early childhood and care in Finland (2016-2017), Valtioneuvoston selvitys- ja tutkimustoiminta; Puroila Anna -Maija, Kinnunen Susanna and Keranen Virve (2017), The University of Oulu.

FURTHER ARGUMENTS SUPPORTING THE COMPLAINT

Article 17 of the ESC defines that it is in the best interests of the child that he or she can "grow up in an environment which encourages the full development of their personality and of their physical and mental capacities". Exclusion of children of unemployed parents from good-quality and comprehensive early childhood education and care services limits the opportunities of these children to develop themselves and their personality. Cutting the entitlement marginalises them and, contrary to the requirements of the ESC, contributes to their exclusion. This makes the position of children who are already otherwise vulnerable even more difficult, which is contrary to Articles 17§1 and E which provide for support for children's development and growth and prohibit discrimination. Even though Article 17§2 imposes a specific obligation on states to encourage drop-outs to regular attendance at schools, the principle can also be extended to early childhood education and care by analogy. In this respect, the State of Finland has acted exactly the opposite and increased the number of drop-outs.

The State has referred to many other means in supporting families which compensate for the reduction of early childhood education and care. Domestic services, family counselling or other similar means-tested special services cannot compensate for the halving of mainstream educational activities. Furthermore, these services are intended for children of all ages and their families, meaning that they are not especially directed to children whose entitlement to early childhood education and care has been restricted.

The Government has also referred to the fact that the Act leaves a means-tested possibility of full-time attendance also for children of unemployed families and families where younger siblings are taken care of at home. Nevertheless, the Government has not provided any instructions for municipalities for interpreting this exceptional rule, which has resulted in its varying application by the municipalities. Municipalities may have granted full-time early childhood education and care only if the families have already been child welfare clients. While the right to early childhood education and care has been granted as a universal entitlement to the majority of population, an uncertain means-tested possibility does not eliminate the discrimination of excluded children and their parents.

Article 16 of the ESC provides that a state should have an adequate system of daycare or early childhood education and care, which is complemented with Article 27§1, according to which the system must pay particular attention to the need to reconcile the parents' work and family life. In Finland, unemployed parents have already been in a less advantageous position as they do not, in fact, receive child home care allowance. The present legislative amendment cut to half their entitlement to have their children participate in mainstream early childhood education and care. As the subjects of family policy, they were put in an even more disadvantaged position than others, which is contrary to the objectives of Article 16, according to which support should be primarily provided for the most disadvantaged families. It also makes the rehabilitation of an unemployed parent for employment more difficult, which is contrary to the objectives of efficient re-entrance to employment laid down in Articles 27§1 and 16. For this reason, the CUCW has considered that restricting the early childhood education and care of the children of

unemployed persons not only violates the rights of children but also discriminates against them against the requirements of Articles 16 and 27§1 of the ESC in relation to Article E of the ESC.

In its arguments, the Government has emphasised the parents' responsibility for upbringing their children and its primacy. This is acceptable as a general principle but segregatory and discriminatory when directed to only two groups of parents.

As regards regional inequality, the Government has referred to municipal self-government. In this respect, it must be noted that the Government has left the final decision on the implementation of the legislative amendment to municipalities. Since the Act was enacted as an austerity measure, it could have been assumed that the economic capacity of municipalities had been the decisive factor in considering whether to introduce the discriminatory rules or not.

Some of the municipalities that had implemented the Act have declared that they will restore the right to full-time early childhood education and care also to unemployed parents and parents with parental benefit. This approach has been adopted, for example, by Vantaa, the third largest city in the capital region. The fact is, however, that children and families are still treated unequally depending on the municipality, which is also contrary to Articles 16, 17 and 27 in relation to Article E of the ESC.

CONCLUSION

The CUCW concludes that the Government has directed its "austerity measures" to children in vulnerable positions and their parents, which, even according to the Government's own observations, is contrary to equal treatment. Nevertheless, the Government has not been able to substantiate that there is an objective, reasonable and acceptable justification for different treatment.

Based on the argumentation presented above, 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 September 29^h2017

Central Union for Child Welfare

f/v- (1)

Pentti Arajärvi

President



Hanna Heinonen

Chief Executive