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

22 May 2014

Case Document No. 1

Finnish Society of Social Rights v. Finland
Complaint No. 108/2014

COMPLAINT

Registered at the Secretariat on 30 April 2014

14.04.2014

Finnish Society of Social Rights sends you respectfully the attached collective complaint due to Finnish legislation that along the opinion of our Association violates the Articles in the European Social Charter.

The person taking care of this complaint in the Society is:

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With best regards

Yrjö Mattila

Chairman, Finnish Society of Social Rights

Helena Harju

Secretary, Finnish Society of Social Rights

Collective complaint I – III due to that Finnish legislation along the opinion of our Association violates the Articles 12 and 24 in the European Social Charter

1. Background to the complaint

The function of the European Committee of Social Rights is to assess the conformity of the situation in States with the European Social Charter and the Revised European Social Charter. The Revised Charter was ratified by Finland on 21 June 2002. The ratification process of the Revised Charter took place in Finland by passing a law in the Parliament concerning the implementing of legal rules of the Revised Charter in Finland (Laki uudistetun Euroopan sosiaalisen peruskirjan lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta 14.6.2002/486, SopS 78, <http://www.edilex.fi/valtiosopimukset/20020080?offset=1&perpage=20&phrase=14.6.2002%2F486&sort=relevance&searchKey=138478>).

In this law is noted that (1 §) *the rules which are in the area of legislation in the Charter (Revised) are in force as a law in Finland as far as Finland has committed itself in them*. Finland has committed itself and taken to be applied as a law amongst others the articles 12, 23 and 24 in the Charter (Revised) and the administrative officials and courts in Finland should apply these rules as a law. Also the interpretation assessments of the Committee should guide the applying of the rules and if the articles of the existing legislation in Finland are contradictory to the articles in the Charter the laws in Finland should be changed to be in harmony with the articles and interpretation guidelines applied and produced by the Committee. Unfortunately this is not the situation in Finland; some of the existing laws are still contradictory to the ratified articles and Committee guidelines. Some of the remarks made by the Committee on the violation of the Charter (Revised) in Finland are implied already some years ago and in spite of that no changes has made in Finland. Due to that our Association is obliged to make this Complaint even though our previous Complaint (88/2012) has not been decided yet in the Committee.

2. The right of the Finnish Society of Social Rights to make a complaint

The name of our association is *Finnish Society of Social Rights (in Finnish and Swedish: Suomen Sosiaalioikeudellinen Seura r.y. - Socialrättsliga Sällskapet i Finland r.f.)*, and it is called “Association” in this complaint. Our association is a bilingual society (Finnish, Swedish) and its home city is Helsinki, Capital of Finland.

It has been established and founded 16.3.1999 and has been officially registered the same year in the Register of Associations in Finland. We include a fresh document from the Register of Associations of our association to this complaint.

The membership of our association is open to all, but still the main part of our affiliates consist of lawyers and social scientists who are specialized or interested in social rights of citizens. The activities of the association are focused on the social rights of citizens. The activities of the association cover both scientific and practical matters including public venues and seminars, discussions, expert statements, scientific articles of the area of social and health matters. Also the right of employees are centrally included within the scope and activities of our association. The rights of the employees in employment contracts including protection of employees against illegal dismissals are one important part of social rights and are naturally also within the interest of our association. The rights of the employees are not constraint within the activities of trade unions because they are normally legal based and the labour protection concerns all salaried employees irrespective if they are organised in trade unions or not. Our association views to be entitled to make these complaints I and II described more specifically later on though they also belong to the area negotiated and contracted within labour market partners. Our association is a Finnish Association centralized in the issues of social rights and labour rights are part of social rights in the society.

With these complaints our association aims to clarify the situation of labour termination protection in Finland. Is it in conformity with the Revised European Social Charter (complaint I and II)? Also our association wants to clarify the economic situation of those dismissed (legally or illegally) employees who have stayed long-term unemployed. Are their economic situations and living conditions in conformity with the Charter (Revised).

In our previous complaint (Complaint 88/2012) the Committee noted that our association is admissible to make complaints to the Committee of Social Rights.

[3.] The problem of the economic situation of long-time unemployed (Complaint III)

The social protection of the long-term unemployed

Article 12. 1-3 in the Charter are:

The right to social security

With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

- 1. to establish or maintain a system of social security*

2. *to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security*
3. *to endeavour to raise progressively the system of social security to a higher level",*

Our Association notes that those employees who lose their jobs in collective redundancies and especially the aged ones are not protected enough. Our view is that the situation is not in conformity with Art. 12. In collective agreements there are rules of dismissal order in redundancies. Along to these rules "professional employees who are important to the enterprise" are last to leave in redundancies. This rule gives the employer a vast discretion area to choose is professional and important to the enterprise. In legislation there are no rules of dismissal order and so aged, long-served employees have no special protection. In many times they are first to leave because the employer wants to get rid of them and change them to younger ones. The situation is totally from that in Sweden where normally aging employees are the last to leave.

The problem of economic survival comes up after the aging citizen has lost his/her job due to that the redundant elderly employee in his/her the fifties has big difficulties to find a new job or it is almost impossible. An unemployed work seeker over forty five years old may not even has an access to job interviews and his/her professional skills are not taken account due to their age. The situation has gone so bad that labour offices do not send employment applications of job seekers to employers if the job-seeker is over 45 years. They regard it a waste of time because from the earlier experience it is known that the employers are not interested. As a following up of this still worsening situation many redundant aging employees stay unemployed permanently until they reach retirement age (now 63, but in the near future years probably at least 65 years). The time between 50 till 63 is economically very tight to them due to that the Government of Finland has impaired the economical protection of elderly redundant employees. Earlier, just a few years ago, the redundant elderly unemployed had a right to a prolonged earnings-related unemployment compensation, if 500 days of compensation became full when he/she was 55 years old. The earnings-related unemployment allowance went on until he/she reached 60 years and became entitled to the special type of pension; unemployment pension. His/her standard of living and economic survival were fairly well guaranteed until retirement. However the situation changed rapidly due to that in 2011-2014 big impairments were made which worsened the situation of aged unemployed dramatically:

- a) The unemployment pension was abolished; now the redundant aging employee has to wait until he/she is 63 years and will be entitled to pension. No relief any more when he/she reaches 60 years.
- b) The prolonged earnings-related unemployment compensation after redundancy has been cut from those unemployed persons who are born in 1957 or later. Along the Unemployment Act, (Työttömyysturvalaki (30.12.2002/1290 <http://www.edilex.fi/lainsaadanto/20021290.pdf>, see also Guide to unemployment: http://www.kela.fi/documents/10180/578772/Unemployment_brochure.pdf/38b7be62-

[6840-41ef-b7e0-82e1627a351e](#)) Chapter 6 § 9 to get a prolonged earnings-related unemployment compensation those younger age groups (born 1957 or later) have to be at least 61 years old when the maximum time of 500 days of earnings-related unemployment becomes full. This means that the aged person has to be dismissed when he/she was 59 years old or later. Normally the aged unemployed lose their jobs much earlier at 45-50 so there is no chance to receive a prolonged earnings-related unemployment compensation. The only option is to content his/herself to the labour market subsidy (575 euros/month/net) until he/she is 63 years old. If the unemployed wants to start anew 500 day's earnings-related compensation time is the precondition that he/she works full time during 6 months. It is very difficult for the elderly unemployed is to find such a job only due to that along the statistics of Labour Ministry there were almost 330.000 job seekers in January 2014. The elderly are the last to be hired from this vast group. The change to the current dark situation has taken place very quickly. In 2010 the unemployment pension still existed in the legislation (chapter 6 § 9 in the Unemployment Act in 2010) and at that time the amount of the unemployment pension at 60 was the same as the future pension in 63 years. In 2010 all unemployed who were 60 years old were entitled to the unemployment pension, in 2014 the institution of unemployment pension has been erased altogether from younger generations and during the time those unemployed born 1957 or later receive labour market subsidy their future earnings-related pension is not increasing. There is a threat that their pension will be very small so that redundancy affects for the rest of their life. The impairments may worsen the life of hundreds of thousands Finns in the future years. The mass redundancies are every-day life in Finnish labour market and there will be more and more aged unemployed citizens with no hope to find new job after redundancy. In the beginning of 2014 about 160.000 unemployed citizens were living in the dependence of labour subsidy.

How those living in the dependence of labours market subsidy live in?

Our Association is convinced that this kind of harsh big impairment to protection of the elderly unemployed citizens in three years is not in conformity with the article 12 in the Charter (Revised). We refer to our earlier Complaint 88/2012 about labour market subsidy and note the amount of that benefit does not allow a citizen to live a decent life. The amount of labour market subsidy is 32, 66 euros/day/5 days/week and so the monthly income earning is 718 euros – tax 20 % = around 575 euros net/month (The law on unemployment protection, työttömyysturvalaki, <http://www.edilex.fi/lainsaadanto/20021290> chapter 6 § 1 and chapter 7 § 2). In the response to the Government's answer in the complaint 88/2012 our association implicated a questioner research of in what kind of conditions of living are for those citizens who live in the dependency of labour market subsidy *Ilpo Airio*: (toim: "Toimeentuloturvan verkkoa kokemassa.) Kansalaisten käsitykset ja odotukset", (<http://hdl.handle.net/10138/38496>). (Pages 50 -74: *Minna Ylikännö. Työmarkkinatuki riittää, riittää, riittää – ei riittänytkään*, in English "Labour Market Subsidy is enough,

enough, not enough”). From the answers it came out (see the letter of our Association 8.10.2013 in the complaint 88/2012) that:

- a) *many had to give up their hobbies,*
- b) *many had given up their health care,*
- c) *new clothes could not be afforded*
- d) *25 % had been obliged to live in hunger.*
- e) *delays in paying obligatory bills*
- f) *delays in paying the rent*
- g) *76 per cent had applied social assistance,*
- h) *52 per cent had afforded cost-free food (from bread queues)*
- i) *28 per cent had searched help from church diaconal work.*

The main reason for these troubles was the small amount of labour market subsidy. The amount of those who in the circumstances described above will be increasing in the future years due to the impairment of economic protection for elderly unemployed. It should be also noted that the price of food in Finland is the highest in Europe and the price of electricity has risen sharply in recent times. There are researches concerning the income which is needed to lead a decent life in Finland:

b) *“Mitä eläminen maksaa, in English: “How much it costs to live”*
http://www.kuluttajatutkimuskeskus.fi/files/5461/2010_04_julkaisu_perusturva.pdf

a) *“Mitä syöminen maksaa” in English “How much it costs to eat”*

http://www.kuluttajatutkimuskeskus.fi/files/5462/2010_126_tyoseloste_ruokabudjetti.pdf

b) *”Takaisin perusteisiin” in English ”Back to the basics”*

<https://helda.helsinki.fi/bitstream/handle/10138/42400/Takaisin%20perusteisiin.pdf?sequence=1>

c) *Huono-osaisten hyvinvointi Suomessa in English ”The welfare of low income citizens in Finland”*

https://helda.helsinki.fi/bitstream/handle/10138/40230/Huono-osaisten_hyvinvointi.pdf?sequence=1

These studies confirm our conviction that the impairment of social protection to elderly unemployed persons in three years and forcing many Finnish citizens to live

with the income totally insufficient to decent life in Finland is a violation of the art. 12 of the Charter (Revised).

Housing allowance is not the solution

The unemployed with labour market subsidy is normally entitled to housing allowance (see Guide to family and housing allowances http://www.kela.fi/documents/10180/578772/Home_and_family_brochure.pdf/846580c1-5eba-4e93-b504-ae544013668f) but the problem is that the housing allowance does not cover all housing costs. At least 20 % of the costs are included to co-payment and due to the strict rules of the benefit the real co-payment reaches often to 40-50 % of the housing costs. This co-payment has to be paid from labour market subsidy (575/month). The result is that that for living can be used about 200-300 Euros/month. In the above mentioned research "*Mitä syöminen maksaa*" in English "*How much it costs to eat*" is noted (page 19) that for those living alone the costs of food alone are 200 – 283 euros/month. So these people can afford food and housing but nothing more which belongs to the decent life.

New decisions

The Government of Finland made 25.3.2014 decisions which impaired the situation even more. One of those decisions was to raise the retirement age up from the current 63 years up. The new retirement age has not been decided yet, but it seems probable that the time of long-time unemployed which will live in the dependence of labour market subsidy (€ 575/month) will be growing. The other decision was to freeze most of the indexes in social benefits. The amount of labour market subsidy will be freeze until 2018. As the price of food will be raising the amount of labour market subsidy and the other basic income will be staying as the same. There has also been made many other cuts to the social security in the same day 25.3.2014 (amongst others cuts to the medicament compensations). The number of citizens which are included in work force in statistics may be 75 % in 2018 which is the aim of Government of Finland but the everyday life of those "seeking work within work force statistics" and living in the dependence of labour marker subsidy will not be high in quality. The amount of poor people in Finland is currently 824.000 citizens (under 60 % of medium income). In 2018 the amount will probably be bigger due to the decisions made in 23.3.2014.

The complaint of our Association (III)

Referring to the above said our Association sees that there is a violation and non-conformity with art. 12 in the Charter (Revised). In erasing unemployment pension and constraining a possibility to receive a prolonged earnings-related unemployment allowance in three years the Government of Finland has forced many elderly long-term unemployed citizens to live a long timer with a very low labour market subsidy for years and hindered them to live a decent life. The freezing of index along the raising of living costs still worsens the situation in the future years. Finland is not

maintaining a system of social security but worsening it sharply, Finland is not maintaining the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security especially in the case of labours market subsidy (see also our complaint 88/2012) and Finland has not endeavoured to raise progressively the system of social security to a higher level. Our association notes that Finland is violating art. 12 in the Charter (Revised) and the situation in Finland is not in conformity with the Charter (Revised).

Cordially and with high respect

Finnish Society of Social Rights

<http://ssos.nettisivu.org/>

Helsinki 14.04.2014



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Additions:

1. Court decisions:

Supreme Court of Finland (KKO: 2010:74, 2010:93, 2013:10 and 2013:11)
(<http://www.edilex.fi/kko/ennakkoratkaisut/>).

Labour Court 2007-103 <http://www.edilex.fi/tt/20070103>

2. Researches of the subject:

”Mitä eläminen maksaa?” How much cost to live?

http://www.kuluttajatutkimuskeskus.fi/files/5461/2010_04_julkaisu_perusturva.pdf

Mitä syöminen maksaa? How much cost to eat?

http://www.kuluttajatutkimuskeskus.fi/files/5462/2010_126_tyoseloste_ruokabudjetti.pdf

”Takaisin perusteisiin” Back to the basics

<https://helda.helsinki.fi/bitstream/handle/10138/42400/Takaisin%20perusteisiin.pdf?sequence=1>

”Huono-osaisten hyvinvointi Suomessa” The welfare of low income citizens in Finland”

https://helda.helsinki.fi/bitstream/handle/10138/40230/Huono-osaisten_hyvinvointi.pdf?sequence=1

"Toimeentuloturvan verkkoa kokemassa” Testing the network social protection (<http://hdl.handle.net/10138/38496>). (Pages 50 -74: *Minna Ylikännö. Työmarkkinatuki riittää, riittää, riittää – ei riittänytkään, in English "Labour Market Subsidy is enough, enough, not enough"*).

3. Legislation of Finland

<http://www.edilex.fi/valtiosopimukset/20020080?offset=1&perpage=20&phrase=14.6.2002%2F486&sort=relevance&searchKey=138478> Laki uudistetun Euroopan sosiaalisen peruskirjan lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta 14.6.2002/486, SopS 78, (Act of Ratification of the European Revised Social Charter concerning legislation area)

<http://www.edilex.fi/lainsaadanto/20060624> . Osakeyhtiölaki 21.7.2006/624 (Act on Incorporated companies)

<http://www.edilex.fi/lainsaadanto/20021290> Työttömyysturvalaki (The law on unemployment protection)

<http://www.edilex.fi/lainsaadanto/20070334> Laki yhteistoiminnasta yrityksissä (The law on co-operation in the undertakings)

<http://www.edilex.fi/lainsaadanto/20010055> Työsopimuslaki (Law on Labour Contract)

<http://www.edilex.fi/lainsaadanto/19740412> Vahingonkorvauslaki (Tort Liability Act)

<http://www.edilex.fi/lainsaadanto/19860609> Laki naisten ja miesten tasa-arvosta (Act on Equality Between Women)

<http://www.edilex.fi/lainsaadanto/20040021> Yhdenvertaisuuslaki (Non-Discrimination Act)

Guides to legislation

Guide to unemployment:

http://www.kela.fi/documents/10180/578772/Unemployment_brochure.pdf/38b7be62-6840-41ef-b7e0-82e1627a351e

Guide to family and housing allowances:

http://www.kela.fi/documents/10180/578772/Home_and_family_brochure.pdf/846580c1-5eba-4e93-b504-ae544013668f