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

6 February 2012

**Case Document No. 3**

**Association of Care Giving Relatives and Friends v. Finland**  
Complaint No. 70/2011

**SUBMISSIONS BY THE GOVERNMENT  
ON THE MERITS**

**Registered at the Secretariat on 3 February 2012**



*Ministry for Foreign Affairs of Finland*  
*Unit for Human Rights Courts and Conventions*

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FRANCE

Helsinki, 3 February 2012

**ASSOCIATION OF CARE GIVING RELATIVES AND FRIENDS V.  
FINLAND**  
**COMPLAINT NO. 70/2011**

Sir,

With reference to your letter of 19 December 2011, I have the honour, on behalf of the Government of Finland, to submit the following observations on the merits of the aforementioned complaint.

**I THE APPLICANT ASSOCIATION'S COMPLAINT**

The Government observes that the Association of Care Giving Relatives and Friends (subsequently "the applicant association") alleges the following. According to the applicant association, the right of municipalities to decide whether informal care support (*omaishoidon tuki; stöd för närstående vård*, see the Act on Informal Care Support, *laki omaishoidon tuesta, lag om stöd för närstående vård; 937/2005*) is granted to a person who fulfils the requirements set out for this purpose in national legislation conflicts with Article 23 of the Revised European Social Charter. The applicant association alleges that the right is about to lead to a situation where the granting of informal care support is influenced by the amount of resources allocated by the municipality for informal care support in the municipal budget. In its complaint, the applicant association alleges that the fact that in some municipalities the budgetary allowance for informal care support has run out during the budgetary year. Due to the discretionary nature of the support and its linkage to appropriations, informal carers residing in different municipalities are allegedly put in an unequal situation in different municipalities.

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The applicant association refers to Article 23 of the European Social Charter (revised) which provides the following concerning the right of elderly persons to social protection:

***Article 23: The right of elderly persons to social protection***

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

*– to enable elderly persons to remain full members of society for as long as possible, by means of:*

*a) adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;*

*b) provision of information about services and facilities available for elderly persons and their opportunities to make use of them;*

*– to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:*

*a) provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;*

*b) the health care and the services necessitated by their state;*

*– to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.*

## **II ON THE MERITS OF THE CASE**

### **1. The right to indispensable care and sufficient social security**

Section 19.1 of the **Constitution of Finland** (*Suomen perustuslaki; Finlands grundlag; 731/1999*, subsequently “the Constitution”) provides that those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care. The provision guarantees everyone a subjective right to an income level and services that safeguard the person's opportunity to lead a life of dignity.

Section 19.2 of the Constitution provides that everyone shall be guaranteed by an Act the right to basic subsistence in the event of unemployment, illness, and disability and during old age as well as at the birth of a child or the loss of a provider.

Section 19.3 of the Constitution provides that the public authorities shall guarantee for everyone, as provided in more detail by an Act, adequate social, health and medical services and promote the health of the population. The criterion for the adequacy of services is a level of services that enables everyone to function as a full member of society.

Section 19.4 of the Constitution provides that the public authorities shall promote

the right of everyone to housing and the opportunity to arrange their own housing. The provision does not set any quality standard for housing but refers to everyone's opportunity to arrange their own housing.

The legislative provisions on different benefits related to social welfare and health care services and on the eligibility for them are contained in Acts of Parliament. Local authorities implement the social welfare and health care legislation in this respect as part of their self-government. In this context, the **Constitutional Law Committee of Parliament** has held in its opinions that the client fees collected for social welfare and health care services provided on the basis of Section 19.3 of the Constitution must not be so high that they make the services inaccessible for those who need them (opinions PeVL 8/1999 vp and PeVL 39/1996 vp).

The provision on equality as a fundamental right is included in Section 6 of the Constitution. According to the provision, no one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person. The family situation of a person in need of care, such as the question whether he or she has a family member or some other close person who can and wants to care for him or her, may be understood as a reason concerning his or her person. In Finland for instance children do not have a legal obligation to ensure care for their elderly parents. The principle of equality requires the public authorities to guarantee indispensable care and sufficient social services for all regardless of whether they have relatives who are able to take care of them.

The **Social Welfare Act** (*sosiaalihuoltolaki; socialvårdslag; 710/1982*) and the more detailed related special legislation include further provisions on concrete measures by which the constitutional right to indispensable care and sufficient social security is realized.

Section 17 of the Act lists those social services which municipalities are obliged to provide. Regarding the elderly, in particular, such services include informal care but also home-help services with any necessary supporting services, housing services and institutional care. Home nursing, too, may be provided as a home-help service pursuant to the Health Care Act (*terveydenhuoltolaki; hälso- och sjukvårdslag; 1326/2010*).

Section 40a of the Act includes provisions on the rights of persons in need of social services to have this need assessed by a social services expert. According to the provision, the need shall in urgent cases be assessed without delay. In non-urgent cases, a person aged 75 years or over must be provided access to an assessment of his or her need for social services at the latest on the seventh weekday from the date when the person or his or her legal representative or relative or some other person or authority contacted the authority of the responsible municipality in order to obtain services.

To obtain the social services needed, clients or their representatives must file an application with the municipal body in charge of social welfare. On the basis of the application, the social welfare body or its employee must make a decision in writing.

The reasons for the decision and appeal instructions must be included in the decision. Should the client be dissatisfied with the decision of the municipal body,

he or she may lodge an appeal before an administrative court.

The majority of the social services regulated by social legislation or the supplementing special legislation are provided from the municipal appropriations reserved for this purpose. Ultimately, municipalities thus have the final power to decide which specific service has to be provided to realise a client's right to indispensable care and sufficient social security services, and how the need for social services discovered by assessment has to be met otherwise. Clients have no absolute right to get the needed care exactly in the form that they or their relatives may wish. Respect for a client's opinion is nevertheless emphasized in Section 8 of the **Act on a Customer's Status and Rights within Social Care** (*laki sosiaalihuollon asiakkaan asemasta ja oikeuksista; lag om klientens ställning och rättigheter inom socialvården; 812/2000*), according to which the client's wishes and opinion must be taken into primary account and the client's right to self-determination must be otherwise respected in providing social services.

## 2. Main features of informal care

Informal care support belongs to the social services provided pursuant to Section 17 of the **Social Welfare Act**, which municipalities are obliged to provide within the limits of the municipal appropriation reserved for this purpose. Informal care support is an aggregate consisting of the necessary services provided to the person receiving care, and of care remuneration, leave and support services provided to the informal carer.

Support for informal care was launched already in the beginning of the 1980s, by introducing care support systems for the elderly, the disabled and those suffering from a chronic disease. From 1993 onwards informal care has been a statutory social service regulated initially by the **Social Welfare Act** (710/1982) and the **Decree on Informal Care Support** (1993/318).

According to the law, informal care means the provision of keeping and care as part of home life for an elderly, disabled or sick person by a relative or another person who is close to the person receiving care. According to Section 3 of the Act on Informal Care Support, informal care support may be granted by a municipality, if:

- 1) keeping and care is required as part of home life by a person with a decreased functional capacity, sickness, disability or a corresponding reason;
- 2) a relative or other person close to the person receiving care is prepared to be in charge of the keeping and care by providing the necessary services;
- 3) the carer's health and functional capacity correspond to the requirements of providing informal care;
- 4) informal care is, jointly with other corresponding social and health services, sufficient in the light of the well-being, health and safety of the person receiving care;

- 5) the home of the person receiving care is suitable for the care provided therein in terms of health-related and other circumstances; and
- 6) the granting of informal care support is estimated to be an advantage to the person receiving care.

The amount of care remuneration is determined according to the commitment and competence required by the care. The minimum care remuneration defined by law in the year 2011 was EUR 353.62 per month. If the informal carer is temporarily and for a short time inhibited from working during a burdensome transition period in care, the minimum remuneration is EUR 707.24 per month, with certain other income-related requirements. The municipality decides on the number of remuneration scales and the amounts granted in remuneration, with the exception of statutory minimum remunerations. Differences exist between municipalities in terms of the granted care remunerations. The remuneration increases the carer's pensionable income and is part of their taxable income.

The municipality agrees on a care and service plan jointly with the person receiving care and the informal carer and concludes a contract on informal care with the informal carer. The contract is primarily in force until further notice.

An informal carer who provides care around the clock or care that requires the carer's continuous, daily commitment is entitled to a statutory leave of three days per calendar month. The municipality may arrange more days off and recreational time off for less than 24 hours for the informal carer. The municipality must ensure the provision of care during the informal carer's leave.

### **3. Municipalities' responsibility for organising and financing informal care**

In the beginning of 2011 there were 336 municipalities in Finland. According to Section 121 of the Constitution, municipalities' administration shall be based on the self-government of their residents. Municipal financing consists of municipal tax and other income, as well as state financing.

When delegating statutory tasks to municipalities, the state must provide the municipalities with a state subsidy corresponding to those tasks. The purpose of the state subsidies is to guarantee the availability of statutory services provided by municipalities throughout the country.

The system of state subsidies is based on compensation for differences in municipal expenditure and differences in needs. A significant part of the state subsidy system is the state subsidy granted for basic municipal services, i.e. social services. The amount of the state subsidy granted for basic municipal services is estimated according to each municipality's population and age structure, the service needs of the municipal residents as well as circumstantial factors that raise the costs of the provided services. In 2011 the average amount of the state subsidy granted for basic municipal services was 34 per cent of the costs of the provided services.

It is up to the municipalities to decide how to use their tax income and the state subsidy granted for basic municipal services. The state subsidy is not ear-marked for the purpose for which it is allocated. The freedom of the municipalities in their resource consumption is limited by Section 3 of the **Act on the Planning of and State Subsidy Granted to Social and Health Care** (*laki sosiaali- ja terveydenhuollon suunnittelusta ja valtionavustuksesta; lag om planering av och statsunderstöd för social- och hälsovården; 733/1992*), which stipulates that resources must be allocated by a municipality to the social and health care for which the state subsidy is granted. The municipality nevertheless has discretionary power to decide on the ways and means of arranging the social and health care services, and on the type of the service structure by which it responds to the needs of municipal residents. Therefore for instance the financial resources allocated for informal care support in a municipality and the granting of that support are based on municipal consideration.

As part of the informational guidance provided by the state to municipalities in the past years, municipalities have been advised to alter the structure of services for the elderly in order to continue reducing the provision of institutional care. Furthermore, the state has advised municipalities to replace long-term institutional care with additional home-help services, informal care and service housing, and to develop services that promote, prevent and rehabilitate elderly people's well-being and health.

If the budgetary appropriation reserved for informal care by a municipality runs out during more than one year in succession, the Regional State Administrative Agency in charge of the guidance and surveillance of social welfare may, as a final resort, oblige the municipality to rectify the situation under the threat of a fine.

#### **4. Development of received informal care support and amounts of granted remuneration**

During 2010, a total of 37,528 persons received informal care support. The majority of them, 66 per cent, were persons aged 65 years or over. From the year 2006 to 2010 the number of persons receiving informal care support increased in total by nearly 6,700 (22 per cent), of which over a half, 3,453 persons, were aged 75 or over. In 2009, municipalities paid a total amount of EUR 144.6 million of informal care support. From 2006 to 2009 the amount of care remunerations increased by EUR 38.2 million (36 per cent).

No separate statistics are collected on the recipients of informal care support and the costs of the various types of services (i.e. home services and home nursing) provided under the concept of informal care support.

During the past years, several dozens of municipalities have reviewed their criteria for granting informal care support because of consolidations of municipalities and the expansion of municipal co-operation. In some municipalities this has improved the position of informal carers, and in others impaired it. Some municipalities have chosen informal care support as one of the targets for savings measures.

Nevertheless, from 2008 to 2009 the total amount of care remunerations relating to informal care support increased or remained unchanged in the majority of municipalities (i.e. 81 per cent of them).

No regular statistics with a nationwide coverage are available regarding the number of applications for informal care support or the grounds on which such applications have been rejected. The latest available information concerns the time-period from 1 January to 30 April 2006. According to the information provided by municipal office-holders from that period, municipalities rejected 14 per cent of all applications for informal care support. The most common reason for rejection was a low need for keeping and care.

## **5. Measures to develop informal care support 2006-2011**

In co-operation with the National Institute for Health and Welfare (*Terveyden ja hyvinvoinnin laitos, Institutet för hälsa och välfärd*) and other actors, the Ministry of Social Affairs and Health has promoted the availability of informal care support and the development of the contents of the support. Attention has been focused particularly on the elderly and their informal carers, as well as on the need to increase equality between informal carers and recipients of care residing in different municipalities.

When the Act on Informal Care Support entered into force in the beginning of 2006, the Ministry of Social Affairs and Health published a guidebook aimed in particular at municipal office-holders and decision-makers, to facilitate the implementation of the legislation (see *Sosiaali- ja terveystieteiden tutkimuskeskus 2005:30; Social- och hälsovårdsministeriets handböcker 2005:30; Handbooks of the Ministry of Social Affairs and Health 2005:30*). The aim of the guidebook is to unify the practices of granting informal care support. It also contains information on e.g. the contents of informal care support, the eligibility requirements for the support and the assessment of service needs.

The entitlement of informal carers to leave was improved by a law reform that took effect on 1 January 2007 (950/2006) and by which the right to statutory leave was increased by one day, i.e., to three days per calendar month.

In 2007 the Ministry of Social Affairs and Health published a report on informal care support and its variations from 1994 to 2006 (*Voutilainen, P., Kattainen, E., Heinola, R.: Omaishoidon tuki sosiaalipalveluna. Selvitys omaishoidon tuesta ja sen vaihtelusta. Sosiaali- ja terveystieteiden tutkimuskeskus 2007:28; Social- och hälsovårdsministeriet rapporter 2007:28, Reports of the Ministry of Social Affairs and Health 2007:28; with an English abstract*). The report supplemented a series of reports published in 1995, 1999 and 2003. The material was compiled on the basis of replies to a questionnaire addressed to all municipalities. The aim of the report was to describe the persons receiving informal care, informal carers, the care remunerations paid to informal carers, the related services, and the needs to develop informal care support. The report paid particular attention to the question how the Act on Informal Care Support in force since 1 January 2006 had influenced informal care support in municipalities. The report was addressed



particularly to municipal decision-makers and social management personnel, in order to facilitate the development of informal care support.

The report stated, inter alia, that nearly half of the persons receiving care supported with informal care support required fairly much assistance and care continuously, and every third of them required assistance and care around the clock. Of the carers, 59 per cent were pensioners and 20 per cent had a full-time occupation. According to municipal office-holders in charge of informal care, such care constituted the primary employment of approximately every tenth informal carer. The average care remuneration paid to an informal carer was EUR 416 per month. In large municipalities the remuneration was on average higher than in small municipalities. As focal development challenges for informal care support, the report listed (1) improving the quality of life for recipients of informal care and informal carers by developing the opportunities to substitute a temporary carer for the primary carer during the latter's leave, (2) a comprehensive evaluation of the care recipient's and the carer's functional capacity and of their resources, in order to allocate the support correctly and in a targeted manner, and (3) long-term development of informal care support as an integral part of the municipalities' service structure, including the expansion of the support coverage.

A central tool in the informational guidance provided by the state to municipalities in the field of services provided for the elderly has been the *Recommendation on the quality of services provided for the elderly*, issued by the Ministry of Social Affairs and Health and the Association of Finnish Local and Regional Authorities (*Kuntaliitto; Kommunförbundet*). This quality recommendation, revised in 2008, emphasizes that services meeting the needs of elderly persons require a comprehensive evaluation of these persons' service needs and functional capacity. The recommendation sets a target of having five to six per cent of all persons aged 75 years or over covered by the system of informal care support by 2012. From 2006 to 2010, the share of such persons covered by informal care support increased from 3.7 per cent to 4.2 per cent. In 2010 every third municipality reached the coverage target. The achievement of the target requires an increase of at least 5,000 persons in the number of persons covered by the system by 2012.

A committee for the renewal of social security, established by the Ministry of Social Affairs and Health, prepared the reform of informal care support. The committee issued its proposal at the end of 2009, suggesting that the care remuneration and the care allowance paid by the Social Insurance Institution of Finland (*Kansaneläkelaitos; Folkpensionsanstaltet*) for pensioners on grounds of their need for help and special costs incurred by them should be combined to form a support granted by the Social Insurance Institution of Finland and financed by the state. As an objective of the reform the committee set neutrality of costs between the state and the municipalities. The committee also proposed considering the transferral of a fiscal support granted as a disability benefit, in order to develop informal care support.

The committee's proposal did not gain unanimous support and has not been put into effect. The applicant association, too, has opposed the proposal.

In autumn 2010, the Ministry of Social Affairs and Health started drafting a plan to develop informal care support. During the drafting process, representatives of

the Ministry also heard non-governmental organizations, such as the applicant association.

In spring 2011, the following targets were set for the plan to develop informal care support:

- to expand the coverage of informal care support within various groups of care recipients;
- to increase equality among informal carers;
- to develop services related to informal care support, e.g. to develop health care for informal carers and so-called substitute care.

The National Institute for Health and Welfare coordinates a national expert network for the assessment and measurement of individuals' functional capacity. The Ministry of Social Affairs and Health, the Social Insurance Institution of Finland and the Association of Finnish Local and Regional Authorities take part in the network activities together with numerous other actors. The network activities are aimed at improving the uniformity and quality of assessing functional capacity. The network has established a database on recommendations for methods of measuring and assessing an individual's functional capacity (see <[www.toimia.fi](http://www.toimia.fi)>). The first version of the database was opened for use on 28 January 2011. The database is intended as a tool for professionals measuring and assessing functional capacity. It contains a recommendation on measuring elderly persons' functional capacity in connection with the assessment of their service need. The database also contains estimates on the applicability of various functional capacity indicators in the evaluation of the service need of elderly persons. The recommendation on measuring elderly persons' functional capacity was revised on 13 June 2011 by making it applicable also in the evaluation of the need for informal care support.

In accordance with the plan to develop informal care support, a new Section 4a (331/2010) was included in the Act on Informal Care Support on 1 August 2011. According to the provision, a municipality may organise informal care during a leave of the primary informal carer by authorising a suitable person to provide substitute care. By the reform, a new alternative method was introduced for municipalities for organizing informal care during a leave of the primary informal carer. The aim of the reform was to support the coping of informal carers by improving their opportunities to take time off. The Ministry of Social Affairs and Health issued an announcement on the reform to municipalities in June 2011.

## **6. Measures planned in the Government Programme to develop informal care support**

One of the targets of the current Government Programme is equal availability of social and health services. This target will be pursued by reforming the social welfare and health care service structure as part of the restructuring of local government. According to the Government Programme, municipalities will remain responsible for providing and funding social welfare and health care services. To ensure the availability of high-quality social welfare and health care services and to safeguard their funding it is necessary to form economically robust municipalities capable of assuming the responsibility for the provision and funding of such services.

The Government is also involved in continuing the development of informal care support. The aging of the population further emphasises the importance of supporting informal care. For supporting informal care, the Government Programme includes the following targets and measures:

- informal care will be developed in cooperation with municipalities and organisations;
- equality among informal carers and care recipients will be improved by harmonising the criteria for granting support;
- the availability and comprehensiveness of informal care support will be increased;
- the well-being of informal carers will be promoted by creating support services, enabling respite, and establishing regular health examinations;
- the possibility of eliminating the taxation of financial support for informal care will be investigated; and
- operating models by which the parents of small children and those providing care for an elderly or sick person close to them can work shorter days or take unpaid leave more flexibly, by determining the specifics with their employers, will be promoted.

The implementation and schedule of the measures on informal care and informal care support outlined in the Government Programme were determined in autumn 2011. In particular, harmonising the criteria for granting support for informal carers may improve equality among informal carers and care recipients residing in different municipalities.

The Government Programme also includes the target of developing means and resources for monitoring social and health services. Equality regarding the availability and quality of informal care support among municipalities may be supported by means of monitoring, e.g. by including informal care support in the monitoring programmes carried out by the National Supervisory Authority for Welfare and Health (*Sosiaali- ja terveystalun lupa- ja valvontavirasto; National tillstånds- och tillsynsverket för social- och hälsovården*) and the Regional State Administrative Agencies.

The Government Programme also includes the target of continuing the comprehensive reform of social welfare legislation. The Ministry of Social Affairs and Health has under preparation a new Social Welfare Act aimed to enhance and maintain the well-being and social security of the population and to guarantee equal availability of sufficient social services. The mandate of the working group on the reform of social welfare expires on 30 June 2012.

## CONCLUSION

Finally, the Government notes, with reference to above, that Finland has in many ways developed the informal care available for the elderly and the support system for it within its territory. Finland has, in line with Article 23 of the Revised European Social Charter, adopted and encouraged appropriate measures designed in particular to enable elderly persons to remain full members of society for as long as possible, to enable them to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able.

In the Government's view the situation in Finland is in conformity with Article 23 of the Revised European Social Charter.

## REQUEST FOR A HEARING

The Government observes that under Article 7.4 of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, in the course of the examination of the complaint, the Committee of Independent Experts may organise a hearing with the representatives of the parties.

The Government refers to your Committees Rule 33 according to which the hearing provided for under Article 7.4 of the Protocol may be held at the request of one of the Parties or on the Committee's initiative. The Committee shall decide whether or not to act upon a request made by one of the Parties.

The Government hereby requests a hearing to be held in the case.

Accept, Sir, the assurance of my highest consideration.



Arto Kosonen  
Director,  
Agent of the Government of Finland before the  
European Committee on Social Rights