



European  
Social  
Charter

Charte  
Sociale  
Européenne



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

30 March 2012

**Case No. 4**

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

**RESPONSE BY THE ASSOCIATION OF CARE GIVING  
RELATIVES AND FRIENDS  
TO THE GOVERNMENT'S SUBMISSIONS  
ON THE MERITS**

**Registered at the Secretariat on 29 March**

**Secretariat General**

**Directorate General**

**Human Rights and Rule of Law**

**Executive Secretary of the European Committee of Social Rights**

**Head of the Department of the European Social Charter**

**And the European Code of Social Security,**

**Mr. Régis Brillant**

**Council of Europe**

**F-67075 Strasbourg CEDEX**

**FRANCE**

**Reference: Your letter 9 February 2012**

**Responses of Association of Care Giving Relatives and Friends v. Finland to the Government's submissions on the Complaint No 70/2011**

**Dear Sir,**

In your letter you said that in conformity with Rule 31§2 of the Rules of the European Committee of Social Rights, the President of the Committee has invited our Association to respond on the Government's submissions. Here are the responses of our Association:

**1. The right to indispensable care and sufficient social security in the Constitution**

In the submission the Government of Finland refers to the Constitution of Finland where there are rules concerning indispensable subsistence and care.

Our Association notes that the rule: "Those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care" is of course positive for the citizens but there is a big problem: The rule is very difficult to refer by the citizens because of the loose and hazy wording. In practice, the rule is more a principle than a subjective right because the state has not concretized the rule into practice in normal legislation. Consequently, the municipalities implementing social security legislation in Finland have large freedom to interpret the Constitution. The principle in the Constitution should be defined in normal legislation, but the state has not done this job.

Also the section 19.2 in the Constitution is not relevant in practice because there is no normal law in

Finland guaranteeing the basic subsistence to elderly people. So again it is a matter of principle which has not been concretized in legislation. The same applies to section 19.3. Municipal authorities implementing social security law do not guarantee adequate social, health and medical services to everyone because the practices of implementation vary highly from municipality to municipality depending on how much appropriation the municipality has reserved to the social services.

### **Submission page 3 section 2**

The submission notes that local authorities implement the social welfare and health care legislation as part of their self-government.

Our Association notes that this is really true. In Finland, the municipalities have the right to decide on the quality and amount of social and health services to their inhabitants. There are only a few subjective rights which the citizen is entitled to receive despite the amount of appropriation in the municipal budget. Due to that the laws concerning social welfare and health are general so that municipalities can independently decide what services they are willing to deliver to their citizens and on what conditions. Due to varying policies of the municipalities the citizens in Finland are not in equal position as regards social and health services.

The submission refers to the opinions of the Constitutional Law Committee of Parliament (peVL 8/1999 vp and PeVL 39/1996 vp.) 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.

Our Association sees that the opinions of the Constitutional Law Committee are not well-known at the municipal level especially when the municipalities deliver housing services to the elderly. The set municipal fees may be too high or even out of reach to the elderly. In this matter our Association refers to our response to the Government submission in Complaint No. 71/2011.

### **Submission page 3 section 4**

In the submission is referred to the section (paragraph) 17 in the Social Welfare Act.

Our Association notes that in the section 17 there is only a list of those social services that the municipalities can deliver to the elderly, disabled or other inhabitants in need of services. The list does not give any rights to inhabitants to require those services because the municipalities decide on the criteria to apply for the services. Even if the applicant fulfills the criteria set up by the municipality he/she may miss out the service if the appropriation to the service has ran out during that budget year. The availability of the social services is subject to the appropriations decided in the municipal budget.

### **Submission page 3 section 6**

Our Association notes again that the need of social services is assessed by a social expert and this assessment is obligatory and written in law. However, there is no guarantee that a person aged 75 years or over receives these services needed. The section referred to in the submission gives a

subjective right to assessment of the need of services but the section does not oblige the municipality to deliver the services. Also, the municipality requires a fee of the services delivered (e.g. home service) and the cost may be so high that the elderly drops the application. Only a part of the municipal social service fees are fixed in the legislation and the rest (e.g. food and cleaning service, transport service) are decided independently by the municipality.

### **Submission page 4 section 1**

In the submission is said that 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.

Our Association notes that there is a possibility to appeal but normally the appeal is rejected in the administrative court because the municipalities have a large discretion to whom the services are delivered and who is not entitled. The administrative courts do not interfere to this discretion done in the municipality bodies.

### **Submission page 4 section 2**

Our Association notes that in the submission is said the core of the matter. 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 realize 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. The clients (inhabitants of the municipality) have no absolute right to receive the care needed or in the form that they or their relatives may wish. Respect for a client's opinion is emphasized in Section 8 of the Act on a Customer's Status and Rights within Social Care, but the ultimate decision of services is on the municipal side, not on client's side. Ultimately the municipalities have the power to decide if they provide or not indispensable care and social services discovered by assessments or otherwise and using this possibility varies from municipality to municipality (Finland has 336 municipalities). The municipal appropriations reserved for these purposes are in many municipalities so scant that the possibility to deliver services stops already in the beginning of the year. After the appropriation has stopped the social workers have no opportunity to deliver services any more in that year regardless of the need of the client to have it. The citizen is a subject without individual rights in this situation.

### **Submission page 4 chapter 3**

In the submission is said that informal care support that the municipalities provide is done within the limits of the municipal appropriation reserved for this purpose.

Our Association notes that the description of informal care in chapter 2 is correct. However, we point out the fact that informal care is provided within the limits of the municipal appropriation. This situation arouses a large inequality between informal carers (family carers) living in the 336 municipalities of Finland. Each municipality decides its own criteria for accessing the official informal carer agreement, days-off and remuneration from the municipality. The local policy is

decisive to the access. A big problem that creates inequity is that the law of informal care establishes only basic guidelines to the informal care and every municipality decides their own criteria. The practices on how the law is applied, who is entitled to make the agreement and receive the fee vary from municipality to municipality. There are no national standards and every municipality can do whatever they want. In some municipalities even very light care may entitle a carer to the status of informal carer. In some other municipality even 24/7 care may not be enough for achieving the status of informal carer.

The other problem is that the position of informal carer is tied to the economical situation in the municipality. Even if the criteria are fulfilled by the informal carer the appropriation may have ended on that budget year in the municipality and so the agreement on family caring is not signed due to the finishing of appropriation. Normally in this situation the caring at home still continues without support from municipality. There is a big threat of social exclusion if the appropriation of the municipality is too small compared to existing needs. There is no equality between carers in the same situation.

## **2. Municipalities` responsibility for organizing and financing informal care**

### **Submission page 6, section 1**

In the submission exists in this point important information concerning our Association´s complaint. The state-subsidy to municipalities is not earmarked for the purpose for which it is allocated. So the municipal politicians decide freely and without any outer control on the appropriations targeted for the social and health services using the municipal independence. The services for the elderly and disabled are thus closely connected to the opinions and values of the local politicians. So it may happen that in some municipality, the politicians are interested in the welfare of elderly and disabled inhabitants and consequently direct adequate appropriations for the social and health services. But in some other municipality the politicians are more interested in supporting local enterprises or public investments and so the money reserved for the social and health services may be too small compared to existing needs. Everything is possible in Finnish local decision system. There can also be opinion differences between right and left wing parties about the amount of appropriations for the social and health care resulting in a compromise of meager funding for services. The state of Finland has followed passively the unequal situation between informal carers and has not demanded equal measurements of the access in all 336 municipalities of Finland.

### **Submission page 6, section 2**

Our Association notes that the informational guidance is the only “power” of the Ministry of Social Affairs and Health to influence the services in the municipalities. It is a very weak way because the municipalities have an option to follow the informal guidance or make their own way. The trend in recent years in the municipalities is to shut up the institutions for long-term institutional care and also the housing services are diminishing. Consequently, the municipalities have less possibilities to

offer institutional care or housing services to the elderly or disabled inhabitants. Despite this the provision of home services has not increased in the same proportion.

**Submission page 6, section 3**

In the submission is said that 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.

Our Association notes that this is a highly theoretical option which may never have been used though our Association and the locals of our Association have made claims to this controlling agency and its predecessor (lääninhallitus, County Administrative Board). In the claims we have remarked the defective amounts of appropriations for informal care in the municipalities. Nothing has happened. The municipalities are so independent in Finland that it is very difficult to have State Agency to rectify the decisions made locally.

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

**Submission page 6, section 6**

In the submission is said that 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 saving measures.

Our Association notes that the main trend has been impairment of the informal care support. Especially the economic depression of 2009 impressed very negatively to the position of informal carers. We add to our statement the answer of Parliament's vice-ombudsman to our Association's claim of the negative treatment of many municipalities towards informal carers (see add. 1). The vice-ombudsman noted among others that:

"In the juridical praxis the Highest Administrative Court has noted that after the appropriations for the social service has ended the municipality has no obligation to admit the social service tied to the appropriation to the client"

"The municipality has no obligation to admit service to the client even if it is noted that the person is in need of service and there are appropriations left, if it can be foreseen in the municipality, that the appropriations will not be enough to all applicants. The municipality can direct the appropriations to that applicant most in need".

In answering our Association's claim the vice-ombudsman did not see any problem in that nine municipalities had cancelled all informal carer agreements in their area and decided on new much

tighter criteria. After the reform only a part of former informal carers were able to make a new agreement with the municipality and most of them with worse conditions and remuneration. Many former informal carers were left out altogether though they still went on caring. The vice-ombudsman noted in her answer that municipalities are free to set criteria to achieve contract on informal care. Informal carer has not a subjective right to require the contract and remuneration from the municipality.

Referring to our complaint in this case, our Association notes that it has now been established by a high authority in Finland that the informal carers have no rights and no way to defend themselves against the negative decisions of the municipalities. The sections of the Constitution have no meaning in the practice.

#### **4. Measures to develop informal care support**

##### **Pages 7-9 chapter 3 in the submission**

Our Association notes that recommendations are just recommendations. The municipalities either obey or not obey them. Our complaint concerns the inequality of informal carers due to the lack of uniform national measurement and the unconformity of the Treaty due to it. The law sets only a framework to the system and all municipalities have their own measurement mechanisms. Our Association admits that some municipalities are positive towards informal care but many also have very strict attitudes and this creates large inequality. There are many recommendations of measurement, also in the network ([www.toimia.fi](http://www.toimia.fi)), but they do not oblige municipalities.

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

##### **Page 9, chapter 4, page 10**

In the submission is said that one of the targets of the current Government Programme is equal availability of social and health services. 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.

Our Association notes that the forming of economically robust municipalities does not necessarily help informal carers if the law stays as vague as it is now and the municipalities can still freely decide on the exact criteria of access to informal care support. All those measures described in the page 10 are aspirations of the new Government and we do not know if they shall take place or not. There are big obstacles for reforms. The earlier reform proposal described on page 8 in the chapters 3 and 4 failed due to the fear of costs to the state. The plan was to transfer the remuneration of the informal care support from the municipalities to the state. This proposal was not accepted in the negotiations of the new Government's programme. In this complaint the Committee has to decide

if the current treatment of informal carers and their patients is in conformity with the Treaty or not. Has Finland obeyed the articles of European Social Charter towards informal carers?

## **5. Conclusion**

The article 23 in the Social Charter has been in force many years. Our Association notes that our Complaint is relevant and we ask the Committee to give their statement of our Complaint.

In the Government's submission is a request for a hearing. Our Association notes that we have no financial resources to send our representative to Strasbourg just for the hearing. If the hearing shall take place it should be held in Finland.

**Helsinki 25.3.2012**

**Association of Care Giving Relatives and Friends**

**Helsinki, Finland**

**Anneli Kiljunen**

**Merja Salanko-Vuorela**

**Chairman, Member of Parliament Executive Manager**

**Address of Association:**

**Association of Care Giving Relatives and Friends**

**Hämeentie 105 A 18, 00550 Helsinki, Finland**

**[www.omaishoitajat.fi](http://www.omaishoitajat.fi)**

**E-mail: [merja.salanko-vuorela@omaishoitajat.fi](mailto:merja.salanko-vuorela@omaishoitajat.fi)**

**Tel. +358207806500**

**The contact person taking care of this complaint in the Association and who gives further information if needed is**

**Mr Yrjö Mattila,**

**Vice-chairman of Association of Care Giving Relatives and Friends**

**Address: Pukkilantie 3 A 9, 00650 Helsinki 65**

**E-mail: [yrjo.mattila@kela.fi](mailto:yrjo.mattila@kela.fi)**

**Tel. +358407154166**

**Appendix: The decision of Parliament's vice-ombudsman (in Finnish)**