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

26 July 2011

Case No. 1

Association of Care Giving Relatives and Friends
Complaint No. 71/2011

COMPLAINT

Registered at the Secretariat on 6 July 2011

Secretary General of the Council of Europe

Collective complaint due to Finnish legislation that violates the Articles in the European Social Charter

Contents of the complaint

The complaint is mainly related to Article 23 of the European Social Charter (revised) concerning the right of elderly persons to social protection.

According to the article with a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties (including Finland) undertake to adapt 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;

Also the complaint is partly related to Article 13, 14 and 16 of the European Social Charter (revised) concerning:

- The right to social security,
- The right to social and medical assistance,
- The right to benefit from social welfare services and
- The right of persons with disabilities to independence, social integration and participation in the life of the community

Article 13

- The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties (including Finland) undertake:

- 1 to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in

case of sickness, the care necessitated by his condition;

- 2 to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
- 3 to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
- 4 to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

Article 14

- The right to benefit from social welfare services

With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:

- 1 to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;
- 2 to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.

Article 16

- **The right of the family to social, legal and economic protection**

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.

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

The right of the Association of Carers and Relatives in Finland to make complaint is based on the following:

The Association of Care Giving Relatives and Friends (Omaishoitajat ja Läheiset –Liitto ry, Närståendevårdare och Vänner -Förbundet rf) is a bilingual society (Finnish, Swedish) and the home base of the Society (Union) is Helsinki, Capital of Finland.

The Association has been founded 20.5.1991 and it has been registered in the Association Register of Finland the same year.

The activities of the Association (Union) concern all Finnish relative and near carers who

take care of their citizens.

Our Association aims to promote legislation and implementation of law concerning the interests of our affiliates and promotes at the same the interest of all those people who deliver care to their sick, disabled or elderly relatives or friends at home.

There are also many projects and research activities within our Association (Union) and its 72 locals.

Furthermore, our Association (Union) and its locals arrange many lectures, seminars congresses, club activities etc. to the affiliates. Besides we have publication activities, periodicals etc.

Our Association lodges initiatives, suggestions and bill motions to officials and politicians of the matters concerning care at home.

The membership of our Association is open to all carers and to those who are interested in our activities.

The amount of membership in our Association is some 10 000 members affiliated in 72 locals of our Association (Union) in the whole country.

We are convinced that our Association (union) as a nationwide actor in the field of relative and friend care is entitled along the rules adopted during the 201st session on 29 March 2004 and revised during the 207th session on 12 May 2005 and during the 234th session on 20 February 2009, to request the Social Committee to assess whether the rights and obligations of the Care Giving Relatives and Friends and of those persons they are taking care of are in conformity with the above mentioned regulations in the European Social Charter (revised). Our Association (Union) is convinced that there exists violations in Finland and due to that we are processing this complaint.

Complaint concerning the charges (fees) for the elderly persons in communal based or communal provided elderly housing in Finland

The [...] serious problem concerning elderly person's and also the relative and friend carer's position in Finland communal charges (fees), which are required from elderly persons to access for communal based or communal provided service housing (elderly service houses or houses that deliver effective, day and night care) . Along the Act on Social Care (710/1982) (appendix 2) the municipality is obliged to take care of the social care including elderly people when they need help and services (13 §). Along the 17 § housing services and institutional care are the means to implement social care in the municipality. Along 22 § housing services are delivered to persons, who of the peculiar reason needs help or support in organising accommodation or in organising inhabitation. With institutional care is meant care, maintenance and rehabilitating activity which is delivered in a constant care giving social care unit. Institutional care is given to the person, who needs help, care or other attention which is not possible or which is not suitable to deliver in his/her own home with the favour of other social services. There is a decree given by The Ministry of Social and Health Affairs on the principles in defining the non-institutional (open) care and institutional care (180/2009, appendix 3).

Earlier the communes offered elderly people "elderly homes", which were as a concept institutions (see 23 §) and the charges (fees) they had to pay to the commune were fixed in the law of client charges in social and health care (734/1992) (appendix 4). Along 7 b in

this law the situation when a person is in long-term institutional care. Main principle is that if the day-night care is estimated to be lasted at least three months, the care is regarded as a long-term care. In 7 c § of the law is then specified the fee a person has to pay for his care to the municipality, which is set along his/her capability to pay the charge. At maximum the charge can be 85 % of his/her income/month and in minimum 90 Euros/months has to be left to his/her personal use.

Until 1990's this system of long-term care has been carried out without big problems, but in the late 1990's difficulties in the payment have been raised. Along Finnish Constitution municipalities in Finland are very independent and they are entitled fairly freely to decide how they implement their obligations in social care including elderly care. In institutional elderly care homes the fixed sum mentioned earlier covered everything elderly persons needed, like food, inhabitation (rent), medical care including drugs. Also all the services the elderly person needed to get on were covered with the total sum up to 85 % of income and the rest to the elderly person could use to personal targets. From 1990's on this type of elderly housing has changed dramatically. The municipalities have used their independency and changed the housing for elderly people in a way, which is cheaper to the commune, but much more expensive to the elderly person who needs institutional care. The old-type communal elderly houses have been changed to communal service houses and effective service houses. In the latter house a care is day-night and in practice the same as care in former institutional care, but formally it is regarded no-institutional (open) care. In many municipalities there is no other institutional care than to be in hospitals and all other care is open care. This means a very costly change for the elderly persons living in communal service or effective service houses due to that their capability is not enough to live independently or even with the support of home services at their actual home any more.

This is due to that there are no law-based fees of charges of living in municipal-based or municipal provided service houses or effective service houses. The municipalities can fix the charges using their independency and normally the charges are multiple compared to law-fixed institutional care charges. Every commune decides separately how much they demand as rent, how much they charge of food delivered in service care house or in effective care service, how much they charge of services the elderly needs to get on etc. No services are included to a total charge as in institutional care. The elderly person has to pay medical and drug costs on his/her own income and separately he/she has to pay from his/her pocket rent, food etc. These are not any more included to the 85 % whole fee though in practice the inhabiting in effective service house is the same as was before when there were municipal, institutional elderly homes.

As a conclusion of this dramatic change in Finnish communal elderly care many elderly persons has to stay in relative or friend care much longer than they should be considering their shape and condition. Their condition may be very weak, they can be very much demented and they could need desperately effective day-night institutional care, but they are not capable to pay the prices municipalities demand for living in effective service care house. This causes much stress to the elderly person and his/her relative or friend carer. The carer is obliged to keep on caring longer than the condition of the elderly person presupposes. E.g. the amount of pension of an elderly may be 1000 Euros/month, but it is needed 3500 Euros/month to live in municipal-based or municipal provided private service house. The charges can be adjusted, but this is done by case by case method in every municipality without any cohesion or guarantee for the elderly person about the positive result. Many elderly persons do not even try to have an access to service houses though their condition would require the access due to the high costs, which they cannot reach with their income.

The state of Finland has not included charges in service houses in the law though many proposals have been made and the defect in service house charges is well known. Unconditional and unfixed charges have the follow-up that the elderly persons cannot reach the inhabitation type that his/her condition would require. This may cause even pre-time deaths, though there are no researches concerning this problem.

In this case our Association (Union) refers to the Articles 13,14, 16 and 23 of the European Social Charter (revised).

In Article 23

the Parties (including Finland) has to undertake to adapt 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:

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:

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

the health care and the services necessitated by their state;

In Article 13

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties (including Finland) undertake:

to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;

to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;

to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;

to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

In Article 14

With a view to ensuring the effective exercise of the right to benefit from social

welfare services, the Parties undertake:

1 to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;

2 to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.

In Article 16

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.

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

Our Association (Union) is convinced that the free charging (fee) system of communal-based or communal provided service houses prevents the elderly people of Finland to receive those benefits, which are described in article 13,14, 16 and 23 of the Treaty. This is mainly due the lack of fixed rules of the charges fees in law. By neglecting to set these rules Finland violates the state of Finland violates the decrees of the Treaty.

Conclusion and claim of Association of Care Giving Relatives and Friends in Finland:

Our Association (Union) sees that [...] the case [...] violate[s] the Treaty's articles mentioned above. Therefore the Association of Care Giving Relatives and Friends in Finland has made this complaint and is ready to give further information to the Committee, if needed.

Helsinki 25.6.2011

**Association of Care Giving Relatives and Friends
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Anneli Kiljunen
Chairperson of the Association
Member of Parliament



Merja Salanko-Vuorela
Executive Manager

Appendix: The laws concerning the Complaint (in Finnish) _