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

14 October 2011

Case No. 2

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

**OBSERVATIONS BY THE GOVERNMENT
ON THE ADMISSIBILITY**

Registered at the Secretariat on 7 October 2011



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

Mr Régis Brillat
Executive Secretary
European Committee of Social Rights

Helsinki, 7 October 2011

Complaint No. 71/2010
Association of Care Giving Relatives and Friends v. Finland

Sir,

With reference to your letter of 29 July, I have the honour, on behalf of the Government of Finland, to submit the following observations on the admissibility of the aforementioned complaint.

Admissibility of the complaint

General

The present collective complaint has been lodged by the Association of Care Giving Relatives and Friends (*Omaishoitajat ja Läheiset -Liitto ry, Närståendevårdare och Vänner -Förbundet rf*; Association).

The Government notes that in accordance with Article 2 § 1 of the Additional Protocol of 1995 providing for a system of collective complaints, any Contracting State may declare that it recognises the right of any other representative national non-governmental organisation than those referred to in Article 2 of the Additional Protocol within its jurisdiction which has particular competence in the matters governed by the Charter, to lodge complaints against it with the European Committee of Social Rights.

The Government observes that it has ratified the Additional Protocol providing for a system of collective complaints on 17 July 1998 and has made a declaration enabling national NGOs to submit collective complaints.

The Government notes, furthermore, that according to Article 3 of the Additional Protocol, national non-governmental organisations may submit complaints only in respect of those matters regarding which they have been recognised as having

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particular competence.

Moreover, according to the Explanatory Report to the Additional Protocol, NGOs are subject to the same conditions as laid down for international non-governmental organisations and national organisations of employers and trade unions: they must be "representative" and particularly "qualified" in issues covered by the Charter. The European Committee of Social Rights will judge whether these criteria are met when examining whether a complaint is admissible (para. 26).

According to your Committee's case law, for the purposes of the complaints procedure, representativity of a trade organisation, is an autonomous concept, not necessarily identical to the national notion of representativity (*inter alia*, Complaint No. 9/2000, Confédération française de l'Encadrement CFE-CGC v. France, para. 6; and Complaint No. 6/1999, Syndicat national des professions du tourisme v. France, decision on admissibility, para. 6).

Moreover, with regard to the particular competence of an NGO, your Committee has, *e.g.*, in examined the statute of an organisation and the detailed list of its various activities relating to Articles of the Charter covered by the relevant complaint, which examination has shown that the complainant has long been involved in and particularly concerned with the relevant areas, and considered that the organisation in question had particular competence within the meaning of Article 3 of the Protocol (Complaint No. 30/2005, Marangopoulos Foundation for Human Rights (MFHR) v. Greece, para. 12).

The Government observes that the Association is an organisation registered in the Register of Associations. According to its rules registered in the Register of Associations, the purpose of the Association is to act for the promotion and support of the status of informal carers and of elderly people, people with disabilities and people with long-term illnesses, and to develop the services and support functions for informal carers and of elderly people, people with disabilities and people with long-term illnesses. Moreover, local, registered informal carer associations can be accepted as ordinary members of the Association.

According to the Association's own assessment it is nationwide, and it has some 10 000 members in its 72 local associations. Furthermore, the Association states that its activities concern all Finnish informal carers. The Government observes that no documentation to indicate the aforesaid has been submitted by the Association.

Furthermore, the Association states, *inter alia*, that it aims to promote legislation and implementation of law concerning the interests of its 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. Also, the Association notes that it lodges initiatives, suggestions and bill motions to officials and politicians of the matters concerning care at home.

In this connection, the Government observes that according to the rules of the Association in the Register of Associations, the forms of activity of the Association include indeed, *inter alia*, to give proposals and initiatives to authorities for the improvement of the standard of living and the quality of life of

informal carers and of elderly people, people with disabilities and people with long-term illnesses, to give statements to authorities and to represent and guide its members in questions relating to them.

In light of the aforementioned, it appears that, in the particular circumstances of the present case, the Association may be considered a "representative national non-governmental organisation" as defined in Article 2 of the Additional Protocol.

Moreover, the Association appears, in the particular circumstances of the present case, to have competence in the matters governed by the Revised European Social Charter.

The Government observes also that it seems to appear from publicly available information that officials of the Association have in some occasions been heard as expert before the parliamentary committees. Thus, it could be argued, in the particular circumstances of the present case, that the complaint has been submitted in respect of a matter, in which the Association may be considered as having been recognised as having particular competence.

The Government notes that according to the Association, it is entitled to request your Committee to assess "whether the rights and obligations of the Care Giving Relatives and Friends and of those persons they are taking care of" (underlining by the author) are in conformity with the provisions of the Charter stipulated in the complaint, whereas, *e.g.*, Article 23 provides for the right of elderly person to social protection. However, the situation described in the complaint does not directly concern the Association itself, but in the system of collective complaints the Association is only indirectly in a position to influence European social standards.

Finally, the Government wishes to note, also, that the complaint has been submitted in writing, and is signed by Ms Anneli Kiljunen, Chairperson of the Association, and Ms Merja Salanko-Vuorela, Executive Manager of the Association, who, according to the rules of the Association registered in the Register of Associations, are together entitled to sign on behalf of the Association.

Unsatisfactory application of the Charter

The Government notes that according to Article 4 of the Additional Protocol providing for a system with collective complaints, a complaint must relate to a provision of the Charter accepted by the Contracting Party concerned and indicate in what respect the latter has not ensured the satisfactory application of this provision.

The Government observes that according to the present complaint, the complaint is mainly related to Article 23 of the Revised European Social Charter providing for elderly persons' right to social protection. According to the complaint, it is also partly related to Articles 13, 14 and 16 of the Revised European Social Charter providing for the right to social and medical assistance, the right to benefit from social welfare services and the right of the family to social, legal and economic protection, respectively.

The Government notes that Finland has declared that it will commit to comply

with, among the other optional provisions, Article 23 concerning the right of elderly persons to social protection, as well as Articles 13, 14 and 16 concerning the right to social and medical assistance, the right to benefit from social welfare services and the right of the family to social, legal and economic protection, respectively.

Moreover, the Government observes that in the complaint, it is claimed, *inter alia*, that as there are no law-based fees or charges of living in municipal-based or municipal-provided service houses or effective service house elderly persons cannot reach the inhabitation type that his/her condition would require.

The Association states, moreover, *inter alia*, that although the charges can be adjusted, it is done case by case in each municipality without any cohesion or guarantee for a positive decision. Accordingly, it is convinced that the free charging (fee) system of communal-based or communal provided service houses prevents elderly people in Finland to receive those benefits that are described in Articles 13, 14, 16 and 23 of the Charter. This is mainly due to the lack of fixed rules on the charges fees. By neglecting to set these rules, Finland violates the provisions of the Charter.

In this connection, the Government wishes to note that the complaint is not entirely clear in the sense that it is not clearly stipulated if the complainant refers to other Articles of the Charter, such as Article 15, as well.

According to Article 23

[w]ith 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.

According to the Explanatory Report concerning the Additional Protocol of 1988 extending the social and economic rights of the 1961 Charter, which according to the Explanatory Report concerning the Revised Social Charter remains relevant to the corresponding Articles in the Revised Social Charter, the expression "in particular" indicates that the provisions enumerated are not exhaustive. The means indicated are therefore intended simply for guidance. The Parties are free to adopt any other measures appropriate to the full achievement of the aim referred to in [paragraph 4 of Part I] and repeated in the introductory sentence of this article.

Moreover, according to Article 13

[w]ith a view to ensuring the effective exercise of the right to social and medical assistance, the Parties 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.

Furthermore, according to Article 14

[w]ith 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.

Finally, according to Article 16

[w]ith 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.

The Government notes, finally, that it appears that the complaint concerns also the question of equal treatment in providing the protection in question. However, Article E of the Charter has not been mentioned in the complaint.

Conclusion

The Government acknowledges that whether or not the Association is representative in the present case will be ultimately decided by your Committee. Thus, without taking any stance on the merits of the case, the Government leaves it to your Committee's discretion to determine whether, in the particular circumstances of the present case, the Association has the competence to lodge a complaint in accordance with Article 2 of the Additional Protocol.

Accept, Sir, the assurance of my highest consideration.



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