

**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. 71/2011

**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. 71/2011**

**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 submit responses to the Government's submissions. Here are the responses of our Association:

**1. The right to receive indispensable care and sufficient social, health and medical services**

Our Association refers to our response in complaint 70/2011 and notes that the rule of the Constitution has not much relevance in the implementation of health and social services in the municipalities. The municipalities in Finland are independent and they also independently decide the appropriations which they are ready to use for social and health services. The attitudes of the local politicians are decisive as regards the quality and amount of social services to the inhabitants in the municipality. The state has no role in delivering social and health services so the rules of Constitution are far from practical situations. Also, the opinions of the Constitutional Law Committee of Parliament are not binding in municipal level. There is no mechanism in Finland with which the rules of Constitution or the opinions of the Committee could be implemented on practical level. The rules in the section 6 and 19 in the Constitution do not help those citizens in need of social and health services in the municipality level. Most of the social and health services are "appropriation targeted". The municipality has to appropriate tax money to the service, but the amount of the money is decided by the local politicians. The assessment of the need of social services (Government submission page 4 chapter 4) does not guarantee service to a person aged 75. The law obliges the municipality only to make the assessment and not to deliver the service. If the decision is negative from the municipality, the appeal before an administrative court is vain. According to the Finnish system the municipality alone decides on appropriations to social services and if the appropriation is too small it is the citizen who suffers. The municipal social worker is not entitled to admit service if there is no appropriation left in the municipal budget.

**2. 24 –hour services (pages 5-7 in the Government's submission )**

Our Association notes that the description on the legislation on pages 5-7 is correct. However, we refer to the last sentence on page 7: "If no consensus is reached on the matter, the Ministry of Social Affairs and Health is requested for a statement, after which the Social Insurance Institution settles the matter". The development from the year 1995 until 2012 is that elderly homes and institutional care houses has rapidly diminished. On the other hand and respectively the amount of outpatient housing-service units has strongly increased. This development is the result of pricing system which

is strictly controlled by law in institutional care and totally decided by local politicians in the latter alternative, housing-service units (see the article on add 1). In effect, the responsibility for the costs of care has been shifted from the municipality to the individual.

### **3. Municipality organizing 24-hour services**

In the Government submission on page 8 in chapter 3 is said that the central government transfer for the provision of services to the municipalities are not earmarked for basic services. Our Association notes that this is a basic problem for the elderly and disabled who cannot stay at home due to their condition and are in need of institutional care or housing-service. As the municipalities are free to use the state transfers freely, the municipalities favour housing-services that are cheaper for the municipality and much more expensive for the elderly or disabled citizen. The lack of legislation of fees in outpatient housing-service favours these kinds of choices in the municipalities.

### **4. Fees in social and health care**

As is said in the Government submission on page 10 chapter 4, there are no provisions on the determination of client fees for service housing or service housing with 24 –hour assistance in the Client Fee Act. This explains the variation in the client fee policies in the municipalities. The average pension in Finland is not much more than 1000 euros/month. With this kind of income the fees required in the municipal or private housing-service may be impossible to cover. The fee in these units may be even 4000 euros/month. To concretize the situation we add an article from Helsingin Sanomat, a leading Finnish newspaper, 6<sup>th</sup> March 2012 (App 1). The article concerns the pricing policy in housing-service units. The municipalities may charge of service housing or service housing with 24 –hour assistance high prices due to the lack of legislation.

In the Government submission on page 10 chapter 5 is said that according to the law the fee for services may not exceed the total cost of producing the service. Our Association notes that paragraph is interpreted very loosely in practice, because there is an idea of average costs in the unit or municipality, not the individual costs of the elderly or disabled living in the housing-service. This interpretation allows municipalities to charge an individual without any limits. The elderly or disabled person has no means of controlling what the average cost of service is in the municipality. The same applies to the rule in The Client Fee Act mentioned in the Government submission on page 11, Chapter 1. In that chapter is said that the municipality is under the obligation of making the client fees reasonable in cases where the fees endanger the client's subsistence. The legislation also in this point is so vague that it is impossible for the elderly or disabled person to defend him/herself against excessive fees set by the municipality. The municipalities do not apply at all the legislation which says that a fee for social services and a fee for health services that are based on the client's ability to pay must be lowered or left uncollected if the client fee threatens to endanger the subsistence of the client. Almost all municipalities require a complete fee from clients and not lower the fee even in difficult situations for the elderly or disabled. The legislation of lowering fees is dead in practice.

### **5. Realization of the rights of the client etc.**

In the Government submission page 11, chapter 4 is said that the municipality has the right to decide with which services it realizes the client's constitutional right to indispensable care and in what way the assessed need for services is sufficiently met. Our Association notes that in practice the municipality may answer to the need by doing nothing. The criteria for delivering services may be set so high in the municipality that it is almost impossible for the elderly or disabled citizen to receive services at all, or the appropriation for the service is very small. The client has a right to appeal, but the decision will not change because the municipality decides independently on criteria and appropriations. The state does not control what the municipalities do in the services. If a person appeals, the decision from the Administrative Court may come after one year and the appeal to Highest Administrative Court is prevented in social services, which weakens the possibilities for

having precedents.

In the Government submission is referred to The Act on the Status and Rights on Social Welfare. Our Association notes that the Act is not important to informal carers because the state does not control its implementation at all and there is no sanction if the law is not obeyed in the municipalities.

In the Government submission on page 12 chapter 1 is described Section 40 of the Social Welfare Act. The section concerns the obligation of the municipality to the assessment of services to elderly citizens over 75 –years. We note that assessment is not the same as delivery of services. There is no obligation to the municipalities to deliver services even if the assessment shows that service is needed. The Act obliges municipalities only to make an assessment but not to deliver services accordingly. The social authority and the elderly or disabled person may disagree on the need of services in the assessment. In the legislation there are means of solving the disagreement between the elderly or disabled citizen and the social worker.

On page 12 chapters 2-4 of the Government submission is said that the obligation to secure sufficient social services is met through both institutional care and service housing with 24-hour assistance regarding the client's need for 24-hour social services, while the obligation to secure sufficient health and medical services is met through institutional care in health centre wards. Our Association notes that in the Act of Social Services both institutional care and service housing with 24-hour assistance are vaguely implicated. The Act does not give any subjective rights to receive those services. According to the chapter 17 of the Act the municipality has to take care of organizing these services but the law does not implicate exactly who is entitled to the services. This matter is decided by the municipality according to its own rules and guidelines based on the independency of the municipality. In practice there are many disagreements between social workers and clients whether there is a need of institutional or housing care. The policy of Finland is to keep people living at own homes as long as possible and deliver services to home. However, the municipalities decide independently also on those services delivered to home and the variation between the municipalities in the amount and quality of services is large. It is also a fact that there are not enough places in the institutional care units or housing services in many municipalities. Consequently, staying at home is in fact the only choice.

In the last chapter of the Government submission is said that the equality principle requires that indispensable care and sufficient social services are secured for each person in need of care irrespective of relatives that could care for the person. Hence, no one has the obligation to become informal caregivers and no one has the obligation to receive informal care.

Our association notes that every municipality interprets the need of the client by its own rules and there is no uniform way or means to deliver social services in Finland. The concept of "indispensable care" is interpreted in many ways and the state has not created any guidelines for uniform services except in the chapter 19 in the Constitution, which is very hazy in the practice. We note that it is true that no one has the obligation to become informal caregiver, but the practical situation and the difficulties in receiving services from the municipality may force one in the position of informal caregiver even without the agreement with the municipality. The situations vary from municipality to municipality because the state has not created a uniform model even of the implementation of the chapter 19 in the Constitution.

In the Government submission on page 13 chapter 1 is said that a key goal of the legislation on client fees has been to ensure that the size of the fees does not prevent anyone from seeking municipal social, health and medical services. In its statements on client fees, the Constitutional Law Committee of Parliament has repeatedly stated that service fees should be set to a level that does not exclude persons who need the services.

Our Association notes that these are just principles and there exists no clear legislation of the fees of the serving-housing fees contrary to the fees of institutional care and we see that this situation is not in conformity with the Treaty. The elderly and disabled people in Finland are in a very uncertain

situation on their fees in needing service-housing, because institutional care for the elderly and disabled has decreased dramatically in Finland. There is no obstacle to the municipality to require as much as 4000 euros/month from the elderly or disabled person when he/she is seeking service-housing while his/her pension is only 1000 euros/month. There is no obligation for the municipalities to make the fees reasonable for the client. In the law is just said that the municipality “can” do it.

Our Association notes that the report 2010:28 referred on the page 13 chapter 2 of the Government submission is a very general report and does not give a clear picture of the situation in Finland. It is said that two fifths of the respondents had reported that social assistance had been granted only for a few clients. Our Association suspects that municipalities may very reluctantly answer to the questions and tell their practices even to the Ministry of Social Affairs and Health. The information may be general and hazy and does not describe practical situations and problems with services and fees. The lack of legislation of service fees sets the elderly and disabled citizens in deep trouble in needing housing-services.

Our Association notes that the third chapter of page 13 in the Government submission is relevant as regards the costs of service-housing for the elderly and disabled persons. The elderly and disabled persons have to pay separately rent, electricity, clothes, hygiene, home services from the municipality or other service provider, medical care and prescribed medicines etc. In institutional care all is included in the fee of care, which is normally 85 % of the income. A special problem for the elderly or disabled living in service-housing is the cost of medicines. The reimbursement of prescribed medicines is just being lowered to just 35 % of the price and many elderly and disabled are unable to the prescribed medicines they need. The articles from "Helsingin Sanomat" (app. 2 and 3) show how the new reimbursement cut affect to the elderly and disabled.

## **6. 24-hour services for elderly persons in Finland**

In the page 14 chapter 2 of the Government submission is described the share of costs between various actors in 24 –hour services. Our Association notes that these figures are only estimates. If an elderly or disabled person lives on housing-services it is most probable that all his/her pension no matter how big or small it is, has to be used to the fees and costs of services and other expenses which he/she has to pay him/herself in the housing-service. Also the laws mentioned in the fourth chapter of the page 14 of the Government submission give in practice to the municipalities a large area of consideration how to implement them to their citizens in need of services.

## **7. Service structure reform and its objectives**

In the second chapter of the page 15 in the Government submission is described the on-going process in Finland to which our Association has referred earlier in this submission. It is true that institutional care with a fixed fee is diminishing and instead services for home, informal care and housing services are increasing. About the reform plans our Association notes that currently there exist only suggestions and recommendations to the municipalities, not strict legislation. The state policy to increase home services is a recommendation but as far as we know there has not been an increase in the home services for the elderly or disabled in the municipalities.

## **8. Developing 24-hour services for elderly people**

Our association notes that the Government programmes described in the last chapter of the page 16 of the Government submission are aspirations for the future. We have seen these kinds of plans many times before but they have not been realized. Our Complaint should be decided on the current situation in Finland and not basing on the plans or aspirations and this concerns also the projects described in the pages 17-18 of the Government submission. The Ministry can suggest municipalities to bring good practices into effect. No permanent results can be reached through these projects.

## **Conclusion**

Our Association is still convinced that the free charging (fee) system of municipal-based or

municipally provided service-housing prevents the elderly and disabled people of Finland from receiving the benefits described in articles 13, 14, 16 and 23 of the Treaty, which is mainly due to the lack of fixed rules of the charges. The situation in Finland is not in conformity with the Treaty.

In the Government's submission is a request for a hearing. Our Association notes that we have not financial resources to send our representative to Strasbourg just for 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  
Chairman**

**Member of Parliament**

**Merja Salanko-Vuorela**

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

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**Appendix: Helsingin Sanomat**