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

8 October 2012

Case Document No.5

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

**REPLIES FROM THE ASSOCIATION
TO ADDITIONAL QUESTIONS**

Registered at the Secretariat on 3 October 2012

The Central Association of Carers in Finland

(former Association of Care Giving Relatives and Friends)

v. Finland

Complaint No. 71/2011

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

Helsinki 30.9. 2012

Answers of Association to the questions

1. What is the legal and socioeconomic reasoning behind regulating differently the client fees for long-term institutional care and service housing for elderly persons while the services in both cases are provided and/or financed by local municipalities? What are the conditions for admittance into institutional care and service-housing and service-housing with 24-hour assistance?

Answer of the Association except the last sentence: Our Association sees that there is no real logic in regulating differently the client fees for long term institutional care and service housing for elderly persons while the services in both cases are provided and/or financed by local municipalities. The reasoning is not socioeconomic because, as a rule, there is no difference in the health condition of the elderly person whether he/she is positioned in an institution (e.g. elderly home) or in effective service (24-hour) housing. In both places an elderly person may be in poor health or have dementia and in both places they may need all kinds of help and support.

Our association sees that the only rationale behind the current situation is purely fiscal. By refraining from offering institutional care to the elderly or the other person in need of supported housing, the municipality is free from the limits set up in the law in charging the elderly or other person for the costs and services in the supported housing. Due to the artificial division of institutional care and service-housing the development has gone from municipal institutional care (e.g. elderly homes) to service housing during the last 20 years. Back in the 1980s the normal way to offer elderly citizens supported housing when he/she could not live at home any more was a place in municipal care facility, in the municipal elderly home where the fees charged from the elderly were set by law to a maximum of 80 % of the income. The law required that some money from the elderly person's income (normally his/her pension) should be left to the private use of the elderly. The 80 % of income fee in living elderly home included all the services the elderly needed (e.g.

food, clothing, medical care, medicines, supporting services etc.) so that the elderly could carry on in the elderly home.

In the 1990s targeted state subsidies to municipalities were changed and the subsidies are since delivered as a general amount, trusting that the municipalities use them for the best benefit to their inhabitants. The aim of the reform was to increase the independence of municipalities in organizing social and health services.

After the reform had taken place, the municipalities found that they may save tax money in charging the residents more from services in supported housing by changing the name of the institution. When the name of the elderly home (where the charges were limited according to institutional care rules) was converted to a "housing unit", all the limits of charging the elderly disappeared. The elderly were transferred from institutional care with all services included in the fee to a situation in which they had to buy all the necessary services separately using own income without any ceiling of cost. The change in the label of the housing unit meant that the elderly had to take care of his/her treatment him/herself by his/her income and the tax income and state subsidy aimed to elderly care could be used for other purposes. When living in service-housing unit the elderly person has to pay separately amongst others:

- a) rent for housing,
- b) food
- c) medicines and health care
- d) supporting services he/she needs to get on and live independently in service- house.

Since there is no legislation on how much the municipalities charge the elderly in service-housing, the fees vary from municipality to municipality and the variation is large due to that there are 336 municipalities in Finland. Equal treatment between elderly persons living out their proper home is not materializing in practice due to the lag of legislation on service-housing.

The current situation is frightening from the point of view of the elderly person who is no longer coping at home. It is a general fear amongst them that the fees charged from them in service-houses exceed their income (normally their pension). In fact the municipalities have the chance to lower the prices of services, but this possibility is discretionary to the municipalities and not used often and if the pension of the elderly is not enough to cover the costs, the elderly may have to apply municipal income support, which is a last resort income in Finland. If the elderly has some property for him/herself, it must be sold before the elderly can receive municipal income support. The law on income support includes only some exceptions from this rule; permanent home and movables are not obliged to be sold in order to become entitled to income support. .

Answer of the Association to the last sentence: There are no strict conditions in the law for admittance into institutional care or service-housing or service-housing with 24-hour assistance. The decision makers in Finland's 336 municipalities decide independently the rules for admittance in their

municipality. The elderly cannot influence these rules but have to accept the rules decided by the municipality politicians. There are no general admittance rules in the law. The system is based on municipal discretionary.

2. How service housing and service housing with 24-hour assistance has been regulated at municipal level? Please give concrete examples of the alleged different applications of municipalities in terms of granting such housing services?

Answer of the Association: There exists no universal regulation at municipal level on service housing and service housing with 24-hour assistance. From Finnish cities we know that the capital Helsinki has fixed the fees along the income of the client. On the other hand Helsinki is also converting the last elderly homes (institutions) within the city into service houses, which means transfer of responsibility from municipality to individual thus adding the costs paid directly by the elderly persons.

In general may be said that municipalities lower the prices of the services in service houses according to the income of the client, if the income is not enough to cover the costs of the services needed. But because lowering is not a legal obligation to the municipality, the other way is that the elderly trying to have entrance to the service house is obliged to apply for the municipal income support (last resort income). Before he/she may become entitled for municipal income support he/she has to sell his/her property. The only exception is own home and the tools needed in livelihood. In the service house the elderly person is normally entitled to the accommodation support from Social Insurance Institution but this support covers only 80 % of the rent at maximum and in many cases the co-payment will rise, because there are many restrictions in the law of accommodation benefit for the elderly. If the fees and prices in service housing would be set more exact in the legislation, the elderly persons in Finland who feel that they cannot live any more independently at their home, could better prepare for the future transfer from home to service house. A clear legislation would take away the uncertainty which exists now. Since elderly homes with costs set in the law have practically disappeared from the municipalities, service housing is currently the only alternative for the elderly.

The artificial division of fees between institutional and housing services is especially relevant for informal carers and their cared-for persons. Patients in informal care often need respite care at regular intervals, for instance two weeks at home and two weeks in respite care which takes place normally in the municipal health unit or in a private social unit ("Little home", "Pienkoti" in Finnish) where the municipality has bought services. The municipality is entitled to decide where interval care is delivered and there may be a big difference in fees whether the interval care is delivered in the municipal health unit or in a social unit (public or private).

In the municipal health unit there exists an annual government-imposed cost ceiling for clients limiting the cost charged on public health care to a maximum

sum per calendar year (636 €/year in 2012). If the respite care for the cared-for person (patient) in informal care is delivered in public health care unit, the yearly cost ceiling comes full very quickly, often already in the beginning of the calendar year and after that the treatment in respite care is mainly cost-free for the cared-for. On the other hand, if the respite care is given in a social unit (public social unit or private "Pienkoti", from which the municipality has bought services), the annual cost ceiling is not applied to treatment costs of the cared-for (patient) and he/she has to pay full price for the treatment every time all the year round.

We give an example from real life from this difference:

One of our association's regional employees met an informal carer in a western Finland town who showed her a care bill of over 1000 €. The carer herself had been in hospital because of an operation while her severely demented husband had been in care organized by the municipality. The municipality had directed the cared-for husband to a private housing service unit (a "little home", "Pienkoti") from which the municipality had bought services. Since this "little home" was a social and not a medical unit the law on annual medical cost ceiling was not applied and consequently the bill exceeding annual cost ceiling had to be paid. The treatment for her husband would have been the same in both places, in municipal health unit and in "Pienkoti". The "name" of the place where the treatment was delivered was decisive to the cost the informal carer had to pay when she had to go to operation and on that time she could not treat her demented husband.

Due to the high costs and limitations in applying annual medical cost ceiling, many informal carers are not able to use respite care for their empowerment. The problem on the difference in costs concerns both the elderly in moving from home to service house and informal carers in using the possibilities of interval (respite) care for empowerment.

3. According to Section 40a of the Social Welfare Act (710/1982) persons in need of social services have the right to have their needs assessed by a social service expert, in case of a person aged 75 years or over within 7 weekdays from respective contact in non-urgent cases. Is there a monitoring system on practical application of this provision? How many assessments of social service needs of persons aged 75 years or over have been conducted per year (preferably 2010 and 2011) by municipalities in total? For the same time periods, in how many cases has such assessment identified the need for service housing (or service housing with 24-hour assistance)? For the same as service housing with 24-hour assistance?

Answers of the Association from sentence to sentence:

- a) According to Section 40a of the Social Welfare Act (710/1982) persons in need of social services have the right to have their needs assessed by a social service expert, in case of a person aged 75 years or over within 7

weekdays from respective contact in non-urgent cases. Is there a monitoring system on practical application of this provision?

Answer of the Association: The Regional State Administrative Agency in charge of the guidance and surveillance of social welfare can receive complaints from citizens if the law is not obeyed and they may have means to act towards the municipality concerned. As far as we know the law on the assessment of service-need for persons aged 75 years or over is obeyed in municipalities quite well. We have not heard many complaints concerning this obligation of municipalities.

- b) How many assessments of social service needs of persons aged 75 years or over have been conducted per year (preferably 2010 and 2011) by municipalities in total?

Answer of the Association: Along the statistics of National Institute for Health and Welfare in 2010 the assessment of service need for aged 75 or over had been done to 10,5 % for those aged 75 or over. Of those 70 % had received more services after the assessment.

The statistics was based on a survey made by the Institute. The survey was directed to 342 municipalities of which 233 municipalities answered. Mostly the municipalities could make the assessment in 7 days after the contact of the elderly. The report is on the website of the Institution (www.thl.fi, statistical report 36/2011)

4. What happens in case of disagreement between the elderly or disabled person and the social worker concerning the need of services? Does the legislation provide means to solve this disagreement?

Answer of the Association: There exists no universal measurement rules or criteria for the assessment of service need. The municipalities have applied many methods but of their own choice because the law obliges the municipalities to do the assessment, but more exact rules are lacking. Also there exists no clear solving methods in case there arises a disagreement between the social worker and the elderly concerning the need of services. The assessment is obligatory by law but to deliver the services assessed is discretionary. The municipalities admit assessed services to the elderly if there are appropriations in the municipal budget. The elderly person is normally obliged to pay for the services received to the municipality.

5. According to the Association, "Many elderly persons do not even try to have access to service houses though their condition would require the access due to the high costs, which they cannot reach with their income". Is there representative factual information available (for example survey data) on the prevalence of such situations where elderly persons have not applied for service housing (or service housing with 24-hour assistance) which is necessitated by their condition due to high costs they cannot afford or would put them in economic hardship? Please provide evidence.

Answer of the Association: It is very difficult to answer this question because we are in the area where data protection/security is very tight. Our association has heard rumours of this kind of situations, but we don't have hard evidence of them. Also the situation and problems may vary in the 336 municipalities of Finland. We can only emphasize and are convinced of that:

the lacking legislation in costs and prices when living in service house or in service-house with 24 –assistantce gives the municipalities too many ways of charging the elderly and this creates uncertainty amongst the elderly who feel that they cannot live at their proper home any more. Planning for your future is impossible if you do not know what kind of costs you have to pay when you transfer from your proper home to service-housing. Due to that the elderly may try to stay at home much longer than would be safe or best for him/her. A clear legislation of costs and prices of services and what the services cover as is the case within institutional care settings, would take away the uncertainty.

6. According to the Government, "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. Usually the fees depend on income at least to a degree." According to Section 1 of the Act on Client Fees in Social Welfare and Health Care (734/1992), fees for municipal social services can be charged with consideration to the person's ability to pay. According to Section 11 of the same Act, the fee for social service which is based on client's ability to pay shall be lowered or left uncollected if the client fee threatens to endanger the subsistence of the client. Please refer to any municipalities where the regulation of client fees for service housing and service housing with 24-hour assistance does not take into account person's income or ability to pay. In case of municipalities, where the client fee policy does take into account person's income or ability to pay, please bring examples of municipalities and their regulations, where the income-test or other applicable criteria are such that make service housing inaccessible for those with limited financial resources or would put the clients of these services in economic hardship.

Answer of the Association: Finland has 336 municipalities. They all have their own policy in fees not fixed in the law. The decisions made in social and health care are covered by strict data protection and the decisions made by the municipalities are not collected to any central data base. Therefore we are unfortunately not able to give an exact answer to your question. According to the law municipalities may lower the fees of low-income clients, but it is not an obligation. The pricing policy in service housing is discretionary and the municipalities have the power to decide one-sidedly and the elderly person has to accept what he/she is offered. We do not know if any elderly person in need to access to the service housing would have been prevented from doing so due to low income, but it is possible, because the law leaves so much space to municipal discretion. Furthermore, the economy overall is going to a worse direction, the attitudes in municipalities may harden and the costs and prices in service houses may become an obstacle in accessing to them. This

kind of situation is not in accordance with the Treaty because the elderly have very tiny means in defending their rights against the discretionary price policy of the municipality in service housing.

7. According to Section 2 of the Act on Client Fees in Social Welfare and Health Care (734/1992), the fees for services may not exceed the costs of producing the service. Is there any further regulation or guidance on how the cost of producing service shall be calculated? Do the costs of producing services and respective client fees in this provision refer to the cost of specific services to an individual user or to the overall average cost of producing respective service?

Answer of the Association: The interpretation of the paragraph concerned varies from municipality to municipality and they all have their own way of counting the costs of producing service. Due to the loose legislation, municipalities have a large discretionary area in counting. We suppose that a general interpretation is some kind of « overall average cost » of which the details in counting may differ heavily from municipality to municipality. The overall average cost means that an overall average cost is the basis of counting and not the specific cost of specific services to an individual user. In general, the fees are set "in average" so that if the client in service housing has a high pension the fees are also high to compensate the costs of those clients whose income is low. The fees are set so that normally the elderly live in service houses without own money. All income goes to the fees and costs charged for the services given in service house. Some municipalities may leave some small money to the client's own use. According to the law it is not obligatory because the elderly live in service housing and not in institutional care.

The elderly have no means of controlling the price formation of the services. The lack of specific information how the cost of producing service is counted prevents this kind of possibility to control prices and costs. The Ministry of Social and Health does not give any guidance of the interpretation of law in counting the producing costs.

8. According to Section 15 of the Act on Client Fees in Social Welfare and Health Care (734/1992) the client has the right to appeal to a body under Section 6 of the Social Welfare Act for a review of a decision on fees for social services. Please provide factual information on the number of appeals on fees per year (preferably 2010 and 2011) relating to fees for service housing and service housing with 24-hour assistance.

Answer of the Association: There are quite a lot cases concerning Client Fees in Social Welfare and Health Care (734/1992) and these are to be found in Finnish language on the Finlex web pages (www.finlex.fi). Some ten cases from Administrative Courts are to be found from the years 2010-2011.

Administrative Court is generally the last appealing level in client fee cases because appeal to the Highest Administrative Court is restricted.

From the cases published in Finlex you can find out the complexity of the client fee policy of social services in Finland (www.finlex.fi). Many municipalities try to charge as much as possible from the services and people try to get justice by appealing.

Concerning our Complaint and as an example of the fee policy in Finland our Association has chosen a decision from *Kuopio Administrative Court 11.01.2012 12/0013/2 (add 1)*. In this case the juridical question was that *should the fees for the client in supported housing be set according to long-term institutional care (elderly home) or open care (service housing)*.

The client in question was a bed patient who had lived for some time in elderly home (institutional care). Then the municipality decided to change the label on the door of the unit from "elderly home" to "service house", which meant a change of the unit from elderly home to a housing service unit and charges from the residents were changed totally at once. The client was not satisfied with the change and appealed. As a result, the Administrative Court of Kuopio rejected the appeal and noted that the change was legal. Due to that the fees from the client could be charged along the service housing way and terminate the former institutional care charging specified in the law. The Court accepted the procedure of the municipality though the client still stayed in the same place and nothing else had changed in his surroundings than the new label "service house" on the door of the unit.

The case shows how helpless the elderly are when they live in municipal care. Earlier all care provision needed by this client was included in the institutional care set by law and after the change of label he had to pay rent, food, support services, health care and medicines, clothing etc. by himself. The change was made unilaterally without asking the opinion of the client though the change deeply affected the position of the client.

9. Is there a supervision system established by the state to secure that all local municipalities comply with their legal requirements under the Act on Client Fees in Social Welfare and Health Care (734/1992), in particular those arising from Sections 1, 2 and 11 of the Act?

Answer of the Association: There is no supervision system to secure that all local municipalities comply with their legal requirements under the Act on Client Fees in Social Welfare and Health Care (734/1992). Every municipality applies the legislation as they see fit.

Helsinki 30.9.2012

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Appendixes