



European  
Social  
Charter

Charte  
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COUNCIL OF EUROPE  
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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

21 January 2013

**Case No. 1**

**Finnish Society of Social Rights v. Finland**  
Complaint No. 88/2012

**COMPLAINT**

**Registered at the Secretariat on 13 December 2012**

# Collective complaint due to Finnish legislation that along the opinion of our Association violates the Articles in the European Social Charter

## 1. Background to the complaint

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter and the Revised European Social Charter was ratified by Finland on 21 June 2002. This complaint of our Association to the European Committee of Social Rights is referred and based to the Article 12 1-3 in the European Social Charter (revised) and concerns the right to social security.

In the article 12 is noted that *with a view to ensuring the effective exercise of the right to social security, the Parties undertake:*

1. to establish or maintain a system of social security;
  2. *to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security*
  3. *to endeavour to raise progressively the system of social security to a higher level;*
- 

Our association has the opinion that the situation in Finland is not in conformity with Treaty in Finland. Finland has not maintained the social security at a satisfactory level equal to that necessary for the ratification of the European Code of Social Security. Neither has Finland endeavoured to raise progressively the system of social security to a higher level along the Treaty.

## 2. The right of the Finnish Society of Social Rights to make a complaint

The name of our association is *Finnish Society of Social Rights (in Finnish and Swedish : Suomen Sosiaalioikeudellinen Seura r.y. - Socialrättsliga Sällskapet i Finland r.f.)*, called "Association" in this complaint is a bilingual society (Finnish, Swedish) whose home city is Helsinki, Capital of Finland. The Association has been established and founded 16.3.1999 and has been officially registered in the same year to Register of Associations in Finland.

The activities of the association are focused on the social rights of citizens. The activities of the Association cover both scientific and practical matters in that area including public venues and discussions, expert statements, scientific articles etc. The amount and level of

social benefits and especially minimum basic social security benefits are a part of social rights so that all citizens can live their lives fairly and decently.

The membership of our association is open to all, but still the main part of our affiliates consist of lawyers and social scientists who are specialized or interested in social rights of citizens. Due to our interests and topic area our Association is concerned on the level of living standard of those citizens who are obliged to live with the income of basic benefits. The amount of income for them is not enough to have a decent human life in the country where the level of prices including food stuff and provisions is one of the highest in EU area. Due to that our Association aims with this claim clarify if the situation in Finland is in conformity with the European Social Charter and the Revised European Social Charter was ratified by Finland on 21 June 2002. Along the rules of the Charter we see that our Association as an official Finnish Association specialized in social rights is entitled to do the claim to the Committee. Finland has not put any restrictions or limits to the associations who are entitled to do the claim if they suspect that there exists a violation in the compliance of the Treaty.

### 3. Basic views

Along the Article 12.2 and 12.3. in the Social Charter (revised) all the countries that have ratified the Charter are obliges " *to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security*", and " *to endeavour to raise progressively the system of social security to a higher level*"

Concerning our country, Finland, there may be a problem that Finland for some reason has not ratified the European Code of Social Security implicated in the Charter. However Finland has ratified the General Agreement of the International Labour Association (ILO) nro 102 concerning " *the minimum level social security*". Our association has the opinion that the neglect of ratification of the European Code of Social Security does not mean that Finland would be relieved to comply the rule 12.2. in the Treaty, which obliges Finland to maintain the social security at least equal to that necessary for the ratification. The level necessary for the ratification creates a basis of complying and the underbidding of the level is not allowed to the countries which have ratified the Treaty and this concerns also Finland. The conclusion is that based on the article 12 our country is obliged to maintain the social security on which the level is at least equal to that necessary for the ratification of the European Code.

In the view of current level of basic minimum level of social security the situation in Finland is not in accordance with the Treaty along the opinion of our Association. Several basic minimum benefits on which many Finnish people has to live on are under the level the Treaty presupposes. Along the interpretation of the Article as we understand it in our Association the level required in the article 12.2 has to be at least 40 % of the equivalised net median income in those countries which have ratified the Treaty. Currently this kind of situation does not exist in Finland and will not exist in the beginning of the year 2013 when some basic, minimum benefits and allowances shall be slightly raised along the state budget for the year 2013.

Our Association has understood that in order to control the complying of the Treaty the Council of Europe counts every four years the minimum level of social security (benefits and allowances) that the states who have ratified the Treaty are not entitled underbidding. This level is 40 % of the equivalised net median income in every country, which has ratified the Treaty. The latest counting of minimum level of social security in cash that is in the knowledge of our Association is from the year 2008. In Finland that 40 % of the equivalised net median income was 750 Euros/month during that year. Unfortunately it is not in the knowledge of our Association which is the result of the counting for this year 2012 we suppose the amount of minimum level to be substantially higher than in 2008 and ask, if it is possible, the Committee to base its assessment along the fresh figures of the year 2012. If that is not possible, we see that the basis of the assessment should at least be the result of the counting for the year 2008 (750 €/month), because the situation in Finland is not even in the beginning of the year 2013 in such a level it should have been along the Treaty in 2008. This concerns especially minimum benefits and allowances concerning unemployment, sickness and maternity in Finland. Our Association sees a violation of the article 12.2. and asks the Committee to assess Finnish situation if the Treaty is complied or not.

### **3. Earlier assessments**

The Committee has earlier made conclusions of the level of Finland's social security in assessing Finland's report to the Council in January 2010. The conclusions of the Committee concerned the accepted provisions relating to the articles 3, 11, 12, 13, 14, 23, 30 of the Treaty, which belong to the thematic group of "*Health, social security and social protection*". In the conclusions the Committee found non-conformity in three cases respecting the articles 12 §1, 12§4 and 23 of the Treaty and observed that the situation in Finland was not satisfactory in respect to the Convention and the observation resulted to a notion of the nonconformity to the Government of Finland. Furthermore in respect to the articles 12§2 and 13§2 the Committee saw that it needed a further information in order to assess the situation completely. Our Association notes that the complaint of our Association is based to this article 12§2 of which the Committee required further information.

### **4. Non-conformity with the art. 12.2.**

Basic benefits described further on are delivered by Social Insurance Institution to all residents in Finland. The rules and amounts of the basic benefits can be found from attachment 1 (Guide to benefits, published by Social Insurance Institution of Finland). The only exception is social assistance, which is delivered by municipalities. As an attachment 2 is the law on social assistance.

#### **4.1 Minimum sickness, maternity and rehabilitation benefits**

A minimum sickness, maternity and rehabilitation benefits (allowances) in Finland are 22,96 euros per day gross (and 574 euros per month gross) during the current year 2012 (see Add. 1 Guide to benefits marked points). Besides that these minimum benefits are deducted with the income tax of 20 %. So the net amount of these minimum beneficiaries is 459,20 euros a month.

The minimum sickness allowance is paid only when the sickness leave has lasted 55 days. This is the situation if a person hasn't had income from work or other social benefit before sickness. During those 55 days a person can get only housing benefit if he/she has housing costs and some social assistance. A mother gets the minimum maternity allowance if she hasn't had income from work or any other social benefit before the maternity leave. The minimum rehabilitation allowances are paid during rehabilitation periods in institutions. Person can have the minimum rehabilitation allowance if he/she hasn't had income from work or any other social benefit before the rehabilitation.

In 2013 the basic sickness, maternity and rehabilitation benefit shall be 23,70 €/day. So there exists no remarkable raise to correct the situation and still the minimum sickness allowance is paid only when the sickness leave has lasted 55 days.

Our Association notes that the amounts of minimum sickness, motherhood and rehabilitation benefits have been below the level of 750 euros set by the Committee for the year 2008. The difference with the equivalised net median income in the year 2008 was 290,80 euros per month, only 61,2 % of the level set by the Committee for the year 2008. The difference with the equivalised net median income set by the committee for the year 2012 (not known to our Association) is probably bigger. Also the law that this very small minimum sickness allowance is paid only when the sickness leave has lasted 55 days is against the charter to our mind.

The situation in minimum sickness and rehabilitation benefits is not in conformity with the Charter (revised).

## **4.2 Basic unemployment allowance and labour market subsidy**

The basic unemployment allowance for a person with no children in 2012 is 31,36 euros/day . This basic unemployment allowance is paid five days a week for the unemployed and the allowance is 674,24 euros per month/gross. Also this benefit is tax deductible and with the 20 % deduction the net allowance for the unemployed is 539,39 euros/month. If the unemployed has children he/she receives a contribution for the allowance. E.g. for an unemployed person with three children the amount per month in 2012 is 880,21 euros gross and 704 euros net.

In 2013 the basic unemployment security shall be 32,36 €/day and 695,74 euros/month/gross and with 20 % tax deduction 556,60 euros/month.

Our Association notes that an unemployed person with even three children receives less allowance than is the level set by the Committee for the year 2008. The difference is probably much bigger compared by standards to the year 2012 (not known to our Association) and the raising of the year 2013 does not change the situation remarkably.

### **Labour market subsidy**

If an unemployed person doesn't have a history of employment, he/she is entitled only to the labour market subsidy. Then the basic amount of benefit is the same as in the basic unemployment allowance (see above), but the allowance will be deducted if the unemployed person lives with his/her parents and the parents have income. The smallest amount an

unemployed person can have is 0,73 e/day, about 15,70 euros/month, which is only a small per cent of 750 euros/month. Still the parents have no legal obligation to take care of the living costs of their unemployed children who are grown up and have full age (over 18 years old). The situation is not logic with different existing laws in Finland (civil law and social law).

The level of basic unemployment allowance and labour market subsidy is not in conformity with the Charter (revised).

### **4.3 Study grant**

A study grant for a higher education student is 298 e/month + government guarantees for student loan 300 e/month. The difference with the equivalised net median income is almost 150 Euros/month in the standards set by the Committee to the year 2008 and probably the difference is much larger for the year 2012 (not known to our Association). Students should be entitled to the level of benefit regulated in 12.2. and 12.3. of the Charter (revised). The amount of study grant in Finland has been frozen since 1990's, and will be indexed only in the year 2014.

The level of the study grant is not in conformity with the Charter (revised).

### **4.4 Guarantee pension**

Our Association sees a problem of level in the guarantee pension, which is a minimum pension for those who have lived in Finland and have not been in working life long enough to earn employment pension. The amount of guarantee pension is 713,73 e/month in 2012, So there is a gap of 36,27 €month to the level of equivalised net median income in 2008 (see attachment 1, marked points of the rules of guarantee pension ) and most probably the gap is larger compared to the to the level of equivalised net median income in 2012 (not known to our Association).

In 2013 the guarantee pension shall be 736,54 €month, so there is still a gap of 13,46 €month to the level of equivalised net median income in 2008. Most probably the gap is larger compared to the to the level of equivalised net median income in 2012 (not known to our Association).

The level of the guarantee pension is not in conformity with the Charter (revised).

### **4.5. Last resort benefit, social assistance**

Social assistance (see the law in Finnish in attachment 2) is a last resort benefit. It is intended as a short term financial aid to people in urgent need in order to assure subsistence in such situations where a person's own earnings, entrepreneurial profits or other income (like basic unemployment benefit or labour market subsidy) or property are insufficient to maintain a basic standard of living. Social assistance is not aimed to be a permanent income but still many people live on it many years.

A basic amount of social assistance for a single person is 461,05 euros in 2012. (See Add. 2 the law of social assistance) and in 2013 basic amount shall be raised to 477,26 euros/month.

The social assistance is highly needs tested. In assessing income a flat and its furniture are considered as necessary but savings, bonds and a car may be counted as capital gains which may be an obstacle to receive assistance. So the applicant has to sell the property before he/she is entitled to receive assistance. Also a money gift from a relative is counted as income too.

All the basic benefits are counted as income in assessing the right for the social assistance and the assistance is paid only if other benefits are smaller than basic amount of social assistance. Normally the amount of assistance is the difference between other incomes and basic assistance. There are also preconditions. If the applicant refuses a job offer or other labour policy measure offered to him/her without justified reason, the basic amount may be reduced with 20 % or in repetitive case with 40 % for a maximum of two months at a time.

In Finland all people are responsible for earning their own livelihood to the best of their abilities. The assistance can be required to pay back if the recipient has shown negligence with regard to the livelihood of his own person and family.

To check the entitlement to the last resort benefit, social assistance the person has to clear all other possible benefits or sources of income. After one has presented all the documents required, it is decided whether social assistance is admitted or not normally the decision to deliver social assistance is made only for one month. After one month he/she has to apply social assistance again. The assistance is applied from the municipality social office though the other basic benefits are applied from SII. The "two-desk" system is complicated to low income citizens. All those who are entitled to assistance do not apply it.

There is a gap of 288,95 €/month to the level of equivalised net median income in 2008 in the amount of social assistance in 2012 and in 2013 the gap is 272,74 €/month. Most probably the gap is larger compared to the level of equivalised net median income in 2012 (not known to our Association). The level of the social assistance is not in conformity with the Charter (revised).

#### **4.6. General housing allowance and its impact to basic social security**

Those citizens living with a basic unemployment benefit or social assistance are normally also entitled to housing allowance delivered by Social Insurance Institution (SII). In order to get general housing allowance, the applicant has to meet a strict criteria (see Guide to benefits, from page 56 on and its supplement from page 23 on). The eligibility for and the amount of the allowance depends on the number of persons in the household, the size of the home, the location, building year and heating system and especially the household's monthly income before taxes including the household's assets. The maximum housing allowance is connected with reasonable housing costs set in the Government decision and there is a limit to the size of apartment the applicant lives. If the costs for the applicant are higher or the applicant lives in a larger apartment than that set in the Government decision the applicant



has to pay the difference him/herself and housing allowance covers only 80 % of those housing costs accepted along the rules.

To concretize the situation from the point of citizens living on basic unemployment benefit a following example:

A single unemployed person with no assets is living in Helsinki in a 1980 built apartment of 40 m<sup>2</sup> and his/her rent is 600 euros. The reasonable housing costs for this home as defined by law and Government decision is a maximum 11,17 €/m<sup>2</sup> for 37 m<sup>2</sup>: s for a single person. Due to that the maximum housing allowance that he/she may receive from Social Insurance Institution is 80 % of 413,29 euros (acceptable housing costs along the law and regulations) = 330,63 euros per month. As the rent is 600 euros, there is still 269,37 euros missing. This part of the rent the unemployed person has to pay from his net unemployment income of 539,39 euros. That leaves 270,02 € to other living costs per month.

To conclude: General housing allowance does not change the non-conformity of Finnish basic social security with the Charter (revised)

**Conclusion: In the cases 4.1. -4.6. there is a non-conformity with the Charter (revised)**

## 5. Non-conformity with art. 12.3.

Art. 12.3. in the Convention (Treaty) obliges member states *to endeavour to raise progressively* the system of social security to a higher level. Still:

- a) In Finland the disposable income of households on basic benefits has increased by between 4 % and 41 % in real terms between 1990 and 2011, but the disposable income after housing costs has decreased. This concerns all other groups except pensioners.
- b) For persons living alone on basic unemployment allowance, minimum sickness allowance or a study grant (including study loans), disposable income after housing costs has decreased by about 2 % in real terms since 1990.
- c) The income before housing costs of a person living alone in dependency on basic benefits is in this year 2012 is only between 37 % and 45 % of that of an average wage earner.
- d) The income of a person living alone on basic benefits after reasonable housing costs is from 23 % to 32 % of the income of an average wage earner.
- e) Since 1990 wages have been increasing steadily but the level of benefits has been frozen during the last 20-22 years time-period. The result of this freezing is currently the basic benefits cover only two thirds of reasonable minimum living costs.

The status of persons living in dependency of basic benefits has been researched using empirical data. As a result was noted that in 2009, some 150,000 Finns were living in households where more than 90% of the gross income consisted of basic benefits. The trend is worrying, because the number of these people has doubled since 1990. The freezing of



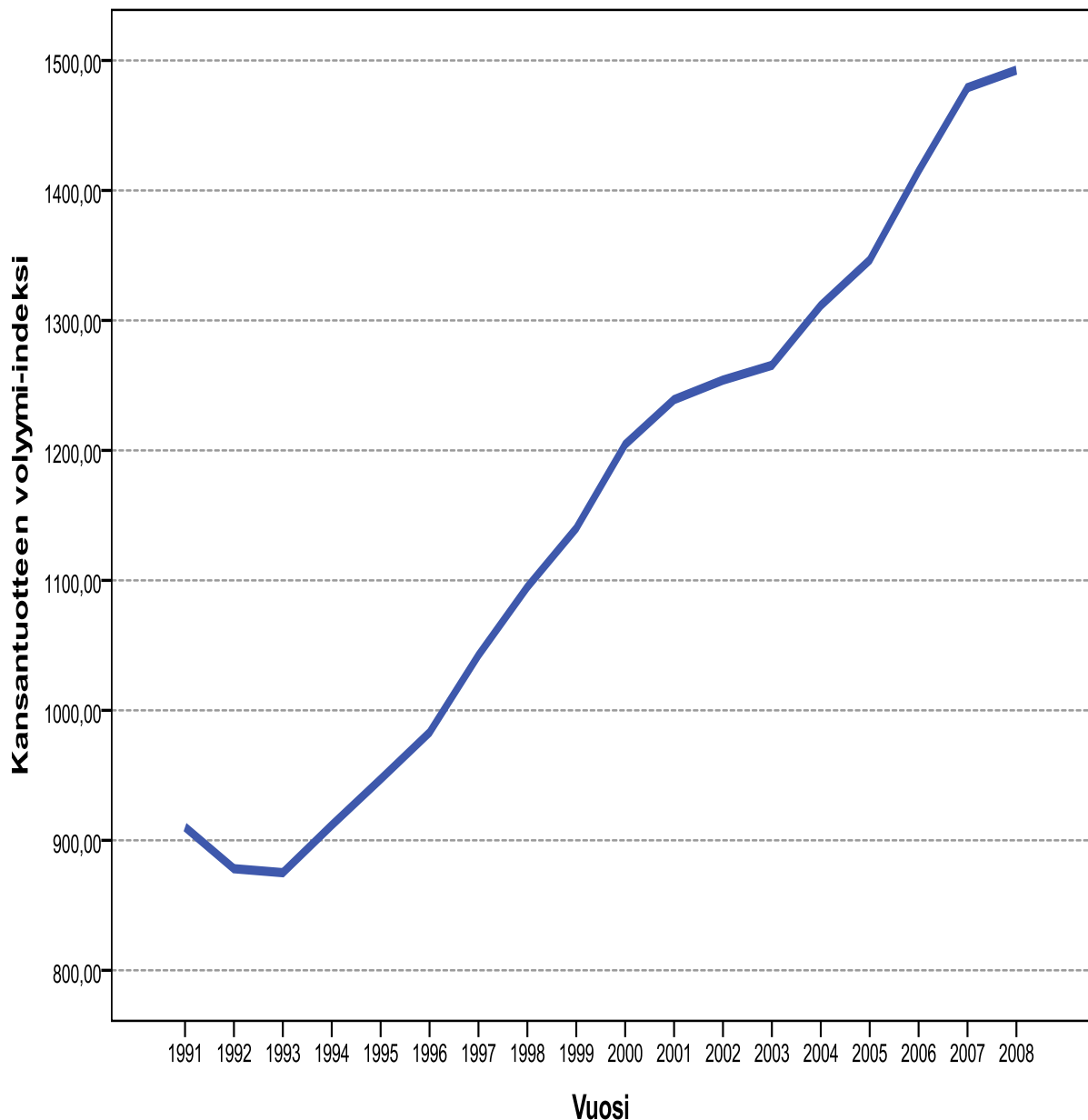
social benefit and stopping developing social security over 20 years has increased social exclusion in Finland.

Along a Finnish research from spring 2011 (See: Attachement 3: Terveiden ja hyvinvoinnin laitos / National institute for Health and Welfare: (Perusturvan riittävyyden arviointiraportti, <http://www.julkari.fi/handle/10024/80420> or <http://www.thl.fi/thl-client/pdfs/d4f9b358-3440-4894-9004-0cdf6a621efe>), most of the households living in dependency of basic benefits are unable to meet reasonable minimum living costs out of their income. The income of households on basic benefits fails to meet what they consider sufficient minimum subsistence. This shortfall has even increased over time and over 13 per cent of children are living in poverty.

In Finland a person who lives on basic benefits must always seek last resort municipal social assistance just to pay his reasonable living and housing costs. Over 30 % of labour market subsidy receivers receive also housing benefit and social assistance. This is the “Golden Triangle” in Finland. In addition to that many maternity allowance beneficiaries, minimum sickness allowance receivers and minimum rehabilitation allowance receivers get housing benefit and social assistance to get on. (Attachement 3 Report, page 44, and table 3.6.1).

It has been more question of attitude than economical compulsion that the development of social security has been frozen since 1990’s. Statistics shows that after 1995 the GDP (Gross Domestic Production) in Finland has risen positively every year (See the figure next page; “*The development of Finnish Gross Domestic Production 1990-2008*”) The rise started in in 1994 and ending in 2008, when the global economic recession came after the banking crisis in USA. From 1995 on there would have been promising prospects to develop social security in Finland as art. 12.3 in the Convention (Treaty) provides, but the opposite took place; a depression feeling went on in spite of rising economy. Social security was kept frozen and due to that social exclusion increased rapidly.

**The development of Finnish Gross Domestic Production 1990-2008 (year 1926 = 100) (Source: Finnish official statistics)**



**Conclusion: The article 12.3 "to endeavour to raise progressively the system of social security to a higher level", has not been complied in Finland because social security benefits have been frozen over 20 years. There is a non-conformity with the Charter (revised)**

**Cordially and with high respect**

***Finnish Society of Social Rights***

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**Attachments:**

**Attachment 1:**

**Guide to benefits, Kela (see marked chapters) (also in internet:**

**[http://www.kela.fi/in/internet/liite.nsf/NET/180808091909HS/\\$File/Pahkina\\_eng.pdf?openElement](http://www.kela.fi/in/internet/liite.nsf/NET/180808091909HS/$File/Pahkina_eng.pdf?openElement)**

**Attachment 2:**

**The law on social assistance (in Finnish), also in internet:**

**<http://haku.suomenlaki.com/#/toimeentu/Regulation/Regulation/So202//>**

**Attachment 3:**

**Terveyden ja hyvinvoinnin laitos - Perusturvan riittävyyden arviointiraportti**

**<http://www.julkari.fi/handle/10024/80420> or <http://www.thl.fi/thl-client/pdfs/d4f9b358-3440-4894-9004-0cdfea621efe>**