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

7 May 2013

Case document No. 2

Finnish Society of Social Rights (FSSR) v. Finland
Complaint No. 88/2012

**OBSERVATIONS FROM THE GOVERNMENT
ON THE ADMISSIBILITY**

Registered at the Secretariat on 3 May 2013



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

Mr Régis BRILLAT
Executive Secretary
European Committee of Social Rights
Council of Europe
F-67075 Strasbourg CEDEX
FRANCE

Helsinki, 3 May 2013

Complaint No. 88/2012

FINNISH SOCIETY OF SOCIAL RIGHTS v. FINLAND

Sir,

With reference to your letter of 22 March 2013, 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 complaint has been lodged by the Finnish Society of Social Rights (*Suomen Sosiaalioikeudellinen Seura r.y. – Socialrättsliga Sällskapet i Finland r.f.*).

<i>Address</i>	<i>Visiting address</i>	<i>Telephone</i>	<i>Telefax</i>
<i>P.O. Box 411</i>	<i>Building A</i>	<i>+358 - 9 - 160 55704</i>	<i>+358 - 9 - 160 55951</i>
<i>00023 Government</i>	<i>Laivastokatu 22</i>	<i>e-mail: OIK-40@formin.fi</i>	
<i>FINLAND</i>			

The Government notes that in accordance with Article 2 § 1 of the Additional Protocol of 1995 providing for a System of Collective Complaints to the Social Charter, any Contracting State may declare that it recognises the right of any other representative national non-governmental organisation 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 Finland has ratified the Additional Protocol providing for a System of Collective Complaints (Finnish Treaty Series 75–76/1998) on 17 July 1998 and made a declaration enabling national non-governmental organisations to submit collective complaints on 16 August 1998. The Additional Protocol entered into force in respect of Finland on 1 September 1998.

Admissibility criteria and their application

The Government recalls 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 particular competence.

Moreover, according to the Explanatory Report to the Additional Protocol, non-governmental organisations 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. Your Committee will judge whether these criteria are met when examining the admissibility/inadmissibility of the complaint (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*, decision on admissibility of 16 November 2001, para. 6; and Complaint

No. 6/1999, *Syndicat national des professions du tourisme v. France*, decision on admissibility of 10 February 2000, para. 6). Furthermore, your Committee has stated that this is all the more relevant in the case of associations and it is therefore up to the Committee to progressively define a range of criteria allowing it to determine the representativity of national organisations, taking into consideration, *inter alia*, their social purpose, as well as their scope of activities (Complaint No. 70/2011, *Association of Care Giving Relatives and Friends v. Finland*, decision on admissibility of 7 December 2011, para 6).

Moreover, with regard to the particular competence of a non-governmental organisation, your Committee has, e.g., 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. (Complaint No. 30/2005, *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, decision of admissibility of 10 October 2005, para. 12).

The Government observes that the Finnish Society of Social Rights is an organisation registered in the Register of Associations. The membership of the Society is open to all. There is no publicly available information on the number of its members. It appears that the Society does not have a headquarters or clerical staff.

According to the rules of the Society, the purpose and nature of its activities are to promote legal research on social issues, to develop social law as a legal discipline and to promote cooperation between researchers, authorities and non-governmental organisations at both domestic and international levels. To this end the society can, *inter alia*, organize events, produce publications, launch initiatives and proposals to authorities and make statements. In addition, the Society can perform other similar functions to carry out its purpose.

The Government notes that it is not mentioned in the rules of the Society whether activities such as submitting complaints form part of the Society's field of operation.

The rules of the society can be found on the society's website (in Finnish):

<http://ssos.nettisivu.org/>

As the chairman of the Society lists on the aforementioned website in his overview of the activities of the Society during the past three years, the Society has organized an array of public events and discussions on various questions on social rights and health and welfare services.

The Government notes that several of these events have been organized in the Social Insurance Institute of Finland (subsequently KELA) and in cooperation with its Research Department. KELA is one of the main state authorities in charge of implementing the social security legislation relevant to the complaint. It provides basic social security to all persons resident in Finland. The KELA Research Department conducts research and offers expertise to support the development of social security and health as well as KELA's operations. The Chairman of the society is employed in the aforementioned Department.

The chairman of the Society in his aforementioned overview describes the Society as a scholarly society open to all that focuses on social and fundamental rights. According to the overview, the Society offers a forum where academics, professionals and enthusiasts may discuss questions on social justice from several perspectives. Furthermore, the scholarly activities of the Society indirectly cater also for citizens in their efforts to decipher and defend their rights.

The Society has submitted comments to the Ministry of Social Affairs and Health regarding social security legislation and amendments to it. The Government is not aware that the Society or its representatives would have been heard as experts before the Parliamentary Committees.

Finally, the Government wishes to note that the complaint has been submitted in writing and is signed by Yrjö Mattila, Chairman of the Society and Helena Harju, Secretary of the Society who, according to the rules of the Society, are together entitled to sign on behalf of the Society.

Content of the present complaint

The Government notes that according to Article 4 of the Additional Protocol providing for a System of 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 the Society claims that the situation in Finland is not in conformity with Article 12 of the Charter. According to the Society, 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 and that Finland has neither endeavoured to raise progressively the system of social security to a higher level.

The Government notes that Finland, when ratifying the revised European Social Charter, has declared that it will commit to comply with Article 12 concerning the right to social security.

Conclusion

Referring to its aforementioned observations, the Government notes that there are, in the circumstances of the present case, some doubts whether the Society fulfills the criteria under Articles 2 and 3 of the Additional Protocol. The Government leaves it to your Committee's discretion and reasoning to determine whether the Society 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

