



European
Social
Charter

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

11 July 2012

Case Document No. 3

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

**OBSERVATIONS BY THE GOVERNMENT
ON THE MERITS**



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

Mr Régis BRILLAT
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Helsinki, 29 July 2013

Complaint No. 88/2012

FINNISH SOCIETY OF SOCIAL RIGHTS v. FINLAND

Sir,

With reference to your letters of 17 May and 26 June 2013, I have the honour, on behalf of the Government of Finland, to submit the following observations on the merits of the aforementioned complaint.

COMPLAINT

1. The Government observes that in its complaint the Finnish Society of Social Rights (subsequently “the Association”) alleges the following:
2. The Association claims that the situation in Finland is not in conformity with Article 12 §§ 1 to 3 of the Revised European Social Charter (“the Charter”). According to the association, 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 (“the Code”) and that

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Finland has neither endeavoured to raise progressively the system of social security to a higher level.

3. The Association alleges, furthermore, that the minimum level of social security benefits in Finland is below the requirements of the Charter. The association is especially referring to sickness, maternity and rehabilitation allowances; basic unemployment allowance and labour market subsidy; study grant; guarantee pension and social assistance.
4. Article 12 of the Charter states the following:

The right to social security

PART I: *“All the workers and their dependents have the right to social security.”*

PART II: *“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; ..”*

MERITS OF THE CASE

General

5. The Association alleges that the situation in Finland regarding the basic minimum level of social security is not in accordance with the Treaty.

6. The Government contests the allegations of the Association.
7. Your Committee has stated that Article 12 of the Revised Charter provides for the right to social security as a fundamental right. (*Sindicato dos Magistrados do Ministério Público (SMMP) v. Portugal*, complaint no. 43/2007, decision on the merits of 3 December 2008, § 40).
8. Furthermore, your Committee has stated that the Article 12 § 3 requires States to improve their social security system. The expansion of schemes, protection against new risks or increase of benefits are examples of improvement (Conclusions XVI-1, Statement of Interpretation on Article 12, p. 11). A restrictive development in the social security system is not automatically in violation of Article 12 § 3 (Conclusions XVI-1, Statement of Interpretation on Article 12, p. 11).
9. Your Committee has held that states enjoy a wide margin of discretion on how to organize their social security systems, including defining the personal scope of schemes providing health care benefits, as long as a significant percentage of population is covered and the benefits provided are sufficiently extensive (*Sindicato dos Magistrados do Ministério Público (SMMP) v. Portugal*, cited above, § 44).
10. Finland has ratified neither the ILO Convention No.102 nor the European Code of Social Security. The predominant reason in the case of the latter is that whereas the level of social security in Finland corresponds to that laid down in the Code, the Code does not as such recognize the kind of structure of social security that is predominant in Finland. In order to fulfill requirements of the Code, social security schemes should provide either sufficient protection for a representative number of workers or general benefits for all residents at a level sufficient to provide a reasonable level for an average worker. The Code is thus based on social security (insurance) schemes intended to provide the necessary protection for the average worker.

11. In Finland social protection is, however, based on three building blocks: minimum benefits, earnings-related social security benefits and public services. Health care in particular is mainly provided through services and not as a social security scheme. Income benefits are primarily earnings-related and set to provide security in case of loss of earnings due to sickness (maternity), old age, or unemployment. However, these schemes also contain minimum benefit levels and these benefits may also be paid to non-active persons. These schemes cover all residents. Basic cash benefits are supplemented with targeted benefits.
12. Thus, the safety-net of social protection should be seen as a whole where the level of income support cash benefits is supplemented with targeted benefits such as housing benefits and disability and care benefits as well as services. It should also be noted that for sickness expenses there are maximum thresholds set annually for the patient's costs after which medicines and travel expenses are free and fees to health care centers are no longer collected.
13. Sickness and maternity, paternity and rehabilitation benefits are primarily social security benefits meant to cover loss of earnings. The minimum amounts, which are payable to those with low or no prior earnings are not to be seen as minimum income benefits as such. As regards the Code the benefit levels fulfill the amounts required by the Code for workers.
14. The minimum income support is set by Social Assistance and for pensioners primarily by the Guarantee Pension. Student aid is a primary benefit for students that can be complemented with earned income. For unemployed persons the basic benefits consist of Basic Unemployment Allowance and, for long-term unemployed who have exhausted their maximum eligibility for unemployment allowances or persons who do not fulfill the labour requirements, Labour Market Subsidy. Pensioners and the unemployed can also rely on Social Assistance.

Benefits and benefit levels

Social Assistance

15. A person who is entitled to Social Assistance may receive additional assistance (Act on Social Assistance, *laki toimeentulotuesta, lag om utkomstöd*, 1412/1997, Section 7 c) and proactive assistance (Section 1 and 13). Social Assistance is a last resort benefit and requires that all other sources of income and other (primary) benefits are used. Basic Social Assistance consists of two elements: basic amount and other basic expenses. The basic amount is designed to cover the costs of food, clothes, hygiene, local transport and communication (newspaper, telephone), hobbies and minor, everyday health care costs. Housing costs and special medical costs are to be covered by housing benefits and disability/care benefits.

16. Housing costs (as defined in Section 6 of the Act on Housing Allowance, *asumistukilaki, lag om bostadsbidrag*, 408/1975) that are considered as reasonable are covered as “other basic expenses”. Reasonable housing costs are covered fully by additional allowance. Other expenditure items that are covered by additional allowance are home insurance premium, home electricity, children’s day care fees, and health care costs that are higher than minor (pharmaceuticals, fees of health centres, doctors or dentists, cost of spectacles).

17. The level of basic Social Assistance in 2013 is EUR 477.26 per month for a single adult person.

Housing Allowance

18. General Housing Allowance is intended for low-income households. It is available for both rental and owner-occupied homes. Students receive Housing Allowance for Students.

19. Housing allowance is counted as follows:

Housing Allowance = (reasonable housing costs – basic deductible) x 0,80.

20. Single persons receiving Labour Market Subsidy can be granted full Housing Allowance. The two benefits together form the basic benefit level. The Housing Allowance covers 80% of accepted rent. The rent limits are annually raised in line with average rent increases. Today the maximum accepted rent is EUR 488 per month. In the centre of the Helsinki metropolitan area rents are however higher. In cases where the General Housing Allowance is insufficient the person will receive additional support through Social Assistance.

21. A pensioner who lives alone or with a spouse can be paid Housing Allowance for Pensioners. If the pensioner has children or other persons besides his or her spouse living with him or her, he or she can choose whether to apply for the General Housing Allowance or the Housing Allowance for Pensioners. The Housing Allowance for Pensioners covers 85% of reasonable housing costs exceeding an out-of-pocket share consisting of a basic deductible and an additional deductible linked to income. The basic deductible is a standard amount of EUR 590.79 per year (49.23 per month) for all. Depending on the income of the spouse, he or she may be responsible for an additional deductible. It is equal to 40% of the income exceeding specified limits. In 2012 28,4 % of those receiving national pension also received housing allowances of an average EUR 196 per month.

Guarantee Pension

22. The purpose of the Guarantee Pension is to provide residents of Finland with a minimum pension. The full amount of the Guarantee Pension in 2013 is EUR 738.82 per month. The full amount is payable if there is no

other pension income at all. Other pension income reduces the amount of the Guarantee Pension. In 2012 103 840 persons received Guarantee Pension.

Student aid

23. When assessing the adequacy of Student aid, it is worth bearing in mind that students are not actually expected to live solely on student grants.
24. Under the Act on Financial Aid for Students (*opintotukilaki, lag om studiestöd*, 65/1994), overall financial aid for students in tertiary education is at most EUR 799.60 a month, consisting of a student grant of EUR 298 a month, a housing supplement of EUR 201.60 a month and of a government guarantee of EUR 300 a month for student loans. Students with a child or children are eligible for a general housing benefit instead of the housing supplement.
25. Student financial aid is a primary benefit for students that can be complemented with earned income. In a typical academic year (9 months), a full-time student can earn on average EUR 987 a month in addition to the student aid without any of the other financial resources being reduced. In this case, the student has a total of EUR 1,787 a month to live on. The income thresholds of student financial aid generally tend to make it easier to earn by working than in the case of other basic social security income thresholds.
26. In some cases, those entitled to receive student financial aid are also simultaneously eligible for certain benefits based on specific criteria, such as maternity allowances, paternity allowances, parental allowances, and child care allowance.
27. Some of the financial assistance in Finnish society materialises in an indirect manner through taxation (e.g. tax deductions for interest on student loans and student loan tax deduction).

Unemployment Benefit and Labour Market Subsidy

28. The purpose of the Labour Market Subsidy is to provide financial assistance for unemployed job seekers who enter the labour market for the first time or otherwise have no recent work experience and/or for long-term unemployed persons who have exhausted their 500-day eligibility for the Basic or Earnings-related Unemployment Allowance.

29. The Labour Market Subsidy is a means-tested benefit. This means that any other income that the unemployed person or, if they live in the same household as the unemployed person, his or her parents may have decreases the amount of the subsidy. Labour Market Subsidy can be paid for an indefinite period. The amount of Labour Market Subsidy is EUR 32.46 per day in 2013, i.e. EUR 698 per month. From 2013 the income of the spouse no longer affects the subsidy.

30. The Basic Unemployment Allowance is paid to persons who meet the condition regarding previous employment but do not belong to an unemployment fund. The allowance is paid for a maximum of 500 days. Basic Unemployment Allowance is EUR 32.46 per day i.e. EUR 698 per month and it is paid for 5 days per week. It is increased for children under 18 who live in the same household as the recipient. The increase is EUR 5.24 per day for one child, EUR 7.69 per day for two children and EUR 9.92 per day for three children or more. In 2012 the average amount was EUR 33.18 for men and EUR 32.33 for women. Of those eligible for Unemployment Allowance 19 % were entitled to Basic Unemployment Allowance.

31. The Earnings-related Unemployment Benefit is paid to members of unemployment funds. The allowance consists of the basic amount i.e. EUR 32.46 per day and the earnings-related amount. The earnings-related component is 45% of the difference between the daily pay and the basic component. If the monthly pay is higher than the income limit i.e. EUR 3 408.30 in 2013, the earnings-related component is 20% of the exceeding amount. There is an additional child increase for children who are under

18 years of age. In 2013, the child increases are EUR 5.24 for one child, EUR 7.69 for two children, and EUR 9.92 for three or more children. In 2012 the average amount paid was EUR 62 per day.

Sickness Allowance and maternity, paternity and parental benefits

32. The Sickness Allowance as well as maternity, paternity and parental allowances are benefits to compensate for loss of income due to sickness or parenthood and linked to taxed earnings. In 2013, the allowance is calculated on the basis of taxed earnings in 2010. In addition, the earnings are multiplied by a wage coefficient. However, even those persons who have had no taxable income, or earnings preceding the sickness, are entitled to receive EUR 23.77 per day minimum if the sickness has lasted for at least 55 consequent days. For maternity, paternity and parental leave the minimum is paid from the first day.

33. In 2012 the average allowance was EUR 54.78 per day, i.e. EUR 1 370 per month.

34. The Sickness Allowance is determined as follows:

<u>Annual earnings</u>	<u>Amount €/day</u>
Up to 1 361	None
1 362 - 35 457	$70.7 \times \text{Annual earnings} : 300$
35 458 - 54 552	$82.73 + 0.4 \times (\text{Annual earnings} - 35\,457) : 300$
<u>Over 54 552</u>	<u>$108.19 + 0.25 \times (\text{Annual earnings} - 54\,552) : 300$</u>

35. Maternity (after 56 days), paternity and parental allowances are determined according to the same formula:

<u>Annual earnings</u>	<u>Amount €/day</u>
Up to 10 189	minimum = 23.77
10190 - 35457	$0.7 \times \text{annual earnings}/300$
35458 - 54 552	$82.73 + 0.4 (\text{annual earnings} - 35\,457)/300$
54 552 -	$108.19 + 0.25 (\text{annual earnings} - 54\,552)/300$

36. Maternity Allowance for the first 56 days:

<u>Annual earnings</u>	<u>Amount €/day</u>
Up to 7 924	minimum = 23.77
7 925 - 54 552	$0.9 \times \text{annual earnings}$
54 552 -	$163.66 + 0.325(\text{annual earnings} - 54\,552)/300$

37. In 2012 the average amount paid was EUR 60.67 per day, i.e. EUR 1 516.75 per month.

Assessment

38. In 2012 the average gross monthly income in the private sector was EUR 3,729 for men and EUR 2,913 for women. The median was EUR 2,951 (3,376 M and 2,612 W). For all employees the median was EUR 2,774. The 60% medium (net) income level was EUR 1,133 per month. The corresponding 40% 'poverty' level was EUR 756.

39. In relation to the Code the benefit levels of an average income worker are, in the Government's view, in conformity with the levels laid down. Also for minimum benefits the levels are to be deemed sufficient when the structure of the protection system is taken into account. For example

for a minimum benefit pensioner the total average benefit level taking into account the full Guarantee Pension and average Housing Allowance would be at least $\text{EUR } 738.82 + 196 = \text{EUR } 934.82$. In addition a person with high care costs would be entitled to the Care Allowance i.e. $\text{EUR } 61.93 / 153.91 / 325.46$ per month depending on the need for care.

40. The benefit levels of Labour Market Assistance and sickness, maternity and rehabilitation allowances were raised in 2012. In 2012 the Guarantee Pension was introduced. In 2013 the impact of the spouse's income on the Labour Market Subsidy was abolished. In addition, in 2013 the Government will bring forward the annual index increase for minimum benefits in order to compensate against the raise in value-added-tax.
41. Student grants were last raised by 15% as of 1 August 2008. The threshold for earned income for students eligible for financial aid was raised by 30% from 2008 onwards. The government guarantee for student loans was last raised as of 1 August 2005, when the student loan tax deduction was also introduced, for which students in tertiary education who have drawn student loans and have graduated within the stipulated time are eligible. The rent threshold for housing supplements was last raised on 1 November 2005. In line with the Government Programme, student financial aid will be index-linked as of 1 September 2014. The system of financial aid for students will be reformed to better promote full-time studying and to accelerate graduation times. In the same context, discrepancies in the system will be addressed relating to financial aid for students in secondary education and the position of students with families will be examined. The costs of the reform in the system of financial aid for students will not outweigh the positive repercussions of it for the economy as a whole.
42. The percentage of households with income below 40% medium income the level has remained fairly stable for the last 10 years i.e. 2.1% in 2001 and 2.6% in 2011. Those below 60% with a fixed level of 2005 have decreased from 12.7% to 9.4%. This clearly indicates that the benefits have been maintained at a reasonable level.

Conclusion

41. The Government refers to its aforementioned observations and is of the view that the situation in Finland is in conformity with Article 12 §§ 1 to 3 of the Revised European Social Charter.

Accept, Sir, the assurance of my highest consideration.



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