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

28 February 2013

Case Document No. 5

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

FURTHER RESPONSE OF THE GOVERNMENT

Registered at the Secretariat on 14 February 2014



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

European Committee of Social Rights
Mr. Régis Brillat
Executive Secretary
Council of Europe
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FRANCE

Helsinki, 14 February 2014

Complaint No. 88/2012

FINNISH SOCIETY OF SOCIAL RIGHTS V. FINLAND

Sir,

With reference to your letters of 17 October 2013, 6 January and 5 February 2014, I have the honour, on behalf of the Government of Finland, to submit the following further observations in connection with the aforementioned complaint.

FURTHER OBSERVATIONS

General

1. The Government reiterates its observations of 29 July 2013 concerning the merits of the complaint.

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2. The Government refutes all further allegations made by the Finnish Society of Social Rights (subsequently the “Association”) in its response of 8 October 2013 to the Government’s abovementioned observations.
3. The Government notes that the Association has not put forward any argument that would merit assessing its complaint differently.
4. Merely, the Association’s allegations are, to a large extent, general comments and descriptions concerning persons living in different situations, which, thus, have no relevance in the matter.
5. Furthermore, the Association does not provide proof for all of its allegations.
6. The Government notes, moreover, that in its complaint of 2 December 2012, the Association has requested the European Committee on Social Rights (subsequently the “Committee”) to find that the situation of Finland is not in conformity with Article 12 §§ 1 to 3 of the Revised European Social Charter (subsequently the “Charter”).
7. Furthermore, on 14 May 2013, the Committee has, having regard, *i.e.*, to the Charter, and in particular to Article 12, declared the aforementioned complaint admissible.
8. However, in aforementioned response, the Association refers in several occasions to other Articles of the Charter, *e.g.*, Articles 12 § 4 and 23, in their observations concerning the alleged non-conformity with the Charter (*e.g.*, p. 20 of the Association’s aforementioned complaint).
9. The Government notes that according to Article 4 of the Additional Protocol to the European Social Charter providing for a System of Collective Complaints (ETS 158), the complaint shall 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.

10. Moreover, according to Article 8 of the Additional Protocol, the Committee shall draw up a report in which it shall, *i.e.*, present its conclusions as to whether or not the Contracting Party concerned has ensured the satisfactory application of the provision of the Charter referred to in the complaint.
11. Thus, in the Government's view, such allegations based on Articles other than indicated in the complaint should, thus, not be taken into account when assessing the matter.

Social security system in Finland

General

12. The Government recalls, furthermore, that the predominant reason for Finland not having ratified the European Code of Social Security is that whereas the level of social security in Finland corresponds to that laid down in the Code, the Code does not as such recognise the kind of structure of social security that is predominant in Finland (see also the Government's observations of 29 July 2013, paras. 10 to 14, in particular).
13. Consequently, the Association's observations in this respect (see the Association's aforementioned response, p. 2 to 4, in particular) have no relevance in the matter.
14. Moreover, the fact that the benefits have to be applied for does not have relevance in the matter, either (see the Association's aforementioned response, *e.g.*, p. 8).

15. The Government recalls that your Committee has held that States enjoy a wide margin of discretion on how to organise their social security systems (*Sincidato dos Magistrados do Ministério Publica (SMMP) v. Portugal*, complaint no. 43/2007, decision on the merits of 3 December 2008, § 44).
16. The Government recalls that, in Finland, social protection is based on three building blocks, minimum benefits, earnings-related social security benefits and public services (see the Government's aforementioned observations, paras. 11 to 14, in particular).
17. Thus, the isolated examination of different benefits continued to be made by the Association is misleading and results in incorrect conclusions.
18. The Government notes, in addition, that the Finnish social security system is based on the principle that all individuals shall, in accordance with their abilities, acquire their livelihood by work or by other means. The system does not involve a basic income guarantee pledging that everyone, irrespective of their need for livelihood or the reason for that need, is paid a certain amount in euros.
19. Earnings-related social security compensates for loss of earnings when certain social risks materialise. Compensation for loss of earnings is paid on account of sickness, unemployment, incapacity for work, old age, occupational accident or disease and childbirth. A minimum level of social security ensures an individual's subsistence when a certain social risk materialises and the individual has not had any earnings at all or only low earnings.
20. Thus, social security in Finland *covers the entire population*, both those gainfully employed and those outside the labour market.

21. In addition, social assistance as a last-resort benefit ensures the indispensable subsistence for those who cannot acquire it by other means.
22. Furthermore, monetary benefits are supplemented with the necessary public social and health services arranged by local authorities, *i.e.*, municipalities, for municipal residents. Organising such services is a statutory obligation of municipalities. Anyone dissatisfied with provided service, care or treatment has access to appropriate legal remedies.
23. Thus, the Association's allegations to the effect that the aforementioned services are not relevant in assessing the complaint (see the Association's aforementioned response, p. 5, in particular), are not correct.
24. Indeed, the Government reiterates that, to the contrary, the social security system in Finland consists of both benefits and services and they should not be assessed separately in this context.
25. Furthermore, the Government notes that clients with low-income contribute to the funding of only a relatively small part of the services (either directly through client fees or indirectly through taxes and social insurance premiums). On average, persons with low-income use services more than they fund them. The social and health services in Finland constitute, in this respect, a transfer-in-kind to these persons.
26. Consequently, the observations of the Association concerning the funding of the social security system (see the Association's aforementioned response, p. 4) have no relevance in the matter.

Disability and nursing services provided by municipalities

Services for persons with disabilities

27. In its response (see the Association's aforementioned response, p. 4), the Association draws attention, *i.e.*, to the discretionary nature nursing services and services for persons with disabilities provided by municipalities, and to the linkage between the said services and budgetary appropriations.
28. The Government notes that persons with disabilities may be entitled to services under the **Social Welfare Act** (*sosiaalihuoltolaki, socialvårdslag*; 710/1982), the **Act on Services for Persons with Disabilities** (the "Services Act"; *laki vammaisuuden perusteella järjestettävistä palveluista ja tukitoimista, lag om service och stöd på grund av handikapp*; 380/1987), and the **Act on Special Care for Mentally Handicapped Persons** (the "Special Care Act"; *laki kehitysvammaisten erityishuollosta, lag angående specialomsorger om utvecklingsstörda*; 519/1977). Social services for persons with disabilities are organised primarily within the general service system in accordance with the Social Welfare Act. Services provided in accordance with the Social Welfare Act are part of the general obligation of municipalities to organise services. Municipalities organise such services within the limit of their budget reserved for this purpose.
29. Moreover, a decision on social welfare under the Social Welfare Act (concerning, *e.g.*, home-help service or housing service) can be appealed by a rectification requested from the municipal social welfare board or a corresponding body, within 14 days from the service of the decision. The decision of the body may be appealed to an administrative court within 30 days from the service of the decision. No appeal may be made against the decision of the administrative court.

30. The Government emphasises, in particular, that all services and support measures needed by persons with disabilities cannot be organised adequately on the basis of general legislation, such as the Social Welfare Act. Therefore, legislation concerning social welfare includes special legislation to guarantee the observance of the special needs of persons with disabilities, persons with severe disabilities, in particular. If a person with disabilities cannot obtain adequate and appropriate services or benefits on the basis of the Social Welfare Act or some other Act, the necessary services and support measures are arranged in accordance with the Services Act (see para. 28 above) and the **Decree on Services and Assistance for Persons with Disabilities** (*asetus vammaisuuden perusteella järjestettävistä palveluista ja tukitoimista, förordning om service och stöd på grund av handikapp; 759/1987*), supplementing the Services Act. The key services under the Services Act have been regulated to be part of the obligation of municipalities to organise services.
31. The Government stresses, moreover, that persons with severe disabilities have a subjective right to these services. The purpose of the subjective right is to ensure that persons with disabilities or severe disabilities have an equal position irrespective of municipality of residence, and that basic rights and liberties and human rights are realised. Municipalities are obliged to organise these services falling under their obligation (to organise services) regardless of their financial situation and decisions on such services may be appealed to the Supreme Administrative Court.
32. Thus, it should be underlined that a municipal body responsible for the provision of social welfare cannot, thus, justify its decisions by the lack of sufficient budget funds for realising these subjective rights. Should the budget funds run out before the end of the financial year, the budget is to be amended.
33. The Government observes, furthermore, that the purpose of the Services Act is to improve the opportunities of persons with disabilities to live

and act equally with others as members of society, and to prevent and eliminate disadvantages and barriers caused by disabilities (Section 1 of the Services Act, see para. 28 above). This Act primarily regulates the special services and activities needed by all persons with disabilities, regardless of diagnosis. Access to such services is not conditional upon the recipient's financial standing or, as a rule, age. Merely, according to the Services Act, "a person with disabilities" refers to a person who, on account of disability or illness, has particular difficulties in coping with ordinary activities of everyday life (Section 2).

34. Under the Services Act, the services and support measures falling under a municipality's special obligation of organisation consist of transport services and related escort services, service housing – arranged either at the recipient's home by means of different services or in a service housing unit –, personal assistance, day activities, compensation for housing modifications, and compensation for acquisitions of equipment and devices to the recipient's home.
35. Moreover, in addition to persons with severe disabilities, other persons, too, may receive those statutory services and support measures which fall under municipalities' general obligation of organisation and which municipalities organise within the limits of their budget for this purpose.
36. A municipal body's decision concerning a service or financial support measure under the Services Act may be appealed to an administrative court within 30 days from the service of the decision. A decision of an administrative court concerning services and support measures based on subjective rights of persons with disabilities may be appealed to the Supreme Administrative Court without requiring leave to appeal.
37. A decision of an administrative court concerning other (budget-bound) services and support measures under the Services Act may be appealed to the Supreme Administrative Court if the court grants leave to appeal.

The court may grant leave to appeal only if the appeal is very important for the appellant or if, from the standpoint of applying legislation in other similar cases or the standpoint of uniformity of case-law, it is important to refer the matter to the court.

38. The Government notes, furthermore, that special care under the Act on Special Care for Mentally Handicapped Persons is available only to the limited client group defined in Section 1 of the Act, *i.e.*, persons whose development or mental functioning has been hindered or disturbed since birth due to a sickness, handicap or injury, and the responsibility to organise special care lies with joint municipal authorities for special care districts. Individual municipalities may also organise such care.
39. The purpose of special care is to promote the person's coping with everyday activities and his or her independent subsistence and integration into society, and to safeguard the treatment and other care needed by the person. Special care services under the Act include the organisation of employment and housing and other similar activities to promote a person's integration into society, the arrangement of personal assistive devices, individual treatment and other care.
40. According to the Special Care Act, joint municipal authorities for special care districts are responsible for organising special care, but individual municipalities, too, may organise it. A special care programme must be adopted for everyone in need of special care. The programme must include all services organised on the basis of the client's mental disability.
41. In addition, a client dissatisfied with a decision on adopting a special care programme, made by the municipal management board for special care or an office-holder, may appeal against the decision in writing to the relevant Regional State Administrative Agency. The decision of the Agency may be appealed to an administrative court and further to the Supreme Administrative Court. A person with a mental disability has a subjective right to special care but no subjective right to receive a

certain service. A client or a client's representative may also demand that the special care programme be supplemented or rectified, and if the demand is not granted, the Regional State Administrative Agency may order that the programme be rectified. The rectification decision of the Agency cannot be appealed against.

42. The Government notes that since the 2009 amendment of the Services Act, this Act has primacy over the Special Care Act. A client with a mental disability is provided with the necessary services and support measures primarily on the basis of the Services Act, to the extent that the services and measures are adequate and suitable for the client's needs, and also otherwise in the client's interest. Services under the Special Care Act are organised only if the client cannot obtain the necessary services on the basis of another Act. The order of applying the two Acts has significance in situations where a client's needs can be met by providing services under either of the Acts. In such cases the situation is assessed from the standpoint of the client's overall interest. The Special Care Act may be applicable, *e.g.*, when services stipulated in it are less expensive for the client than services under the Services Act.
43. The social welfare legislation applicable to persons with disabilities is being reformed. A broad-based working group set up by the Ministry of Social Affairs and Health is preparing the reform, with a mandate expiring on 31 December 2014. The purpose is to safeguard in the reformed legislation, too, the subjective rights of persons with severe disabilities to services and support measures.

Services for older persons

44. The Government acknowledges that services for older persons provided for in the Social Welfare Act continue to be bound to the budget.
45. The Government observes, however, that the **Act on Supporting the Functional Capacity of the Older Population and on Social and**

Health Services for Older Persons (the “Age Act”, *laki ikääntyneen väestön toimintakyvyn tukemisesta sekä iäkkäiden sosiaali- ja terveystalveluista*, *Lag om stödjande av den äldre befolkningens funktionsförmåga och om social- och hälsovårdstjänster för äldre*; 980/2012) improves, in many ways, the equal treatment of clients in the provision of nursing services. The Act contains provisions on *e.g.*, responding to older persons’ service needs, access to services, and their quality.

46. The Age Act itself and the measures to support and monitor its implementation are aimed to ensure for everyone as equal access to care services as possible.
47. The main purposes of the Act are to ensure that local authorities (municipalities) prepare for the future increase in service needs, resulting from the change of the population's age structure, and that high-quality social and health services guarantee older people all over the country equal access to treatment and care that respond to their individual needs.
48. Section 5 of the Age Act obligates local authorities to draw up a plan on measures to support the wellbeing, health, functional capacity and independent living of the older population as well as to organise and develop the services and informal care needed by older persons. The plan must 1) evaluate the state of wellbeing among the older population, the adequacy and quality of the services available to the older population, and factors affecting the service needs of the older population; 2) determine the objectives to support the wellbeing, health, functional capacity and independent living of the older population as well as to develop the volume and quality of the services provided for the older population; 3) determine the measures by which local authorities must implement the objectives, as well as estimate the resources needed by local authorities to implement the measures. Local authorities must take the plan into consideration when preparing municipal decisions that affect the position of the older population and

the services needed by it, and when preparing the budget and budget plan referred to in Section 65 of the **Local Government Act** (*Kuntalaki, kommunallag*; 365/1995).

49. Section 9 of the Age Act obligates local authorities to assign adequate resources for implementing the plan. Nevertheless, it remains possible that an application for a service must be rejected for resource reasons, even if the applicant, in principle, fulfilled the eligibility preconditions for the service. In such cases the authorities are aware of the older person's need for services and must respond to it as soon as possible. In these cases, too, the matter is taken under consideration again when a written or oral application is made. The client must be advised to apply for the service as soon as granting it within the statutory time becomes possible.
50. The Government stresses that the Age Act aims, in many ways, at avoiding refusal of services. Local authorities must chart the service need in municipalities, make a plan for organising the necessary services, assess the adequacy of the services every year and reserve sufficient resources for them. Councils for older people are partly responsible for ensuring that the local authorities fulfil all these obligations. Making the service system meet the real need will require long-term efforts of local authorities, and the objective may not be achieved everywhere at once. However, the Act regulates related decision-making so as to prevent clients' needing to queue for an undetermined time.
51. A client in need of a service must be refused the service applied for, if it is known that it cannot be arranged within the stipulated three months. The ground for the refusal should be mentioned in the reasoning for the decision, in order that the decision may be referred to a review body, whose decision may be appealed to an administrative court.
52. Section 18 of the Age Act reinforces the equal treatment of clients within municipalities and across municipality borders. Local authorities

must decide on granting urgently needed social services to an older person on the basis of a written or oral application and provide the granted services without delay, so that the older person's right to necessary care is not jeopardised. A decision on granting non-urgent social services must be made without unnecessary delay after a written or oral application has been taken under consideration. An older person has the right to obtain the granted non-urgent social services without unnecessary delay, and at the latest after three months from the date of the decision.

53. The investigation of a client's service needs under Section 15 of the Act, and a possibly existing service plan, must be regarded as the basis for determining the adequacy of the provided social services. If a very important reason compels the decision-makers to deviate from the conclusions drawn, e.g. in the service plan, about the adequacy of the services, the ground for the deviation should be mentioned in the decision. An older person has the right to obtain the granted non-urgent social services without unnecessary delay, and at the latest after three months from the date of the decision. For instance, a decision to grant an individual place in a service housing unit must be enforced within three months from the date of making the decision.
54. Section 26 of the Age Act enables comparison of the provision of services in each municipality. Municipalities must, at least every sixth month, publish information about the time frame within which an older person may obtain the social services applied for. The information must be published by using methods that enable older persons to effectively receive the information.
55. The Ministry of Social Affairs and Health has commissioned the National Institute for Health and Welfare and the National Supervisory Authority for Welfare and Health to collect research information on social and health services for older persons and on their functioning capacity and experienced service need, both before and after the entry into force of the Age Act. Because the Act imposes separate

responsibilities on both municipalities and service providers, their activities were charted (in spring 2013) before the Act took effect and will be charted (in autumn 2014) after the Act took effect, by sending related inquiries to municipalities, associations of municipalities and municipal and private units producing 24 h care and home care. The results of all these inquiries are published at the website of the National Institute for Health and Welfare (http://www.thl.fi/fi_FI/web/fi/aiheet/tietopaketti/vanhuspalvelulain_toimeenpanon_seuranta).

Costs of medical treatment and medicine expenses

56. The Association alleges, *i.e.*, that there are gaps and problems related to, *e.g.*, the threshold of medical costs and medical expenses, which has a negative impact to the persons living on basic social security (see, *e.g.*, p. 5 of the Associations' aforementioned response).
57. The Government notes that the fees for municipal health services are subject to a calendar yearly out-of-pocket limit. The costs for services used by a person under 18 years of age are added to the service costs of the person in custody of him or her. Services exceeding the out-of-pocket limit are free of charge for all those persons whose costs have contributed to reaching the out-of-pocket limit. In 2013 the limit was EUR 636.
58. Moreover, a client dissatisfied with the decision on a fee may seek rectification of the decision from the body responsible for the service. Instructions for seeking rectification of a decision are given on the invoice. Local authorities must reduce or waive to collect a social welfare fee and a health care fee determined on the basis of the client's financial standing, if the collection would jeopardise the client's or his or her family's subsistence or fulfilment of the client's statutory maintenance obligation.

59. The Government notes, furthermore, that travel costs related to medical treatment or rehabilitation are equally subject to a calendar yearly out-of-pocket limit. If a client's deductible of travel costs or lower lump-sum costs exceed EUR 242.25 during a calendar year, the Finnish Social Insurance Institution reimburses the client for all necessary travel costs exceeding the limit.
60. Moreover, medicine expenses are subject to a separate calendar yearly out-of-pocket limit. In 2013 the limit was EUR 670. After a client's medicine expenses have exceeded the limit, the client pays only a deductible of EUR 1.50 per medicine.
61. The Government emphasises that, in Finland, medicines have the same price in all pharmacies. This is ensured by means of a price rate determining the retail price of medicines.
62. The Government notes that, in October 2013, the Government adopted a new price rate for medicines, which has been applied as of 1 January 2014. The new rate has reduced the price of expensive medicines and increased the price of less expensive medicines. Medicine prices below approximately EUR 41 have risen, and the prices above this limit have gone down.
63. The Government emphasises that the new price rate will reduce the reimbursement costs for medicine expenses by approximately EUR 15.8 million per year, assessed at the cost level of 2011. Correspondingly, clients' medicine expenses would increase similarly. However, such an increase is prevented by evening out the expenses. This will be achieved by reducing the yearly out-of-pocket limit for clients' medicine expenses to EUR 610 (reduction by EUR 70; without the reduction the limit would have been EUR 680 in 2014).
64. Regard should be had also to the fact that in 2013, the out-of-pocket limit was exceeded by approximately 160,000 clients, and at least the same number of clients will benefit from the reduction. The Finnish

Social Insurance Institution estimates that in 2014 the number of clients with expenses exceeding the yearly out-of-pocket limit will increase by approx. 21 per cent, *i.e.* to approximately 195,000 persons. According to the current Government Programme, reimbursement for medicines will be focused on those using the most of all medicines and paying the largest deductibles. Statistics show that most reimbursement for medicines is paid to older pensioners, who often also have the lowest income. The new prices and limits apply since 1 January 2014.

Social Assistance

65. The Association reiterates its allegations concerning social assistance (see the Associations aforementioned response, p. 6 to 11).
66. The Government notes, in respect of these allegations, in particular, that the Association has not put forward any fact or circumstance that would merit assessing the complaint differently but has rather repeated the submissions made in its complaint or described facts or circumstances that have no relevance in the matter.
67. The Government wishes, however, to observe the following.
68. The Government states that its own submission may show social assistance in a misleading light to an external reader, because the components of the assistance, *i.e.* "other basic expenses", on one hand, and "additional assistance", on the other hand, may be confused with each other. However, the possibility of such confusion is not crucial from the standpoint of the Association's complaint.
69. The Association refers to the low rate of using "additional assistance" and "proactive assistance". However, the Government points out that, in recent years, the use of these forms of assistance has increased every year. In 2005, the percentage of households receiving proactive assistance was 7.5 per cent of all recipients and in 2011 it was 10.2 per

cent. During the same period, the expenses of proactive assistance increased from EUR 442 million to EUR 609 million (in 2011 prices).

70. In 2010 the total percentage of households receiving additional assistance was 38.4% of all recipients (no information is available from the previous years). In 2011 the total percentage was 39.6%. During the same period, the expenses of additional assistance rose from EUR 46.969 million to EUR 51.532 million (in 2011 prices).
71. The basic amount of social assistance (referred to as "basic social assistance" in the Association's submission) covers ordinary expenses of indispensable subsistence mentioned in section 7a of the Social Assistance Act (1412/1997). Section 9 of the Act regulates the size of the basic amount. The Act determines the size of the monthly basic amount for adults living alone, and for single parents. The basic amounts for other persons living in a household and for minor children are given as a percentage of the basic amount for adults.
72. The size of the basic amounts is linked to the national pension index (Section 9a of the Social Assistance Act). At the beginning of 2012 the level of the basic amount was increased by 6%. At the same time, it was stipulated that the basic amount be paid to single parents with a 10% increase (Act 1184/2011). Later on, activation supplements, payable to beneficiaries of activation measures during their unemployment, have been given priority in the granting of social assistance (Act 1006/2012) *i.e.* the activation supplements are not taken into account as an income when granting the social assistance.

Reimbursement for housing costs

73. The Association refers in its submission (p. 9-11) to reimbursement for housing costs.

74. The Government notes that the Finnish Social Insurance Institution grants the general housing allowance on application. The level of the allowance is 80 per cent of those reasonable housing costs in excess of the deductible which the Government defines annually by a decree as the maximum acceptable costs. In defining the maximum acceptable amount of housing costs, account is taken of the size of the recipient family, the municipality where they live, and the age, size and equipment level of their dwelling. The recipient of the allowance must always pay a deductible, *i.e.*, at least 20 per cent, of the housing costs. The level of the general housing allowance has not developed on a par with the development of rents. This is the situation especially in cities, *e.g.*, in the Helsinki metropolitan area. Therefore, the real amount of the deductible paid by even the lowest-income recipients may have been higher than the intended 20 per cent of the housing costs.
75. A recipient of the general housing allowance may apply for social assistance from the local authorities if, after receiving the allowance, his or her own income does not suffice to cover the deductible of the housing costs. Although the amount of housing costs to be paid by means of the allowance is at the discretion of the social worker deciding on the allowance, the costs are usually paid in full through social assistance. When social assistance is granted, housing costs are not counted as expenses to be covered by the basic amount of the social assistance, which is of equal size for all recipients. Instead, housing costs are compensated for as "other basic expenses" on the basis of the applicant's real situation. Unlike the Association mentions in its supplementary submission, a recipient of social assistance must thus be guaranteed EUR 477 per month for covering the basic everyday needs, such as food, clothing, telephone and public transports.
76. When granting social assistance to a client with high housing costs, authorities also try to activate the client, if necessary, to make him or her acquire a dwelling at a more reasonable cost, if they consider the standard of the client's dwelling and the costs too high in relation to his or her needs. The Ministry of Social Affairs and Health has, by means

of a handbook for the application of the Act on Social Assistance, instructed local authorities deciding on social assistance to take account of the real housing costs. (Opas toimeentulotukilain soveltajille, p. 107, http://www.stm.fi/c/document_library/get_file?folderId=6511564&name=DLFE-25836.pdf).

77. According to the instruction, when determining the indispensable amount of a client's housing costs, account must be taken of the size and nature of the dwelling in relation to the size and needs of the family, as well as the cost level corresponding to the reasonable local housing standard. The real amount of the reasonable housing costs must be taken into account. The instruction also underlines that the discretion of reasonableness must not lead to the applicant's homelessness or his or her being compelled to move to a dwelling that does not meet the housing standard that is generally acceptable or corresponds to the persons' or family's individual needs. Special needs to be taken into account in this context may be *e.g.* the school of children, particular need for care, need for room for assistive devices of a person with disabilities, or need for room based on the right of non-custodial parents to meet their children.
78. Furthermore, the instruction emphasises that it is justifiable to take account of the real amount of the housing costs, even when exceeding the amount laid down in the municipal instructions, if the applicant for social assistance has no real opportunity of finding a local dwelling at a cost considered reasonable by the local authorities. In addition, the client must be allowed sufficient time for seeking a less expensive dwelling before the housing costs can be taken into account only in an adjusted amount. An applicant for social assistance may always appeal against a discretionary decision of a local authority to an administrative court and, in the last resort, to the Supreme Administrative Court.
79. Although, in granting the general housing allowance, the acceptable amounts of housing costs have been increased in recent years to correspond to the developments in the recipient's rents, the acceptable

costs remain, after the savings decisions of the 1990s, lower than the real market rent level. Therefore social assistance, intended as a temporary and last-resort form of support, has become a continuous form of reimbursement for housing costs.

80. The final conclusion made in the Association's submission about the low level of the general housing allowance is correct but ignores that social assistance, in the last resort, ensures a reasonable standard of housing also for those with the lowest income.

Pensions

81. The Association refers in its submission (p. 11) to the purchasing power of pensions.
82. The Government observes that the purchasing power of pensions is maintained by means of an index system. In addition to the regular index adjustments, an extra index adjustment has been made in advance to support the purchasing power of recipients of the national pension and the guarantee pension.
83. The guarantee pension was introduced in 2011 in order to ensure a minimum pension level. At the beginning of 2013, the national pensions, the guarantee pensions and certain other social security benefits were increased partly in advance by an index increment of 0.7%. This was an extra increment of the national pension and the guarantee pension. The actual index adjustment of 2014 will still be made in full.
84. As regards the level of the pension, the Government reiterates what was stated in its previous submission in that minimum benefits are to be deemed sufficient when the structure of the protection system is taken into account. For a minimum benefit pensioner, the total average benefit level taking into account the full Guarantee Pension and the

average Housing Allowance would in 2013 have been at least EUR 738.82+196=EUR 934.82. In addition, a person with high care costs would be entitled to the Care Allowance i.e. EUR 61.93/153.91/325.46 per month (in 2013) depending on the need for care.

Student Aid

85. With regard to the Association's allegations concerning the level of student Aid, the Government wishes to note the following.
86. The Government recalls that in connection with the 2014 budget proposal, the Government submitted to Parliament a legislative proposal (HE 116/2013 vp) for bills to amend the **Act on Financial Aid for Students** (*opintotukilaki, lag om studiestöd*; 65/1994) and section 2 of the **Act on School Transport Subsidies for Students in Upper Secondary and Vocational Education** (*laki lukiokoulutuksen ja ammatillisen koulutuksen opiskelijoiden koulumatkatuesta, lag om stöd för skolresor för studerande i gymnasieutbildning och yrkesutbildning*; 48/1997) (see the Government's aforementioned observations, para. 41).
87. In line with the Government Programme, it was proposed that student financial aid be index-linked and the system be revised to support full-time study and to promote faster graduation times.
88. It was proposed that study grants be linked to the national pension index and that income thresholds of parents, which have a reducing effect on study grants, of students aged 18–19 who live independently, other than those in tertiary education, be raised.
89. To improve the adequacy of student financial aid, the Government guarantees for student loans were proposed to be raised by EUR 100.

90. To improve the viability of student loans, it was also proposed that eligibility for loan guarantees become applicable to secondary level students, the one per cent interest payment be relinquished for the period of studies and the income thresholds for interest assistance be linked to the wage coefficient.
91. In tertiary education it is proposed that a study loan compensation system that support loan repayment be introduced, which encourages effective completion of studies in the target time. This would replace the loan deduction mechanism.
92. The Parliament accepted the proposal and the president passed an Act on 30 December 2013 amending the Act on Financial Aid for Students. The amendments will enter into force on 1 March 2014/1 August 2014.

Reimbursement for medicine expenses

General

93. The Association draws attention to the effect of medicine to the low unemployment benefits (see the Association's response, p. 17).
94. The Government notes that citizens of Finland are, under the **National Health Insurance Act** (*sairasvakuutuslaki, sjukförsäkringslag*; 1224/2004), entitled to reimbursement for medicine expenses. The reimbursement is payable for a medicine, clinical nutrient or emollient cream prescribed by a doctor for the treatment of illness, if the Pharmaceuticals Pricing Board, operating in affiliation with the Ministry of Social Affairs and Health, has confirmed the product as reimbursable.
95. The Finnish Social Insurance Institution administers the reimbursement system. The rates of reimbursement are as follows:

- i. basic reimbursement (35 percent of the actual price or reference price)
 - ii. lower special reimbursement (65 percent of the actual price or reference price)
 - iii. higher special reimbursement (100 percent of the actual price or reference price; a EUR 3 deductible is charged for each medicine purchased at one time).

96. The reimbursement covers only the necessary medicine expenses. To qualify for reimbursement, the medicine must be taken as instructed, and purchased for 3 months' use at a time, at the maximum, in the most economical package size.

97. If the patient's medicine expenses in a calendar year exceed the annual out-of-pocket limit of EUR 610 (in 2013 EUR 670), the exceeding part is reimbursed in full, except for a deductible of EUR 1.50 for each purchase.

98. The Government observes that national reimbursement systems for medicine expenses are often compared with each other by examining the percentage of public funding in the reimbursements for medicine expenses in out-patient treatment.

99. In this connection, the Government observes, moreover, that the statistics of the OECD show that in Finland in 2009 public funding accounted for 57 per cent of all reimbursements for medicine expenses in out-patient treatment. The average percentage was 67 among all OECD states, 59 among the EU27 states and 70 among the EU15 states. However, the percentage of public funding shown in the OECD statistics cannot be interpreted unambiguously without knowing in more detail the basis for statistics applied by different states. For instance in Finland, the medicine expenses of the lowest-income patients are partly paid by municipalities through social assistance, but the percentage of the payments is not known in detail.

Reimbursement for health care expenses, especially medicine expenses, through social assistance

100. The Government notes that the expenses to be covered by the basic amount of social assistance, paid by municipalities, include minor health care costs. Higher health care costs, not covered by the basic amount, are taken into account as "other basic expenses", to the extent appropriate (Section 7b of the **Social Assistance Act** (*laki toimeentulotuesta, lag om utkomststöd*; 1412/1997)). Minor health care costs refer to costs of approximately EUR 11–12 per month for treatment not prescribed by a doctor, *e.g.*, expenses for self-care medicines where as higher health care costs result usually from, *e.g.*, prescriptions of medicines by a doctor.
101. The Government observes, in particular, that expenses based on a doctor's prescription are taken into account in full. Medicine expenses may be taken into account in granting social assistance even if the medicines are not reimbursable. The decisive factor is the necessity of the medicine or treatment for the patient's health.
102. The Government notes that no statistics or comprehensive research information exist on the use of social assistance for health costs. The medical prescription records of the Finnish Insurance Institution show that in 2008–2010, in the whole country, approximately EUR 13–14 million were paid through social assistance to reimburse 78,000–81,000 persons for deductibles of medicine purchases. Of these persons, 8–10 percent exceeded the out-of-pocket limit. The statistics do not include social assistance clients' minor medicine expenses and those medicine purchases for which clients have received reimbursement afterwards, against invoice, through social assistance. The medical prescription records of the Finnish Insurance Institution include all those medicine purchases from pharmacies that social welfare offices have paid under payment commitments and accounted for to the Institution as instructed.

Sickness allowance under the National Health Insurance

103. The Association refers in its submission (p. 18) to the implications that the 55 day waiting period, stipulated under the National Health Insurance Act, for the payment of sickness allowance has negative implications for certain person groups.
104. The Government notes that the sickness allowance is not a wage or remuneration paid in return for a person's sickness. Neither is it intended to reimburse for expenses caused by sickness. The sickness allowance reimburses a person for loss of earnings when the person, because of sickness, is unable for his or her usual work or comparable work. The sickness allowance is payable both to employees and entrepreneurs, and also if the person is unemployed without his or her own fault. For the sickness period, when a person is not available to the labour market, he or she does not receive unemployment benefits but the sickness allowance instead.
105. The 55 day minimum duration of incapacity for work, stipulated in the National Health Insurance Act as a precondition for the payment of the sickness allowance, applies to persons who do not meet the criterion of having earnings from work and thus have not lost any earnings. This criterion is not met if the person has, due to his or her own actions, been unemployed or without work, without interruption, for the last three months immediately preceding the start of the incapacity for work.
106. However, if it is found obvious, when the person's incapacity for work begins, that it will continue for at least approximately a year, the sickness allowance is paid even if the person does not meet the 55 day criterion.

107. It is worth noting in this context that eligibility for the sickness allowance does not, in any respect, exclude a person's right to receive social assistance if his or her indispensable subsistence requires it. The Government notes here too, that in assessing the level of the benefit, account should be taken of the whole structure of the protection system, including any other potential assistance and services the person may be entitled to.

General assessment and concluding remarks

108. The Government refers to its observations above and wishes to observe also the following, in relation to the requirements of Article 12 §3, in particular.
109. The Government recalls that the criteria applied when considering a person's eligibility for labour market subsidy have been mitigated by abolishing the impact of the spouse's income on the amount of the subsidy (see the Government's aforementioned observations, para. 29).
110. Furthermore, the parental leave system has been improved by prolonging the duration of paternity leave.
111. Moreover, the amount of the general housing allowance and the related income limits have been raised.
112. Thus, social security, benefits, criteria for benefits, financing and administration are being developed and reformed continuously by means of legislation. All legislation is based on efforts to improve and develop the system and to make it more efficient, while taking account of economic realities, on one hand, and the need to support individuals' employment efforts, on the other hand.
113. The Government notes, moreover, that the **Constitution of Finland** (*Suomen perustuslaki, Finlands grundlag*; 731/1999) and the basic

rights and liberties guaranteed therein form the basis for preparation of legislation concerning social security. The Constitution and its provisions on realising the basic rights and liberties form a binding basis for developing the statutory social security system and social and health services.

114. In particular, Section 19 of the Constitution stipulates that those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care. The provision applies to all situations where a person cannot effectively obtain the necessary security by other means.
115. Section 19 of the Constitution further stipulates that everyone shall be guaranteed by an Act the right to basic subsistence in the event of such risks as unemployment, sickness, and disability and during old age, as well as at the birth of a child or the loss of a provider. Thus, to protect people against such social risks, legislation must ensure security at a higher level than indispensable subsistence. Consequently, no group is completely deprived of social security.
116. Moreover, the Constitution requires that public authorities must guarantee for everyone, as provided in more detail by an Act, adequate social, health and medical services and promote the health of the population.
117. Finally, the Government wishes to note that a legislative amendment requiring, every fourth year, an overall assessment on the adequacy of basic security took effect in December 2010. According to the **National Pensions Index Act** (*laki kansaneläkeindeksistä, lag om folkpensionsindex*; 456/2001), the Ministry of Social Affairs and Health commissions, every fourth year, an overall assessment on the adequacy of basic security. In this assessment, account is taken of the benefits granted by the Finnish Social Insurance Institution to a person or household, and of the social assistance based on the Social Assistance Act.

118. 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

ANNEX Development of certain benefits in 2005–2013