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

1 September 2017

Case Document No. 3

Central Unit for Child Welfare v. Finland
Complaint No. 139/2016

SUBMISSIONS OF THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 18 July 2017



18 July 2017

Mr Henrik Kristensen
Deputy Executive Secretary
European Committee of Social Rights

Complaint No. 139/2016
Central Union for Child Welfare (CUCW) v. Finland

Sir,

With reference to your letter of 18 May 2017 concerning the aforementioned complaint, I have the honour, on behalf of the Government of Finland, to submit the following observations on the merits of the aforementioned complaint.

OBSERVATIONS ON THE MERITS OF THE COMPLAINT

General

1. The Government recalls its observations of 14 February 2017 on the admissibility of the complaint where the Government stated that it has no objections concerning the formal requirements of the admissibility of the present complaint.
2. The Government observes that by its decision of 10 May 2017 the European Committee of Social Rights (later, "the Committee"), without prejudice to its decision on the merits of the complaint, declared the complaint admissible and invited the Government to make written submissions on the merits of the complaint by 18 July 2017.
3. The Government further recalls that the present complaint has been lodged by the Central Union for Child Welfare (later, "CUCW") on 14 November 2016.
4. The CUCW alleges that Finland has violated Articles 16, 17 and 27§1 c alone or in conjunction with Article E of the Revised European Social Charter (later, "the Charter") and alleges that Finland has, through the amendment of the *Act on Early Childhood Education and Care* that entered into force on 1 August 2016, violated the above mentioned provisions.

5. The Government notes that the extent and quality of day care services, as of any other services provided to families with children, may vary by municipality (there are 295 municipalities in Finland, excluding 16 municipalities in the autonomous territories of Åland), depending on such factors as local decisions concerning the service system and different emphases. Moreover, the economic situation of a municipality, as mentioned in the complaint, may influence the municipal service system within the latitude allowed by legislation. Based on their self-government, municipalities also determine the percentage of their municipal income tax. Both the level of municipal services and the municipal tax percentage may influence families' choice of municipality of residence.

On the relevant domestic law

6. On the basis of the obligation under Section 22 of the **Constitution of Finland** (*perustuslaki, grundlagen*; 731/1999) to protect basic rights and liberties, and of the financing principle under Section 121 of the Constitution, the Government is ultimately responsible for realising basic rights and liberties and human rights in Finland.
7. Governmental supervisory authorities supervise the realisation of statutory services in municipalities. Within the regulatory framework consisting of the *Local Government Act* (410/2015), the *Act on Central Government Transfers to Local Governments for Basic Public Services* (1704/2009) and the *Act on the Structure of Local Government* (1698/2009), the Government ensures that all municipalities have the necessary financial standing for performing their statutory duties and that the organisation of services required for realising inhabitants' basic rights and liberties as well as human rights is not jeopardised in any individual municipality.
8. The Government funds municipal services by central government transfers and equalises the municipal tax revenue between municipalities by means of the central government transfer system. The Government also monitors the financial standing of municipalities. If a municipality fulfils the criteria of being in a particularly difficult financial situation, the Government may set up an assessment team to assess the economy of the municipality and its capacity to provide services to the inhabitants. If the municipality is incapable of providing statutory services to its inhabitants, the assessment procedure may result in merging the municipality with another, to build a stronger entity.
9. According to Section 11a, subsection 1 of the **Act on Early Childhood Education and Care** (*varhaiskasvatuslaki, lag om småbarnspedagogik*; 36/1973), as amended by Act (108/2016), in addition to what is provided in Section 11, the municipality shall take care that the child receives 20 hours of early childhood education and care in facility organised by the municipality as referred to in Section 1, subsection 2 or 3, after a period has ended for which maternity and paternal allowance or partial parental allowance referred to in the Health Insurance Act is payable. However, it is not necessary to organise early childhood education and care during a period for which paternity allowance referred to in Chapter 9, Section 7, subsection 1 of the Health Insurance Act is payable outside of the maternity and parental allowance period.

10. According to subsection 2, by way of derogation from subsection 1, early childhood education and care shall be organised on a full-time basis if the child's parents or other guardians work full-time or study, act as entrepreneurs or work full-time as self-employed as referred to in the Unemployment Security Act (1290/2002). After the above-mentioned situation has ended, early childhood education and care must still be organised in accordance with this subsection for a period of two months, unless the child's parent or other guardian stays at home to take care of another child living in the family or retires.
11. According to subsection 4, early childhood education and care shall, however, be organised on a full-time basis for a child if it is necessary because of child's development, need for support or circumstances of the family or it is otherwise in the best interests of the child.
12. The Government notes in this connection that the **Constitutional Law Committee** of Parliament, in its statement (PeVL 12/2015) issued on the legislative amendment in question during the parliamentary proceedings, considered that the proposed amendments, as formulated in the related Government Bill, adequately met the obligation of public authorities under Section 19, subsection 3 of the Constitution to support those responsible for providing for children so that they have the ability to ensure the wellbeing and personal development of the children. The Committee also considered that the Government Bill would not be problematic from the perspective of the equality provisions of the Constitution, either.
13. Furthermore, the Government pays attention to the position taken by the Constitutional Law Committee that under Section 19, subsection 3 of the Constitution public authorities must guarantee for everyone, as provided in more detail by an Act, adequate social and health services. Moreover, public authorities must support families and others responsible for providing for children so that they have the ability to ensure the wellbeing and personal development of the children. Day care services are part of the service system referred to in Section 19, subsection 3 of the Constitution. However, according to the Constitutional Law Committee's practice, the first sentence of the provision does not guarantee any specific manner of providing child day care services. The Constitution only requires that such services must be adequate.
14. Another established position taken by the Constitutional Law Committee is that the general equality provision in Section 6, subsection 1 of the Constitution does not set strict limits to the legislator's margin of appreciation in its regulation efforts required by prevailing social developments at each time. In that context it is essential that possible segregation must be justifiable in an acceptable manner from the standpoint of the system of basic rights and liberties and that the segregation must not be arbitrary and unreasonable.

Observations on the CUCW's allegations concerning Article 16

15. The Government recalls that the CUCW alleges that Finland has violated Article 16 alone or in conjunction with Article E of the Charter.

16. The Government observes in this connection that the Committee has previously considered that the measures taken to develop and promote child day care structures are examined under Article 27 of the Charter.
17. Nevertheless, the Government considers despite that approach that the said amendment to the *Act on Early Childhood Education and Care* is in conformity also with Article 16 of the Charter.
18. The Government notes in this connection that the childcare facilities in Finland are both available, affordable and of good quality. The early childhood education and care (later, "ECEC") services are steered by a number of acts and decrees. For instance, access to ECEC is a universal right and there are more specific regulations on educational goals, staff-child ratios, group size, staff qualifications and client fees as described below.
19. The staff-child ratio in centre-based services is 1:8 for children aged between 3-6 years in full-time services and 1:13 for children aged between 3-6 years in part-time services. For children under 3 years of age the ratio is always 1:4. The maximum group size is regulated according to the number of adults in the group. In full-time ECEC the maximum group size for children over 3 years is 24 children. Such a maximum-sized group must have 3 qualified adults.
20. In centre-based ECEC, the staff members are required to have at least an upper secondary vocational qualification in the field of social welfare and health care. One in three staff members must have a higher education level degree: Bachelor of Education, Master of Education or Bachelor of Social Services.
21. New legislation on client fees in ECEC came into force on 1 March 2017. The maximum fee is EUR 290 per month and the fees for low income families were reduced. The fee for the second child can be at maximum 90 % of the first child's fee *i.e.*, EUR 261 and for each additional child EUR 58 per month. For low income families, ECEC is free of charge. If the fee would be under EUR 27 it is not collected. In Finland, the client fees in ECEC are considerably moderate. Only 14 % of the total costs of arranging ECEC are covered by client fees.
22. In addition to providing ECEC services, Finland has many other means in supporting children and families.
23. The aim of the family policy in Finland is to ensure a safe environment for all children to grow up and to provide parents with the material and psychological support to have and raise children. This support encompasses universal services for families with children, securing adequate income and housing for families, promoting the reconciliation of work and family life, and support for parenting.
24. In Finland, the reconciliation of family and working life has been a priority for several years. The family leave system is designed to give parents an opportunity to stay at home with their children in different circumstances. On the basis of childbirth, the mother and father can take maternity leave, paternity leave or parental leave, receiving maternity, paternity or parental allowance respectively. Allowances are determined on the basis of income and paid for the duration of the leave. In the absence of income, a minimum allowance is paid. Parental leave and care leave

provide both parents with an equal opportunity to participate in child care.

25. The ECEC system has been developed with the objective to offer families various child-care options, in order to take the different needs of families into account as well as possible. After the parental leave period, the families have three alternatives to arrange ECEC, supported by public funding:
 1. Caring for the child at home on child care leave and receiving child home care allowance up to the age of three;
 2. Having the child cared for at a private ECEC unit with private child care allowance until the child goes to school; or
 3. Having the child cared for in municipal ECEC until the child goes to school.

26. The Government recalls that the Constitutional Law Committee, for its part, considered the Government Bill concerning the amendment of the *Act on Early Childhood Education and Care* and approved it. Among other things, the Committee paid attention to Section 19, subsection 3 of the Constitution, according to which public authorities must support families and others responsible for providing for children so that they have the ability to ensure the wellbeing and personal development of the children. The legislative reasoning for Section 19, subsection 3 of the Constitution emphasised that the main responsibility for the development and upbringing of children lies with their families, especially the parents, or others responsible under law for providing for the children. Section 19, subsection 3 in itself does not confer upon children a subjective right to municipal day care. Instead, the provision requires that the services must be adequate.

27. Moreover, regarding Section 19, subsection 3 of the Constitution the Constitutional Law Committee adopted the approach that, in setting the level of the benefits referred to in the provision, account is to be taken of the existing state of national economy and public finance. The Committee considered that objectives of national retrenchment during an economic recession are an acceptable justification for cutting down, for instance, on the level of child benefits to some extent, as long as such regulation as a whole does not jeopardise the constitutional obligation to support families and others responsible for providing for children.

28. In light of the above, the Government considers that the said amendment to the Act on Early Childhood Education and Care is in conformity with requirements set out by Article 16 of the Charter.

Observations on the CUCW's allegations concerning Article 17

29. The Government notes firstly that in Finland, the legislation, policy and practices fully comply with the Article 17§1a of the Charter. Education is free of charge at all levels from the pre-primary education for 6-year-old children to basic, secondary and higher education. Pre-primary education has been mandatory since 2015. All children and pupils have the right to educational support, which can be remedial instruction or support for the child's special needs. Responsibility for educational funding is divided between the State and the local authorities. Morning

and afternoon activities for the first and second-year pupils and all pupils with special needs have been arranged since 2004.

30. Arranging health services is another example of universal services. A comprehensive network of maternity and child health clinics is available on equal grounds for all children and families. Also school health care and dental care for children is provided. Primary health care services are provided locally and they are free of charge for residents.
31. Children with disabilities and their families are entitled to special services and assistance if the services and assistance available under general legislation are not appropriate or sufficient for their needs. These services can include transport and access to a personal assistant. Also assistive devices to help children cope with disability are available.
32. Child welfare services are provided for children and families in situations where the home environment is deemed detrimental to the child's health and development, or if the child's own behavior endangers his or her well-being.
33. Financial support for families consists of child allowance, maternity grant, maintenance allowance, disability allowance, adoption grant, housing support and social assistance. The child allowance and maternity grant are universal benefits, whereas the maintenance allowance, housing support, disability allowance and social assistance are paid according to the need. Child allowance is the main means of evening out the expenses of families with children and families without children.
34. The Government observes in this connection that according to the Committee's Conclusions XV-2 concerning Statement of Interpretation on Article 17, (p. 26), Article 17 of the Charter is interpreted in light of the *UN Convention on the Rights of the Child*. According to the Convention (Article 18§3), the States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible. The Convention ensures childcare services only for the children of working parents.
35. In light of the above, the Government considers that the aforementioned amendment to *the Act on Early Childhood Education and Care* is in conformity also with Article 17 of the Charter.

Observations on the CUCW's allegations concerning Article 27§1 c

36. The Government observes that the Committee noted in its Conclusions concerning Sweden (2015/def/SWE/27/1/EN) in 2015 on Article 16 that "as Sweden has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision".
37. The Committee further noted concerning Article 27§1 the following:

“Child day care services and other childcare arrangements

Under the Education Act municipalities are obliged to provide preschool and out of school centres for children aged 1–12 years to the extent necessary in order

to allow for parents to be gainfully employed or study or if the child has its own need of the activity. The obligation also comprises preschool for children whose parents are unemployed or on parental leave for a sibling. These children must be offered a place in preschool at least three hours a day or 15 hours a week. Municipalities may also provide pedagogical care (e.g. family day care), instead of preschool according to the parents' choice.

The municipalities have an obligation to organise universal preschool to all children from the autumn term of the year the child reaches the age of three.

In 2013 preschool and pedagogical care comprised 87 % of all 1–5-year-olds. Over 506,000 children were in preschool education and pedagogical care in 2013, where approximately 105,000 adults are employed. In 2013 the total cost of preschool was SEK 59.8 billion (€ 6.5 billion). The number of children per worker was 5.3 children."

38. The Government notes in this connection that the Swedish child day care system is based on similar principles as the Finnish system, and observes that the Committee concluded in the case of Sweden that the situation in Sweden is in conformity with Article 27§1 of the Charter.
39. The Government also emphasizes that Articles 16, 17 and 27 of the Charter taken together embody similar principles as the *UN Convention on the Rights of the Child*, i.e., the primary responsibility for the upbringing and development of the child rests on the family and the State shall provide appropriate support.
40. According to Article 18 of that Convention, the States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from childcare services and facilities for which they are eligible.
41. In the Government's view, the *Act on Early Childhood Education and Care* must be evaluated on the basis of the aforementioned principles, i.e., whether the legislation enables the effective enjoyment of the rights provided by the Charter. One of the aims of the Act is to co-operate with and support the child's parent or other guardian in their upbringing task.
42. In light of the above, the Government considers that the amendment to the Act on Early Childhood Education and Care is in conformity also with Article 27§1 c of the Charter.

Observations on the CUCW's allegations concerning Article E

43. The Government observes that the Committee has previously considered, *inter alia*, that "the insertion of Article E into a separate Article in the Revised Charter indicates the heightened importance the drafters paid to the principle of non-discrimination with respect to the

achievement of the various substantive rights contained therein. It further considers that its function is to help secure the equal effective enjoyment of all the rights concerned regardless of difference. Therefore, it does not constitute an autonomous right which could in itself provide independent grounds for a complaint. Article E of the Charter not only prohibits direct discrimination but also all forms of indirect discrimination that may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all" (*International Association Autism Europe (AIAE) v. France*, Complaint No. 13/2002, §§51-52).

44. The Committee has considered that "States Parties enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law, but it is ultimately for the Committee to decide whether the difference lies within this margin" (*Confédération française démocratique du travail (CFDT) c. France*, Complaint No. 50/2008, §39)."
45. The Committee has further considered that "Article E enshrines the prohibition of discrimination and establishes an obligation to ensure that, in the absence of objective and reasonable justifications, any individual or groups with particular characteristics benefit in practice from the rights in the Charter" (*European Roma Rights Centre (ERRC) v. Bulgaria*, Complaint No. 31/2005, §40)."
46. The Government notes that according to the *Act on Early Childhood Education and Care*, the municipalities have an obligation to provide ECEC to all children residing in their area. Every child is entitled to a minimum 20 hours of early childhood education and care per week (4 hours per day), which also includes necessary and healthy nutrition, and to more than 20 hours when it is necessary based on the individual situation of the child's guardian (employment, study etc.) The child is also entitled to fulltime ECEC, when considered necessary due to the child's individual development, need for support or circumstances of the family or when considered otherwise necessary for the best interests of the child. Therefore, the Government emphasizes that the current legislation leaves no child without the support and care offered in ECEC.
47. Furthermore, the Finnish domestic legislation contains the necessary measures to safeguard the position of those families that are in a vulnerable situation.
48. In the Government's view, the CUCW's allegation that services should be universal and identical to all regardless of relevant differences in families' situations is too rigid and not in line with the Committee's case law mentioned above.
49. The distinction due to the amendment to the *Act on Early Childhood Education and Care* has an objective and reasonable justification because it is based on the differing needs of different families and yet no one is left entirely without early childhood education and care. Thus, the right of a child to ECEC is ensured. Therefore, there is no discrimination based on the social and socioeconomic status of parents or any other criteria. The Charter in itself is based on the principle of ensuring that families, children and workers have access to the services, benefits and other arrangements that they *need*. The specifics of the childcare system are within the discretion of the State Party. The Government recalls in

this connection that the Swedish child day care system, which is based on similar principles as the Finnish system, has been found by the Committee to be in conformity with the Charter.

50. The Government recalls that in its aforementioned Statement, the Constitutional Law Committee also assessed the *Act on Early Childhood Education and Care* from the standpoint of the equality provisions in Section 6 of the Constitution. The Committee considered it decisive that a child must always have a subjective right to full-time early childhood education and care if it is necessary on grounds of the child's development or need for support or the family's circumstances, or if it is otherwise in the child's best interest. The Committee emphasised that in individual cases, the best interest of the child must ultimately determine the child's right to full-time early childhood education and care.
51. Another established position taken by the Constitutional Law Committee is that the general equality provision in Section 6, subsection 1 of the Constitution does not set strict limits to the legislator's margin of appreciation in its regulation efforts required by prevailing social developments at each time. In that context it is essential that possible segregation must be justifiable in an acceptable manner from the standpoint of the system of basic rights and liberties and that the segregation must not be arbitrary and unreasonable.
52. Accordingly, the required level of equality is sufficiently ensured as every child ultimately has the right to fulltime ECEC if it is found to be necessary for the child's individual development, due to the need of support of the child or the family circumstances, or if it for another reason is considered to be in the best interest of the child. Thus, fulltime ECEC is provided for those children who need it.

Equality between municipalities

53. According to Section 121 of the *Constitution*, Finland is divided into municipalities, whose administration shall be based on the self-government of their residents. Provisions on the duties of the municipalities are laid down by an Act. The duty to arrange ECEC is laid down in the *Act on Early Childhood Education and Care*.
54. The Government observes that the CUCW appears to refer to the case of *CACF v. Finland*, Complaint No. 71/2011, §§45-46, where the Committee recalled that "the general principle of international law according to which, in terms of the international responsibility of states, the conduct of any state organs, including local authorities, is deemed to be an act of state (*International Federation of Human Rights (FIDH) v. Belgium* Complaint No. 62/2010, § 54)(Article 4 of the Draft articles on responsibility of States and comments by the International Law Commission) (see, mutatis mutandis, European Court of Human Rights *Assanidze v. Georgia*, Judgment of 8 April 2004). States may decide either to exercise certain powers or to delegate them to local authorities or the social partners. However, such a delegation does not relieve them from the obligations entered into under international agreements (Conclusions 2006, General Introduction, §10). Concerning Article 23, the modalities of operation of local autonomy should not prevent the effective application of this provision."

55. The Government notes that regarding the different practices of municipalities, the situation in arranging ECEC is not analogous to that in the aforementioned *CACF v. Finland* where the Committee concluded (§53) that “insufficient regulation of fees for service housing and service housing with 24-hour assistance combined with the fact that the demand for these services exceeds supply, does not meet the requirements of Article 23 of the Charter insofar as these:

Create legal uncertainties to elderly persons in need of care due diverse and complex fee policies. While municipalities may adjust the fees, there are no effective safeguards to assure that effective access to services is guaranteed to every elderly person in need of services required by their condition.

Constitute an obstacle to the right to “the provision of information about services and facilities available for elderly persons and their opportunities to make use of them” as guaranteed by Article 23b of the Charter.”

56. The Government points out in this connection that the aforementioned *CACF v. Finland* concerned effective access to services in the first place, whereas effective access to ECEC is guaranteed to every child. The regional differences arise from the fact that some municipalities still guarantee full-time ECEC to every child, regardless of the situation of the family. Thereby, the municipalities are exceeding the obligation to provide a minimum of 20 hours of ECEC to every child per week, as stipulated in the *Act on Early Childhood Education and Care*.

Evaluation of the legislative reforms

57. The Government notes that upon accepting the amendments in the *Act on Early Childhood Education and Care*, the Parliament requested an evaluation of the amendments to be made and requested the Government to give a report to the Parliament in 2017. The Parliament also claimed for a comprehensive evaluation on the effects on equality when approving the legislative amendments, which took effect on 1 August 2016.

58. An evaluation is carried out by the University of Oulu in a research project titled “*VakaVai - Exploring the influences of new legislation of early childhood education and care in Finland*”, carried out during 2016 – 2017.

59. The project takes a multi-dimensional approach to exploring the effects of the amendments made in 2015 and 2016 in legislation affecting ECEC in Finland. The project takes use of the data gathered by a nation-level survey, in which the directors, educators, and parents evaluate their experiences about the impacts of the legislative amendments on ECEC. Qualitative data has been generated by organizing group interviews with directors, staff members, and parents. Moreover, educators and parents have gathered ideas, comments, and stories of the children’s daily life experiences in early childhood settings for the purposes of the project.

60. The final results of the survey will be published by the end of 2017. According to the preliminary results, it can be stated that 77 municipalities continue arranging the ECEC as before the legislative amendment, thereby exceeding the obligation to provide a minimum of 20 hours of ECEC to every child per week, as stipulated in the *Act on Early Childhood Education and Care*. Some 209 municipalities replied to the survey (altogether, there are 295 municipalities in Finland, excluding 16 municipalities in the autonomous territories of Åland). According to the survey, the size or location of the municipalities has no affect in their decisions relating to arranging the ECEC in their respective regions.
61. In light of the above, the Government considers that the amendment to the *Act on Early Childhood Education and Care* is in conformity also with Article E of the Charter.

Conclusion

62. In respect of the merits of the complaint, the Government notes that when in the present case the situation of the Finnish domestic legislation is assessed holistically and comprehensively with the Charter, the only available conclusion is that the relevant provisions in aggregate do fulfil the obligations set by Articles 16, 17, 27§1 c and E of the Charter.
63. Accordingly, there is no violation of Articles 16, 17 and 27§1 c alone or in conjunction with Article E of the Charter in the present case.

Accept, Sir, the assurance of my highest consideration.



Krista Oinonen
Agent of the Government of Finland
before the European Committee of Social Rights
Director, Unit for Human Rights Courts and Conventions