



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

9 February 2021

**Case Document No. 2**

**Validity v. Finland**  
Complaint No. 197/2020

**OBSERVATIONS BY THE GOVERNMENT ON  
ADMISSIBILITY**

**Registered at the Secretariat on 29 January 2021**





29 January 2021

Mr Henrik Kristensen  
Deputy Executive Secretary  
European Committee of Social Rights

**Complaint No. 197/2020**  
**VALIDITY v. FINLAND**

Sir,

With reference to your letter of 2 December 2020, I have the honour, on behalf of the Government of Finland, to submit the following observations on the admissibility of the aforementioned complaint.

**Admissibility of the complaint**

*General*

1. The Government observes that the present complaint has been lodged by Validity Foundation – Mental Disability Advocacy Center, an association based in Budapest, Hungary (later, "the applicant association"), in partnership with Law Firm Kumpuvuori Ltd and European Network on Independent Living – ENIL, on 26 October 2020.
2. The applicant association alleges that Finland has violated Articles 11, 14 and 15 in conjunction with Article E of the Revised European Social Charter (later, "the Charter").
3. Finland has ratified the Revised European Social Charter on 21 June 2002 and declared itself bound by the aforementioned Articles. The Revised Charter has entered into force in Finland on 1 August 2002.
4. The Government notes that the complaint concerns Articles of the Charter that are applicable to Finland and has, thus, no formal objections concerning the admissibility of the complaint in this respect.

*Representativity and particular competence of the organisation*

5. The Government notes that according to Article 1§b of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158), international non-governmental organisations which have consultative status with the Council of Europe and that have been put on a list established for that purpose by the Governmental Committee, have a right to submit complaints alleging unsatisfactory application of the Charter.

6. The Government further notes that the applicant association, Validity Foundation – Mental Disability Advocacy Center, is a specialist international non-governmental organisation deployed legal strategies to promote, protect and defend the human rights of persons with mental disabilities. It is listed in the Council of Europe's database which lists the international non-governmental organisations that have been granted participatory status with the Council of Europe.

7. The Government observes, thus, that the applicant association is entitled to lodge a collective complaint before your Committee, and has no formal objections concerning the admissibility of the complaint in this respect.

#### *Unsatisfactory application of the Charter*

8. The Government notes that according to Article 4 of the Additional Protocol providing for a system with collective complaints, a complaint must relate to a provision of the Charter accepted by the Contracting Party concerned and indicate in what respect the latter has not ensured the satisfactory application of this provision.

9. The Government notes that the applicant association, by invoking Article 11 in conjunction with Article E of the Charter, alleges that Finland has violated those Articles by failing to adopt measures that ensure non-discriminatory access to health care for persons with disabilities during the COVID-19 pandemic. Especially by prohibiting leaving housing service units and prohibiting visits to those by family members and professionals, the applicant association argues that persons with disabilities became isolated in "confined spaces" and that those institutions became "hotbeds of COVID-19".

10. The applicant association further alleges that Finland failed to provide with appropriate and accessible information and guidance on how to protect oneself against the spread of the virus, violating Article 11 and Article E of the Charter.

11. Further, by invoking Articles 14 and 15 in conjunction with Article E of the Charter, the applicant association alleges that persons with disabilities were denied of social services that foster their independence, social integration and inclusion in the community by the restrictive measures adopted by the Government.

12. Furthermore, the applicant association argues that the restrictive measures were not based on law, cannot be considered reasonable or necessary in the given situation, and they are based on prejudiced and stereotypical portrayals of persons with disabilities, and are, thus, discriminatory.

13. The Government refutes all the aforementioned allegations and wishes to present the following arguments.

14. At the outset, the Government notes that the measures referred to in the complaint were taken to protect the population against a new generally hazardous communicable disease, the behaviour of which was not fully known. The legal basis for the measures taken was, first and foremost, the positive obligation of the State to safeguard the right of every person to life, as required by Article 2 of the European Convention on Human Rights (ECHR), and the right to protection of health under Article 11 of the Charter, and in particular Article 11§3, which requires the State to take appropriate measures designed, *inter alia*, to prevent as far as possible, epidemics, endemic diseases and other diseases.

15. In the view of the Government, the complaint is largely based on incorrect or inaccurate information. The complaint is based on the assumption that the tools employed by the Government to combat the pandemic, including restrictive measures at housing service units, *de facto* expose the persons with disabilities who reside at such units to the coronavirus, and that these tools were thus in violation of the provisions of Article 11 of the Charter. However, the complaint fails to provide any statistical data or other concrete evidence in support of these claims.

16. With reference to the above, the Government notes that the disease situation in Finland has been fairly good relative to many other countries, which is in part a result of the measures taken. At 15 December 2020, for example, the number of confirmed infections and deaths linked to the coronavirus in Finland were 31,110 and 461, respectively. In comparison, Denmark, with a nearly equal-sized population, had 2.5 times the number of infections (109,758) and more than twice the number of deaths (941). In Switzerland, where the population is about 1.5 times higher than in Finland, the numbers of infections and deaths were more than ten times higher than in Finland (372,329 and 5,378, respectively).

17. In the period up to 15 December 2020, neither the Ministry of Social Affairs and Health (hereinafter “the Ministry”) nor the supervisory authorities in social services and healthcare had become aware of any wide-scale coronavirus infections or exposures at housing service units for persons with disabilities. At 15 December 2020, the Ministry and the supervisory authorities for social services and healthcare had been informed of one death associated with the coronavirus taking place at a housing service unit for persons with disabilities.

18. The Government further notes that organisations in the field of development disabilities supplied the Government Situation Centre with a report on the coronavirus situation with regard to persons with disabilities on a weekly basis in the spring and a bi-weekly basis in the autumn, and that no information that would support the claims made in the complaint has emerged in these reports either.

19. The Government therefore considers the claim that housing service units for persons with disabilities would be COVID-19 hotbeds and death traps, to be manifestly ill-founded.

20. The Government further notes that the complaint fails to put forward adequate grounds as to the respects in which persons with disabilities would have been treated unequally and discriminated against when compared to other people resident at residential housing service units or the entire population. The Government emphasises that measures of similar content, seeking to safeguard health protection as provided in Articles 11§1 and 11§3 of the Charter and the right to life as provided in Article 2 of the ECHR, applied equally to all housing service units, not only to housing service units for persons with disabilities. In addition to the above, the entire population was instructed to avoid social contacts in all situations.

21. In the Government’s view, the instructions to avoid visits, given to social welfare housing service units, are therefore no different in terms of content from the general instructions given to the entire population. Persons with disabilities were thus not treated unequally or discriminated against within the meaning of Article E of the Charter.

22. The applicant association also alleges that as a result of the coronavirus pandemic, persons with disabilities would have been denied their right to healthcare required under Article 11 of the Charter, their right to benefit from social welfare services required under Article 14 of the Charter, and their right to vocational training, rehabilitation and social resettlement required under Article 15 of the Charter. The Government notes that the introduction of the Emergency Powers Act (*valmiuslaki, beredskapslag*; 1552/2011) on 16 March 2020 impacted the entire population’s access to services without discrimination, in accordance with Article E of the Charter.

23. The Government points out that in the instructions given by the Ministry on 20 March 2020, the latter expressly emphasised that the obligation to organise health and social services remains in effect despite the introduction of the Emergency Powers Act. The Ministry noted that it was appropriate for municipalities to assess any staff shortages and changes in the focus of activities to anticipate the individuals or groups of customers in respect of whom it was critically important to organise the requisite support, and to ensure that any reorganisations of duties in social services and healthcare in municipalities did not jeopardise the health and safety of persons in need of particular support. The Ministry nonetheless emphasised that essential healthcare and medical attention, care and livelihoods were to be ensured also under emergency conditions, and that in the provision of social services and healthcare, special attention was always to be paid to realising the best interests of customers in need of particular support, which need was only highlighted by the emergency conditions. The Ministry additionally emphasised that the individual need for services was to be assessed for each person separately so as not to jeopardise the right of anyone to care and to livelihood under last-resort measures. The said instructions have been submitted to your Committee as an annex to the complaint (see “information notes etc. of the Finnish Ministry of Social Affairs and Health”).

24. However, the Government also notes that in many cases, persons with disabilities are often provided with special social welfare services which municipalities have a duty to organise, and that these services safeguard the persons' right to essential care, non-discrimination and participation in the manner required under Article 14 of the Charter.

25. With reference to the above, the Government emphasises that the waiving of the time limit for service needs assessment under Section 36, subsection 2 of the Social Welfare Act (*sosiaalihoitolaki, socialvårdslag*; 1301/2014) implemented on the basis of section 88 of the Emergency Powers Act does not apply to the service needs assessment under Section 3a, subsection 1 of the Act on Disability Services and Assistance (*laki vammaisuuden perusteella järjestettävistä palveluista ja tukitoimista, lag om service och stöd på grund av handikapp*; 380/1987). Consequently, the introduction of Section 88 of the Emergency Powers Act had no direct impacts on the implementation of essential special social welfare services to persons with disabilities. The Ministry specifically highlighted the above fact in its instructions of 20 March 2020 that were submitted to your Committee as an annex to the complaint. Persons with disabilities were thus not treated unequally or discriminated against within the meaning of Article E of the Charter relative to the rights described in Articles 11, 14 and 15 of the Charter; if anything, this was a case of positive discrimination in favour of persons with disabilities.

26. The applicant association further alleges failure to provide persons with disabilities with an equal right to, *inter alia*, healthcare, testing or information. The Government considers the said allegation to be incorrect. The Government emphasises that the measures taken to curb the coronavirus pandemic have been specifically based on equally safeguarding access to critical healthcare services, which is pointed out, *inter alia*, in the instructions issued by the Ministry on 20 March 2020 and 16 April 2020 that appear as annexes to the complaint. The purpose of the measures was thus to safeguard the rights of each individual in the manner required under Article 2 of the ECHR and Articles 11 and E of the Charter.

27. Moreover, the Government notes that unlike alleged in the complaint, special efforts have been made in Finland with regard to the availability and accessibility of instructions, guidelines and information. Information on the coronavirus has been available in multiple languages (including easy Finnish and sign language) and sign language interpretation has been provided at briefings, for example. Particular attention to accessibility was also paid in the development of the mobile coronavirus contact tracing app and in the law-drafting relating to the use of the app by including organisations of persons with disabilities in the process. In addition, over the course of spring 2020 the Ministry engaged in repeated discussions with organisations of persons with disabilities and met with representatives of these organisations on two occasions.

28. The Government further notes that in time of the coronavirus, the Ministry's Funding Centre for Social Welfare and Health Organisations STEA has provided financial support to organisations that has allowed them, among other things, to provide coronavirus advisory services and a peer support telephone counselling service to combat loneliness and fears. The said measures have served to safeguard the support for the participation of persons with disabilities under Article 15 of the Charter in time of the pandemic.

29. The Government also notes that contrary to the claims made in the complaint, the Ministry has issued numerous guidelines and recommendations on safeguarding the rights of persons with disabilities during the pandemic. These recommendations and guidelines have also been submitted to the your Committee as annexes to the complaint.

30. The Government also considers incorrect the allegation made in the complaint that the measures taken would not meet the requirements under Article 31 of the Charter. As the complaint states, the measures taken were primarily based on Sections 6–9, 17 and 58 of the Communicable Diseases Act, meaning that they were prescribed by law as required under Article 31. Contrary to the claims made in the complaint, the restrictive measures were necessary in a democratic society for the protection of public health in the manner required under Article 31 of the Charter, as the aim of the measures taken was specifically to curb the spread of a new generally hazardous communicable disease and to safeguard urgent services and the capacity of the healthcare system under all circumstances equally in the manner required under Articles 11 and E of the Charter.

31. Moreover, the Government stresses that Article 31 of the Charter is not within the scope of this complaint. All claims in this respect should be rejected.

### **Conclusion**

32. In the Government's view, and contrary to what the applicant association alleges, Finland has expressly guaranteed the satisfactory application of the provisions of the Charter in the situation of a global pandemic as necessary for the protection of the population in the manner required under Article 11 of the Charter and Article 2 of the ECHR. In the Government's view, the complaint fails to put forward plausible grounds as to the respects in which Finland would not have guaranteed the implementation of the aforementioned rights.

33. Further, in the Government's view, the complaint also fails to put forward, with sufficient clarity and justification, the respects in which the measures taken would have been inconsistent with Article 31 of the Charter or would have treated persons with disabilities unequally and discriminated against them within the meaning of Article E in respect of Articles 11, 14 and 15 of the Charter, and it is, thus, manifestly ill-founded.

34. In this connection, the Government reiterates that Article 31 of the Charter is not within the scope of the application.

35. The Government's firm view is that the complaint does not fulfil the conditions for admissibility under Article 4 of the Additional Protocol and it should therefore be declared inadmissible.

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