

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

DECISION ON THE MERITS

Adoption: 22 March 2023

Notification: 24 April 2023

Publicity: 25 August 2023

Validity Foundation v. Finland

Complaint No. 197/2020

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 333rd session in the following composition:

Aoife NOLAN, President
Eliane CHEMLA, Vice-President
Tatiana PUIU, Vice-President
Kristine DUPATE, General Rapporteur
József HAJDÚ
Karin Møhl LARSEN
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George THEODOSIS
Mario VINKOVIC
Miriam KULLMANN
Carmen SALCEDO BELTRÁN
Monika ŠIMŮNKOVÁ
Franz MARHOLD

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 7 December 2022, 23 January 2023 and 22 March 2023

On the basis of the report presented by Kristine DUPATE,

Delivers the following decision adopted on the latter date:

PROCEDURE

1. The complaint lodged by the Validity Foundation – Mental Disability Advocacy Center (“Validity”) was registered on 26 November 2020.
2. Validity alleges that some measures taken by the Government to tackle the Covid-19 pandemic in spring 2020 violated the rights of persons of disabilities under Article 11 (the right to health), Article 14 (the right to social services), and Article 15 (the right to independence and inclusion in the community) as well as Article E (non-discrimination) in conjunction with each of the invoked provisions of the Revised European Social Charter (“the Charter”).
3. On 8 September 2021, the Committee declared the complaint admissible.
4. In accordance with Article 7 of the 1995 Protocol providing for a system of collective complaints (“the Protocol”), the Committee invited the Government to make written submissions on the merits of the complaint by 29 October 2021.
5. Referring to Article 7§§1 and 2 of the Protocol, the Committee invited the States Parties to the Protocol and the States having made a declaration in accordance with Article D§2 of the Charter as well as the international organisations of employers or workers mentioned in Article 27§2 of the Charter, to notify any observations they may wish to make on the complaint by 29 October 2021.
6. The Government’s submissions on the merits of the complaint were registered on 28 October 2021.
7. Pursuant to Rule 31§2 of the Rules, the President of the Committee invited Validity to submit a response to the Government’s submissions on the merits by 7 January 2022. Validity’s response was registered on 14 January 2022.
8. Pursuant to Rule 31§3 of the Rules, the Government was invited to submit a reply to Validity’s response by 31 March 2022. The Government’s reply was registered on 31 March 2022.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

9. Validity alleges that in the spring of 2020, during the outbreak of the Covid-19 pandemic, no appropriate measures were taken by the Finnish Government to protect the life and health of persons during the pandemic (where residential institutions for persons with disabilities became hotbeds for the spread of the virus), and that no accessible information and guidance in accessible formats were distributed to persons with disabilities in that period. In addition, according to the complainant organisation, some measures taken by the Government to tackle the Covid-19 pandemic in 2020 in respect of persons with disabilities, such as the prohibition to leave social care facilities and the prohibition or restriction of visits in housing service units for persons with disabilities, deprived such persons of access to personal assistance and healthcare. Validity alleges that, due to the above lack of appropriate measures and excessive prohibitions and restrictions, the Government violated the rights of persons with disabilities under Articles 11, 14 and 15 of the Charter as well as Article E in conjunction with each of the invoked provisions of the Charter.

B – The respondent Government

10. The Government rejects the allegations of the complainant organisation and asks the Committee to find that there is no violation of the Charter provisions invoked.

RELEVANT DOMESTIC LAW AND PRACTICE

A – Constitutional principles

11. Constitution of Finland

Section 23 – Basic rights and liberties in situations of emergency

“Such provisional exceptions to basic rights and liberties that are compatible with Finland’s international human rights obligations and that are deemed necessary in the case of an armed attack against Finland or in the event of other situations of emergency, as provided by an Act, which pose a serious threat to the nation may be provided by an Act or by a Government Decree to be issued on the basis of authorisation given in an Act for a special reason and subject to a precisely circumscribed scope of application. The grounds for provisional exceptions shall be laid down by an Act, however.
[...]”

B – Domestic legislation

12. Emergency Powers Act No. 1080/1991 – as amended

Section 2

“For the purposes of this Act, emergency conditions are:

- (1) an armed attack against Finland, as well as war and the aftermath of war;
- (2) a serious violation of the territorial integrity of Finland and a threat of war against the country;
- (3) war or a threat of war between foreign countries and a serious international crisis implying the threat of war and requiring immediate action for the increase of the defensive readiness of Finland as well as other specific conditions outside Finland having a

- comparable effect, if they may pose a grave danger to the foundations of national existence and well-being referred to in section 1(1);
- (4) a serious threat to the livelihood of the population or the foundations of the national economy brought about by hampered or interrupted import of indispensable fuels and other energy, raw materials and goods or by a comparable serious disruption of international trade; and
 - (5) a catastrophe, provided the authorities cannot control the situation with regular powers.
- [...]"

Section 9

- "(1) In emergency conditions the constitutionally protected or other rights of a person shall not be restricted more than what is absolutely necessary for dealing with the situation.
- (2) In the Presidential Decrees and Government Decrees relating to emergency powers based on this Act and in the use and implementation of those emergency powers no one shall without an acceptable reason be differentiated on the basis of sex, age, origin, language, religion, conviction, opinion, state of health, handicap or other personal reason.
- [...]"

13. Communicable Diseases Act No. 1227/2016 – as amended

Section 1

Objectives

"The objective of the Act is to prevent communicable diseases and their spread, as well as to prevent harmful effects caused by these diseases to people and the society.

[...]"

Section 6

General responsibilities of authorities

"State authorities and expert institutions as well as municipalities and joint municipal authorities referred to in this Act must systematically combat communicable diseases and be prepared for disruptions in healthcare. They must take immediate action when informed of a communicable disease or the risk of such a disease within their responsibility area, which requires control measures."

Section 7

National control activities

"(1) The general planning, steering and monitoring of the control of communicable diseases are the responsibility of the Ministry of Social Affairs and Health. The ministry is responsible on the national level for preparing for disruptions of healthcare or for their risk, and for leadership in such situations.

[...]"

Section 17

Prevention of healthcare – associated infections

- "(1) A healthcare and social welfare unit must systematically combat healthcare-associated infections. Measures must be harmonised with the measures of promoting patient safety laid down in section 8 of the Healthcare Act.
- (2) The head of the unit must implement surveillance for communicable diseases and extensively drug-resistant microbes and ensure of infection control. The unit must ensure that patients, clients and personnel are properly protected and placed, and that antimicrobial drugs are used appropriately.
 - (3) The head of the unit must enlist the support of healthcare professionals specialised in the control of communicable diseases and coordinate his or her activities with measures

implemented by the municipality or joint municipal authority as well as with national control programmes on healthcare – associated infections.
[...]

Section 58

Measures related to extensive risk of infection

“(1) When a generally hazardous communicable disease or a disease that is justifiably suspected of being generally hazardous constituting an extensive risk of infection has been diagnosed or can justifiably be expected to occur, the municipal body responsible for the control of communicable diseases may in its area decide on closing social and healthcare units, educational institutions, day care centres, residential apartments and other similar facilities, as well as on prohibiting general meetings and public events. In addition, it is required that the measure must be essential for preventing the spread of a generally hazardous communicable disease or a disease that is justifiably suspected of being generally hazardous. The Regional State Administrative Agency may make the corresponding decisions in its area, when the decisions are needed for an area covering several municipalities.

(2) If a communicable disease other than a disease referred to in sub-section 1 constitutes an extensive risk of infection, the municipal body responsible for the control of communicable diseases and the Regional State Administrative Agency may decide on closing educational institutions and day care centres in their area, if it is necessary for preventing the spread of the disease.

(3) The decisions referred to in sub-sections 1 and 2 above are made for a period of one month at the most. The measures must be discontinued at once when the risk of infection no longer exists.”

14. Intellectual Disabilities Act No. 519/1977 – as amended

8c§ Personal Assistance

“Under this Act, personal assistance shall mean necessary assistance of a person with a severe disability at home and outside of the home:

- 1) in activities of daily life;
- 2) in work and studies;
- 3) in hobbies;
- 4) in social participation; or
- 5) in maintenance of social interaction.

The purpose of personal assistance is to assist the person with a severe disability to realise his own choices in activities mentioned under subsection 1. Organisation of personal assistance shall be requisite of the person with a severe disability ability to himself determine the contents of the assistance provided and the way in which assistance is organised.

[...]

15. In its judgment of 7 January 2021, No. 21505/2020, the Supreme Administrative Court of Finland held that social services units were urged to set a visiting prohibition in the units by virtue of Section 17 of the Communicable Diseases Act. Although the said legal provision does not prescribe for visiting prohibitions or other decision-making concerning contacts of the residents in social services units, the instruction of the Ministry of Social Affairs and Health supported such interpretation of Section 17 of the Communicable Diseases Act based on which the head of unit could prohibit visits. In reality, the visiting prohibition limited the right of the appellants in that case to respect for private and family life. Issuing a visiting prohibition concerning the housing unit meant far-reaching interference with the protection of private life and family life of the residents of the housing unit. Section 17 of the Communicable Diseases Act concerns the prevention of healthcare-associated infections. The legal provision does not prescribe the authority to take measures that limit the fundamental rights. Such authority is prescribed in the law only for situations

of quarantine and isolation. Thus, it was not possible to set a visiting prohibition by a decision made by the manager of services for the persons with disabilities. The decision was therefore contrary to the law.

RELEVANT INTERNATIONAL MATERIAL

A – Council of Europe

16. **The Council of Europe Disability Strategy 2017-2023** sets out the priority areas of the Council of Europe in this field for the period 2017 to 2023 providing guidance and inspiration to member States and other stakeholders on policies, activities and measures to ensure implementation of those priorities at national and local levels. The overall goal of the Strategy is to achieve equality, dignity and equal opportunities for persons with disabilities which requires ensuring independence, freedom of choice, full and effective participation in all areas of life and society, including living in the community. There are five priority areas: 1) equality and non-discrimination; 2) awareness; 3) accessibility; 4) equal recognition before the law; 5) freedom from exploitation, violence and abuse.

1. Committee of Ministers

17. The Committee of Ministers in its Recommendation No. R(92) 6 on a coherent policy for persons with disabilities considered that states must pursue a coherent, global and comprehensive policy in co-operation with persons with disabilities and the organisation of and for them, to secure all necessary help for persons with disabilities. This policy concerns all areas of community life and is particularly directed towards: - prevention and health education; - identification and diagnosis; - treatment and therapeutic aids; - education; - vocational guidance and training; - employment; - social integration and daily environment; - social, economic and legal protection; - training of persons involved in the rehabilitation process and in social integration of persons with disabilities; - information; - statistic and research. Some of the aims in respect of persons of disabilities are that through a coordinated set of measures they should be enabled to: - be as free as possible from needing permanent medical treatment and care, while having access to such care whenever necessary; - be as free as possible from institutional settings and constraints, or where these are unavoidable, to have as much personal choice as possible within the said institution; - be provided with the necessary personal care, in a location of their choice; - to play a full role in society and take part in economic, social, leisure, recreational and cultural activities.

18. In its Recommendation No. Rec(2006)5 on the Council of Europe Action Plan to promote the rights and full participation of persons with disabilities in society: improving the quality of life of persons with disabilities in Europe 2006-2015 the Committee of Ministers stated that “it is important that persons with disabilities be able to exercise their right to vote and participate in political and public activities”, that they “should also be able to participate in the cultural life [...] of that society”, that

they “should have equal access to good quality healthcare services that are respectful of clients’ rights”, “to prevent the deterioration of disability, alleviate its consequences and enhance independence of persons with disabilities, comprehensive rehabilitation [...] programmes that include an array of accessible, and, where appropriate, community-based services, should be implemented”. Moreover, “services provided by the social protection [...] system – including social security, social assistance and support – can contribute to the equality of life of their recipients. Persons with disabilities should be able to adequately benefit from social protection systems and have equal access to these services.”

2. Parliamentary Assembly

19. In its resolution 2339(2020) on upholding human rights in times of crisis and pandemics: gender, equality and non-discrimination, the Parliamentary Assembly urged the member States to plan, budget for and provide from the outset additional support to persons who will need it, such as speakers of minority or non-official languages and persons with disabilities in order that they have equal access to information about measures they can take to protect themselves from the crisis and about new obligations stemming from it.

B – The United Nations (UN)

1. Convention on the Rights of Persons with Disabilities (2006)

Article 3 – General principles

“The principles of the present Convention shall be:

1. Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
 2. Non-discrimination;
 3. Full and effective participation and inclusion in society;
- [...]”

Article 11 – Situations of risk and humanitarian emergencies

“States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.”

Article 19 – Living independently and being included in the community

“States Parties to the present Convention recognise the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and

inclusion in the community, and to prevent isolation or segregation from the community;
c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.”

Article 21 – Freedom of expression and opinion, and access to information

“States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;

b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;

[...]”

Article 25 – Health

“States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;

[...]”

THE LAW

PRELIMINARY CONSIDERATIONS

As to the provisions of the Charter at stake

20. Validity alleges that the measures taken by the Government to tackle the Covid-19 pandemic in the spring of 2020 violated the following provisions of the Charter:

- a. Article 11, as no appropriate measures were taken to protect the life and health of persons during the pandemic where residential institutions for persons with disabilities became hotbeds for the spread of the virus;
- b. Article 14, as the right of the persons with disabilities to social services was limited during the pandemic;
- c. Article 15, as the right of persons with disabilities to independence and inclusion in the community was limited during the pandemic;
- d. Article E taken together with each above-mentioned provisions on account of discrimination of the persons with disabilities based on the exclusion of such persons from the rest of the population.

21. While Validity argues that the authorities violated several provisions of the Charter (Articles 11, 14 and 15 read alone and E read in conjunction with each of the provisions concerned of the Charter), the Committee considers that the grievances expressed by Validity are not sufficiently substantiated in respect of all of the different provisions of the Charter invoked so as to allow a distinct assessment under each of these provisions.

22. The Committee recalls that in case of pandemic, Article 11§2 of the Charter requires the States Parties to take all necessary measures to educate people about the risks posed by the disease in question. This entails carrying out public awareness programmes so as to inform people about how to mitigate the risks of contagion and how to access healthcare services as necessary. In the light of this, States Parties must ensure that the right to protection of health is given the highest priority in policies, laws and other actions taken in response to a pandemic (see Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020). The Committee notes that the only argument of Validity arguably relating to the content of Article 11§2, namely that accessible information and guidance in accessible formats were not distributed, is not supported by the evidence submitted to the Committee. The Committee considers therefore that this allegation is not substantiated.

23. As regards Article 14§1 of the Charter, the Committee recalls that this provision establishes an individual right for all persons who find themselves in a dependent situation to benefit from services using methods of social work (International Federation of Human Rights (FIDH) v. Belgium, Complaint No. 75/2011, decision on the merits of 18 March 2013, §105). The situation of dependency in which persons must find themselves in order to claim entitlement to social welfare services is defined by means of the criterion that they belong to groups considered to be vulnerable, including persons with disabilities (International Federation of Human Rights (FIDH) v. Belgium, *op. cit.*, §109). The Committee has taken equal and effective access to social welfare services under Article 14§1 to mean access that is guaranteed in law and in practice and is capable of keeping pace with user's needs (International Federation of Human Rights (FIDH) v. Belgium, *op. cit.*, §108). The overall organisation and functioning of social services fall within the scope of Article 14§1.

24. The Committee notes that, in so far as Article 14§1 is concerned, the arguments of Validity relate to the fact that, because of the restriction of visits in housing service units for persons with disabilities, such persons were deprived of access to personal assistance and that this also amounted to discrimination. The Committee considers however that this is a question that falls within the scope of Article 15§3 of the Charter and holds that no separate issue arises under Article 14§1 of the Charter.

25. The Committee also notes that Article 14§2 of the Charter requires States Parties to provide support for voluntary associations seeking to establish social welfare services (e.g., Conclusions 2005, Bulgaria, Article 14§2). It also requires States Parties to encourage individuals and organisations to play a part in maintaining services, for example by taking action to strengthen the dialogue with

civil society in areas of welfare policy which affect the social welfare services (ibid.). The Committee takes the view that the present complaint does not address the issues covered by Article 14§2 of the Charter, and it therefore considers this allegation as not substantiated.

26. The Committee recalls that under Article 15§1 of the Charter all persons with disabilities, irrespective of age and the nature and origin of their disabilities, are entitled to guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private (Conclusions 2020, Andorra, Article 15§1, Statement on Covid-19 and social rights, 24 March 2021). Article 15§2 of the Charter requires States Parties to promote an equal and effective access to employment on the open labour market for persons with disabilities (Conclusions XX-1, Czech Republic, Article 15§2). The Committee notes that Validity's allegations do not concern these issues but rather the participation of the persons with disabilities in the life of the community, which is guaranteed by Article 15§3 of the Charter. As such, it considers that the allegations under Article 15§1 and Article 15§2 of the Charter are not substantiated.

27. Considering all the information at its disposal and in view of these preliminary considerations, the Committee decides to assess this complaint from the angle of Articles 11§§1 and 3, Article 15§3, and Article E in conjunction with Article 11§§1 and 3 of the Charter.

I. ALLEGED VIOLATION OF ARTICLE 11§1 AND 3 OF THE CHARTER ALONE AND OF ARTICLE E IN CONJUNCTION WITH ARTICLE 11§1 AND 3 OF THE CHARTER

28. Article 11§§ 1 et 3 of the Charter reads as follows:

Article 11 –The right to protection of health

Part I: "Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable."

Part II: "With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:

1.to remove as far as possible the causes of ill-health; (...)

3.to prevent as far as possible epidemic, endemic and other diseases, as well as accidents."

29. Article E of the Charter reads as follows:

Article E –Non-discrimination

"The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status."

A – Arguments of the parties

1. The complainant organisation

30. Validity indicates that by taking measures, such as visiting prohibitions and prohibition for the residents of social care facilities with disabilities to leave the facilities, which led to an almost complete isolation of persons of disabilities in the social care facilities and lasted at least between March 2020 and June 2020, the Government deprived them of access to healthcare. The complainant organisation argues that the right of persons with disabilities to healthcare services was impeded significantly.

31. Validity also indicates that the authorities lacked the most basic data to be able to ascertain how many people would be affected by the restrictive measures before those measures being introduced. Validity estimates that the number of such people affected ranges between 10,000 and 15,000 and states that it is for the Government to collect and make such data available. Validity also states that there was only limited information about the virus available to persons with disabilities in housing service units.

32. Validity further argues that during the pandemic, institution-like environments, such as the housing service units, became hotbeds of Covid-19. According to the complainant organisation, the Government was obliged to ensure that persons with disabilities were immediately provided with the opportunity to move from these units into the community with appropriate support.

33. Validity therefore asks the Committee to find that prohibition to leave social care facilities and the prohibition of visits deprived persons with disabilities of healthcare and exposed them to higher risk during the pandemic, in violation of Article 11§§1 and 3 of the Charter.

34. Finally, Validity states that during the Covid-19 pandemic the Government failed to adopt measures to ensure non-discriminatory access to healthcare to persons with disabilities and treated all of them without distinction as a vulnerable group, although it was not always the case. In particular, Validity states that persons with disabilities are a very diverse group of people. Although some persons with disabilities living in housing service units may belong to a vulnerable group, others live an active, healthy and independent life and are not so vulnerable in view of Covid-19.

2. The respondent Government

35. The Government states that the measures referred to by Validity were taken to protect the population from a new generally hazardous communicable disease, the behaviour of which was not fully known. The legal basis for the measures taken was the positive obligation to safeguard the right of every person to life and the right to protection of health, and the measures were lifted as the pandemic eased in June 2020. The Government submits that a major part of persons with disabilities belong

to the risk group. Also, the Government states that at the end of 2019, there were only 452 persons with disabilities in the actual institutional care, which is a small number when compared to other European countries.

36. The Government provides some statistical data on the number of confirmed infections and deaths from Covid-19 in December 2020 and notes that they were relatively moderate compared to other countries. Moreover, in the period between the start of the pandemic in the spring of 2020 and until 15 December 2020, there were no large-scale Covid-19 infections or exposures in the housing service units for persons with disabilities and there was only one death associated with Covid-19 during said period.

37. The Government further states that the introduction of restrictive measures in social care facilities had no direct impact on the implementation of essential special social welfare services to persons with disabilities. According to the Government, the measures taken have been specifically based on equally safeguarding access to critical healthcare services. Information about the virus was available in sign language and easy read, as well as in other languages.

38. The Government states that housing units are homes of the residents who pay rent for them and in some housing units persons with disabilities live in normal apartment blocks complying with accessibility requirements. Such units may accommodate 15-20 persons but there are smaller units as well.

39. The Government notes that similar measures were applied equally and without discrimination to all housing service units, not only to housing service units for persons with disabilities. Moreover, the entire population was instructed to avoid social contacts in all situations. The introduction of the Emergency Powers Act on 16 March 2020 had an impact on the entire population's access to services.

40. The Government thus maintains that there is no violation of Article 11§§1 and 3 of the Charter.

B – Assessment of the Committee

Alleged violation of Article 11§1 and 3 of the Charter

41. The Committee recalls that the right to protection of health includes the right of access to healthcare, and that also during times of pandemic access to healthcare must be ensured to everyone without discrimination. This implies that healthcare must be effective and affordable to everyone, and that groups at particularly high risk, such as homeless persons, persons living in poverty, older persons, persons with disabilities, persons in institutions, persons detained in prisons, and persons with an irregular migration status must be adequately protected (see Statement of Interpretation on the right to protection of health in times of pandemic, 21 April 2020,

and International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §218).

42. The Committee also recalls that according to Article 11§3 of the Charter, States Parties must take appropriate measures to prevent as far as possible activities which are detrimental to human health (diseases and accidents). In terms of preventive measures, States Parties must apply the precautionary principle: when a preliminary scientific evaluation indicates that there are reasonable grounds for concern regarding potentially dangerous effects on human health, the State must take precautionary measures consistent with the high level of protection provided for in Article 11, to prevent those potentially dangerous effects (see Statement of Interpretation on the right to protection of health in times of pandemic, 21 April 2020).

43. The Committee recalls that such measures may include testing and tracing, physical distancing and self-isolation, the provision of adequate masks and disinfectant, as well as the imposition of quarantine and “lockdown” arrangements. All such measures must be designed and implemented having regard to the current state of scientific knowledge and in accordance with relevant human rights standards (see Statement of Interpretation on the right to protection of health in times of pandemic, 21 April 2020). Further, such measures should be taken in the shortest possible time, with the maximum use of available financial, technical and human resources, and by all appropriate means. In times of pandemic, such means must be both national and international in character, including international assistance and cooperation (*ibid.*).

44. Furthermore, the Committee reiterates that States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for other persons affected, including especially their families on whom falls the heaviest burden in the event of institutional shortcomings (see Statement of Interpretation on the right to protection of health in times of pandemic, 21 April 2020).

45. Coming to the specific situation at stake in the present case, the Committee considers that the visit restrictions in the housing service units for persons with disabilities occurred within a very specific context, namely during a public health emergency and were introduced in view of possible significant detrimental effects not only to the health of persons with disabilities in housing service units, but also to the other housing service units and to the society as a whole. The visit restrictions were temporary in nature and lasted from March 2020 until the end of June 2020. At the end of June 2020, the ban on visits was relaxed and after that date the complete prohibition of visits was not re-introduced. At certain points in time, the visiting rules were tightened, for example, visitors had to take a Covid-19 test before visiting, there was a maximum limit of visitors to be had by one person, but there was no complete prohibition of visits after June 2020. It also has to be underlined that the prohibition of visits mainly meant that all external visits had to be avoided, except for visits by the

closest ones to the seriously ill, children or persons in palliative care – without symptoms – as well as spouses or support persons, which were allowed to visit on a case-by-case basis. It was stated in the recommendations, that units where persons with disabilities were living could, for example, establish sheltered meeting places/rooms (for example in the lobby of the facility or in separate units outside), where contact with relatives or other close ones could be safely established.

46. The Committee further notes that at the beginning of the Covid-19 pandemic when the restrictive measures at issue were introduced, little was known about the virus itself and the situation at the time could be characterised as uncertain and the future unforeseeable. Subsequently, the characteristics of Covid-19 became clearer, including the conditions that contributed to its transmission between people. Thus, in order to protect persons with disabilities, the Government authorised the introduction of certain measures aimed at avoiding infection and at limiting the spread of the virus in case it reached the facilities where persons with disabilities were living (see §42 above). As the situation was new and uncertain, the authorities had to react in a timely manner by taking immediate measures aimed at preventing the spread of the virus. The date of the introduction of measures at issue, namely March 2020, corresponds to the timing of similar measures introduced in other countries aimed at limiting physical contacts in the society at large. Such measures were also introduced at the same time in other housing service units in Finland for persons other than persons with disabilities, such as, for example, the elderly.

47. The Committee notes that the Government did not provide any details on the incidence of Covid-19 infections in housing service units for persons with disabilities but observes that, according to the information provided by the Government, one death related to Covid-19 was recorded in these units. The Committee also notes that the Government failed to give any temporal context to the restrictive measures introduced. Nevertheless, the Committee notes from the information at its disposal that the prohibition of visits to the housing service units for persons with disabilities was relaxed at the end of June 2020 and was not applied again after that date (see §45 above). On this basis, the Committee considers that the visit restrictions were temporary and not excessive in duration taking appropriate account of the development of the general epidemiological situation in the country.

48. In light of the above, the Committee considers that the measures taken by the authorities to prevent and limit the spread of the virus in the housing service units for persons with disabilities between March 2020 and June 2020 complied with the obligation on States Parties to take precautionary measures consistent with the high level of protection provided for in Article 11 in order to prevent potentially dangerous effects on human health (see §42 above).

49. Moreover, the Committee notes that, as regards the lack of healthcare services, it appears from different technical recommendations issued in various cities in Finland (Helsinki, Espoo, Tampere, Vantaa, Oulu, Turku) on rules to be followed during the pandemic that essential healthcare was available to everyone who needed it (Maintaining essential health services: operational guidance for the Covid-19

context, 1 June 2020, World Health Organisation), as well as necessary rehabilitation services, such as physiotherapy and occupational therapy services.

50. On the basis of the information at its disposal, the Committee is unable to conclude that persons with disabilities in housing service units were denied essential healthcare. On the contrary, such care was available to them even when the visit restrictions were in place during the period March-June 2020.

51. The Committee holds therefore that there is no violation of Article 11§§1 and 3 of the Charter.

Alleged violation of Article E in conjunction with Article 11§1 and 3 of the Charter

52. The principle of equality reflected in Article E means treating persons equally, which may require treating differently persons whose situations are significantly different (*Associazione sindacale "La Voce dei Giusti" v. Italy*, Complaint No. 105/2014, decision on the merits of 18 October 2016, §63). More particularly, in designing and implementing new additional measures to ensure a Charter-compliant response to the challenges presented by Covid-19, States Parties must take due account of all social rights-holders, according special attention and appropriate priority to the most socially affected groups and individuals. States Parties must ensure that measures taken in response to the crisis, including economic and social policy measures, do not result in discrimination in terms of social rights enjoyment, whether direct or indirect (see Statement on Covid-19 and social rights, 24 March 2021).

53. The Committee notes that Validity primarily alleges that persons with disabilities living in the housing service units suffered discrimination in equal access to healthcare. The Committee observes that the measures introduced by the Government affected not only housing service units for persons with disabilities, but also the elderly and other at-risk groups. The Committee acknowledges that the situation of persons with disabilities in housing service units is not entirely comparable to the situation of the population at large. However, it also observes that the restrictive measures introduced by the authorities as a matter of precaution in an uncertain pandemic situation and were temporary in nature. In addition, over the course of those restrictions the authorities took specific action in order to both prevent persons with disabilities from contracting the virus and to provide them with the healthcare services they needed, even if access to some non-essential healthcare services (World Health Organisation, op.cit.), such as routine check-ups and planned surgical interventions, was limited to a certain extent.

54. The Committee takes note of Validity's argument that not all persons with disabilities necessarily belong to a vulnerable group. The Committee notes, however, that during the pandemic such as Covid-19 persons with disabilities who live in housing service units might be more exposed to the virus because of their movement restrictions. In these circumstances, the Committee considers that the measures taken by the Government were aimed at preventing persons with disabilities from

contracting the virus and thus protecting their health. To a large extent these measures resembled the ones applicable to the other housing service units and to those in place for the entire population as the access to non-emergency healthcare, such as routine check-ups, planned surgeries, was limited to all in order for healthcare units to transfer their resources from non-urgent healthcare to urgent care for persons with Covid-19 and other types of urgent care.

55. For these reasons, the Committee holds that there is no violation of Article E taken in conjunction with Article 11§1 and 3 of the Charter.

II. ALLEGED VIOLATION OF ARTICLE 15§3 OF THE CHARTER

56. Article 15§3 of the Charter reads as follows:

Article 15 – The right of persons with disabilities to independence, social integration and participation in the life of the community

Part I: “Disabled persons have the right to independence, social integration and participation in the life of the community.”

Part II: “With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular: [...]

3. to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.”

A – Arguments of the parties

1. The complainant organisation

57. Validity states that the prohibition on leaving the housing service units deprived persons with disabilities of independence, social integration and participation in the life of the community and denied them the right to be provided personal assistance.

58. Validity also states that such prohibition had no legal basis, as it was not based on the Emergency Powers Act and Section 17 of the Communicable Diseases Act could not be a lawful basis for it as well.

59. Validity further alleges that the measures introduced were not reasonably necessary and proportionate to the aim of promoting the general welfare in a democratic society.

60. Validity finally states that such prohibition was implemented without consulting persons with disabilities or their representative organisations. The only representative

of persons with disabilities was invited for consultations in mid-May of 2020.

2. The respondent Government

61. The Government states that in the instructions given by the Ministry of Social Affairs and Health on 20 March 2020, the latter expressly emphasised that despite the introduction of the Emergency Powers Act, the essential healthcare and medical attention had to be ensured also under the conditions of emergency. It was critically important to organise the requisite support, and to ensure that any reorganisations of duties in social services in municipalities did not jeopardise the health and safety of persons in need of particular support.

62. The Government emphasises that the entire population was instructed to avoid social contacts in all situations.

63. Moreover, the Government states that over the course of spring 2020, the Ministry of Social Affairs and Health engaged in repeated discussions with organisations of persons with disabilities and met with representatives of these organisations on two occasions.

64. The Government also states that in its design and selection of the measures to take, it balanced the fundamental and human rights against each other, in light of available facts. For example, transport services for persons with limited functional abilities, have been available throughout the pandemic.

65. Further, the Government points out that information about the Covid-19 was available in many languages, including the sign language, the mobile application for tracing the contacts was planned with the participation of disability organisations in order to pay particular attention to the accessibility of the application. The Funding Centre for Social Welfare and Health has channeled monetary support to organisations to help them provide Covid-19 information and peer support over the phone to prevent loneliness and various fears.

66. The Government finally states that the situation related to the outbreak of the Covid-19 pandemic fully justified the decisions restricting certain rights because the right to life and to health outweighed the other rights.

B – Assessment of the Committee

67. The Committee recalls that the right of persons with disabilities to social integration provided for by Article 15§3 implies that barriers to communication and mobility be removed in order to enable access to transport (land, rail, sea and air), housing (public, social and private), cultural activities and leisure (social and sporting activities (Conclusions 2005, Norway, Article 15§3). Telecommunications and new

information technology must be accessible and sign language must have an official status (Conclusions 2016, Austria, Article 15§3).

68. To give meaningful effect to the promotion of the full social integration and participation in the life of community of persons with disabilities, mechanisms must be established to assess the barriers to communication and mobility faced by persons with disabilities and identify the support measures that are required to assist them in overcoming these barriers (Conclusions 2008, Statement of interpretation on Article 15§3); support services, such as personal assistance and auxiliary aids, must be available, either for free or subject to an appropriate contribution towards their cost and taking into account the beneficiary's means (Conclusions 2008, Statement of interpretation on Article 15§3).

69. In the context of the Covid-19 pandemic, services for the population specifically set up to cope with the pandemic, including remote and online services, quarantine facilities, personal protective equipment, and public information and guidelines, should be accessible to persons with disabilities on an equal basis to other members of the community. Amongst other things, public health information must be made available in sign language and accessible means, modes and formats (Statement on Covid-19 and social rights, 24 March 2021).

70. The Committee notes that in the present case Validity's main arguments are that persons with disabilities were isolated in their housing service units and could not participate in the life of the community, that they lacked information about Covid-19 and that their organisations were not consulted prior to the adoption of such restrictive measures.

71. Taking note of Validity's arguments, as well as of the fact that certain restrictions to the right of persons with disabilities to social integration, under Article 15§3 of the Charter, were applied by the Government during the period at stake, the Committee cannot but consider that regard must be had, in the present complaint, to Article G of the Charter, which makes it possible for States Parties to restrict rights enshrined in the Charter (see *Greek General Confederation of Labour (GSEE) v. Greece*, Complaint No. 111/2014, decision on the merits of 23 March 2017, §83).

72. As the Committee pointed out in its Statement on Covid and social rights of 24 March 2021, Article G also applies to the Covid-19 pandemic context, providing for the conditions under which restrictions on the enjoyment of rights protected by the Charter are permitted (see *Syndicat des Agrégés de l'Enseignement Supérieur (SAGES) v. France*, Complaint No. 26/2004, decision on the merits of 15 June 2005, §31). Given the severity of the consequences of a restriction of these rights, especially for society's most vulnerable members, Article G lays down specific preconditions for applying such restrictions (see *GSEE v. Greece*, op. cit., §83). Furthermore, the Committee recalls that, as an exception applicable only under extreme circumstances, restrictions under Article G must always be interpreted narrowly.

73. The Committee recalls that restrictions must be prescribed by law, pursue a legitimate aim and be necessary in a democratic society for the pursuit of that aim (see *GSEE v. Greece*, op. cit., §38). Restrictive measures must have a clear basis in law, and they must satisfy the requirements of precision and foreseeability (see *Statement on Covid-19 and social rights*, 24 March 2021). Also, restrictive measures must pursue a legitimate aim, i.e., the protection of the rights and freedoms of others, of public interest, national security, public health or morals. Finally, legal acts must ensure proportionality between the goals pursued and their negative consequences for the enjoyment of social rights (see *GSEE v. Greece*, op. cit., §87). Consequently, even under extreme circumstances the restrictive measures put in place must be appropriate for reaching the goal pursued, they may not go beyond what is necessary to reach such goal, they may only be applied for the purpose for which they were intended, and they must maintain a level of protection which is adequate (see *GSEE v. Greece*, op. cit., §87).

74. In the present case, the Committee must determine whether the restrictive measures that resulted in the restriction of visits in housing service units imposed by the Government in the context of Covid-19 complied with the preconditions for applying them (see §73 above).

75. With regard to the participation in the life of the community, the Committee notes that during the Covid-19 pandemic, especially in its early stages, little was known about the virus. As it appears from the information available to the Committee, gatherings of over 10 people, visits to hospitals and nursing homes were prohibited, educational institutions and public spaces such as museums and libraries were closed, and persons returning from abroad were ordered to self-isolate for 14 days upon their arrival in Finland. Such restrictions were announced on 16 March 2020 and were extended until 13 May 2020. Later on, the restrictions were further extended until the end of June and after that they were relaxed depending on the number of new Covid-19 cases detected. The Committee notes that restrictions applied not only to persons with disabilities in housing service units, but also to other persons in housing service units. The Committee reiterates that the restrictions were temporary and applied between March and June 2020 and were gradually relaxed without them being returned to their strictest form (see §45 above).

76. The Committee notes that the restrictions were mainly based on Section 23 of the Constitution of Finland and Sections 6-7, 17 and 58 of the Communicable Diseases Act, and as such they were prescribed by law.

77. Concerning the existence of a legitimate aim, the Committee considers that the restrictions introduced by the Government pursued a legitimate aim of protecting public health.

78. With regard to the means employed, the Committee notes that the recommendation of prohibition of visits to housing service units for persons with disabilities mainly meant that all external visits had to be avoided, except for visits by the closest ones to the seriously ill, children or persons in palliative care – without

symptoms – as well as spouses or support persons, which were allowed to visit on a case by case basis. It was stated in the recommendations, that units where persons with disabilities were living could, for example, establish sheltered meeting places/rooms (for example in the lobby of the facility or in separate units outside), where contact with relatives or other close ones could be safely established. Moreover, with regard to personal assistance, as it is clear from various instructions that were in force in different cities of Finland, it was only recommended that the visits of personal assistants were avoided. Moreover, it was underlined in the instructions issued by the Ministry of Social Affairs and Health that the ban on visits did not apply to personal assistance services provided under the Disability Services Act. This meant that the personal assistance services were functioning even at the height of the pandemic.

79. Admittedly, visit restrictions did cause difficulties in setting up meetings with personal assistants in some cases, however, as it appears from the information provided by both parties, personal assistance services were not terminated during the restriction period but were implemented in a way that would protect as much as possible persons with disabilities from contracting the virus. Moreover, it was encouraged, where possible, to make use of communication technologies such as telephone or video equipment as an alternative to social contact with personal assistants. While the Committee recognises that the use of these technologies might not have been suitable to every person with disabilities living in housing service units, such persons could, as noted above, still meet their personal assistants in person in specific sheltered meeting places.

80. The Committee further notes that from the various technical recommendations issued by the authorities in multiple cities in Finland (Helsinki, Espoo, Tampere, Vantaa, Oulu, Turku) that the inhabitants of housing service units could in fact leave them to meet with personal assistants and they were not confined within the units.

81. The Committee considers that the restrictions were introduced in order to protect persons with disabilities living in housing service units, as persons at risk, from contracting Covid-19 and from facing potentially lethal consequences as a result of the virus. The authorities had to carry out a careful balancing exercise of different rights. Moreover, no information has been submitted to the Committee concerning social services users who could not access services such as personal assistance that would enable the Committee to assess whether the restrictions are disproportionate or excessive.

82. Moreover, the Government adopted the restrictive measures as a precautionary and temporary solution to prevent the spread of the virus and to protect the life and health of persons with disabilities living in housing service units. Noting the incidence of Covid-19-related illness and deaths recorded in such units, the Committee considers that a fair balance was struck between the legitimate aim pursued and the restrictions introduced in this respect.

83. In addition, the Committee further notes that health information concerning Covid-19 was available in various languages, including easy read and sign language. Validity argues that the Government did not ensure that information and guidance in accessible formats were available, it also argues that persons with disabilities in housing service units had limited access to relevant information about protection against the virus. However, it has not submitted any specific information regarding the alleged obstacles for persons with disabilities in housing service units to access information about Covid-19. As indicated by the Government, information was available in multiple languages, including sign language. Other information, including the contact tracing application, as well as recommendations, guidelines and rules regarding protection against Covid-19 and actions in case of infection was freely available on the internet. On the basis of the information at its disposal, the Committee thus sees no violation of Article 15§3 of the Charter in this respect.

84. Finally, with regard to the issue of consultation of the persons with disabilities concerned by the present complaint, the Committee notes that the parties presented differing information. Validity states that representatives of persons with disabilities were invited for consultations in mid-May 2020, and the Government states that such consultations took place twice in the spring of 2020. In these circumstances, the Committee, while regretting the lack of precise information provided by the Government about the exact timeline of the consultations, their frequency and their substance, can only observe that the consultations indeed took place and is therefore unable to conclude that Finland has violated its obligations in this regard.

85. Having regard to all of the above, the Committee holds that there is no violation of Article 15§3 of the Charter.

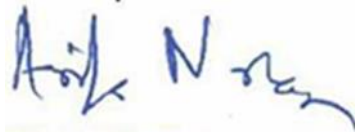
CONCLUSION

For these reasons, the Committee concludes:

- unanimously that there is no violation of Article 11§§1 and 3 of the Charter;
- unanimously that there is no violation of Article E taken in conjunction with Article 11§1 and 3 of the Charter;
- by 13 votes against 1 that there is no violation of Article 15§3 of the Charter.



Kristine DUPATE
Rapporteur



Aoife NOLAN
President



Henrik KRISTENSEN
Deputy Executive Secretary