EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

3 November 2021

Case Document No. 5

Validity v. Finland
Complaint No. 197/2020

SUBMISSIONS OF THE GOVERNMENT ON THE MERITS

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MINISTRY FOR FOREIGN AFFAIRS OF FINLAND
Legal Service
Unit for Human Rights Courts and Conventions

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28 October 2021

Mr Henrik Kristensen
Deputy Executive Secretary
European Committee of Social Rights

Complaint No. 197/2020
VALIDITY FOUNDATION v. FINLAND
OBSERVATIONS ON THE MERITS OF THE COMPLAINT

Sir,

With reference to you letter of 14 September 2021, I have the honour, on behalf of the Government of Finland, to submit the following observations on the merits of the aforementioned complaint.

Admissibility of the complaint

1. The Government notes the decision of the European Committee on Social Rights (hereinafter "the Committee"), of 8 September 2021, on the admissibility of the aforementioned complaint. In that decision, the Committee declared the complaint admissible and invited the Government, pursuant to Article 7§1 of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158) and Rule 31§1 of the Rules of the Committee, to make written submissions on the merits of the complaint by 29 October 2021.

Main merits of the complaint and alleged violations

2. According to the complaint, service housing units for persons with disabilities became COVID-19 hotbeds and death-traps, and this jeopardised the right of persons with disabilities to health, in violation of Article 11 of the Revised European Social Charter (hereinafter "the Charter"). The applicant association, Validity Foundation, considers that the Government failed to take appropriate measures to protect these persons' lives and health during the pandemic. As a result, the virus spread in service housing units. According to the applicant association, the Government neglected its obligation to ensure that persons with disabilities could leave these units immediately and move elsewhere.

3. The applicant association also considers that the Government failed to ensure the access of persons with disabilities to social welfare and health care services without discrimination, and that the measures adopted by the Government led to complete isolation of persons with disabilities living in social service housing units, hence limiting their right to social life and their right to inclusion in the community as enshrined in Articles 11, 14, 15 and E of the Charter.

P.O.Box 176
FI-00023 GOVERNMENT
FINLAND

Laivastokatu 22

Tel
+358-(0)295-350 000

Fax
+358-(0)9-629 840

Legal foundations

4. The Government states that the measures referred to in the complaint were adopted for the purpose of protecting the population against the new generally hazardous communicable COVID-19 disease, the behaviour of which was not yet known in the early months and spring of 2020 but which was known to spread among the population very rapidly and widely and to cause a severe risk to people's lives and health. Above all, the measures were intended to safeguard the right of individuals to life and their right to health in compliance with the human rights treaties binding on Finland.

5. Article 11, subparagraph 1 of the Charter provides that 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* to remove as far as possible the causes of ill-health. Subparagraph 3 of the same Article, in turn, obligates the Parties to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

6. A similar obligation is laid down in Article 12 of the United Nations' International Covenant on Economic, Social and Cultural Rights. According to paragraph 1 of the Article, the States Parties to the Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Paragraph 2, subparagraph c requires the States Parties to take the necessary steps for the prevention, treatment and control of epidemic and endemic diseases, among others. Paragraph 2, subparagraph d obligates the States Parties to take steps for the creation of conditions which would assure to all medical service and medical attention in the event of sickness.

7. Article 11 of the Charter and the obligations laid down in the International Covenant on Economic, Social and Cultural Rights are in line with Section 19 of the Constitution of Finland (*Suomen perustuslaki, Finlands grundlag*: 731/1999). According to Section 19, paragraph 3, public authorities must guarantee for everyone, as provided in more detail by an Act, adequate social, health and medical services and promote the health of the population.

8. Article 2 of the European Convention on Human Rights, Article 7 of the United Nations' International Covenant on Civil and Political Rights and Section 7 of the Constitution of Finland safeguard everyone's right to life. The European Court of Human Rights has considered in its case law that Article 2 of the Convention imposes a positive duty on States to take measures to prevent avoidable losses of human lives (*McCann and others v. the United Kingdom [GC]*, judgment of 29 September 1995; *L.C.B. v. the United Kingdom*, judgment of 9 June 1998). The Court has also held that a State has an obligation to take measures to prevent a real and immediate danger to the lives of people (*Osman v. the United Kingdom [GC],* judgment of 28 October 1998). Furthermore, the Court has considered that Article 2 of the Convention also requires a State to take measures to prevent a possible danger to a person's life if the State is aware of the danger (*Öneryildiz v. Turkey [GC]*, judgment of 30 November 2004; *Budayeva and others v. Russia*, judgment of 20 March 2008).

9. Moreover, Article 10 of the United Nations' Convention on the Rights of Persons with Disabilities obligates States Parties to safeguard every human being's inherent right to life, and Article 25 lays down a similar obligation in respect of the right to health. Article 11 of the Convention also obligates public authorities to take all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk.

10. When the Government chose what measures to take, it balanced the fundamental and human rights described above against other fundamental and human rights, in light of the available facts. The rights discussed above were weighted in relation to the rights guaranteed in the Charter, as explained in more detail in these observations.

11. Article 14 of the Charter obligates States to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment, as well as to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.

12. Article 15 of the Charter safeguards the right of persons with disabilities to independence, social integration and participation in the life of the community. Subparagraph 1 of the Article requires States to take the necessary measures to provide persons with disabilities with 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.

13. According to subparagraph 2 of Article 15, States must promote the access of persons with disabilities to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability.

14. Subparagraph 3 of Article 15 obligates States to promote the full social integration and participation of persons with disabilities 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.

15. As part of the impacts of the measures on fundamental and human rights, the Government also discussed the impact of its recommendations on the whole population, especially on the right to the protection of family life. Article 8, paragraph 1 of the European Convention on Human Rights, Article 17, paragraph 1 of the International Covenant on Civil and Political Rights, and Section 10, paragraph 1 of the Constitution of Finland guarantee everyone the right to enjoy respect for one's private and family life. Article 8, paragraph 2 of the Convention provides that there must be no interference by a public authority with the exercise of the right safeguarded under paragraph 1 except such as is in accordance with the law and is necessary in a democratic society in the interests of, among other things, the protection of health, or for the protection of the rights and freedoms of others. However, no legal restrictions were placed during the pandemic on the right to respect for one's private and family life.

16. The Government also notes that the freedom of movement of persons with disabilities was recognised in identifying those fundamental and human rights whose implementation the pandemic could affect. According to Article 2, paragraph 1 of Protocol No. 4 to the European Convention on Human Rights, Article 12, paragraph 1 of the International Covenant on Civil and Political Rights, and Section 9, paragraph 1 of the Constitution of Finland, everyone lawfully within the territory of a State has, within that territory, the right to liberty of movement and freedom to choose his residence. According to Article 2 of Protocol No. 4 to the Convention and Article 12, paragraph 3 of the Covenant, no restrictions must be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of protection of health/public health, or for the protection of the rights and freedoms of others. Article 12, paragraph 3 of the Covenant also requires that any restrictions must be consistent with the other rights recognized in the Covenant.

17. The Government emphasises, however, that to the extent that the freedom of movement was restricted by isolating the Uusimaa Region from the rest of Finland, the restrictions applied equally to the whole population, as described below. Thus, the Government did not, at any stage of pandemic, place legally binding restrictions on movement only on persons with disabilities. Nor did the Government, as explained below, for example prevent persons with disabilities from leaving social service housing units or changing place of residence.

18. The Government emphasizes that the international human rights treaties have been transposed into the national legal system and are in force as legislative acts of Parliament. Obligations arising from these international human rights treaties, including the Charter, are taken into account in legislative, administrative and judicial practices. The Government further emphasizes that the human rights framework has to be taken into account as a whole.

Medical foundations

19. The COVID-19 virus, the outbreak of which was declared as a pandemic in early 2020, causes a new, rapidly spreading, generally hazardous communicable disease. Especially when the pandemic began, the behaviour of the virus and its effects on human health were not yet fully known. Nor had humanity any immunity against the virus then. However, it was already known that the virus mainly spreads by droplet transmission between people and causes an acute respiratory infection. It was also known that an infected person spreads the virus during a couple of days before the symptoms occur. Moreover, it was known that the clinical picture of the disease varies from a nearly symptomless infection to severe illness, and that the symptoms may vary as the infection progresses.

20. A patient with the severe form of COVID-19 disease may develop pneumonia, an acute syndrome with shortness of breath, and other complications. The status of the patient may worsen rapidly, and the severe COVID-19 disease may be fatal. Some COVID-19 infected patients need hospital care or intensive care, which may take a long time. Patients with shortness of breath may need treatment which a respiratory ventilator, which may expose them to bacterial infections. Patients may also have other complications, such as deep vein thrombosis in a lower limb, pulmonary embolism or ischaemic attacks. Some patients develop neurological symptoms, such as changes in alertness. Need for hospital care is more common among aged patients and patients with primary diseases.

21. Although age is the most significant risk factor of the severe form of COVID-19 disease, the risk is also increased by certain primary diseases. Patients with these diseases have an increased risk to contract the severe form of the disease, to need hospital care or intensive care, or to die of the infection. These primary diseases include severe hereditary immunodeficiency, other severe immunological disorders, severe chronic renal disease, severe chronic pulmonary disease, type 2 diabetes treated with medicines, and the Down syndrome. The Down syndrome may be accompanied by anomalies of the immune system, which manifest themselves as susceptibility to infections, among other features. Similarly, a COVID-19 infection may worsen health problems caused by structural defects related to the syndrome, for example a hereditary heart defect. Illnesses that predispose to the severe COVID-19 disease also include asthma requiring continuous medication, severe heart diseases, such as cardiac insufficiency or pulmonary heart disease, neurological diseases or disorders causing respiratory dysfunction (including the CP syndrome), autoimmune diseases treated with immunosuppressive medication, and type 1 diabetes.

22. In March 2020, it was concluded on the basis of the modelling then available that, according to the worst case scenarios, even more than 80 % of the population would be infected during the first wave of the epidemic and at least one third would fall clinically ill if no protective measures were taken. According to the modelling at the beginning of the pandemic, most cases diagnosed in Finland are relatively mild but approx. 15 % of the cases are severe and approx. 5 % critical. Although the risk group consists of aged people, in particular, it was already known in early 2020 that younger generations, as well, may contract the very severe form of COVID-19 disease, which also causes some of the infected 30–69 years old persons to develop pneumonia that threatens their lives and health and requires intensive care.

23. When assessing the planned restrictive measures, the Government already had access to information from other countries about the spreading of the virus and its consequences for the workload in health care, among other things. When spreading, the pandemic had driven the health care, especially hospital care, in different countries to its limits. The need for care focused especially on intensive care for patients with severe respiratory insufficiency and multiple organ failures because such patients usually die if they are left without intensive care. It was also known that the intensive care of patients with severe respiratory insufficiency caused by viral pneumonia is highly demanding, that the patient typically recovers slowly, and that the treatment takes a long time, which burdens the human resources of intensive care. The restrictive measures were considered necessary for safeguarding the lives and health of people and ensuring sufficient capacity for intensive care, as described in more detail below.

Application of the legal and medical foundations to the applicant association's allegations

Measures imposed on service housing units for persons with disabilities (assessment based on Articles 11 and E of the Charter)

24. The Government emphasizes that all human rights are equal and are always looked at as a whole. However, it is not possible in all situations to apply all human rights at the same time. In such conflicts of human rights, different rights must be balanced against each other for assessing which of them is to be safeguarded as a priority and to what extent this right must be prioritised. Under Finnish legislation, all measures to restrict fundamental and human rights must be based on law and be necessary and proportionate in relation to the pursued objective. It is also possible to issue the population with recommendations and instructions based on law in order to prevent the spreading of communicable diseases.

25. During the COVID-19 pandemic, the Government considered that public authorities must protect, above all, people's right to life and right to health. At the very beginning of the pandemic, there were clear indications that especially the elderly and other people who belong to the risk group because of a serious illness or disability have a considerably higher risk to contract the severe form of COVID-19 disease than the rest of the population. Later on, scientific research has verified that these indications of a higher susceptibility of persons with disabilities to an infection are correct.[1] Consequently, the measures taken by the Government were intended to protect the population, and especially vulnerable people, against the spreading and consequences of the very widely spread generally hazardous communicable disease, in compliance with such obligations as those laid down in Article 11 of the Charter and Article 2 of the European Convention on Human Rights, while safeguarding, at the same time, the implementation of other human rights as widely as possible.

26. The Government also notes that the Constitutional Law Committee of Parliament, which oversees the constitutionality of, for instance, legislative proposals and other matters as well as compliance with international human rights treaties, considered in several reports issued in spring 2020 that the pandemic situation required measures to ensure the capacity of the health care system and hence to prevent serious threats to people's lives and health (*e.g.* reports of the Committee PeVM 2/2020, 18.3.2020; PeVM 3/2020, 18.3.2020; PeVM 7/2020, 27.3.2020 and PeVM 12/2020, 6.4.2020).

27. In the situation at issue, the Government concluded that the right to life and the right to health outweighed the other human rights, and therefore considered it necessary to recommend that visits to such places as social service housing units be avoided. Recommendations are not legally binding. Unlike the applicant association alleges, the recommendation issued by the Ministry of Social Affairs and Health concerned all social service housing units equally and not only those intended for persons with disabilities. An underlying factor that particularly influenced the recommendation was awareness of the fact that many persons living in social service housing units belong to the risk group because of their age or health and are therefore more susceptible to the severe form of COVID-19 disease. In their case, the severe infection would probably require a long period of intensive care and also more probably expose them to death. The Government considers that without the recommendation there would have been a high risk of the COVID-19 virus spreading widely in social service housing units and causing major outbreaks of the disease, as described in the complaint, and leading to deaths, which the recommendation now helped to avoid.

28. When issuing the recommendation, the Ministry of Social Affairs and Health also took account of its possible adverse effects and balanced them against the achievable benefit. The Ministry was aware that people would be separated from their close ones and this would worsen the quality of their lives and be difficult to understand for many of them. However, the Ministry encouraged contacts by other, safe, means. The Government considers, however, that the advantages achieved by means of the recommendation, especially the safeguarding of people's lives and health, outweighed the disadvantages.

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[1] Heslop, Pauline et al., "Deaths of people with intellectual disabilities: Analysis of deaths in England from COVID-19 and other causes", *Journal of Applied Research in Intellectual Disabilities* (16.7.2021), https://onlinelibrary.wiley.com/doi/10.1111/jar.12914

29. Furthermore, the Government underlines that, according to its recommendations, the whole population should avoid physical contacts and contact their close ones by other means than visits. As the pandemic progressed, the Government found it necessary to restrict the movement of the whole population and to isolate the Uusimaa Region for three weeks (28 March – 15 April 2020), in order to prevent the virus from spreading to the rest of the country and hence to contain the spreading of the pandemic and to ensure the capacity of the health care system. No other legally binding restrictions were placed on movement. Parliament approved the restriction after the Constitutional Law Committee of Parliament had supported it. On 1 April 2020, the Ministry of Social Affairs and Health issued separate instructions providing, among other things, that the restrictions on movement concerning the Uusimaa Region applied to persons with disabilities by the same principles as to the rest of the population.

30. In the instructions of 1 April 2020, the Ministry of Social Affairs recommended, however, that movement from social service housing units be avoided to prevent the spreading of COVID-19 infections. In particular, the instructions stressed the obligation of public authorities under Article 11 of the Convention on the Rights of Persons with Disabilities to ensure the protection and safety of persons with disabilities in situations of risk. The instructions specified that, in addition to aged people, a major part of all persons with disabilities belong to the risk group. Thus, the Ministry never prohibited persons living in social service housing units from leaving the units but, invoking the obligations under a human rights treaty binding on Finland, recommended that they avoid movement.

31. In the Government's view, persons with disabilities were not placed in an unequal position or discriminated against in the manner referred to in Article E of the Charter vis-à-vis the other persons living in service housing units or the rest of the population. The Government emphasises that its measures to ensure the protection of health in compliance with Articles 11(1) and 11(3) of the Charter and to safeguard the right to life in compliance with such provisions as Article 2 of the European Convention on Human Rights, applied with the same content to all service housing units equally and not only to those intended for persons with disabilities. In addition, it was recommended that the whole population avoid physical contacts in all situations. The Government therefore considers that the content of the recommendation to avoid visits, issued to social service housing units, did not differ from the content of the instructions given to the whole population. Moreover, the recommendations and instructions issued by the Ministry of Social Affairs and Health and its subordinate agencies to service housing units also included guidance as to how the implementation of the self-determination of persons with limited functional abilities could be promoted in the prevailing circumstances by means of health-secure practices.

32. Today, Finland provides hardly any institutional care for persons with disabilities, unlike many other European countries. This type of care has been largely abandoned and replaced with service housing, which provides more home like living conditions. At the end of 2019, there were only 452 persons with disabilities in actual institutional care. The Government further notes that the persons with disabilities living in service housing units live there specifically because they need the services provided by the units and hence cannot live independently or, for example, with their close ones. The Government considers that if it had acted as proposed in the complaint and moved the persons living in these units elsewhere when the pandemic began, it would probably have violated Article 11 of the Convention on the Rights of Persons with Disabilities and Article 11, paragraphs 1 and 3 of the Charter. The Government underlines, however, that it never prevented persons with disabilities from leaving social service housing units or from changing place of residence. This was articulated for example in the instructions of the Ministry of Social Affairs and Health of 1 April 2020.

33. The Government notes that, thanks to the measures taken, Finland has succeeded very well in combating the pandemic, when compared to many other countries. For example, by the end of September 2021, there had been 137 594 COVID-19 infections and 1 062 deaths caused by the virus in Finland. In Denmark, the population of which is nearly the same size, the number of infections had been two and a half-fold compared with Finland (357 370) and the number of deaths more than two-fold (2 646). In Switzerland, whose population is approximately one and a half-fold compared with Finland, the number of infections had been six-fold (832 928) and the number of deaths ten-fold (10 618).

34. The Government further states that by September 2021, it had been informed about one COVID-19 death in a social service housing unit for persons with disabilities. By September 2021, the Ministry of Social Affairs and Health or the supervisory authorities for social welfare and health care had not been informed of any widespread COVID-19 infections or large-scale COVID-19 exposures in service housing units for persons with disabilities. In spring 2020, organisations representing intellectual and developmental disabilities submitted weekly, and in autumn 2020 every two weeks, a report on the COVID-19 situation of persons with disabilities to the Situation Centre of the Government. The reports did not contain any information that would support the allegations made in the complaint.

35. Finland adopted the measures to contain the spreading of the COVID-19 virus at an early stage of the pandemic. It is obvious that this significantly contributed to the low number of severe COVID-19 related health problems and deaths in service housing units for persons with disabilities. By comparison, those countries which adopted restrictive measures considerably later, have had higher rates of COVID-19 infections and deaths among persons with disabilities. For example, a study conducted in Great Britain showed that between 2 March and 14 July 2020, 59 % of all persons who died of a COVID-19 infection in Great Britain were persons with disabilities, although the percentage of this group in the whole population is only 16 %.[2]

36. Therefore, the Government finds unfounded the applicant association's allegation that the measures taken by the Government turned social service housing units into COVID-19 hotbeds. The Government also finds unfounded and contradictory the applicant association's allegation that the Government failed to comply with its obligation to immediately ensure persons with disabilities an opportunity to leave the units and move elsewhere. The Government considers that such action would have exposed the residents in social service housing units to a higher risk of contracting a COVID-19 infection, which, in the worst case, would have caused these people to die or to need hospital care. This action could also have jeopardised their right to adequate services.

37. The Government holds that the chosen model of action was the best means to safeguard the rights to life and health of the persons living in social service housing units and to prevent them from needing long-term intensive care because of the severe form of the COVID-19 disease. Consequently, the chosen models of action were in line with the human rights treaties binding on Finland.

The right of persons with disabilities to benefit from social welfare and health care services (assessment based on Articles 11, 14, 15 and E of the Charter)

Safeguarding health care in general

38. The applicant association also contends that, as a result of the COVID-19 pandemic, the Government denied persons with disabilities their right to the health care required by Article 11 of the Charter, the social welfare services required by Article 14 and the independence, social integration and participation in the life of the community required by Article 15.

39. In March 2020, the most up-to-date and best available modelling, adapted to the Finnish conditions and treatment practices, showed that the epidemic would place an unprecedented burden on specialised health care, especially the heavy intensive care, in Finland, too. It was also estimated that the COVID-19 disease, for which there is no specific treatment, would put a very heavy strain on primary health care, social welfare services and hospital wards during the first wave of the epidemic.

40. In response to the COVID-19 pandemic, the Government decided to adopt measures (including the recommendations to avoid physical contacts in all situations) to support the functioning of the health care system, to alleviate the pressure on its capacity during the pandemic, and to try to safeguard the indispensable and necessary social welfare and health care services.

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[2] Office for National Statistics, *Coronavirus (COVID-19) related deaths by disability status, England and Wales: 2 March to 14 July 2020,* https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/articles/coronaviruscovid19relateddeathsbydisabilitystatusenglandandwales/2marchto14july2020

41. The purpose of the measures was to tackle the root cause of the threat caused by the epidemic to life and health, *i.e.* to limit and slow down the spreading of COVID-19 infections in human contacts while, at the same time, keeping the disease burden caused by the infections to the population as small as possible. The purpose of the measures was to protect, above all, those population groups to which the disease causes a particular risk.

42. The Government used infectious epidemiological modelling produced by the scientific community to continuously assess the need for hospital care arising from the COVID-19 epidemic with relation to the efficiency of the restrictive measures and recommendations. The epidemiological assessments indicated that even a small change in the reproduction number (R0 number) largely influences the progress of the epidemic, the number of patients in intensive care, and the burden on the service system.

43. In the normal situation, approx. 10 % of all patients in intensive care are persons with respiratory insufficiency, whose treatment is difficult and heavy, like that of COVID-19 patients. The calculations concerning the sufficiency of intensive care were based on an average length of treatment of 8 days. In the case of COVID-19 patients, however, a more realistic estimate of the length of intensive care saving the person's life is 14–21 days. Moreover, the intensive care of COVID-19 patients consists of treatment to support and replace vital functions (incl. treatment by respiratory ventilator, dialysis machine, support to circulation, treatment of infections), which is technically very demanding and work-intensive. In normal conditions, such demanding treatment to support and replace vital functions is only needed for part of the patients treated in intensive care.

44. In assessing the capacity of the health care system, especially intensive care, and its sufficiency, account was also taken of the fact that a sufficient number of places in intensive care units had to be reserved for patients other than COVID-19 patients even if non-urgent operations could be postponed and the capacity of intensive care could thus be enhanced. The foreseeable increasing need for intensive care also posed challenges to the availability of competent and skilled personnel because the demanding intensive care requires special know-how that only a small part of health care personnel has. Therefore, it was necessary to rapidly train personnel from other departments of specialised health care to provide intensive care, and to reorganise human resources by transferring personnel from non-urgent health care to urgent health care.

45. The adoption of restrictive measures and recommendations (incl. recommendations to avoid physical contacts) was necessary for containing the progress of the epidemic, in order to safeguard the capacity of the health care system during the pandemic and especially to ensure access to intensive care saving human lives in all situations requiring it (incl. situations other than urgent situations caused by the COVID-19 virus). The provision of intensive care had to be ensured in order to provide a sufficient number of places in such care for everyone in need of it, and to avoid a situation where the health care system would have been compelled to limit the right of COVID-19 patients and other patients in need of intensive care to receive the care, which would have risked human lives. It was clear that the restrictions on movement and the recommendations to avoid physical contacts, which were intended to slow down the progress of the epidemic, would save human lives in Finland because they, in particular, helped to distribute the demand for capacity for intensive care over a longer period.

46. As appears from the above, the measures taken by the Government focused, during the whole pandemic, on safeguarding the right of everyone to urgent health care, which ultimately safeguards one's right to life. The measures applied to the whole population, without placing persons with disabilities in an unequal or weaker position. For example, persons with disabilities were never denied their right to urgent medical care. They had access to health care services by the same principles as the rest of the population throughout the pandemic.

47. During the pandemic, the Government also safeguarded the right of persons with disabilities to the necessary services, for instance transport services, in accordance with the normality principle. Consequently, for example transport services for persons with limited functional abilities, which make possible their access to health care services, have been available throughout the pandemic.

The right of persons with disabilities to health care and social welfare services and their right to independence, social integration and participation in the life of the community

48. On 16 March 2020, the Government decided to use powers under the Emergency Powers Act (*valmiuslaki, beredskapslag*; 1552/2011), which made it possible, among other things, to abolish the time limits for access to non-urgent health care defined in the Health Care Act (*terveydenhuoltolaki, hälso- och sjukvårdslag*; 1326/2010) if the abolition is necessary for ensuring urgent health care and does not jeopardise the patient's health. Section 88 of the Act also makes it possible to waive the time limit for initiating an assessment of the need for services referred to in Section 36 of the Social Welfare Act (*sosiaalihuoltolaki, socialvårdslag*; 1301/2014).

49. The use of powers under the Emergency Powers Act affected the availability of services equally for the whole population in compliance with Article E of the Charter. The Government points out, however, that the Ministry of Social Affairs and Health specifically emphasised in its instructions of 20 March 2020 that the obligation to organise social welfare and health care services would continue despite the use of powers under the Emergency Powers Act. The Ministry noted that it was appropriate for municipalities, taking into account the possible shortage of personnel and changes in the focuses of activities, to identify those persons or client groups for which it was critically important to organise support. The municipalities also had to ensure that any possible reorganisation of duties in the municipal social welfare and health care units would not jeopardise the health and safety of persons in need of special support. The Ministry emphasised, however, that the necessary health care and medical care, as well as other care and subsistence must be ensured during the state of emergency, as well, and that in providing social welfare and health care, particular attention must always be paid to implementing the best interests of those clients who need special support, and that exceptional conditions accentuate this need. The Ministry also underlined that everyone's individual need for services must be assessed separately in order not to jeopardise anyone's right to last resort subsistence and care. The applicant association has annexed the instructions to the complaint submitted to the Committee.

50. Nevertheless, the Government also points out that persons with disabilities often benefit from special social welfare services arranged under the responsibility of municipalities. These services safeguard their right to the necessary care, equality and participation as required by Article 14 of the Charter. With reference to the above, the Government underlines that waiver under Section 88 of the Emergency Powers Act of the time limit for initiating an assessment of the need for services under Section 36, subsection 2 of the Social Welfare Act does not concern the assessment of the need for services referred to in 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). Thus, the use of powers under Section 88 of the Emergency Powers Act had no immediate consequences to the provision of the necessary special social welfare services to persons with disabilities. The Ministry specifically emphasised this fact in its instructions of 20 March 2020, which the applicant association also has sent to the Committee as an annex to the complaint. The Government considers that persons with disabilities were not placed in an unequal position or discriminated against in the manner referred to in Article E of the Charter in respect of the right described in Article 14 of the Charter. Instead, persons with disabilities rather enjoyed positive special treatment.

51. The applicant association further alleges that the equal right of persons with disabilities to health care, testing and information, among other things, has not been implemented. The Government considers the allegation as erroneous. The Government underlines that the measures taken to contain the COVID-19 pandemic were specifically based on the objective to ensure the availability of critical health care services in an equal manner. This is stated, *inter alia,* in the instructions of the Ministry of Social Affairs and Health of 20 March 2020 and 16 April 2020, annexed to the complaint. The instructions specifically emphasise the need to observe, even during the state of emergency, the obligations under the United Nations' Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities to safeguard the rights of these persons. Thus, the measures were intended to safeguard everyone's rights in compliance with the human rights treaties binding on Finland, emphasising, however, especially the implementation of the rights of those population groups, such as persons with disabilities, who are in principle in a weaker position than others and whose rights are safeguarded in a specific human rights treaty.

52. Unlike the applicant association contends, no instructions issued by the Ministry of Social Affairs and Health provide that persons with disabilities have no access to the health care or medical care (incl. intensive care) that they need. By contrast, the Ministry specifically stresses in the instructions that the whole population must have an equal right to health care (incl. intensive care). On the basis of feedback from the field, the Ministry even clarified the instructions by means of an information note published on 1 April 2020, underlining specifically that persons with disabilities must not be excluded from intensive care but that decisions concerning intensive care are always to be made by the treating physician after assessing each individual situation.

53. On 14 April 2020, the Ministry of Social Affairs and Health issued instructions that the services of primary health care must be adapted according to the regional situation of infections. The Ministry emphasised that when the number of patients is moderate and there is personnel working, basic level activities must not be unduly reduced. Furthermore, the Ministry stressed again that patients in need of special support must be taken into account in the provision of services.

54. Unlike alleged in the complaint, Finland has made special efforts to ensure the availability and accessibility of instructions and information. Information about the COVID-19 virus has been available in many languages (incl. easy language and sign language), and for instance press briefings have been interpreted into the sign language. In developing the mobile application tracing COVID-19 infection chains, and in the legislative project related to its use, disability organisations were included in the process in order to pay particular attention to the accessibility of the application. Moreover, during the spring of 2020, the Ministry of Social Affairs and Health had repeated dialogue with disability organisations and met their representatives twice. These measures have contributed to guaranteeing, during the pandemic, participation of persons with disabilities as required by Article 15 of the Charter.

55. During the COVID-19 pandemic, the Funding Centre for Social Welfare and Health (STEA), operating in connection with the Ministry of Social Affairs and Health, has channelled monetary support to organisations to help them provide COVID-19 information and peer support by telephone to prevent loneliness and fears. This measure has contributed to guaranteeing, during the pandemic, support to the participation of persons with disabilities as required by Article 15 of the Charter.

56. The Government further points out that, unlike alleged in the complaint, the Ministry of Social Affairs and Health has issued numerous instructions and recommendations on how to safeguard the rights of persons with disabilities during the pandemic. The applicant association has annexed such recommendations and instructions to its complaint to the Committee. For example, the Ministry has instructed unequivocally that personal assistants and providers of necessary rehabilitation services, such as physiotherapists and occupational therapists, must have access to social service housing units (Instructions of the Ministry of Social Affairs and Health of 1 April 2020).

57. When the pandemic reached its worst stage, services to support participation were reduced, and for instance day activities were not available. The reductions were, however, necessary to contain the spreading of the COVID-19 virus and to protect the whole population and especially the groups most exposed to the virus. When the pandemic began to weaken, the day activities and other activities to promote participation were restarted as soon as possible. Correspondingly, at the early stages of the pandemic, new models of action, such as distant rehabilitation, were introduced rapidly in order to ensure the implementation of the right of people to participate (the instructions of the Ministry of Social Affairs and Health of 20 March 2020, updated on 16 April 2020). The Government also emphasises that unlike the applicant association contends, the measures concerning social services, for example the interruption of day activities, applied equally to all persons using the services (incl. aged persons and drug and mental health rehabilitees), and not only to persons with disabilities.

58. Consequently, the Government did not place persons with disabilities in an unequal position or discriminate against them in the manner referred to in Article E of the Charter in respect of the rights described in Articles 11, 14 and 15 of the Charter.

Conclusions

59. The Government considers that, unlike the applicant association alleges, Finland has specifically guaranteed a satisfactory application of the provisions of the Charter in the global pandemic situation, in a manner that has been necessary for protecting the population as required by Article 11 of the Charter 11 and Article 2 of the European Convention on Human Rights, and by taking into account the obligations laid down in Article 11 of the Convention on the Rights of Persons with Disabilities.

60. Furthermore, the Government does not consider that persons with disabilities were placed in an unequal position as referred to in Article E of the Charter in respect of Articles 11, 14 and 15 of the Charter, or that the Government failed to safeguard an adequate application of the above-mentioned Articles in the global pandemic situation.

61. Thus, in respect of the merits of the complaint, the Government reiterates that when in the present case the global evolving situation of the new generally hazardous communicable COVID-19 disease, Finnish domestic legislation and the measures taken by the Finnish authorities for purpose of protecting the population, including persons with disabilities, against the communicable disease are assessed holistically and comprehensively with the Charter, the only available conclusion is that the relevant provisions and measures taken in aggregate do fulfil the obligations set by Articles 11, 14, 15 and alone or in conjunction with Article E of the Charter.

62. In conclusion, the Government considers that nothing in this complaint indicates violations of the Charter, and invites the Committeee to declare the complaint manifestly ill-founded as whole.

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