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

8 April 2022

Case Document No. 7

Validity v. Finland
Complaint No. 197/2020

**REPLY FROM THE GOUVERNEMENT
TO VALIDITY'S RESPONSE**

Registered at the Secretariat on 31 March 2022



31 March 2022

Mr Henrik Kristensen
Deputy Executive Secretary
European Committee of Social Rights

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

Sir,

With reference to your letter of 4 February 2022, I have the honour, on behalf of the Government of Finland, to submit the following further observations on the merits of the aforementioned complaint.

Admissibility of the complaint

1. The Government recalls 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.
2. The Government further recalls its observations on the merits of the complaint of 28 October 2021.
3. The Government notes that pursuant to Rule 31§3 of the Committee, the President of the Committee has invited the Government to submit a reply to the complainant’s response by 31 March 2022.
4. Therefore, the Government submits the following further observations on the merits of the complaint.

Further observations on the merits

5. The Government observes that the complainant organisation seems to suggest in its observations of 7 January 2022 (paras. 4 and 6) that the Government should also have addressed each general instruction separately to persons with disabilities.

6. The Government states that at the material time, in spring 2020, it was impossible to give individual instructions to everyone but the Government strove to ensure that the public was informed as widely as possible. Thus, for example, the instruction to avoid physical contacts and to use other means of contact was a general instruction that was addressed to the whole population and was repeated during spring 2020 both in press conferences of the Government and, for instance, in news broadcasts. The information reached persons with disabilities, too. Moreover, for example, the staff in service housing units and the families of the residents there were aware of the Government's instructions to avoid physical contacts and to use alternative means of contact.

7. The Government also underlines that it made major efforts to ensure the availability and accessibility of information. For example, all press conferences of the Government were interpreted into sign language. The Finnish Institute for Health and Welfare published comprehensive information about the COVID-19 virus at its website in several languages (including easy language). These measures are described in para. 54 of the Government's observations of 28 October 2021. Furthermore, the *Handbook on Disability Services*, maintained by the Finnish Institute for Health and Welfare, was rapidly supplemented with instructions relating to the COVID-19 virus and information about the rights of persons with disabilities also during the COVID-19 pandemic. This information was specifically addressed to the staff in service housing units for persons with disabilities. Thus, in addition to providing information to the general public, the Government targeted information at persons with disabilities through the staff in service housing units. Therefore, the Government considers unfounded the complainant organisation's allegation that persons with disabilities were not sufficiently informed about the COVID-19 virus (para. 8).

8. Unlike the complainant organisation alleges, the Government responded to the concerns raised by disability organisations by, for instance, clarifying its instructions when it received feedback from the field regarding observed deficiencies or misinterpretations of the instructions (para. 5). In this respect, the Government refers to its observations of 28 October 2021, especially paras. 51–54, and to the considerations presented below in these additional observations.

9. The Government observes that the complainant organisation refers to COVID-19 deaths of persons with disabilities in other countries and invokes them as grounds for its key allegation that the Government of Finland exposed persons with disabilities living in social service housing units to the COVID-19 virus (para. 11). The Government points out, however, that the virus began to spread earlier especially in Southern Europe than in Northern Europe. Finland was closely monitoring the spreading of the virus elsewhere in Europe and was therefore able to react rapidly when it became clear that the virus was beginning to spread in Finland, too. Thanks to the rapid measures, Finland managed to curb the spreading of the virus among the population very efficiently. Therefore, the Government considers the allegation of the complainant unfounded.

10. It is also justifiable to ask why the collective complaint at issue was raised against Finland specifically while the complainant organisation itself admits that the risk of service housing units becoming COVID-19 hotbeds did not materialise in Finland. As far as the Government knows, the organisation has not made a corresponding collective complaint against any other State, although the organisation itself specifically lists countries where the situation, in its opinion, has been considerably worse than in Finland.

11. The complainant organisation admits in its observations that the risk of service housing units becoming COVID-19 hotbeds did not materialise in Finland. Despite this, the organisation considers that Finland has failed to comply with its obligations under the Revised European Social Charter. The Government, however, considers that by admitting that the risk did not materialise, the complainant organisation leaves the allegations made in its complaint completely without foundation. In a collective complaint, the complainant should be able to substantiate in what respect the State Party has failed to ensure satisfactory application of the provisions of the Revised Charter. In the Government's view, it would be warranted to assess the allegations made in the complaint and their possible significance if the COVID-19 virus had spread in service housing units in Finland and caused deaths there. The fact that this did not happen in Finland proves that the Government has ensured the application of the provisions of the Revised Charter in an efficient manner.

12. The complainant organisation refers to an individual communication pending against Finland before the United Nations Committee on the Rights of Persons with Disabilities, and implies that Finland has a structural problem with supporting the independent living of persons with disabilities (para. 15). The Government emphasises that the communication is specifically individual by nature and concerns specific questions related to the individual situation of one person. Therefore, the communication is not, as such, comparable to the collective complaint. Nor does the individual communication in question concern measures taken during the COVID-19 pandemic. Moreover, the communication has not yet been adjudicated. For these reasons, it is not justifiable or even possible to draw any broader conclusions on the situation in Finland.

13. The complainant organisation also considers that all housing units are institutions within the meaning of the United Nations Convention on the Rights of Persons with Disabilities (para. 16). The Government points out that the approach in Finland differs from the complainant organisation's view, and underlines that the Finnish system is highly advanced compared to the systems in many other European countries, where the housing services especially for persons with intellectual disabilities or those with an *autism spectrum* disorder are very institution-like. In the 2000s, Finland has made major efforts to abolish institutional care and to develop service housing jointly with disability organisations. For example, as early as in 2003, the Ministry of Social Affairs and Health published a quality recommendation for housing services for persons with disabilities.¹ In 2011, the Finnish Institute for Health and Welfare published a report on housing of persons with intellectual disabilities.² The advisory board for housing of persons with intellectual disabilities (*Kehitysvamma-alan asumisen neuvottelukunta, Delegationen för boende för personer med utvecklingsstörning*) has published quality recommendations for the construction of housing for persons with intellectual disabilities.³ In addition, in 2010, the Government launched a programme to develop the housing of persons with intellectual disabilities, and a related report was published in 2016.⁴

14. The Government emphasises that in the Finnish system, housing units are homes of the residents, who pay rent for them. In principle, each resident in a service housing unit has at least a room of their own with a bathroom. Some dwellings are or can be equipped with a kitchen. In addition, there are common facilities available to all those residing in the unit. In some housing units, persons with disabilities live in normal blocks of flats or terraced houses complying with accessibility requirements. Their dwellings are one-room flats or larger flats, for example for families. In those cases, the facilities common to the residents are located separately in the same or another building. Residents of service housing units, as well, have access to personal assistance, which contributes to supporting the right of persons with disabilities to independent life. Therefore, the Government cannot understand the complainant organisation's allegation that persons with disabilities living in service housing units should have been moved elsewhere in order to protect them against the COVID-19 virus. The Government underlines that for instance under Article 8 of the European Convention on Human Rights, everyone – including every person with a disability – has the right to respect for his or her private and family life, home and correspondence.

¹ *Individualised services, functional accommodation and accessible environment – A quality recommendation for housing services for people with disabilities*. Helsinki 2003 (*Handbooks of the Ministry of Social Affairs and Health*, ISSN 1236-116X; 2003:4.) ISBN 952-00-1323-7). Available at: <https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/70109/asumpalvo3.pdf?sequence=1&isAllowed=y>

² TLH, *Kehitysvammaisten asumisen, Uusi reformi 2010–2015*, THL:n raportti 10/2011. Available at: <https://www.julkari.fi/bitstream/handle/10024/80019/654df847-a315-42e2-ab92-bebb8df864b7.pdf?sequence=1&isAllowed=y>

³ Kehitysvamma-alan asumisen neuvottelukunta, *Laatusuosituksset kehitysvammaisten henkilöiden asuntojen rakentamiseen vuosille 2010 – 2017*. https://www.kvank.fi/wp-content/uploads/laatusuosituksset_asuntojen_rakentamseen_2010_2017.pdf

⁴ Sosiaali- ja terveysministeriö, *Laitoksesta yksilölliseen asumiseen. Kehitysvammaisten asumisen ohjelman toimeenpanton arviointi ja tehostettavat toimet vuosille 2016–2020*. Seurantaryhmän loppuraportti. Sosiaali- ja terveysministeriön raportteja ja muistioita 2016:17. Available at: https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/74818/Rap_ja_muistioita_2016_17.pdf?sequence=1&isAllowed=y

15. The Government further states that Finnish service housing units do not accommodate hundreds of people, as the complainant organisation implies. In principle, a Finnish service housing unit may accommodate 15–20 persons, but there are also smaller units. Even if there are places for tens of residents in a service housing unit as such, the units are divided into smaller parts, for instance different floors or parts of buildings, which helps to reduce unnecessary contacts and thus prevents the spreading of generally hazardous communicable diseases, such as the COVID-19 disease. As to the sources of information, the Government refers to the above-mentioned materials describing the Finnish service housing system for persons with disabilities.

16. The complainant organisation also contends that the instructions given by the Government were understood as legally binding in the field (paras. 18–21). The Government considers it plain that it did not necessarily appear sufficiently clearly from the original instructions, as in normal situations, that the instructions constituted a recommendation and not a legally binding regulation. On the other hand, it must be taken into account that the instructions were mainly addressed to public authorities and that, according to the founding principles of Finnish administrative law, steering by ministries is as a rule not legally binding. For assessing the matter, the key factors to be examined are primarily the conditions in which the instructions were issued, the objective pursued by the instructions, the prevailing situation, and the degree of achieving the objective. The purpose of the instructions was specifically to protect the lives and health of the population in the acute crisis situation and to prevent the new generally hazardous communicable disease from spreading. At the time when the instructions were issued in March 2020, the available information about the behaviour and lethality of the COVID-19 virus was not yet as profound as it is now. In light of the information then available, it was justified and necessary to very rapidly take measures and issue instructions to protect the lives and health of the whole population as widely as possible, and the authorities also succeeded in this task. The Government stresses that the instructions were clarified without delay on 1 April 2020, and the recommendation was lifted when the pandemic had eased in June 2020. Thus, as a whole, the recommendation to avoid visits to service housing units was valid only for the time that was considered necessary for epidemiological reasons. At the same time, it was recommended that the whole population refrain from physical contacts that were not indispensable.

17. Finally, the Government notes that the complainant organisation seems to consider that the right of persons with disabilities to independent life and their right to participation in society outweigh the right to life and the right to health. This view is supported, among other things, by the organisation's comment *'The Government failed to effectively engage with this core argument of the Complaint which, their lack of understanding of the fundamental concepts on which the Complaint relied: the right to live independently and be included in the community, and the corresponding state obligation to deinstitutionalise social services (para 2)'*. The Government reiterates the considerations presented in its earlier observations: In principle, all human rights are equal, but in the situation referred to in the collective complaint (after the outbreak of the COVID-19 pandemic in spring 2020), the Government concluded that especially the right to life and the right to health outweighed the other human rights. The Constitutional Law Committee of Parliament, as well, concurred with the Government's view. In this respect, the Government refers to its observations of 28 October 2021, especially paras. 24–27.

Conclusions

18. The Government reiterates its conclusion 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.

19. The Government emphasizes that it 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.

20. 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.

21. In conclusion, the Government firmly considers that nothing in this complaint indicates violations of the Charter, and invites the Committee 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