EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

6 February 2012

Case Document No. 3

Association of Care Giving Relatives and Friends v. Finland
Complaint No. 71/2011

SUBMISSIONS OF THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 3 February October 2011

Ministry for Foreign Affairs of Finland
Unit for Human Rights Courts and Conventions

Mr Régis Brillat
Executive Secretary
European Committee of Social Rights
Council of Europe
F-67075 Strasbourg CEDEX
F R A N C E

Helsinki, 3 February 2012

ASSOCIATION OF CARE GIVING RELATIVES AND FRIENDS V. FINLAND COMPLAINT NO. 71/2011

Sir,

With reference to your letter of 16 December 2011, I have the honour, on behalf of the Government of Finland, to submit the following observations on the merits of the aforementioned complaint.

I THE APPLICANT ASSOCIATION'S COMPLAINT

The Government observes that in its complaint the Association of Care Giving Relatives and Friends (subsequently "the applicant association") alleges the following. According to the applicant association, the changing of municipal residential homes for elderly persons to service housing units and service housing units with 24-hour assistance and the increasingly common practice of purchasing service housing and service housing units with 24-hour assistance from private service providers has led to a situation where elderly persons are compelled to pay for the 24-hour services they need in accordance with the grounds defined by the municipality instead of the previously applied income-dependent fee for institutional care determined by Section 7 b–c of the Act on Client Fees in Social Welfare and Health Care (subsequently the Client Fee Act*; laki sosiaali- ja terveydenhuollon asiakasmaksuista; lagen om klientavgifter inom social- och hälsovården; 732/1992*). The applicant association alleges that his is due to the lack of regulations regarding the client fees for service housing and service housing with 24-hour assistance, and in some cases the clients pay significantly higher fees for service housing than for institutional care. The applicant association further claims that units that previously operated as residential homes have been transformed into service housing units with 24-hour assistance. According to the applicant association this is so although no corresponding

Address *P.O. Box 411* *00023 Government* *FINLAND*
Visiting address *Building A* *Laivastokatu 22*
Telephone *+358 - 9 - 160 55704* *e-mail: OIK-40@formin.fi*
Telefax *+358 - 9 - 160 55951*

changes have taken place in the operations of the unit or in the clients' needs.

According to the applicant association, the high level of the fees has compelled more and more elderly persons in poor condition to drop out of the services and rely on informal care.

Accordingly, the applicant association alleges that the lack of regulations on the fees for service housing and service housing with 24-hour assistance violate against the following articles of the Revised European Social Charter (Finnish Treaty Series 80/2002):

Article 13: The right to social and medical assistance
With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:
1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

Article 14: The right to benefit from social welfare services
With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:
1. 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;
2. to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.

Article 16: The right of the family to social, legal and economic protection
With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

Article 23: The right of elderly persons to social protection
With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

– to enable elderly persons to remain full members of society for as long as possible, by means of:
a) adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;
b) provision of information about services and facilities available for elderly persons and their opportunities to make use of them;
– to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:
a) provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;
b) the health care and the services necessitated by their state;
– to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

II ON THE MERITS OF THE CASE

1. The right to receive indispensable care and sufficient social, health and medical services

Section 19.1 of the **Constitution of Finland** (*Suomen perustuslaki; Finlands grundlag; 731/1999* subsequently "the Constitution") provides that those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care. The provision guarantees everyone a subjective right to an income level and services that safeguard the person's opportunity to lead a life of dignity.

Section 19.2 of the Constitution provides that everyone shall be guaranteed by an Act the right to basic subsistence in the event of unemployment, illness, and disability and during old age as well as at the birth of a child or the loss of a provider.

Section 19.3 of the Constitution provides that the public authorities shall guarantee for everyone, as provided in more detail by an Act, adequate social, health and medical services and promote the health of the population.
The criterion for the adequacy of services is a level of services that enables everyone to function as a full member of society.

Section 19.4 of the Constitution provides that the public authorities shall promote the right of everyone to housing and the opportunity to arrange their own housing. The provision does not set any quality standard for housing but refers to everyone's opportunity to arrange their own housing.

The legislative provisions on different benefits related to social welfare and health care services and on the eligibility for them are contained in Acts of Parliament. Local authorities implement the social welfare and health care legislation in this respect as part of their self-government. In this context, the **Constitutional Law Committee of Parliament** has held in its opinions that the client fees collected

for social welfare and health care services provided on the basis of Section 19.3 of the Constitution must not be so high that they make the services inaccessible for those who need them (opinions PeVL 8/1999 vp and PeVL 39/1996 vp).

According to Section 6 of the Constitution, no one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person. Within the limits of acceptable intention and the principle of proportionality it is, however, permitted to deviate from formal equality in order to achieve genuine equality.

The Social Welfare Act (*sosiaalihuoltolaki; socialvårdslagen; 710/1982*) and the more detailed related special legislation include further provisions on concrete measures by which the constitutional right to indispensable care and sufficient social security is realized. Section 17 of the Social Welfare Act lists those social services, including institutional care, which municipalities are obliged to provide.

Section 40a of the Social Welfare Act includes provisions on the rights of persons in need of social services to have this need assessed by a social services expert. According to the provision, the need shall in urgent cases be assessed without delay. In non-urgent cases, a person aged 75 years or over must be provided access to an assessment of his or her need for social services at the latest on the seventh weekday from the date when the person or his or her legal representative or relative or some other person or authority contacted the authority of the responsible municipality in order to obtain services.

To obtain the social services needed, clients or their representatives must file an application with the municipal body in charge of social welfare. On the basis of the application, the social welfare body or its employee must make a decision in writing. The reasons for the decision and appeal instructions must be included in the decision. Should the client be dissatisfied with the decision of the municipal body, he or she may lodge an appeal before an administrative court.

The Health Care Act (*terveydenhuoltolaki, hälso- och sjukvårdslagen; 1326/2010*) and other health-care related Acts and Decrees complementing it prescribe in more detail the measures with which to achieve the right to indispensable care and sufficient health and medical service.

Chapter 2 of the Act lays down provisions on the promotion of health and welfare and Chapter 3 on medical care. The municipality is responsible for organising these services.

According to Section 51 of the Act on access to primary health care, the municipality must organise its operations so that the patient can gain immediate access to a health centre or other health care unit on weekdays during office hours. The provision lays down that a health care professional must assess the patient's need for services at the latest on the third weekday from the date when the patient first contacted the health services if the assessment could not be made on the day of the contact. Assessing the need for specialised medical care to be carried out in connection with primary health care must be initiated within three weeks of the arrival of the referral at the unit.

Under Section 52 of the Act the assessment of the need for specialised medical care in urgent cases and when the assessment is based on a referral must be Initiated within three weeks of the arrival of the referral at the hospital or other unit for specialised medical care.

Under Section 50 of the Act, the municipality must organise 24-hour emergency duty for urgent medical care.

The decision to grant access to health and medical care is not an individual administrative decision but is instead primarily based on the physician's decisions under Section 22 of the Act on Health Care Professionals (*laki terveydenhuollon ammattihenkilöistä; lagen om yrkesutbildade personer inom hälso- och sjukvården 559/1994*) and medical aspects requiring special expertise. A health care professional decides on access to care in agreement with the patient or his or her legal representative on the basis of the recommendations on access to care, the patient's life situation and the medical assessment of the need for care. Therefore, it is not considered proper to subject it to assessment by court of law through the appeal process. However, if authorised health care professional denies a person access to care either within municipal health services, as outsources service or service arranged with service voucher, the person may appeal the matter to an administrative court.

2. 24-hour services

a) Institutional care

According to Section 24 of the **Social Welfare Act**, institutional care refers to the provision of *treatment, upkeep and rehabilitation* in a social welfare unit providing continuous care. Institutional care is provided in the case of a person who needs *assistance, treatment or other care* which cannot be provided, or which it is not expedient to provide, in the person's own home by making use of other social services. Section 11 of the **Social Welfare Decree** (*sosiaalihuoltoasetus; socialvårdsförordningen; 607/1983*) lays down that persons in institutional care must be provided with the rehabilitation, care and attendance that they need depending on their age and physical condition. They should also be ensured a safe, home-like and activating living environment that permits privacy and promotes rehabilitation, independent initiative and functional ability.

According to Section 67 of the **Health Care Act**, a decree of the Ministry of Social Affairs and Health defines when a service provided within the municipal health care is considered institutional care. The corresponding provision for social welfare is Section 24a of the Social Welfare Act.

Pursuant to Subsection 1 of the **Annex to the Decree of the Ministry of Social Affairs and Health** on the grounds for defining outpatient and institutional care (*sosiaali- ja terveysministeriön asetus avohoidon ja laitoshoidon määrittelyn perusteista; social- och hälsovårdsministeriets förordning om grunderna för öppenvård och institutionsvård; 1806/2009*), care is always institutional care

when it is provided in the hospital or health centre ward or in a corresponding social welfare institution.

Social welfare institutions provide care, rehabilitation and maintenance for persons who do not need medical care but who *do* need special care and who do not cope at home or in other outpatient care despite regular services.

b) Service housing and service housing with 24-hour assistance

According to Section 22 of the **Social Welfare Act**, housing services mean the provision of service housing and supported accommodation. According to Section 23 of the Act housing services are provided in the case of persons who, for special reasons, need help or support with organising housing or their living conditions. Section 10 of the **Social Welfare Decree** lays down that housing services are organised in the form of service housing and supported accommodation to support a person's independent living or transition to independent living by means of social work and other social services. **The Social Welfare Act** lays down no provisions on service housing with 24-hour assistance. The difference between regular service housing units and service housing units with 24-hour assistance is that the latter units have staff on hand round the clock.

Pursuant to Subsection 1 of the **Annex to the Decree of the Ministry of Social Affairs and Health** on the grounds for defining outpatient and institutional care, services that are organised elsewhere than in the units of institutional care listed above are considered outpatient care if there are no strong grounds for considering the service institutional care. A key characteristic of outpatient care is that the client has influence over the organisation of services and housing. Moreover, housing is as a rule based on a residential lease agreement. A service and care plan has usually been drawn up for the client with regard to the services provided at home and the related support services. Further, the service fees are determined on the basis of that plan.

c) Decision between outpatient care and institutional care

According to Subsection 3 of the **Annex to the Decree of the Ministry of Social Affairs and Health** on the grounds for defining outpatient and institutional care, the decision between outpatient and institutional care is based on t*he whole of the unit's operations*, the *level of care provided in the unit* and the *assessment of the need for services of the persons cared for in the unit*, if the decision cannot be reached on the basis of the grounds stated above.

The basic principle is that a service is institutional care *only if the service meets the conditions laid down for institutional care*. In other cases, a service is institutional care only if there are particularly strong grounds that give reason to deem that the initial purpose has been to provide institutional care. Also the contents of the service must comply with the contents of institutional care. Moreover, attention must be paid to the entity formed by the following factors:

a) The *quality and extent of the services* provided in the unit,

b) the *size of the unit* and the *education, number and working hours of the care staff* working there,
c) the *housing* (do the patients share room with others or not) and *other arrangements* relating to the premises as well as
d) the *functional capacity* of the persons residing in the unit and their *possibilities to influence the organisation of housing, services and personal activities*.

In order for outpatient housing-service units operating in immediate connection with institutions to be considered outpatient units, they must be clearly separate from the institutional services in operational terms. The characteristics of outpatient care must apply to the persons residing in these units, *i.e.*, the client must pay rent and answer for his or her living expenses and the services he or she receives. Moreover, the care provided in the outpatient unit must be clearly different from the care provided in the institutional unit. According to the Decree of the Ministry of Social Affairs and health on the grounds for defining outpatient and institutional care, services are not deemed outpatient care if, for instance, a municipal residential home for elderly persons has been renamed into a housing service unit without any changes to the operations of the unit. An institution cannot be changed into an outpatient unit unless its operations change accordingly.

In such cases municipal decisions are, then, assessed by the Social Insurance Institution of Finland and, in the last resort, by the Ministry of Social Affairs and Health. Defining the limits of outpatient and institutional care has importance for the determination of the benefits paid out by the Social Insurance Institution. According to the Decree of the Ministry of Social Affairs and health on the grounds for defining outpatient and institutional care, the municipality must notify, with certain exceptions, the Social Insurance Institution of each new institution, each institution where changes have been made in the operations, outsourced institutional services and each outpatient unit providing housing services. If the Social Insurance Institution deems the unit an institution, it must notify its decision to the municipality operating the unit or the municipality where the unit is situated. The issue concerning the public- or private-sector nature of the institutional care is settled in negotiations between the municipality and the Social Insurance Institution. If no consensus is reached on the matter, the Ministry of Social Affairs and Health is requested for a statement, after which the Social Insurance Institution settles the matter.

3. Municipality organising 24-hour services

Section 121 of the Constitution lays down that the administration of municipalities is based on the self-government of their residents.

The municipalities are financed through municipal tax and central government transfers. The most important sources of municipal income are tax revenue and central government transfers. The purpose of central government transfers is to ensure access to the public services which the municipalities are responsible for organising. The transfer system is based on compensating for differences in costs and needs and on levelling the revenue basis.

The most important feature of the transfer system is the central government transfers for the provision of basic municipal services laid down in **the Act on Central Government Transfers to Local Governments** (*laki kunnan peruspalvelujen valtionosuudesta; lagen om statsandel för communal basservice; 1704/2009*). The basic service transfer also covers social service with 24-hour assistance.

The central government transfers for the provision of basic municipal services is an estimate and it is based on the municipality's number of residents and its demography, but also on the residents' need for services and the circumstantial factors that increase the costs for services. In 2011, the average of central government transfers to local governments was 34 per cent.

The municipalities decide how they use their tax revenue and the central government transfer for the provision of services. The transfers are not ear-marked for basic services. However, the municipalities' freedom to decide how to spend the resources is limited by Section 3 of **the Act on Planning and Government Grants for Social Welfare and Health Care** (*laki sosiaali- ja terveydenhuollon suunnittelusta ja valtionosuudesta; lagen om planering av och statsandel för social- och hälsovården; 733/1992*) that ordains that the municipality must allocate resources for the social and health care which forms the basis for the central government transfers. Within the limits of Section 4 of the Act, the municipality has, nevertheless, the right to decide how to organise its social and health services.

Under Section 4 of the Act the municipalities can provide the services by themselves or in cooperation with other municipalities. They can also outsource services from private or public-sector providers or alternatively issue vouchers to service users with which they can purchase necessary services from the private sector. The client has the right to decline a service voucher, in which case the municipality must refer the client to services the municipality provides by other means. Joint municipal authorities and parent municipalities organise services in much the same way as independent municipalities.

The municipality's discretion in organising services is bound by the provisions on the general obligation to organise services. The interpretation of the latter must, in turn, take into account the obligations laid down by fundamental and human rights.

4. Fees in social and health care

The Government observes that Section 3 of the D**ecree on Client Fees in Social Welfare and Health Care** (below Client Fee Decree*; asetus sosiaali- ja terveydenhuollon asiakasmaksuista; förordning om klientavgifter inom social- och hälsovården; 912/1992*) includes provisions on client fees chargeable for services provided at home.

Section 3 of the Client Fee Decree lays down that a reasonable client fee determined in relation to the quality and amount of the home service, the financial standing of the client and the size of the family may be charged for continuous and regular home nursing as well as for home-help services provided pursuant to Section 9.1.1 of the Social Welfare Decree (*sosiaalihuoltoasetus; socialvårds-förordningen; 607/1983*). The monthly fee may not exceed the amount of the monthly income surpassing a certain income limit that is determined by the payment percentage defined in Section 3.2 of the Client Fee Decree. For single person households, the income limit is set at €520 per month, and the client fee may not exceed 35 per cent of the income surpassing this limit. Correspondingly, the income limit for two-person households is set at €959, and the payment percentage for income surpassing this may not exceed 22 per cent.

The client fee for services provided at home does not cover rent, which the client must pay separately. A client of limited means may, however, be granted a housing allowance for their housing expenses pursuant to **the Act on the Housing Allowance for Pensioners** (*laki eläkkeensaajan asumistuesta; lag om bostadsbidrag för pensionstagare; 571/2007*) or a general housing allowance pursuant to the Housing Allowance Act (*asumistukilaki; lag om bostadsbidrag; 408/1975*). According to Section 5 of the Act, housing expenses include the housing expenses part of a service fee for a housing service unit (sheltered housing or residential homes for the elderly).

Section 11 of the Act includes provisions on excess housing expenses. The excess housing expenses include basic excess and additional excess. Excess limits for the housing allowance for pensioners are adjusted annually by the national pension index. In 2012, the basic excess is set at €590.79 per year and the additional excess at 40 per cent of the yearly income surpassing €8,397. For married or cohabiting pensioners the additional excess is 40 per cent of the joint annual income of the spouses that 1) surpasses €12,308, if the other spouse is not entitled to the housing allowance for pensioners or 2) surpasses €13,488, if both spouses are entitled to the housing allowance for pensioners or if the other spouse receives early old-age pension payable for under 65-year-old persons.

As a rule, the amount of the housing allowance is 85 per cent of the annual housing expenses to be taken into account pursuant to the Act on the Housing Allowance for Pensioners and of which the above-mentioned excess has been reduced in accordance with Section 11.

Moreover, a client may apply for the care allowance for pensioners under **the Act on Disability Benefits** (*laki vammaisetuuksista; lag om handikappförmåner; 570/2007*). The allowance is granted when the functional capacity of a pensioner that fulfils the conditions set out in the above Act may be assessed to have diminished continuously for at least a year due to sickness, problem or disability and when that sickness, problem or disability causes need for help or need for guidance and supervision or special expenses. The care allowance for pensioners is graded into three classes based on the need for help, need for guidance and supervision and the amount of special expenses. The care allowance is exempt from tax and its amount is adjusted annually by the national pension index. In 2012, the basic care allowance for pensioners is set at €59.73 per month, the increased allowance at €148.69 per month and the highest allowance at €314.41 per month.

Furthermore, the Government observes that Section 15 of **the Act on Client Fees in Social Welfare and Health Care** (*laki sosiaali- ja terveydenhuollon asiakasmaksuista; lagen om klientavgifter inom social- och hälsovården; 732/1992*) lays down that the client has the right to submit a decision on a client fee to review by the body referred to in Section 6 of the Social Welfare Act (*sosiaalihuoltolaki; socialvårdslagen; 710/1982*) in case of social services, by the body referred to in Section 6 of **the Primary Health Care Act** (*kansanterveyslaki; folkhälsolag; 66/1972*) in case of health centre services.

In case of specialised medical care provided by a hospital district or special care services for persons with intellectual disabilities provided by a special care district, the client has the right to submit a decision on a client fee to review by the body to which the office holder who has taken the decision is subordinate. A decision on a client fee may be appealed to an Administrative Court within 30 days of notice of the decision as laid down in the Administrative Judicial Procedure Act (*hallintolainkäyttölaki; förvaltningsprocesslag; 586/1996*).

According to Section 7 of the Client Fee Act, the fee for long-term institutional care can be no more than 85 per cent of the client's net income per month, provided that the client has at least EUR 97 per month for his or her personal use. The fee for institutional care covers everything the client needs while living in the institution, i.e., full upkeep, including housing, cleanliness, meals, care as well as, for example, assistive devices necessary for rehabilitation. If a person has before the commencement of institutional care lived in the same household with his or her marital or common-law spouse and if his or her monthly income is higher than that of the spouse, the client fee is determined under Section 7 c.2 of the Client Fee Act on the basis of the combined monthly income of the spouses so that the fee for the institutional care is no more than 42.5 per cent of the combined income of the spouses.

There are no provisions on the determination of client fees for service housing or service housing with 24-hour assistance in the Client Fee Act. This explains the variation in the client fee policies in the municipalities. Usually the fees depend on income at least to a degree.

Fees are often collected separately as basic and care fees, meal-service fees and other support service services. In addition, the client normally pays rent based on a residential lease agreement in accordance with **the Act on Residential Leases** (*laki asuinhuoneiston vuokrauksesta; lagen om hyra av bostadslägenhet; 481/1995*). The general principles of the provisions on client fees set certain restrictions on collecting fees. According to Section 2 of the Client Fee Act, the fee for services may not exceed the total cost of producing the service. Moreover, it is not allowed to collect a fee twice for a service, for example, as care and support service fees. The functional capacity and individual needs of the client determine to which extent he or she uses the services that support housing and, therefore, also the amount of the fee.

Section 7c of the Client Fee Act lays down that a person residing in institutional care must retain a certain share of his or her income for personal use (disposable funds). In 2011 the disposable funds were set at EUR 97. There are no provisions on disposable funds in service housing with 24-hour assistance.

The Client Fee Act provides separately that the municipality is under the obligation to make the client fees reasonable in cases where the fees endanger the client's subsistence. Section 11 of the Act lays down that a fee for social services and a fee for health services based on the client's ability to pay must be lowered or left uncollected if the client fee threatens to endanger the subsistence of the client. The provision applies to institutional care as well as to service housing and service housing with 24-hour assistance. The decision to lower a fee or leave it uncollected is taken by the municipality. This measure should always take precedence over the social assistance granted by virtue of the Social Assistance Act (*laki toimeentulosta; lagen om utkomststöd; 1412/1997*).

Section 12 of the Client Fee Act further stipulates that the mode of service provision may not affect the determination of client fees. Whether the service is organised by a single municipality or a group of municipalities or outsourced from the private sector, the fees and reimbursements must be the same.

5. Realisation of the rights of the client - indispensable subsistence and care, sufficient social, health and medical services as well as equality

The right to indispensable subsistence and care under Section 19 of the Constitution is the last-resort minimum protection which the society must provide in all circumstances. The provision does not only apply for social security, it also requires the provision of services that ensure the means necessary for a life of dignity. Regarding social, health and medical services, however, the sufficient level of services entails that each and everyone have the prerequisites to act as full members of the society (Government Bill 309/1993).

The provisions regarding the organisation of institutional care in residential homes of elderly persons as well as the organisation of service housing and service housing with 24-hour assistance are included in the social welfare legislation. As most of the social services included in the Social Welfare Act and the special acts and decrees complementing it are organised within the appropriations the municipality has reserved for the purpose, the municipality has the right to decide with which services it realises the client's constitutional right to indispensable care and in what way the assessed need for services is sufficiently met. Hence, the client's right to indispensable care and sufficient social services can be realised as institutional care and as outpatient care, and the client has no absolute right to receive the services he or she needs in the way wished by the client or his or her family. Nevertheless, the importance of considering the client's opinion is emphasised in Section 8 of the Act on the Status and Rights of Social Welfare Clients (*laki sosiaalihuollon asiakkaan asemasta ja oikeuksista; lag om klientens ställning och rättigheter inom socialvården; 812/2000*) where it is ordained that in the provision of social welfare, it is first and foremost the client's wishes and opinion that must be taken into account. Also, the client's right of self-determination must be respected. Moreover, Section 39 of the Social Welfare Act stipulates that social welfare must be implemented primarily through measures which promote independence and create the financial means and other potential needed to cope independently in day-to-day life.

From the individual's viewpoint, the assessment of the sufficiency of social services also include the consideration *whether the services provided by the municipality meet the client's needs*, and are, thus, sufficient for the individual. Section 40 of the Social Welfare Act gives the municipality an obligation to preferential treatment when the need for services of persons aged 75 years or more must be assessed within the given time frame. Also the assessment of the need for health and medical services must be initiated within the given time frame. In urgent cases the need for social, health and medical services must be assessed immediately. The aim of the service-need assessment is, first, to assess the elderly person's need for social, health and medical services, secondly, to support the person in maintaining his or her functional capacity and initiative, thirdly, to intervene as early as possible in any deterioration of functional capacity, and fourthly, to enhance the elderly person's possibilities to cope at home. The elderly person's right to counselling and guidance as well as his or her right to be referred to service-need assessment, are also supported by Section 20 of the Health Care Act which provides that the municipality must organise advice services for persons receiving old-age pension in order to promote their welfare, health and functional capacity. Regarding the *assessment of whether the services are genuinely sufficient* for the individual, it is relevant to asses whether the service needs listed in the service-need assessment have been met in a way that enables the individual to act as full member of society according to his or her individual opportunities.

Also the equality principle in Section 6 of the Constitution is important for the organisation of social services. Here, the key issues include the actual service provision, reasons that concern the person and the fee collected for the services.

Whether the services are genuinely sufficient for the individual also depends on whether the municipality provides services that the individual needs according to the service-need assessment. The obligation to secure sufficient social services is met through both institutional care and service housing with 24-hour assistance regarding the client's need for 24-hour social services, while the obligation to secure sufficient health and medical services is met through institutional care in health centre wards.

Section 6 of the Constitution lays down that no one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age,origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person. As other reason that concern the person can be considered also the family situation of the person in need of care, that is, for example, whether the person has any relatives or other close persons that can take care of him or her. In Finland, for example, children do not have a statutory obligation to care for their elderly parents. The equality principle requires, then, that indispensable care and sufficient social services are secured for each person in need of care irrespective of relatives that could care for the person. Hence, no one has the obligation to become informal caregivers and no one has the obligation to receive informal care.

A key goal of the legislation on client fees has been to ensure that the size of the fees does not prevent anyone from seeking municipal social, health and medical services. In its statements on client fees, the Constitutional Law Committee of Parliament has repeatedly stated that *service fees should be set to a level that does not exclude persons who need the services* (Committee statement 39/1996 on Government Bill 208/1996 and Committee statement 8/1999 on Government Bill 77/1999). In addition to determining the level of client fees this also means that Section 11 of the Client Fee Act must be applied in situations where the client fee threatens to endanger the subsistence of the client. However, sufficient social, health and medical services cannot, and social assistance should not always, relate to the indispensable subsistence and care secured by Section 19.1 of the Constitution. In other words, the level of social assistance does not necessarily equal the minimum protection level referred to in Section 19.1 of the Constitution. Hence, an obligation to organise the support system in a way that *individuals have sufficient genuine opportunities to have their rights fulfilled* has been derived from Section 19.1 of the Constitution and the public authorities' obligation to guarantee the observance of basic rights and liberties and human rights prescribed in Section 22 of the Constitution. In effect, the lowering of client fees in accordance with Section 11 of the Client Fee Act should not necessarily be a measure comparable to guaranteeing indispensable subsistence.

According to a recent study (Reports of the Ministry of Social Affairs and Health 2010:28) municipalities seldom need to lower client fees for service housing and service housing with 24-hour assistance. As the report covered 49 per cent of the whole of the Finnish population and 44 per cent of the population aged 75 years or more, the sample can be considered fairly comprehensive. More than a half of the respondents told that no social assistance had been granted for clients in service housing with 24-hour assistance. Two fifths of the respondents reported that social assistance had been granted but only for few a clients. In effect, it seems that the client fees for service housing and service housing with 24-hour assistance do not at present endanger the subsistence of the clients on a general level.

According to the report, the municipalities have usually determined the level of disposable funds for clients in service housing with 24-hour assistance. A minimum amount has been determined for the disposable funds or it is income related. The report shows that the disposable funds of service housing clients range between EUR 92.50 and EUR 212.90. However, the clients in service housing with 24-hour assistance must use the disposable funds to pay for personal expenses, such as fixed non-reimbursable sum for medicines, doctor's and hospital fees, eyeglasses and clothing, that are included in the client fee for institutional care.

6. 24-hour services for elderly persons in Finland

At present the institutions and service housing units with 24-hour assistance have over 40,000 residents aged 75 years or more that need 24-hour services. Nearly a half of them reside in service housing units with 24-hour assistance, a third in residential homes and a fifth in health centre wards.

It is estimated that the costs for 24-hour services for elderly persons is EUR 2.3 billion per year. The services are financed by the municipalities, the state and the clients. The central government transfer for the running costs of municipal social and health care covered around 30 per cent of the municipalities' statutory expenditure in 2009. Approximately 8 per cent of the expenditure was covered by client fees. The rest, around 60 per cent of the expenditure, was financed by the municipalities. The share of client fees varies between different types of services: for services for elderly persons the share is nearly a fifth.

The demographic change has crucial impact on the need for 24-hour services as not all ageing people retain their health and functional capacity. Finland is the fastest ageing country in Europe and, therefore, the number of elderly persons in need of 24-hour services will increase even if we manage to reach the goals to reduce the share of institutional care, to increase the share of services provided at home and, more importantly, to promote the health of the population. Moreover, regional variations in the demographic development cause that the municipalities in Finland (a total of 366 at the outset of 2011) have different kinds of resources and needs when it comes to planning the housing and service solutions for the elderly residents.

The present system for 24-hour services consisting of three operators (health centre hospitals, residential homes and service housing units) was designed for a different kind of operational environment: for example, the provision of 24-hour services for elderly persons is based the Social Welfare Act dating back to 1982 and the client fee system is based on the Client Fee Act dating back to 1992. The system has not been thoroughly restructured to meet today's challenges. The steps towards the current developments stem from problems in the quality of services as well as elderly persons' personal choices in the mid-1990s. Already in 1999 a barometer focusing on the elderly (Reports of the Ministry of Social Affairs 1999:3) reported that elderly persons were of the opinion that in case they need long-term care they would rather live in service housing than in an institution. Later on, changes in the service structure have been aided by a more comprehensive project to restructure services under informative guidance by especially the Ministry of Social Affairs and Health and the Ministry of the Environment but also by the Ministry of Employment and the Economy. Also, the policy of Finland's Slot Machine Association to support the housing of elderly persons as one of its priority action areas has endorsed the progress towards service housing. A revision of the normative control regarding the service structure reform has been initiated.

7.Service structure reform and its objectives

Quality problems in the 24-hour services have been strongly highlighted during the past decade. A particular emphasis has been on the characteristics of institutional care: institutional care residents are often considered as a group instead of individuals, they have little opportunities to influence their own lives and the decisions concerning their lives, activities in institutions are very routine-like, medication-centred and organisation-centred. It has been considered that the structures and contents of the current system are in need of reform (the latest example is the Reports of the Ministry of Social Affairs 2010:28) both because elderly persons' have increasingly multifaceted needs and because the operating environment has changed. More information on factors causing need for services and on the client structure and quality problems of 24-hour services as well as good practices that have been developed have created an opportunity to develop the services based on more precise data.

Recommendations to restructure services by reducing the use of institutional care and by increasing the supply of services at home and housing services have been presented in several Finnish and international studies and recommendations[1]. State informative guidance, especially the 2008 National Framework for High-Quality Services for Older People, has directed municipalities to restructure their services for elderly persons by continuing to reduce the use of institutional care, by replacing long-term institutional care by increasing the supply of services provided at home, informal care and service housing as well as by developing services that promote elderly persons' welfare, health and functional capacity and services that focus on prevention and rehabilitation.

Also an expert group of the European Commission issued a report in 2009 on the transition from institutional care to community-based care. The recommendations in the report apply to all client groups in institutional care: children, elderly persons, mental health clients and persons with disabilities. Nearly 1.2 million people live in institutions in the EU Member States and Turkey. The reasons the

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[1] Leskinen H. 2001. Kunta vastuuseen. Sosiaali- ja terveydenhuollon palvelurakennepolitiikan toimeenpano ja sen arviointi. [*More responsibilties for the municipality. The implementation of the service structure policy in social welfare and health care and its assessment.*] Acta-väitöskirjasarja 1. Publications of theses in the Series Acta-väitöskirjasarja in cooperation with the University of Kuopio. Association of Finnish Local and Regional Authorities; Vaarama M.,Voutilainen P. & Kauppinen S. 2005. Ikääntyneiden hoivapalvelut. [*Care services for elderly persons*] In: Heikkilä M. & Roos M. (eds.): Sosiaali- ja terveydenhuollon palvelukatsaus 2005 [*2005 Review of social and health care services*]. National Research and Development Centre for Welfare and Health; Voutilainen P., Kauppinen S., Heinola R. et al. Katsaus ikääntyneiden kotihoidon kehitykseen. [*Development of services provided at home for elderly persons: a review*]. In: Heikkilä M. & Roos M. (eds.): Sosiaali- ja terveydenhuollon palvelukatsaus 2007 [*2007 Review of social and health care services*]. National Research and Development Centre for Welfare and Health; Ministry of Social Affairs and Health and Association of Finnish Local and Regional Authorities 2008 National Framework for High-Quality Services for Older People Ministry of Social Affairs and Health, Publications 2008:3; Suomen Alzheimer-tutkimusseuran kokoama asiantuntijaryhmä 2008 [*Expert Group called together by the Finnish Alzheimer research society in 2008*] Hyvät hoitokäytännöt etenevien muistisairauksien kaikissa vaiheissa [*Good care practices in all phases of progressive memory disorders*]. Suomen Lääkärilehti 63. Suppement; European Commission 2009. Directorate-General for Employment, Social Affairs and Equal Opportunities Report of the Ad Hoc Expert Group on the Transition from Institutional to Community-based Care; European Commission 2009. Directorate-General for Employment, Social Affairs and Equal Opportunities Report of the Ad Hoc Expert Group on the Transition from Institutional to Community-based Care.

report gives for the transition from institutional care to community-based care include the realisation of human rights as well as the call for improving people's right of self-determination, quality of life and social inclusion. The report presents a set of common principles for the transition which the Member States can make use of.

Long-term care of elderly persons has been and will be reformed by changing the structures and practices. The goal is to find other options for long-term care in health centre wards that is not medically justified. Health centre wards can then focus on flexible and rapidly available acute treatment and rehabilitation. The objective is that long-term care is arranged to meet the client's own wishes at home or in a homely environment, such as service housing units with 24-hour services, and to create a new form of care to replace the traditional residential home and long-term institutional care in health centre wards that will offer rehabilitative long-term care to meet the client's needs. The restructuring of services aims at revising the outlook on services by extending the concept of home. Home is either a private home or a group home or corresponding which has been chosen in accordance with the assessment of the client's service needs.

8. Developing 24-hour services for elderly persons

A reform of the 24-hour social and health services for elderly persons is currently under way, and the goal of improving the status and rights of elderly persons has been incorporated into several programmes.

a. Government Programme

The Government Programme of (Prime Minister Jyrki Katainen's Government) includes several policies of key importance for the elderly persons' access to social and health services and the determination of client and patient fees.

According to the Government Programme, elderly persons' rights to high-quality, needs-based care will be protected by law. Provisions pertaining to the rights of older people to obtain care and rehabilitation as determined in the service plan will be laid down. The Act, drafted at the Ministry of Social Affairs and Health, is scheduled to enter into force during the year 2013.

According to the Government Programme, the development of the client fee system will continue in order to prevent social welfare and health care payments from becoming an obstacle to service use. For example, the system is reformed on the basis of proposals by a working group for services for elderly persons at the Ministry of Social Affairs and Health so that uniform criteria for the client fees in housing services which the municipality must organise are introduced, client fees for service housing with 24-hour assistance are harmonised, and a minimum level for the disposable funds is defined. Moreover, social welfare and health care payment provisions will be combined into a single piece of legislation in order to improve the transparency of the fee system.

The health and independent living of older people will be aided by means of services promoting welfare and health, by increasing the gerontological expertise of personnel providing services to older people, while developing professional leadership skills. The goal is to foster independent living and develop home-based services, but also to ensure the availability of needs-based institutional care. Needs-based housing options and rehabilitation services will be provided for older people on the basis of the above-mentioned working group's proposals, and a cross-administrative housing development programme will be introduced.

Also, the comprehensive reform of social welfare legislation will continue. The purpose of the legislation drafted at the Ministry of Social Affairs and Health is to maintain the population's welfare and social protection and secure equal access to sufficient social services. The social welfare legislation which is currently being prepared will also endorse the restructuring of services. The working group preparing a reform of the social welfare legislation has stated in its interim report (Reports of the Ministry of Social Affairs 2010:19) that people must be helped in their own every-day environments and that the use of institutional care must be minimised. The term of the working group will continue until 30 December 2011.

Another of the Government's goals is to ensure equal access to social welfare and health services. Accordingly, the social welfare and health care service structure will be reformed as part of the restructuring of local government.
The responsibility for the provision and funding of social welfare and health care services will remain with the municipalities. In order to ensure the availability of high-quality social welfare and health care services and their funding, economically robust municipalities that are capable of assuming the responsibility for the provision and funding of social welfare and health care must be formed.

b. Projects

A key tool for state informative guidance with regard to services for elderly persons is the *National Framework for High-Quality Services for Older People*. The quality recommendation, compiled by the Ministry of Social Affairs and Health and the Association of Finnish Local and Regional Authorities, highlights that services meeting old-age needs must be based on comprehensive assessment of service needs and functional capacity. According to the quality recommendation, long-term care in health centre wards that is not medically justified must be replaced by other options, which will enable health centre wards to focus on acute care and rehabilitation. The quality recommendations set a goal that 3 per cent of persons aged 75 years or more live in residential homes or in long-term care at health centre wards and 5–6 per cent in service housing with 24-hour assistance by 2012. Available data shows that progress has been made towards this goal, even though municipalities have not reduced the use of institutional care as anticipated when they have increased the supply of outpatient services.

The *National Development Plan for Social Welfare and Health Care (Kaste)* is a strategic steering tool for the Ministry of Social Affairs and Health that is based on the Act on Planning and Government Grants for Social Welfare and Health Care. It is used for reforming social welfare and health care. The plan defines the objectives and tools for the reform work and promotes the drafting of key

legislative reforms and the introduction into practice of the reforms. The Government renews the plan every four years. The plan for 2012–2015 will be adopted by the end of 2011. This new plan continues to some extent the work carried out under the plan for 2008–2011. It also continues the extensive reform processes and disseminates and establishes previously created good practices. The development work includes also the promotion of the welfare of and the development of services for elderly persons.

In autumn 2009, as part of the *Kaste* plan and the implementation of the National Framework for High-Quality Services for Older People, the Ministry of Social Affairs and Health appointed *a working group to prepare proposals for developing the structures and contents of 24-hour services for elderly persons as well as for policies regarding the determination of client fees for housing services*. The working group completed its work in February 2011 (Reports of the Ministry of Social Affairs 2010:28). Ten of the 18 working group proposals concern the restructuring of the 24-hour services for elderly persons. The working group proposed, among others, that the 24-hour services are restructured so that the present system of three operators (service housing units with 24-hour assistance, residential homes and health centre wards) is gradually replaced by a system for 24-hour services where there is only one operator. Moreover, no new institutional structures should be created as a result.
The reasons for the proposed reform are as follows: *the elderly person has the right to a home and normal daily routines, to 24-hour services when his or her functional capacity and health status so require as well as to a minimum number of transitions between different stages of service*.

The working group proposes that service housing with 24-hour assistance and residential and group homes for elderly persons form an integrated system after 2015. Such a reform is called for by the service needs of all elderly clients, and especially clients with memory disorders. The working group further proposes that the restructuring of services must be complemented by a reform of the Client Fee Act so that client fees for housing services will be included in the legislation.

To promote the restructuring of services the working group proposes a 10-step programme, the measures of which include, for example, *the introduction of uniform national grounds for determining client fees for housing services as well as the introduction of uniform grounds for collecting client fees for housing services organised either as municipal services or through outsourcing*.

CONCLUSION

With reference to above, in the Government observes that social and health services for elderly persons and equal access to social and health services have been developed by various kinds of projects and are currently being developed by projects and legislative reform as well as by other steering methods. Hence, Finland has, in compliance with Articles 13, 14, 16 and 23 of the Revised European Social Charter, implemented and promoted, and is currently implementing and promoting, measures that aim at guaranteeing elderly persons the equal right to sufficient social, health and medical services.

Thus, in the Government's view the situation in Finland is in conformity with Articles 13, 14, 16 and 23 of the Revised European Social Charter.

REQUEST FOR A HEARING

The Government observes that under Article 7.4 of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, in the course of the examination of the complaint, the Committee of Independent Experts may organise a hearing with the representatives of the parties.

The Government refers to your Committees Rule 33 according to which the hearing provided for under Article 7.4 of the Protocol may be held at the request of one of the Parties or on the Committee's initiative. The Committee shall decide whether or not to act upon a request made by one of the Parties.

The Government hereby requests a hearing to be held in the case.

Accept, Sir, the assurance of my highest consideration.

Arto Kosonen
Director,
Agent of the Government of Finland before the
European Committee on Social Rights