Comment to the 12th Periodic Report
on the implementation of
the Revised European Social Charter,
Submitted by the Government of Finland

Submission to the European Committee of Social Rights

Finnish League for Human Rights – Ihmisoikeusliitto ry

Finnish Society of Social Rights – Suomen sosiaalioikeudellinen seura ry

ihmisoikeusliitto
FÖRBUNDET FÖR MÄNSKLIGA RÄTTIGHETER

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Comment to the Twelth Periodic Report on the implementation of the Revised European Social Charter, Submitted by the Government of Finland.

Submission to the European Committee of Social Rights

The Finnish League for Human Rights (Ihmisoikeusliitto ry) and the Finnish Society of Social Rights (Suomen sosiaalioikeudellinen seura ry) appreciate the opportunity to provide their views to the national report of the Government of Finland on the implementation of the revised European Social Charter, submitted by the Government of Finland (hereinafter the Government of Finland or 'Government'). The purpose of this comment is to provide a 'shadow report' to the Governments' report. This comment includes our views in particular to the implementation of the ar ticles 12; 13; 23; and 30. The aim is not to comment all topics covered by the Government in its report but rather to comment upon the questions which related to our expertise areas as well as questions in which our organisations believe there is a particular need to complement the report of the Government.

Article 11 – The Right to Protection of Health

The report submitted by the Government of Finland points out valuable acknowledgments in relation to the implementation of Article 11. However, despite the relevance of the presented observations by the Government, the report remains somewhat constrained. Certain selected and most topical omissions by the Government are presented below.

1. Access to health and medical care

1.1 Access to primary health care and specialized medical care services

The Government report does not discuss the issues relating to timely access to non-urgent health and medical care. Finnish Health Care Act (1326/2010) requires the authorities responsible of the health care to ensure timely access to health care within the unequivocal time frames codified into the act (Sections 50 to 53). For example, Section 51 obliges authorities to ensure that patients are able to contact local health care centres without delay during weekday office hours in matters of primary health care and that treatment shall be provided within three months from the assessment of a patient's medical condition. According to Section 52, patient in need of specialised medical care services shall be provided necessary treatment within six months of the ascertainment of the need for treatment.

National Institute for Health and Welfare (THL) collects data on access to health care. According to data, on 31st August 2016 three percent (3 %) the waiting time of all patients waiting to access primary health care had exceeded the three months waiting period prescribed in the Health Care Act[1]. In relation to specialised health care, the corresponding number of patients whose waiting period had exceeded the six month's waiting period was 2 282, which amounts to two percent (2 %) of all the patients[2]. Regional State Administration Agencies (AVI) and National Supervisory Authority for Welfare and Health (Valvira) supervise the access rates according to a supervisory plan. Supervision has been conducted already for years, during which the supervisory authorities have acknowledged the continuity of the problem in their supervisory plan[3].

Above mentioned obstacles on timely access to non-urgent health care also compromise equal access to health care, as timely access is dependable inter alia on regional factors and

[1] National Institute for Health and Welfare (2016a)
[2] National Institute for Health and Welfare (2016b)
[3] National Supervisory Authority for Welfare and Health (2016)

the availability of medical specialists. In order to manage and avoid extensively long queues to health care, the public sector is obliged to outsource treatment to other service providers, as is provided in Section 54 of the Health Care Act. However, such arrangements have been prone to confusion about the responsibilities of the overall treatment and compensation received from the state[4]. Similarly, concerns have been raised with regard to overall coordination of treatment among different fields of medicine[5].

1.2 Access to emergency health services

Emergency medical health services in Finland are provided by twenty (20) hospital districts. Provisions are codified in the Health Care Act and the Decree on Emergency Medical Services (340/2011). According to legal provisions, emergency medical services shall be provided efficiently and expediently by taking into account, inter alia, coverage areas, local geographical specialities and the amount of population in a specific area. However, both the Act and the Decree contain a lot of flexibility, which results from them not defining e.g. the required number of emergency medical service units within a specific coverage or the amount of persons with respect to one unit. Similarly, as the responsibility of providing emergency medical services relies on the hospital districts, it follows that the service differs among the districts despite the decisions of the Parliamentary Ombudsman requesting national-wide non-discrimination in providing emergency medical services[6].

[4] See e.g. Parliamentary Ombudsman, decision 4709/4/14, 22.10.2015.
[5] Parliamentary Ombudsman, decision 1225/4/14, 25.3.2015.
[6] Parliamentary Ombudsman, decisions 4410/4/13, 29.12.2014 and 1989/4/14, 16.7.2015 (in Swedish).

2. Connection between health care and social welfare

The Government's report invokes practically no connection between health care and social welfare with regard to Article 11, despite such connection being a major factor of removing and preventing ill-health[7]. In fact, the Government is keen to promote such coalition as for example the on-going social welfare and health care reform aims to combat against the now existing distinctiveness between these two fields[8]. Furthermore, the provisions requesting mutual cooperation are codified inter alia in the Health Care Act[9].

In their supervisory plan[10] Valvira and AVI have emphasised the cooperation between health care and social welfare with regard to urgent medical and social service situations. The concern relates especially to health care professionals' ability to recognise patients' need for social assistance in all types of situations, including mental health, alcoholism, child protection and psychosocial support after a traumatic event. On the other hand, the supervisory authorities have also recognised that there are challenges with regard to cooperation between health care and social welfare services, especially with regard to child welfare and access to mental health services[11]. The objects for the supervisory plan and biannual reports are composed based on general observations made by the supervisory authorities and contacts from the citizens.

[7] Connection between health care and social welfare are recognized with regard to elderlies, but not with other groups (e.g. promotion of wellbeing of families with small children).
[8] The Government of Finland: Health, Social Services and Regional Government Reform.
[9] E.g. Section 27 on mental health services, Section 28 on substance abuse services, Section 40 on psychosocial need and Section 69 on the duties relating to the Child Welfare Act.
[10] National Supervisory Authority for Welfare and Health (2016).
[11] National Supervisory Authority for Welfare and Health (2015).

3. Healthy school environment

Healthy school environment is constantly questioned despite the Government's emphasis on wellbeing of families with children, as well as the promotion of health and welfare within the society[12]. The Health Care Act provides for triennial checks on the health and safety of school environments and welfare promotion among learning communities (Sections 16 and 17). The provision is further specified in the Government Decree on Maternity and Child Health Clinic Service, School-Based and Student Health Care and Preventative Dental Care (338/2011). The obligation for the checks is also codified in Pupil and Student Act (1278/2013) and Health Protection Act (763/1994). Involvement and cooperation between several authorities is necessary as health and safety of school environments does not only concern children, but is also a matter of healthy working conditions of the teachers and other employees. In 2015, THL also issued a guide book[13] on how these checks should be conducted.

Despite the existing legislation, numerous schools in Finland have been reported to have severe indoor air problems and related symptoms among both teachers and pupils, mostly caused by mould. In several municipalities, for example, there are teachers who have had to leave their jobs due to severe mould sensitisation. THL, as well as the supervisory authorities, have continuously in vain emphasised the need for systematic checks[14].

[12] Ministry of Social Affairs and Health: The Key Projects and Reforms of the Government; Prime Minister's Office: Action plan for the implementation of the key project and reforms defined in the Strategic Government Programme (2016).
[13] National Institute for Health and Welfare (2015a).
[14] E.g. National Institute for Health and Welfare (2012); and National Institute for Health and Welfare (2014).

4. Limiting a patient's personal liberty in health care

According to Section 7 of the Constitution of Finland, every person has the right to personal liberty, security and integrity. Personal integrity cannot be violated and liberty cannot be deprived arbitrarily or without a reason prescribed by an Act. However, Finland does not have precise legislation describing the conditions under which the personal liberty of a patient could lawfully be overridden. Currently deprivation of liberty during medical treatment is most often sought to be justified with necessity clause under the Finnish Criminal Code, despite the fact that the provision has not been designed for continuous usage.

The absence of a detailed and precise Act on prescribing the legitimate grounds for deprivation of liberty does not only violate the most fundamental rights safeguarded by the Finnish Constitution, but also imposes patents to potential psychosocial traumas or comparable mental health issues[15]. Furthermore, the lack of precise rules has even a potential to cause loss of lives if paramedics are unaware of under which conditions they can, for example, break into the apartment to provide treatment[16].

Regarding psychiatric care, the Mental Health Act (1116/1990) appears practically the only health care related act in which the limitations to a patient's fundamental rights during involuntary treatment and examination have been prescribed. However, even in the psychiatric care the problems relating to unlawful limitations of the rights do occur as the limitations do not comply with the Mental Health Act but are rather based on in-house-rules and guides[17].

[15] Parliamentary Ombudsman, decisions 4318/4/2015, 16.11.2016 and 3586/4/12, 11.12.2013.
[16] Parliamentary Ombudsman, decision 625/4/14, 4.3.2015.
[17] Parliamentary Ombudsman, decision 4215/4/14, 28.10.2015.

5. Access to health care and medical treatment of prisoners

5.1 Prisoners' health care

The Government's report does not discuss the issue of access to health care and medical treatment of prisoners. Despite existing legislation and its admittedly novel objectives, some serious and longstanding deficiencies remain regarding health care provided to prisoners.

Prisoners' Health Care Unit (VTH)[18] is the main body responsible for organising preventive and medical care for prisoners in accordance with their medical needs. In addition, VTH carries out forensic psychiatric assessments on prisoners.[19] As of 1 January 2016, VTH operates under the supervision of the National Institute for Health and Welfare.

The above-mentioned deficiencies concern, among others, the funding of prisoners' health care. Relevant legislation provides that all required health care and medical rehabilitation of a prisoner is funded from the state budget. If a prisoner cannot be appropriately treated or examined in a unit of the VTH, he or she shall be sent temporarily outside the prison to be treated or examined. Such costs are likewise to be covered by the state, provided that the treatment or examination is allocated or approved by a prison doctor.[20] Thus, prisoners are legally provided the right to obtain special care through public health care. Regrettably, the resources allocated to the VTH are scarce. This leads to a situation where prisoners' right to access to care or after-care outside the prison is not always fulfilled.[21] Treatment has reportedly been postponed to be provided after release,

[18] Before 1 January 2016 VTH was called the Health Care Unit of the Criminal Santions Agency.
[19] Act on Imprisonment (Vankeuslaki 767/2005), Chapter 10, Section 1 (1640/2015); and National Institute for Health and Welfare (general).
[20] Act on Imprisonment (Vankeuslaki 767/2005), Chapter 10, Sections 2 and 7 (1640/2015).
[21] Discussions with Krits, a nationwide non-governmental (NGO) non-profit aftercare organisation

seemingly to cut costs. Furthermore, as an illustrative example of the problem it can be mentioned that the Parliamentary Ombudsman has been obliged to stress to the relevant authorities that e.g. regulation concerning prisoners' health care cannot be used to limit or exclude prisoners' rights provided by the law[22].

Additionally, there remain shortages regarding the care provided in the prison hospitals and policlinics. Prisoners have multiple and complex health care and social needs.[23] There are currently 25 outpatient clinics operated by VTH in prisons, as well as a prison hospital in the city of Hämeenlinna and psychiatric prison hospitals in the cities of Turku and Vantaa[24]. Current prison clinics are capable of providing minimum care to the prisoners. However, e.g. the prison hospital in Hämeenlinna has no somatic places for women, although women prisoners reportedly often have more health problems than male prisoners.[25] Additionally, the rehabilitation needs of prisoners are not systematically taken care of. Shortages regarding the provided rehabilitation and in fulfilling prisoners' needs were pointed out already in 2006 by a Ministry of Justice working group which assessed how the principal of normality applies to prisoners.[26]

5.2 After-care for released prisoners

The report of the Government remains silent also on the issue of after-care for released prisoners. Some 5 600 prisoners were released in Finland in 2015[27]. There remain obstacles with regard to the principle of normality both during imprisonment and after the release of a prisoner. Prisoners face difficulties with regard to health care, rehabilitation,

[22] Parliamentary Ombudsman decision 199/2/2013, 27.11.2014.
[23] Viitanen, (2013).
[24] National Institute for Health and Welfare (general).
[25] Viitanen (2013).
[26] Ministry of Justice (2006).
[27] Criminal Sanctions Agency (2015)

social security, paying off debts, housing, education and professional rehabilitation[28].. Thus, released prisoners are in need of special support in order to integrate in the society.

Municipalities are responsible for providing after-care for released prisoners. Municipalities should organise all needed services, such as housing, substance abuse services, health care and rehabilitation. It has been noted already in 2008, that public social and employment services are not sufficient to cover released prisoners' need for support[29]. Regrettably, access to services varies significantly depending on the municipality. According to Criminal Sanctions Agency, only every fifth prisoner's plan for release is formulated in cooperation with local authorities, which remains below the objective set for 2015. [30]

6. Legal gender recognition for transgender persons

The Government report discusses the question of legal gender recognition for trans persons. However, the report omits concers related to the existing legislation and ensuing continuing violations of trans persons' human rights. The prior requirements for legal gender recognition of a transgender person's gender are still abusive including coerced sterilization and a psychiatric diagnosis and include an age limit (not accessible to under 18s). This process subjects all persons requesting legal gender recognition to medical interventions which they might not need. Psychiatric diagnosis subjects persons to unnecessarily lengthy and intrusive process. Restricting the process to adults leaves many underage trans persons in a vulnerable situation as they cannot receive ID papers matching their gender. The state should urgently proceed to reform legislation in order to

[28] Kaurala & Kylämarttila (2010)
[29] Ketolainen, Kuusio & Mustonen (2008).
[30] Criminal Sanctions Agency (2016).

remove abusive requirements and ensure that legal gender recognition is swift, transparent and accessible process based on the self-determination and ensures physical integrity.

7. The right of undocumented migrants to obtain medical care

The number of undocumented migrants has grown in Finland due to the recent increase in the number of asylum-seekers and the corresponding increase in the number of rejected asylum applications[31]. Currently there is no legislation securing undocumented migrants' access to health care in Finland. The Health Care Act secures access to emergency health services, but the care is not state-subsidised. In practice, undocumented migrants can be charged a fee up to the real costs of the services, and thus many of them do not have real access to health care. Moreover, services of prenatal clinics and treatment of serious chronic illnesses are not regarded as emergency services.

In practice, the need for health care of undocumented migrants is now addressed mostly by Global Clinic, an NGO-based clinic run by volunteers, which operates in five cities. Decisions at the local level about providing public health care services for pregnant women and minors have been taken in the cities of Helsinki and Turku. Moreover, Helsinki provides emergency services for all undocumented persons with the same fees as for official residents. However, as these decisions to provide wider public health care are only regional, the treatment of undocumented migrants is unequivocally unequal.

The Ministry of Social Affairs and Health prepared in 2014 a bill on undocumented migrants' access to health services. The bill did not pass parliamentary scrutiny, and the

[31] For example in 2016, Finland issued 28.208 decisions on asylum applications out of which 50.6 % (14.282) were negative (see Finnish Immigration Service (2016).

issue has not proceeded during the current term of office. The Finnish state does not take responsibility for securing undocumented migrants' right to health, which is a violation of their fundamental right to have access to the highest possible standard of health as recognised by the Universal Declaration of Human Rights, The International Covenant on Economic, Social and Cultural Rights and the European Social Charter.

Absence of legislation is prone to create uncertain atmosphere which hinders and endangers the protection of every person to obtain highest possible standard of health. While outside the scope of the Government's reporting period to the Committee, further challenges in this regard should be noted here. For example, in January 2017 the Ministry of Social Affairs and Health Published a guidance sheet[32] to the municipals. According to the Ministry's advisement, the municipal authorities who would become aware of undocumented migrants unlawfully residing in Finland should direct such persons to the immigration services. The guidelines also apply to medical doctors working on the municipal level of health care services. The Finnish Medical Association perceived the guideline to violate the confidentiality between the patient and the physician and thus refused to follow it[33].

Article 12 – The Right to Social Security

8. Minimum social benefits

In reporting on the implementation of Article 12, the report submitted by the Government of Finland remains silent on Merits 88/2012 by the Committee of Social Rights. These Merits are, nevertheless, central with regard to the forthcoming conclusions of the Committee.

[32] Ministry of Social Affairs and Health (2017).

[33] Article in Lääkärilehti: Potilassalaisuus suojaa paperitontakin, 24.2.2017 (in Finnish).

In Merits 88/2012, the Committee found several violations of the Social Charter (Revised) in daily minimum sickness benefit, the minimum level of maternity benefit and rehabilitation benefit, the basic unemployment allowance and the guarantee pension. The Merits were published on 11th February 2015. The Ministry of Social Affairs and Health has, jointly with the Ministry for Foreign Affairs, stated that the Committee's conclusions are inaccurate, and there has been little follow-up or corrective action.

The reporting associations Finnish League for Human Rights and Finnish Society for Social Rights have had an opportunity to meet with the relevant officials of the Ministry of Social Affairs and Health to discuss the necessary means to correct the violations found by the Committee. In this meeting the Ministry representatives shifted the focus from corrective actions to the challenge created by the economic recession and the Government's cuts to social and health budget

Under existing regulations, the basic (minimum) benefits are adjusted yearly in accordance with the development of the Consumer Price Index (kansaneläkeindeksi). Basic minimum benefits were reported to cover 71 % of all necessary costs in 2014[34], while in 2016 the coverage amounted to 72 %[35]. In order to facilitate and balance state economy, the Government of Finland made in 2016 a decision to further lower basic benefits by 0.85 % and refrain from raising them before 2020. The decision does not concern income support. Prices of e.g. food and rents are not subject to index freeze and can therefore be raised freely in accordance with market conditions. The decision is most likely to further complicate the living conditions of low-income citizens[36].

[34] National Institute for Health and Welfare (2015b)
[35] National Institute for Health and Welfare (2016c)
[36] National Institute for Health and Welfare (2015b)

With regard to the violations found by the Committee in Merits 88/2012, no reform has taken place. In 2017, the amounts of minimum sickness benefit, minimum parental benefit and rehabilitation benefit is 23.73 euros per day or 593.25 euros (paid after 55 sickness days). The amounts correspond to 30 % of median equivalised income[37] before tax and 20 % after tax[38]. The basic unemployment allowance of 32.40 euros per day amounts to 690.15 euros per month[39]. The amount corresponds to 28 % of median equivalised income. As the benefits remain on the same level as in 2013 and the respective percentages of median equivalised income are even lower than in 2013, it is clear that the amounts are still manifestly inadequate. Due to the index freeze of basic benefits, no reforms are to be expected before 2020.

Similarly, the amount of guaranteed pension is 760.26 euros per month[40], which corresponds to approximately 38 % of median equivalised income. Thus, the level of 40 % of median equivalised income has not been reached despite the remarks of the Committee in the Merits 88/2012. As the level of guaranteed pension is likewise frozen until 2020, those dependent on guaranteed pension will most likely face serious economic difficulties resulting from the rise of prices and rents in accordance with market conditions.

The comparison between the levels of current benefits and those of 2013 clearly shows that the Government of Finland is acting against the Commission's Merits 88/2012. The

[37] The latest statistics of equivalised income are from 2015. In 2015, median equivalised income was 1.976 euros per month.

[38] In 2013 the corresponding amounts were 23.77 euros per day or 594 euros per month, corresponding to 31 % of median equivalised income before tax and 24 % after tax.

[39] In 2013 the corresponding amounts were 32.46 euros per day or 698 euros per month, corresponding to 36 % of median equivalised income before tax and 29 % after tax.

[40] In 2013, the amount of guaranteed pension was 738.83 euros per month, corresponding to 38 % of median equivalised income.

Merits have not lead to reforms concerning the level of minimum benefits. The development has rather been the opposite, as has been demonstrated above.

9. Social security of prisoners

The report submitted to the Committee by the Government of Finland omits the issue of social security of prisoners. The Social Assistance Act (1412/1997) does not segregate prisoners as a group, indicating that prisoners are entitled to social assistance on the same basis than everyone else. It also signifies that the legislation does not determine the amount of a prisoner's basic social assistance. Nevertheless, current application of the legislation suggests that as the prisons provide prisoners maintenance, prisoners are not entitled to social assistance per se[41]. Similarly, the Ministry of Social Affairs and Health's guidance concerning social assistance stipulate that the maintenance provided by prisons cover by large part a prisoner's expenses[42].

Prisoners receive a monthly maintenance allowance, which is 2,10 euros per day and amounts to 42 euros per month[43] for prisoners who do not participate in prison activities, whether it is due to one's own account or to that the prison in question cannot provide such activities. . Prison maintenance does not cover all prisoners' expenses, such as contact with family and hygiene products. As current legal praxis regards maintenance allowance to be adequate, a prisoner might be denied social assistance regardless of his or her needs.

Social security benefits are complicated also for prisoners. Some benefits continue for a fixed period after the sentence, meanwhile some are discontinued immediately. Prison

[41] The Supreme Administrative Court found in 2013 that a monthly maintenance allowance of 47 euros was sufficient to cover a prisoner's expenses, and the prisoner in question was not entitled to social assistance of 43 euros. See KHO:2013:58.

[42] Ministry of Social Affairs and Health (2013).

[43] The Social Insurance Institution of Finland (2017)

income does not accrue pension. This despite the fact that the above-mentioned Ministry of Justice working group on principal of normality suggested in 2006[44] that the payment of national pension should not be suspended fully for the time of unconditional imprisonment, but the payments should be continued at least in some respects during the whole period of imprisonment. During imprisonment and that also sentenced prisoners should be eligible for sickness allowances.

Article 13 – The right to social and medical assistance

10. Social assistance benefits

The report submitted by the Government of Finland to the Committee points out some valuable remarks with regard to social assistance. However, the report remains silent on improvements or other measures taken with reference to the Committee's Merits 88/2012.

In Merits 88/2012, the Committee stated that social assistance benefits and the labour market subsidy were not adequate in the meaning of Article 13§1 of the revised Social Charter. The Committee found a violation of Article 13§1 of the Charter.

However, the Ministry of Social Affairs and Health and the Ministry for Foreign Affairs have publicly proclaimed that the Committee had assessed the situation in Finland inaccurately and that there actually was no violation of the revised Social Charter. As noted earlier, the Government has not taken corrective action to the issues.

Since the publication of Merits 88/2012, the conditions have deteriorated. Instead of rising social assistance benefits to the level required in the revised Social Charter, the Government of Finland decided during fall 2016 to decrease also the amount of labour

[44] Ministry of Justice (2006).

market subsidy by 0.85 % and freeze it until 2020. Thus, until 2020 the amount of labour market subsidy will remain the same and index increments will only be made to social assistance.

The net amount of labour market subsidy presented to and assessed by the Committee in 2013 was 558 euros per month. In 2017, the gross amount of labour market subsidy is 32.40 euros per day and 696.60 euros per month. After 20 % tax, the net amount is 557.28 euros per month. Thus, in 2020, the amount will remain approximately on the same level as it was in 2013. However, housing costs and prices of goods are expected to be significantly higher in 2020 than in 2013, since their rising according to the market conditions has not been limited.

As for basic social assistance, the amount has increased merely by some ten euros from 2013. In 2017, the amount is 487.89 euros per month. In Merits 88/2012 the Committee noted that the level of 2013 was manifestly too low. Since the level has not risen, the same conclusions apply to the situation in 2017 and will be applicable also in 2020. Additionally, it should be noted that there are strict discretional constraints for receiving basic social assistance. For example, a person is required to sell property owned by him or her before becoming eligible to receive basic social assistance.

Article 23 – The right of elderly persons to social protection

11. Informal care of elderly persons

The report submitted by the Government of Finland does refer to measures taken to enhance informal care. However, the report omits some critical issues in this regard. These issues are best presented by assessing Merits 70/2011 of the Committee and the Government's measures taken after the publication of said Merits.

Under legislation, municipalities have the right to formulate regulation concerning informal care. The legislation includes only a few constraints to municipalities' right to self-regulation.

Complaint 70/2011 brought the question about informal carers' unequal position depending on where in Finland they live under the Committee's consideration. The Committee found in Merits 70/2011, that the lack of uniformity in the services provided for elderly persons throughout Finland resulting from the lack of uniformity in the funding of such services by municipalities did not as such violate Article 23 of the Charter. However, the fact that the legislation allowed practices leading to a part of the elderly population being denied access to informal care allowances or other alternative support, was considered to constitute a violation of Article 23.

After the publication of the Merits 70/2011, the Government of Finland has established working groups aiming at forming a comprehensive strategy for informal care. Regrettably, only a few of the Committee's recommendations have been implemented. Informal carers are still in an unequal position depending on where in Finland they live. Because of economic reasons, the access to care for elderly persons in municipalities has been limited by e.g. tightening the criterion to receive informal care[45].

Municipalities face difficulties particularly in transferring elderly persons from home to service-houses. The difficulties result mainly from the fact that there are not enough places in the existing service-houses and municipalities have refrained from building new service-houses to meet the demand. The high costs may also prevent the elderly persons from transferring to service housing. Therefore, it is evident that Article 23 is still being violated.

[45] Social Affairs and Health Committee (2016)

Though outside the scope of the Government's reporting period, it is relevant to note in this context that as of 2019, 18 provinces will be responsible for organising all social services of municipalities, including informal care. The revision is likely to increase the uniformity of informal care inside a province. However, the revision does not guarantee national uniformity. Current plans do not consider standardising the informal care on a national level. Therefore, informal carers are in 2019 still likely to be in an unequal position depending on where in Finland they live.

12. Long-term care of elderly persons

The report submitted by the Government of Finland refers to long-term care and the fees charged for long-term care. The question was last assessed by the Committee in Merits 71/2011. As the following assessment shows, some central objects remain to be taken into consideration.

Complaint 71/2011 brought the question of insufficient regulation of fees for service housing and service housing with 24-hour assistance under the Committee's consideration.

The Committee noted, that insufficient regulation of fees for service housing and service housing with 24-hours assistance combined with the fact that the demand for these services exceeded the supply, did not meet the requirements of Article 23 with regard of two consequences resulting from these. Firstly, the Committee expressed that the factors are considered not to meet the requirements of Article 23 insofar as they create legal uncertainties to elderly people in need of care due to diverse and complex fee policies. The Committee noted, that while municipalities may adjust the fees, there are no effective safeguards to assure that effective access to services is guaranteed to every elderly person in need of services required by their condition. Secondly, the Committee highlighted the incompatibility with Article 23 insofar as the factors constitute an obstacle to the right to

"the provision of information about services and facilities available to elderly persons and their opportunities to make use of them" as guaranteed by Article 23b of the Charter. For these reasons, the Committee held that there was a violation of Article 23 of the Charter.

Regrettably, the situation has not improved since September 2013 when the Merits 71/2011 were published, and the situation in Finland still violates Article 23 of the revised Charter. Much uncertainty remains with regard to costs of transferring from home to service housing or service housing with 24-hour assistance. Municipalities maintain their own price-lists. In general, several elderly persons are obliged to use all disposable income to cover living costs, whether they live in service housing or service housing with 24-hour assistance. The costs of e.g. housing, food, services and TENA services differ amongst municipalities. In addition, elderly persons must pay themselves for medicines and other health care. The majority of the costs consists of service costs, which by itself may amount to 2 000 euros per month.

A particular problem may arise in cases where one spouse transfers from home to service housing and the other one stays at home. It is common that the one transferring to service housing, with or without 24-hour assistance, is the husband with a better pension. Meanwhile the wife with a lower pension stays at home. In such cases, as all of the transferring spouse's income is used to cover service housing costs, it is likely that the one staying at home faces severe economic difficulties and faces challenges in covering all necessary living costs. The economic situation of the transferring spouse is normally not taken into account if the spouse staying at home is not obliged to apply for social assistance to cover his or her living costs.

Article 30 – The right to protection against poverty and exclusion

The report submitted by the Government of Finland points out some valuable acknowledgements with regard to protection against poverty and exclusion. However, the right to protection against poverty and social exclusion is not a prime target in the agenda of the Government of Finland. Finland has signed the EU Lisbon Strategy and the Europe 2020 Strategy following it. According to Europe 2020 strategy, the amount of people living in poverty or social exclusion in Finland should be decreased by approximately 150.000 people between the years of 2010 and 2020. However, the recent developments and reforms in Finland will not lead in reaching the target. As has been presented above, social benefits and social assistances have been cut and living conditions of Finnish citizens are constantly deteriorating.

The Government has not carried out prior assessment on the potential impact of cuts on social benefits on fundamental and human rights of various groups of people, eg., children, the elderly, or disabled or other minority groups. For example, the government has made numerous decisions on cuts of child and family services and benefits. The Constitutional Committee of Parliament[46] has stated that the reforms affecting the position of families with children may result in negative, cumulative effects on families. [47] A restriction of the individual entitlement to early childhood education.

[46] Constitutional Law Committee https://www.eduskunta.fi/EN/lakiensaataminen/valiokunnat/perustuslakivaliokunta/Pages/default.aspx; Constitutional Law Committee 11/2015 (https://www.eduskunta.fi/FI/vaski/Lausunto/Sivut/PeVL_11+2015.aspx) and Constitutional Law Committee 12/2015 (https://www.eduskunta.fi/FI/vaski/Lausunto/Sivut/PeVL_12+2015.aspx).

[47] The Constitutional Law Committee required the Government to follow closely the implementation of legislation to ensure that the fundamental rights of children and families with children are not jeopardised.

A new Act on Early Childhood Education and Care entered into force in Finland on 1 August 2015. The Act emphasises the entitlement of the child to early childhood education and care instead of the service provided for parents, and it is based on decisions made two decades earlier, according to which daycare/early childhood education and care was a universal right and an individual entitlement of every child and family.

As part of the State's austerity policy, the Government of Finland has afterwards decided to save, according to its estimation, 62 million euros in the annual costs of daycare and early childhood education and care of children, which has been implemented by means of the amendments to the Act on Early Childhood Education and Care that entered into force on 1 August 2016 and restrict the individual entitlement to early childhood education and care to 20 hours per week where a parent is unemployed and where one parent is taking care of another child of the family on a maternity, paternity or parental leave, the impact of which is that a child whose entitlement to full-time early childhood education and care has been restricted will be left without more comprehensive educational support as well as without healthy nutrition offered under the Act on Early Childhood Education and Care.

The austerity measures are directed at groups which are also otherwise in a more vulnerable situation. This may violate the rights of the child of unemployed parents and of parents on a maternity, paternity or parental leave. This also puts children and their parents in a regionally unequal position[48] depending on the municipality where they live,

[48] Municipalities are entitled to offer better services than those guaranteed by the Act to their residents, and if they so decide, they can also treat children of unemployed parents and of parents on a maternity, paternity or parental leave in an equal manner. Many municipalities have actually decided to act this way, which has resulted in an unequal treatment of children depending on their municipality of residence.

which discriminates, in particular, against the children in the economically least advantaged municipalities.[49]

Furthermore, Merits 88/2012 have been given little if any attention by the Government of Finland nor the relevant authorities. It is clear that the overall situation constitutes also to a violation of Article 30 of the revised Charter.

Conclusions

Finally, the reporting mechanism regarding the supervision of the implementation of the accepted provisions of the European Social Charter is designed to ensure that the Contracting Parties comply with the provisions by which they have accepted to be bound. It should also be acknowledged by the Contracting Parties that the reports sent to examination are evaluated by multiple committees of the Council of Europe[50]. While the final recommendations to Finland adopted by the Committee of Ministers lack legally binding force, they nevertheless illustrate the perceptions and concerns of the Council of Europe on the human rights situation in Finland. The Government of Finland should pay due attention to such recommendations and ensure it has taken adequate corrective measures on the basis of the Committees' recommendations before the next periodical review.

Furthermore, the resolutions resulting from the Collective Complaints procedure carry equivalent importance as the measures taken to correct the incompliances found need also

[49] Collective Complaint by Central Union for Child Welfare (CUCW) on 21 March 2017 to the Secretary General of the Council of Europe, Executive Secretary of the European Committee of Social Rights.

[50] The reports are evaluated by the European Committee of Social Rights, Governmental Committee, and finally the Committee of Ministers. The findings of these committees will also be transmitted to the Parliamentary Assembly (the European Social Charter (Revised 1996), Part IV, Article D).

to be included in the next report[51]. While Finland has included references to these recommendations in the report submitted in October 2016, the measures taken remain rather ineffective. The Government of Finland should acknowledge that the compliance with the recommendations of the Committee of Ministers (deriving both from the Collective Complaints procedure and the state reporting mechanism) not only strengthens the respect of human rights nationally, but also has a positive impact on the reputation of Finland in the global human rights arena.

Helsinki, March 31st 2017

Reetta Toivanen	**Kaari Mattila**
Chairperson	Secretary-General
Finnish League for Human Rights	Finnish League for Human Rights
Yrjö Mattila	**Eila Sundman**
Chairperson	Vice-chairperson
Finnish Society of Social Rights	Finnish Society of Social Rights

[51] Additional Protocol to the European Social Charter Providing a System of Collective Complaints (1995), Article 10.

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