

**DECISION
ON ADMISSIBILITY AND MERITS**

Adoption: 8 December 2016

Notification: 4 January 2017

Publication: 5 May 2017

Finnish Society of Social Rights v. Finland

Complaint No. 108/2014

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 289th session attended by:

Giuseppe PALMISANO, President
Monika SCHLACHTER, Vice-President
Petros STANGOS, Vice-President
Lauri LEPPIK, General Rapporteur
Colm O’CINNEIDE
Birgitta NYSTRÖM
Karin LUKAS
Eliane CHEMLA
Marcin WUJCZYK
Krassimira SREDKOVA
Raul CANOSA USERA
Marit FROGNER
François VANDAMME

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 6 and 8 December 2016,

On the basis of the report presented by Eliane CHEMLA,

Delivers the following decision adopted on this last date

PROCEDURE

1. The complaint lodged by the Finnish Society of Social Rights was registered on 29 April 2014.

2. The Finnish Society of Social Rights alleges that Finland is in violation of Article 12 of the Revised Charter ("the Charter") on the grounds that unemployment benefits for elderly persons have been gradually reduced, and that the level of the labour market subsidy is inadequate and therefore it has neither maintained the social security system at a satisfactory level at least equal to that necessary for ratification of the European Code of Social Security nor raised the system to a higher level in violation of Article 12§§1 to 3 of the Charter.

3. In accordance with Rule 29§2 of the Rules of the Committee ("the Rules"), the Committee asked the Government of Finland ("the Government") to make written submissions on the merits in the event that the complaint is declared admissible, by 13 November 2014, at the same time as its observations on the admissibility of the complaint. The Government sought and was granted an extension of this deadline until 5 January 2015. The Government's submissions were registered on 5 January 2015.

4. The Finnish Society for Social Rights was invited to submit a response to the Government's submissions by 15 April 2015. It sought and was granted an extension of the deadline until 15 May 2015. The response was registered on 15 May 2015.

5. Pursuant to Article 7§2 of the Protocol, the Committee invited the international employers' and workers' organisations mentioned in Article 27§2 of the Charter of 1961 to submit observations before 15 January 2015.

6. The International Organisation of Employers ("the IOE") sought and was granted an extension of this deadline until 30 January 2015. Observations from the IOE were registered on 30 January 2015.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

7. The Finnish Society for Social Rights invites the Committee to find that Finland is in breach of Article 12 of the Charter on the grounds that unemployment benefits for elderly persons have been gradually reduced and that the level of basic allowance, the labour market subsidy, falls below the requirements of the Charter.

B – The respondent Government

8. The Government considers that the complaint fulfils the requirements in relation to the representativity of the association as well as the formal requirements laid down by Article 4 of the Additional Protocol (“the Protocol”). However it has serious doubts whether the Finnish Society of Social Rights has particular competence in relation to the issues raised in the complaint as required by Article 2 (and Article 3) of the Protocol. However it notes that the Committee has already considered the complainant organisation in a previous complaint (Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on admissibility of 14 May 2013) to have competence in matters relating to social security and decides not to contest the Committee’s previous decision on admissibility. It asks the Committee to declare the complaint unfounded in all respects.

THIRD PARTY OBSERVATIONS

Observations by the International Organisation of Employers (IOE)

9. As regards the allegation by the Finnish Society of Social Rights that Finland is in violation of Article 12 of the Charter on the grounds that the levels of social security are unsatisfactory for elderly unemployed persons, the IOE states that no specific data is provided on the number of elderly unemployed persons currently reliant on the labour market subsidy.

10. The IOE observes that the employment rate of elderly persons in Finland is higher than the EU average; in 2013 the employment rate of workers between the ages of 60 and 64 was 44% in Finland compared to an EU average of 34.5%. The employment rate in Finland for workers aged between 55-64 years increased from 35% in 1995 to 59% in 2013. The unemployment rate for the 55-64 age group was 7% in Finland in 2013, compared to 7.7% in the EU-15.

RELEVANT DOMESTIC LAW

11. In their submissions, the parties make reference to the following main domestic legal sources:

12. The Constitution of Finland (1999), in particular Article 19, which reads as follows:

“Those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care.

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.

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. Moreover, the public authorities shall support families and others responsible for providing for children so that they have the ability to ensure the wellbeing and personal development of the children.

The public authorities shall promote the right of everyone to housing and the opportunity to arrange their own housing.”

13. The following legislation is relevant to the claims at stake in this complaint:

- Act on Unemployment Security No. 1290/2002;

RELEVANT INTERNATIONAL MATERIALS

I. The United Nations

a. The Universal Declaration of Human Rights

14. Article 25 of the United Nations Universal Declaration of Human Rights (1948) reads as follows:

“1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
...”

b. The International Covenant on Economic, Social and Cultural Rights

15. The International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966; includes the following provisions:

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

[...]”

THE LAW

ADMISSIBILITY

16. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Finland on 17 July 1998 and entered into force for this State on 1 September 1998, the complaint has been submitted in writing and concerns Article 12 of the Charter, a provision accepted by Finland when it ratified this treaty on 21 June 2002 and to which it is bound since the entry into force of this treaty in its respect on 1 September 2002.

17. Moreover, the grounds for the complaint are indicated.

18. The Committee also observes that the Finnish Society of Social Rights is a national non-governmental organisation, founded on 16 March 1999 and registered the same year at the Register of Associations in Finland. It notes that, in a declaration dated 21 August 1998 and entered into force on 1 September 1998 for an indefinite period, Finland recognised the right of any representative national non-governmental organisation within its jurisdiction which has particular competence in the matters governed by the Charter to lodge complaints against it.

19. As regards the requirement of “representativity” laid down by Article 2§1 of the Protocol, the Committee recalls that it has previously found the Finnish Society of Social Rights to be representative within the meaning of the Protocol (Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on admissibility of 14 May 2013, §§6-11)

20. As regards the particular competence of the Finnish Society of Social Rights, the Committee notes from its Rules and their Internet site that its sphere of activity concerns the protection of social rights, including social security. Consequently, the Committee finds that the Finnish Society of Social Rights has particular competence within the meaning of Article 3 of the Protocol, in respect of the instant complaint (see Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on admissibility of 14 May 2013, §12).

21. The complaint submitted on behalf of the Finnish Society of Social Rights is signed by Mr Yrjö Mattila, Chairperson and Mrs Helena Harju, Secretary of the Finnish Society of Social Rights and member of the Board who, according to Article 10 of the Society’s rules, are together entitled to represent it. The Committee therefore considers that the condition provided for in Article 23 of its Rules is fulfilled.

22. On these grounds, the Committee declares the complaint admissible.

MERITS

Preliminary considerations

23. The Committee observes that the present complaint concerns the reduction in social security benefits and the adequacy of the labour market subsidy in Finland.

24. In the presentation of the complaint the Finnish Society of Social Rights invokes in a general manner Articles 12§§1-3 of the Charter, but in the specific allegations it refers expressly to Article 12§2 and Article 12§3, claiming respectively that Finland has not maintained the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security, and has not endeavoured to raise progressively the system of social security to a higher level.

25. The Committee considers that the allegations concerning Article 12§§1 and 2 of the Charter are very vague. In fact, the Finnish Society of Social Rights has made no specific allegation under Article 12§1. It alleges that the level of the labour market subsidy in Finland is not in conformity with the requirements of the Charter.

26. Under Article 12§2, the Committee assesses the conformity of the national situation on the basis of the resolutions adopted by the Committee of Ministers on the application of the European Code of Social Security, when the State concerned has ratified the said Code. For countries such as Finland which are not bound by the Code nor by ILO Convention No. 102 (Social Security – Minimum Standards, 1952), the Committee proceeds to make its own assessment based on information contained in the national reports as well as information from other sources, notably the findings of the ILO Committee of Experts on the Application of Conventions and Recommendations in respect of other ILO conventions on social security (which provide for a higher level of protection than the Code) ratified by the countries concerned.

27. The Committee has previously referred to the complexity of distinguishing between social security benefits and other benefits, notably social assistance benefits. In making the distinction between social security benefits and social assistance benefits under Article 12 and Article 13 respectively it pays attention to the purpose of and the conditions attached to the benefit in question. As far as social security benefits are concerned, these are benefits granted in the event of risks which arise but they are not intended to compensate for a potential state of need which could result from the risk itself (Statement of interpretation on Articles 12 and 13, Conclusions XIII-4).

28. On the other hand, non-contributory benefits which are means-tested and paid as a last resort to persons in need with no or insufficient other sources of income fall within the scope of Article 13§1. The Committee recalls that it has previously examined the labour market subsidy under Article 13§1 of the Charter in *Finnish Society of Social Rights v. Finland*, Complaint No. 88/2012, decision on the merits of 9 September 2014. Even if the current complaint only concerns elder workers who have exhausted their eligibility for unemployment benefit, the Committee maintains that the allegation pertaining to the level of the labour market subsidy is most

appropriately to be examined under Article 13§1 of the Charter. The Committee recalls that Finland accepted Article 13 when it ratified the Revised Charter on 21 June 2002.

29. The Committee observes that the information and arguments put forward in the present complaint as far as the allegation that Finland has failed to raise the social security system to a higher level pertain to Article 12§3 and thus do not enable it to make a proper assessment of the situation in respect of Article 12§1 or 2.

30. In conclusion and in view of the above considerations, the Committee considers that the complaint on which it is called to decide in substance corresponds to two questions, namely:

- 1) whether the developments in recent years as regards unemployment benefits for older persons are in conformity with the obligation laid down by Article 12§3 to endeavour to raise progressively the system of social security to a higher level;
- 2) whether the social assistance scheme, consisting of the labour market subsidy paid to persons in need who have exhausted their eligibility for unemployment allowance is in conformity with Article 13§1.

FIRST PART: ALLEGED VIOLATION OF ARTICLE 12§3 OF THE CHARTER ON GROUNDS OF FAILURE TO RAISE PROGRESSIVELY THE SYSTEM OF SOCIAL SECURITY TO A HIGHER LEVEL

31. Article 12§3 of the Charter reads as follows:

Article 12 – The right to social security

Part I: “All workers and their dependents have the right to social security.”

Part II: “With a view to ensuring the effective exercise of the right to social security, the Contracting Parties undertake:

[...]

3. to endeavour to raise progressively the system of social security to a higher level;

[...]”

A – Arguments of the parties

1. The complainant organisation

32. The Finnish Society of Social Rights alleges that Finland is in violation of Article 12§3 of the Charter on the grounds that the situation of older unemployed persons has deteriorated as regards unemployment benefits

33. The Finnish Society of Social Rights states that previously older persons who were made unemployed had a right to a prolonged earnings-related unemployment benefit if they had exhausted their right to 500 days of benefit by the time the person reached 55 years of age. The prolonged earnings-related unemployment benefit was payable until the person reached the age of 60 when he/she then became entitled to an unemployment pension.

34. However, between 2011 and 2014 the unemployment benefits system was modified; the unemployment pension was abolished; an unemployed person must now wait until the age of 63 to receive an old age pension. A prolonged earnings related unemployment benefit is no longer payable to anyone born after 1957, unless they are 61 years when their unemployment benefit has been exhausted. i.e. a jobseeker born in 1957 or later may, notwithstanding the maximum period, be paid unemployment allowance until the end of the calendar month in which s/he reaches the age of 65, provided s/he has reached the age of 61 before the maximum period expires and has acquired, on expiry of the maximum period, at least five employment years - as defined by law - over the last 20 years.

35. The Finnish Society of Social Rights maintains that these changes to the system have the effect that far fewer persons will be entitled to a prolonged earnings-related unemployment benefit and unemployment pension, in particular those who lose their jobs aged 45-50 years.

36. The Finnish Society of Social Rights states that persons made unemployed aged 45 or over face serious difficulties in finding new employment, and in fact have little chance of doing so and often face age discrimination when seeking new employment.

2. The respondent Government

37. The Government maintains that the Finnish Society for Social Rights has misrepresented the legal and practical situation.

38. According to the Unemployment Security Act (1290/2002) the basic unemployment allowance and the earnings related unemployment allowance are payable for a maximum of 500 days of unemployment (Chapter 6, Section 7 of the Act).

39. A jobseeker born between 1950-1954 may, notwithstanding the maximum period, be paid unemployment allowances until the end of the calendar month in which s/he reaches the age of 65, provided s/he has reached the age of 59 before the maximum period expires and has acquired, on expiry of the maximum period, at least five employment years - as defined by law - over the last 20 years.

40. A jobseeker born between 1955-1956 may, notwithstanding the maximum period, be paid unemployment allowances until the end of the calendar month in which s/he reaches the age of 65, provided s/he has reached the age of 60 before the maximum period expires and has acquired, on expiry of the maximum period, at least five employment years - as defined by law - over the last 20 years.

41. A jobseeker born in 1957 or later may, notwithstanding the maximum period, be paid unemployment allowance until the end of the calendar month in which s/he reaches the age of 65, provided s/he has reached the age of 61 before the maximum period expires and has acquired, on expiry of the maximum period, at least five employment years - as defined by law - over the last 20 years.

42. Following the expiry of the maximum period for which unemployment allowance is payable a jobseeker is eligible for the labour market subsidy which is payable without time limits.

43. The age limit at which the right to additional days arises/ maximum period for unemployment allowances is extended has been raised several times, most recently in 2014. It was raised according to the Government as studies have shown that raising it has improved the employment situation of older persons.

44. However in order to ensure that older persons who have exhausted their right to unemployment allowances are not necessarily reliant on the labour market subsidy, the Act on Public Employment and Business Service (916/2012) requires that the municipality in which the jobseeker resides must provide him/her with an opportunity to work for 6 months, to allow him/her to again meet the conditions for receipt of unemployment allowances. Thus in practice a person who becomes unemployed at the age of 55 continues to receive the earnings-related unemployment allowance until he/she is eligible for the old age pension.

45. An increased earnings related unemployment allowance is payable for 90 days if a person has been dismissed due for example to financial or production-related reasons and if the person has been employed for at least 20 years and has been a member of an unemployment fund for at least 5 years.

46. The Government further provides information on the prohibition of discrimination on grounds of age in Finland.

B – Assessment of the Committee

47. The Committee recalls that Article 12§3 requires States to improve their social security system. The expansion of schemes, protection against new risks or increase

of benefit rates are examples of improvement (Statement of interpretation on Article 12, Conclusions 2009).

48. A restrictive development in the social security system is not automatically in violation of Article 12§3 (Statement of interpretation on Article 12, Conclusions XVI-1, (2002)). However, as the Committee has previously held, any modifications should not undermine the effective social protection of all members of society against social and economic risks and should not transform the social security system into a basic social assistance system. In any event any changes to a social security system must nonetheless ensure the maintenance of a basic compulsory social security system which is sufficiently extensive (Statement of interpretation on Article 12, Conclusions XVI-1 (2002)).

49. The Committee has also previously held that restrictions or limitations to rights in the area of social security were compatible with the Charter in so far as they appeared necessary to ensure the maintenance of a given system of social security (Statement of interpretation on Article 12§3, Conclusions XIII-4) and did not prevent members of society from continuing to enjoy effective protection against social and economic risks. The Committee has further stated that in view of the close relationship between the economy and social rights, the pursuit of economic goals is not incompatible with Article 12 (see e.g. Federation of employed pensioners of Greece (IKA-ETAM) v. Greece, Complaint No. 76/2012, decision on the merits of 7 December 2012, §71).

50. In the context of the current complaint, the Committee notes that the Government has progressively raised the age limit for receipt of earnings related unemployment benefits and has abolished the unemployment pension. According to the Government the system was altered as studies showed that this would improve the employment situation of older workers.

51. The Committee finds that increasing the age limit for receipt of certain benefits and phasing them out for younger workers may be legitimate, taking into account the employment situation in the country. The Committee notes that for Finland the lengthening of people's careers has been one of the priority issues in recent years, which led, inter alia, to the introduction of a comprehensive pension reform with a flexible retirement scheme

52. The Committee considers that the measures complained of were introduced with the aim of keeping older workers in the workforce for longer, and do not prevent members of society from continuing to enjoy effective protection against social and economic risks. The Committee further considers that the measures taken were proportionate to the aim, in particular as the age limit for receipt of the prolonged earnings related unemployment benefits is lower for the oldest unemployed persons and increases gradually for younger generations. The Committee notes that persons in Finland may receive an early old age pension at the age of 63 and a full pension at age 65 years. The Committee further notes that unemployment benefit is available for all for a duration of 500 days (which exceeds that required by the European Code of Social Security), and that an extended period of protection is still available to unemployed older persons who have exhausted their right to unemployment insurance.

53. It also recalls that in its Conclusions 2013 the Committee found the situation in Finland to be in conformity with Article 12§2. The Committee took note that the social security system in Finland covered all the nine branches with a satisfactory personal scope. It further noted that earnings-related pensions had remained at a stable level in relation to pay (the net compensation rate was around 65%). The compensation rate of the unemployment insurance was around 60% of the net pay (see also Finnish Society of Social Rights v. Finland, Complaint No.88/2012, decision on the merits of 9 September 2014, § 30).

54. The Committee further refers to its most recent examination of the situation in Finland under Article 12§3 in the context of the reporting procedure. In its conclusion the Committee took note of a series of improvements to social security made during the reference period 2008-2011, (see Conclusions 2013, Article 12§3, Finland). The Committee concluded that the situation was in conformity and the arguments adduced in the present complaint do not give grounds for the Committee to reach a different finding.

55. The Committee holds that there is no violation of Article 12§3 of the Charter.

SECOND PART: ALLEGED VIOLATION OF ARTICLE 13§1 OF THE CHARTER ON GROUNDS OF THE INADEQUATE LEVEL OF THE LABOUR MARKET SUBSIDY

56. Article 13§1 of the Charter reads as follows:

Article 13 – The right to social and medical assistance

Part I: “Anyone without adequate resources has the right to social and medical assistance.”

Part II: “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;

[...].”

A – Arguments of the parties

1. The complainant organisation

57. The Finnish Society of Social Rights states that older unemployed persons not entitled to a prolonged earnings related unemployment benefit, who have exhausted the maximum period, which is 500 days of earnings related unemployment benefit will then receive the labour market subsidy. The labour market subsidy in 2014 amounted to 32,66 € per day for 5 days per week or 718 € gross and 575 € net after tax per month. This, it maintains is well below 40% of median equivalised income.

58. According to the Finnish Society of Social Rights the labour market subsidy is not sufficient to enable beneficiaries maintain a decent standard of living. It refers to various research in this respect. Housing allowance is normally payable in addition to the labour market subsidy, but it states that this rarely covers the entirety of housing costs. Persons in receipt of the labour market subsidy must pay at least 20% of their housing costs themselves.

59. Further in 2014 the Government announced that there would be a freeze in the index of social benefits until 2018.

2. The respondent Government

60. The Government confirms that in 2014 the amount of the labour market subsidy was 32.66 €, payable 5 days a week (or 702 € per month - 21.5 x 32.66 €). A daily increase of 4.78 € is payable to those who participate in services promoting employment. The earnings of a recipients spouse are not taken into account. The amount of the labour market subsidy is increased annually in accordance with the National Pensions Index, which tracks changes in the cost of living.

61. Persons in receipt of the labour market subsidy are also entitled to housing allowance. The level of housing allowance is 80% of reasonable housing costs which the Government defines annually by decree. A recipient of a housing allowance must usually pay 20% of housing costs. However, the Government admits that the general level of the housing allowance has not kept abreast of increases in housing costs in particular in Helsinki. Therefore, in 2012 and 2014 modifications were made to the system in order to ensure that those living in areas with expensive housing costs could cover the costs.

62. The Government maintains that those in receipt of housing allowance may also apply for social assistance.

B- Assessment of the Committee

63. Article 13§1 provides for the right to benefits, for which individual need is the main criterion for eligibility and which are payable to any person on the sole ground that he or she is in need (Conclusions 2013, Article 13§1, Bosnia and Herzegovina).

64. The entitlement to social assistance arises when a person is unable to obtain resources “either by his own efforts or from other sources, in particular by benefits under a social security scheme” (Statement of interpretation on Article 13§1, Conclusions XIII-4, (1996)).

65. Social assistance must be at a level sufficient to ensure adequate assistance. When assessing the level of assistance, the Committee has regard to basic benefits, any additional benefits and a threshold in the country, which it has set at 50% of median equivalised income as calculated on the basis on the Eurostat at-risk-of-poverty threshold (e.g. Conclusions XIX-2, Article 13§1, Latvia (2009)).

66. As regards the labour market subsidy the Committee notes that it amounted to 702 € per month in 2014. According to Eurostat data 50% of the median equivalised income corresponded to 987,57 € in 2014. The labour market subsidy hence corresponded to 35.5% of median equivalised income. The labour market subsidy is subject to income tax of 20% and the net value of the subsidy is thus about 561.6€ per month or about 28.4% of median equivalised income. This is clearly not sufficient to ensure conformity with the Charter.

67. The Committee notes that recipients of the labour market subsidy may apply both for housing allowance and also for social assistance to cover housing costs in excess of the housing allowance. The amount of the housing benefit is determined by criteria and the ceiling stipulated by the law relating to the said allowance. The maximum amount of this assistance is 80% of reasonable housing expenses adjusted for household size and income and the location of the dwelling. In 2013, the maximum amount of rent or housing expenses taken into account was 488 € per month.

68. The Committee observes that the housing allowance is limited by the various objective criteria mentioned above; nothing in the information brought to its attention indicates that the beneficiaries of the labor market subsidy are always entitled to the maximum amount of the allowance and nor the amounts paid to standard beneficiaries (on this last point, the Committee notes from another source (National Insurance Institute, www.kela.fi) that the average amount of the housing allowance paid in 2013 was 286 €). The Committee did not find, neither in the current complaint or in information obtained through other means, (such as from (Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014), or reports under the reporting procedure), information on the level of social assistance benefits that may be payable to beneficiaries of the labour market subsidy.

69. The Committee recalls that it previously held that the labour market subsidy fell below the level required by the Charter (Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014, §121).

70. The Committee therefore considers that the labour market subsidy combined with the other benefits referred to, is not sufficient to enable its beneficiaries to meet their basic needs.

71. The Committee holds that there is a violation of Article 13§1 of the Charter.

CONCLUSION

For these reasons, the Committee:

- unanimously declares the complaint admissible,

and unanimously concludes

- that there is no violation of Article 12§3 of the Charter;
- that there is a violation of Article 13§1 of the Charter.



Eliane CHEMLA
Rapporteur



Giuseppe PALMISANO
President



Henrik KRISTENSEN
Deputy Executive Secretary

In accordance with Rule 35§1 of the Rules a separate concurring opinion of Petros STANGOS is appended to this decision.

SEPARATE CONCURRING OPINION OF PETROS STANGOS

I concurred with the unanimous vote of the Committee members in favour of a finding of a non-violation by Finland of Article 12§3 of the Charter in response to the complainant organisation's allegations that as a result of the Unemployment Security Act of 2002 and its application, the situation of the elderly unemployed had deteriorated with regard to unemployment benefits. I had several misgivings concerning this finding so I have decided to make my views public in the form of this separate concurring opinion.

The aim of Finnish legislation, as the Committee explicitly concedes, is to keep elderly workers in the labour market for as long as possible. I am not at all convinced that for any of the States Parties, and in this case for Finland, such a social policy goal is compatible with the aim which states must pursue under Article 12§3 of the Charter, namely to "raise progressively the system of social security to a higher level". It is true that the aim assigned to Finnish social policy is in keeping with an approach promoted in the expert opinions of the European Commission and international organisations such as the IMF and the World Bank, which is that the retirement age should be raised and older people should be given employment opportunities. This approach results in a rethink of the notion that workers should be encouraged explicitly or implicitly to withdraw from the labour market early. Reservations about pension schemes on the one hand and the increased standard of living of new groups of pensioners on the other have resulted in a shift from a negative approach to ageing to a more positive one: notions such as "active ageing" or "productive ageing" are gradually becoming more and more prevalent in Europe.

This complaint gave the Committee the opportunity to look into this new approach in the light of the relevant Charter provision. Although this discussion and assessment did not take place, this still does not prevent me from thinking that the main objective of pension schemes remains to ensure a decent level of income for persons whose livelihoods or future livelihoods depend on the benefits provided by these schemes.