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EUROPEAN SOCIAL CHARTER

Statements by Central Organisation of Finnish Trade Unions (SAK), Finnish Confederation of Professionals (STTK) and Akava, the Confederation of Unions for Professional and Managerial Staff in Finland

on the 9th national report by Finland

on the implementation of the revised European Social Charter

submitted by

THE GOVERNMENT OF FINLAND

(Articles 2, 4, 5, 6, 21, 22 for the period 01/01/2009 – 31/12/2012)

Report registered by the Secretariat on 7 February 2014

CYCLE 2014

Translation of the statement by Central Organisation of Finnish Trade Unions (SAK), Finnish Confederation of Professionals (STTK) and Akava, the Confederation of Unions for Professional and Managerial Staff in Finland:

Council of Europe; Revised European Social Charter; Ninth Periodic Report by Finland

Central Organisation of Finnish Trade Unions (SAK), Finnish Confederation of Professionals (STTK) and Akava, the Confederation of Unions for Professional and Managerial Staff in Finland state the following:

General

The European Committee of Social Rights has asked the Government of Finland questions about the implementation of certain Articles of the European Social Charter. The Central Organisation of Finnish Trade Unions (SAK), the Finnish Confederation of Professionals (STTK), and Akava, the Confederation of Unions for Professional and Managerial Staff in Finland, note that the Government has not answered all these questions in the periodic report. For instance regarding the legislation on working hours, the Government has not, despite the Committee's request, assessed whether section 29(2) of the Finnish Working Hours Act complies with the Charter.

Neither does the report discuss matters related to ensuring the quality of working conditions for employees exposed to radiation in their work (Article 2 § 4), the obligation of employees to work longer than for 12 successive days (Article 2 § 5), and the division of responsibility between different actors in harassment cases (Article 26 § 1). Therefore the three employee organisations consider that the Government should supplement the report by answering the still unanswered questions of the European Committee of Social Rights.

Comments by Article

Article 2: The right to just conditions of work; §§ 1 and 5 (reasonable working hours and weekly rest period)

According to the Working Hours Act, regular working hours must not exceed 40 hours a week. In practice, violations of provisions of the Act occur frequently. Employers exclude employees from the scope of application of the Act by using different job designations, fail to monitor working hours or ignore the real, effective, working hours. The opportunities for weekly rest periods are insufficient, and compensatory rest periods cannot be arranged.

According to the Labour Force Survey conducted by Statistics Finland in 2012, more than one of ten full-time employees in Finland worked at least 48 hours a week. Employers order overtime work also without remuneration.

Different studies show that more than one third of all professional and managerial employees are excluded from the monitoring of working hours, and for approximately half of them overtime work is not recorded at all. Nearly 60% of all professional and managerial employees must be available to their employers after the actual working hours, too.

It is a common misunderstanding that the Working Hours Act may be departed from by means of individual agreements. Compliance with the Act is supervised by occupational safety and health authorities, whose resources are insufficient also in other respects.

In 2013, working hours protection was improved by an amendment of the Occupational Safety and Health Act that obligates employers to examine and assess any harm and risks that working hours might cause to the health and safety of employees. The Occupational Safety and Health Act also applies to superiors and managers. Under the Act, working hours include travelling related to work and time connected with work. It remains to be seen how the amendment of the Act will improve the situation in practice.

Article 4: The right to a fair remuneration

Finland is not committed to applying the provision of the Charter on minimum pay, with the justification that the approach under the Charter essentially differs from the way in which the minimum conditions are currently determined in Finland (Government proposal HE 229/2001). However, examples from Denmark and elsewhere show that commitment to applying Article 4 of the Charter does not exclude the option of determining minimum pay by collective agreements.

Article 6 § 4: The right to bargain collectively

In its fifth periodic report Finland referred to decision TT 2007–105 (vote) of the Labour Court, according to which mass resignation was not permitted as collective action of officeholders. However, the employee organisations consider that the legal situation prevailing in Finland is unclear. The European Committee of Social Rights has repeatedly pointed out that the right of public officials to strike should be assessed from the standpoint of the nature of their duties and not their legal status. Thus, those public officials who do not exercise public power should have full rights of collective action. Consequently, this interpretation of the Charter seems to conflict with the Finnish Collective Bargaining Agreements Act (664/1970).

In its ninth periodic report Finland referred to decisions TT 2012:74 and TT 2012:75 of the Labour Court, which concerned an alleged violation of commitment to labour market harmony and the significance of a precautionary measure ordered by a district court. In both cases the Labour Court found a violation of the commitment to labour market harmony but dismissed the claim for withdrawal of the precautionary measure on grounds of lack of jurisdiction. The Finnish employee organisations consider that the Government should clarify the wording of the report in this respect. The report should express more precisely that the Labour Court could not take a stand on the lawfulness of the precautionary measure because the claim fell outside its jurisdiction (the text should read "could not rule" instead of the current wording "did not rule"). The employee organisations consider that using a precautionary measure under civil procedural law in the context of collective action conflicts with the right to bargain collectively and the freedom of association, at least in light of the case law of the ILO's Committee on Freedom of Association.

Article 21: The right to information and consultation

To supplement the periodic report, the employee organisations note that the Co-operation Ombudsman only supervises compliance with the Act on Cooperation within Undertakings. This Act applies to undertakings with at least 20 employees in regular employment relationships. By contrast, the Ombudsman does not supervise cooperation at public sector workplaces.

All employee groups must be guaranteed the right to an occupational safety delegate of their own.

Article 22: All employees have the right to take part in determining and improving the working conditions and working environment of their employer undertaking.

All employee groups must be guaranteed the right to an occupational safety delegate of their own.

Article 28: Employees' representatives in undertakings have the right to protection against acts prejudicial to them. The representatives should be afforded such facilities as may be appropriate in order to enable them to carry out their functions.

All employee groups must be guaranteed the right to an occupational safety delegate of their own.

The Central Organisation of Finnish Trade Unions (SAK)

The Finnish Confederation of Professionals (STTK)

Akava, the Confederation of Unions for Professional and Managerial Staff in Finland