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REVISED EUROPEAN SOCIAL CHARTER

Comments from the
Central Organisation of Finnish Trade Unions (SAK),
the Finnish Confederation of Professionals (STTK)
and the Confederation of Unions for Professional
and Managerial Staff in Finland (Akava)
on the
5th National Report on the implementation of
the European Social Charter (revised)

submitted by

THE GOVERNMENT OF FINLAND

(Articles 2, 4, 6, 21 and 26
for the period 01/01/2005 – 31/12/2008)

Report registered by the Secretariat on 5 May 2011

CYCLE 2010

The Central Organisation of Finnish Trade Unions (SAK) and The Finnish Confederation of Professionals (STTK) state the following:

General

The Central Organisation of Finnish Trade Unions (SAK) and The Finnish Confederation of Professionals (STTK) note that the periodic report of Finland does not reply to all questions posed by the European Committee of Social Rights. Regarding for instance the working hours legislation Finland has not, despite the request of the Committee, assessed the question whether section 29(2) of the Working Hours Act complies with the European Social Charter.

Neither does the report discuss ensuring the quality of working conditions for employees exposed to radiation in their work (Article 2 para. 4 of the Charter), the obligation to employees to work longer than in 12 successive days (Article 2 para. 5) or the division of liability between different actors in cases of harassment (Article 26 para. 1). Therefore, SAK and STTK consider that Finland should supplement the report to the extent that it has not answered the questions made by the European Committee of Social Rights.

Comments by Article:

Article 4: The right to a fair remuneration

The current practice of determining overtime compensation to family day care workers places those working at home in an unequal position with those working in premises provided by municipalities. SAK and STTK consider that wage differentials within a single group of employees conflict with the provisions of the European Social Charter.

Article 6 para. 4: The right to bargain collectively

Finland refers in its report to decision TT 2007-105 (voting) of the Labour Court, according to which a mass resignation was not a permitted industrial action to the extent that it involved officeholders.

In the opinion of SAK and STTK, the prevailing legal situation is unclear. The European Committee of Social Rights has repeatedly stated that the right of civil servants to strike should be examined from the standpoint of the nature of their tasks and not from the standpoint of their legal status. Those civil servants who do not exercise public authority should have full rights to industrial action. Thus, the Finnish Act on Collective Agreements for State Civil Servants seems to conflict with the European Social Charter.

Article 21: The right to information and consultation

As an addition to the periodic report, SAK and STTK state that the Cooperation Ombudsman only supervises compliance with the Act on Co-operation within Undertakings. The Act applies to undertakings normally employing at least twenty persons as parties to an employment relationship. By contrast, the Ombudsman does not supervise cooperation at public sector workplaces.

Article 26 para. 2: The right to dignity at work

SAK and STTK note that the Non-discrimination Act is being reformed. The preparation of the reform will probably continue after the parliamentary election of spring 2011.

Further, SAK and STTK point out that according to the Non-discrimination Act currently in force, nobody may be discriminated against on the basis of age, ethnic or national origin, nationality, language, religion, belief, opinion, health, disability, sexual orientation or other personal characteristics (section 6 of the Act). However, compensation is payable only for discrimination based on age, ethnic or national origin, nationality, religion, belief, opinion, state of health, disability or sexual orientation (section 9). Thus the list of grounds for discrimination entitling to compensation under section 9 of the Act is shorter than the list of grounds for discrimination prohibited in section 6.

For example in precedent KKO 2010:93 the Supreme Court found that discrimination as such had taken place but did not order payment of compensation because section 9 of the Non-discrimination Act does not permit compensation for discrimination based on engagement in activities of associations or trade unions. It is the understanding of SAK and STTK that the current legal situation in Finland does not comply with the provisions of the European Social Charter in this respect.

Confederation of Unions for Professional and Managerial Staff in Finland (Akava), states the following:

Article 2 para. 1; Reasonable daily and weekly working hours, & para. 5; Weekly rest period

Article 4 para. 2; Right of workers to an increased rate of remuneration for overtime work

According to the Working Hours Act the regular working hours must not exceed 40 hours a week. The maximum regular working hours set in collective agreements are often shorter, for instance 37.5 hours per week. According to Statistics Finland, Labour Force Statistics 2009, 22% of Akava members worked on average 7.8 hours overtime per week in 2009. During the same period, 12% of Akava members were estimated to work more than 48 hours per week.

According to the same survey, 8% of all full-time working Akava members worked on average 8.8 hours overtime per week without compensation. Overall, 22% of all Akava members worked overtime, which means that more than one third of those working overtime did not get any compensation for it. Of all wage and salary earners, 3% worked overtime without compensation.

In practice, the position of upper-level employees (i.e. legislators, senior officials, managers, professionals, technicians and associate professionals) with regard to weekly rest periods and working hours in general is often problematic, as the Working Hours Act and collective agreements are frequently breached at workplaces.

For correcting the situation Akava requires that a system with a working hours bank and its minimum requirements be introduced in the Working Hours Act. Such legislation would also support the introduction of other flexible working hours arrangements and improve the functioning and monitoring of these arrangements. All hours used for work, such as travelling outside normal working hours and so-called grey overtime, which means uncompensated work outside normal working hours, must be subject to the statutory monitoring of working hours. To reduce the burden of travel time, sufficient rest periods need to be guaranteed after the travel.

Article 4 para. 2; The right of men and women workers to equal pay for work of equal value

The tripartite equal pay programme was launched in 2006 in order to narrow the pay differentials between women and men and to promote gender equality. For a rather long time, the pay differentials have remained nearly unchanged, being on average 18–20% in favour of men. According to a recent assessment the pay differentials have slightly decreased in the last few years, but the rate of decrease is too slow compared to the objective of the programme. The achieved decrease is attributable to collective agreements in the private and the public sector, pay schemes based on requirements of work, equality planning and women's progress in their careers.

It seems improbable that Finland will achieve the main objective of the programme, i.e. reducing the pay differentials between women and men to 15% by 2015. Akava considers it important to continue the equal pay programme. All practicable means must be used to achieve the objective. The procedures, organisation and coordination of the programme must be improved, and an intensive and concrete action plan must be prepared for realising equal pay. In addition, the division of responsibilities between the different actors must be

clarified. Pay differentials must be corrected especially in sectors dominated by educated women, where the pay is not commensurate with the requirements of the work.

In order to narrow the pay differentials between the sexes it is important to develop and introduce pay schemes based on assessment of the requirements of the work and the performance of the employee. Moreover, a programme must be introduced for monitoring the career progress of both sexes and their position in working life. If the current legislation does not suffice to guarantee equal opportunities for both sexes, the legislator must consider introducing obligatory gender quotas in both the public and the private sector in order to follow up the earlier measures and to intensify the promotion of equal pay.

In 2008, Akava renewed the inquiry sent in 2006 to its shop stewards concerning the preparation of equality plans at workplaces. The Act on Equality between Women and Men obligates employers to equality planning. According to the Act, the equality plan must also include a pay survey. The inquiry showed that problems continued to exist with the preparation of pay surveys and with access to information about pay. Getting information about pay was most difficult in the private sector. The inquiry also showed inexplicable wage differentials between women and men. The inquiry of 2006 already showed that the regulation of pay surveys is open to interpretation, and the inquiry of 2008 confirmed this assumption. Although the situation in equality planning had improved to some extent from 2006, all workplaces subject to the planning obligation had not made equality plans.

Consequently, the legislation on pay surveys must be clarified in order to improve the functioning of the Act on Equality between Women and Men. The concept of pay must be extended to cover all financial benefits related to an employment relationship. The groups engaged in conducting pay surveys must be enlarged. The obligation of employers to provide the information needed for pay surveys must be clarified.

Akava is also concerned about the fact that young highly educated women work more often than men in fixed-term employment relationships in the public and the private sector. In 2009, 13% of all male members of Akava younger than 35 years had a fixed-term employment relationship, while the corresponding figure for female members younger than 35 years was 35% (source: Statistics Finland, Labour Force Statistics 2009). The situation was worst in the public sector, especially within the government administration. Employees with fixed-term employment relationships are usually paid less than employees with permanent employment relationships. Since fixed-term employment correlates with a slower career progress, the career progress among highly educated women is even ten years slower than the progress among men with corresponding education.

Akava suspects that fixed-term employment relationships of young women are used for circumventing the legislation on security against dismissal and employers' costs for family leave. Such indirect discrimination against women is also reflected in pay differentials, which the current legislation cannot prevent. Therefore, the legislation must be amended to prevent the circumvention of provisions on security against dismissal by concluding fixed-term employment relationships. Furthermore, the security against dismissal of employees returning from family leave must be improved and the use of family leave by fathers must be increased.