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REVISED EUROPEAN SOCIAL CHARTER

Comments from the
Central Organisation of Finnish Trade Unions (SAK)
and the
Finnish Federation of Professionals (STTK)
on the
6th National Report on the implementation of
the European Social Charter (revised)

submitted by

THE GOVERNMENT OF FINLAND

(Articles 19
for the period 01/01/2005 – 31/12/2009
Articles 27
for the period 01/01/2003 – 31/12/2009)

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CYCLE 2011

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

Comments by Article:

Article 19; The right of migrant workers and their families to protection and assistance

Right of foreign employees to social security

Finland states in its periodic report among other things that a foreign employee has the same rights to social security as Finnish employees. The precondition is that the foreign employee is covered by the residence-based social security scheme and fulfils the eligibility criteria for it.

The statement holds true as such. In practice, however, it may be difficult for a foreigner to get access to the residence-based social security scheme. For instance employees from third countries must have an employment contract of at least two years in order to qualify for the scheme.

Practical problems are connected also with e.g. the implementation of integration plans. The Act on the Integration of Immigrants and Reception of Asylum Seekers provides that immigrants who register as unemployed jobseekers are entitled to an integration plan, which includes language instruction. However, opportunities to language instruction are not offered systematically, and not at least when no resources exist for arranging such instruction.

Foreigners in working life

Only very few cases involving work discrimination against foreigners are revealed. The reason for this is that migrant workers arriving in Finland are not aware of their rights. This is the case especially when workers from developing countries enter Finland in order to work in cleaning, construction, accommodation and catering, logistics or berry picking. These workers may also have paid illegal job exchange payments, or they may otherwise be in such a position that they dare not question the working and living conditions. One reason for failure to report work discrimination may be that the underpayment paid to migrant workers in Finland is many times higher than the wage that they get in their home countries. A study¹ conducted in spring 2011 showed that foreign employees are exploited in many ways in Finland. The most common form of exploitation is wage discrimination.

It is the understanding of the Central Organisation of Finnish Trade Unions (SAK) and the Finnish Confederation of Professionals (STTK) that the use of temporary foreign employees in the above-mentioned sectors has increased expressly because, in the absence of sufficient control, migrant workers may be paid lower wages than workers from the original population. The increased use of migrant workers has not increased the supervision of conditions of employment. By contrast, the resources of the authorities supervising employment relationships have been continuously reduced.

¹ Anniina Jokinen - Natalia Ollus - Minna Vauhko: Ehdoilla millä hyvänsä. Työperäinen ihmiskauppa ja ulkomaisten työntekijöiden hyväksi käyttö Suomessa. European Institution for Crime Prevention and Control affiliated with United Nations (HEUNI). Publication Series No 67. Helsinki 2011, 193.

Another problem is that authorities do not usually conduct inspections outside office hours. However, many foreigners work irregularly or at times when other employees are off duty. For example shop cleaning is night work. Underpaid migrant workers may also work at construction sites during weekends, while workers representing the original population work there during work weeks.

The opportunities of trade unions to supervise employment relationships have not been increased, either, despite many proposals to that effect. Another problem hampering supervision by trade unions is the interpretation of the Finnish data protection legislation. The established interpretation is that shop stewards and unions do not have the right to obtain information about individual wages (see e.g. the position of the Data Protection Ombudsman of 18 February 2011, Reg. no. 45/41/2010). However, the right to obtain information would be particularly important in the case of migrant workers, who do not necessarily have any knowledge of Finnish wages and other conditions of employment. Therefore it is nearly impossible for shop stewards and trade unions to find out whether migrant workers are paid in accordance with the collective agreement or not. In practice, however, trade unions as well as shop stewards and industrial safety delegates, which represent the unions at workplaces, are the only actors who can help migrant workers with issues related to wages and employment relationships.

According to the EU regulations binding on Finland, workers who stay in Finland temporarily (so-called posted workers) are insured in their home countries. Because Finland offers, without exception, better social security than the home countries of migrant workers, a foreign worker is always less expensive than locally employed workers, even if he or she is paid according to the collective agreement and even if the Finnish legislation and the collective agreement are complied with in other respects. This situation, which is legal as such, leads companies to prefer temporary foreign workers. Consequently, unemployment increases among the local population and weakens the opportunities of employees' unions to improve the position of their members in the labour market.

27 Article; The right of workers with family responsibilities to equal opportunities and equal treatment

A three-party working group that studied the need to reform the family leave system completed its work in March 2011. In its report the working group proposes a number of amendments of the relevant legislation in order to facilitate reconciliation of work and family life. The proposals are not unanimous in all respects. The new Parliament will consider the possible reform of the family leave system.

The provision in Chapter 4, section 7 a of the Employment Contracts Act concerning absence from work for caring for a family member or another close person entered force on 1 March 2011. The provision concerns absence for caring either a member of the employee's family or another person close to the employee. The provision obligates the employer to arrange the work so that the employee may be absent from it for a fixed period. If the leave can be arranged, the employer and the employee must also agree about its details, such as the duration of the leave and the other arrangements for it.