



European
Social
Charter

Charte
sociale
européenne

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

24 April 2015

Case Document No. 5

Finnish Society of Social Rights v. Finland
Complaint No. 106/2014

**OBSERVATIONS BY THE GOVERNMENT
TO THE OBSERVATIONS BY THE EUROPEAN TRADE
UNION CONFEDERATION (ETUC)**

Registered at the Secretariat on 18 March 2015



Ministry for Foreign Affairs of Finland
Unit for Human Rights Courts and Conventions

Mr Henrik Kristensen
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FRANCE

Helsinki, 18 March 2015

Complaints Nos. 106/2014 and 107/2014
FINNISH SOCIETY OF SOCIAL RIGHTS (FSSR) v. FINLAND
OBSERVATIONS ON THE OBSERVATIONS OF THE EUROPEAN
TRADE UNION CONFEDERATION

Sir,

With reference to your letter of 27 January 2015, I have the honour, on behalf of the Government of Finland, to submit the following observations on the observations submitted by the European Trade Union Confederation in the aforementioned cases.

I. Complaint 106/2014 and the question of reinstatement of employees

1. The Government refutes the allegation of the European Trade Union Confederation that the situation in Finland constitutes a violation of Article 24 of the Revised European Social Charter. In this respect the Government recalls its submissions of 5 January 2015 on the matter.

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II. Complaint 107/2014 and the question of regulation of dismissal for economic and production-related reasons under the Employment Contracts Act

2. The Government would like to correct the European Trade Union Confederation's referral to domestic law in its submissions concerning regulation of dismissal for economic and production-related reasons under the Employment Contracts Act.
3. According to the European Trade Union Confederation ILO Convention No. 158 does not recognise "financial grounds" as a valid ground for dismissal. The Government submits, that this English phrase only exists in an unofficial and therefore non-binding translation of the Employment Contracts Act (55/2011).
4. The Government concedes that it too did refer to this phrase in its own observations of 5 January 2015. This reference, however, was mistaken and should be rectified to take into account the following.
5. Rather than using the term "financial" the Employment Contracts Act in its official Finnish and Swedish versions uses the term "taloudelliset syyt/ekonomiska orsaker," which in its appropriate translation renders "economic reasons," which in turn is language that is in conformity with ILO Convention No. 158 that formed the basis of the European Trade Union Confederation's submissions on the matter.
6. In order of full disclosure, the original Finnish and Swedish versions of the relevant Sections of the Act, that is Chapter 7, Section 3, read as follows:

"Taloudelliset ja tuotannolliset irtisanomisperusteet

*Työnantaja saa irtisanoa työsopimuksen, kun tarjolla oleva työ on **taloudellisista**, tuotannollisista tai työnantajan toiminnan uudelleenjärjestelyistä johtuvista syistä vähentynyt olennaisesti ja pysyvästi. Työsopimusta ei kuitenkaan saa*

irtisanoa, jos työntekijä on sijoitettavissa tai koulutettavissa toisiin tehtäviin 4 §:ssä säädetyllä tavalla.

Perustetta irtisanomiseen ei ole ainakaan silloin, kun

1) työnantaja on joko ennen irtisanomista tai sen jälkeen ottanut uuden työntekijän samankaltaisiin tehtäviin, vaikka hänen toimintaedellytyksensä eivät ole vastaavana aikana muuttuneet; tai

2) töiden uudelleenjärjestelystä ei ole aiheutunut työn tosiasiallista vähentymistä.”

”Uppsägning av ekonomiska orsaker eller av produktionsorsaker

*Arbetsgivaren får säga upp ett arbetsavtal om det till buds stående arbetet av **ekonomiska** orsaker eller produktionsorsaker eller av orsaker i samband med omorganisering av arbetsgivarens verksamhet har minskat väsentligt och varaktigt. Arbetsavtalet får dock inte sägas upp, om arbetstagaren kan placeras i eller omskolas för andra uppgifter på det sätt som anges i 4 §.*

Grund för uppsägning anses åtminstone inte föreligga, om

1) arbetsgivaren antingen före eller efter uppsägningen har anställt en ny arbetstagare för liknande uppgifter trots att inga förändringar i arbetsgivarens verksamhetsbetingelser inträffat under samma tid, eller om

2) omorganiseringen av arbetsuppgifterna inte har orsakat någon verklig minskning av arbetet.”

7. Bearing this in mind, the Government finds that the observations related to this provision given by the European Trade Union Confederation are now inapplicable to the present case.
8. Finally, the Government maintains that there is no violation of the Article 24 of the Revised European Social Charter in the present case.

Accept, Sir, the assurance of my highest consideration.



Arto Kosonen
Director,
Agent of the Government of Finland
before the European Court of Human Rights