



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

19 June 2015

Case Document No. 6

Finnish Society of Social Rights v. Finland
Complaint No. 107/2014

**RESPONSE OF THE FINNISH SOCIETY OF SOCIAL RIGHTS
TO THE GOVERNMENT'S SUBMISSIONS**

Registered at the Secretariat on 15 May 2015

Suomen sosiaalioikeudellinen seura ry.
- Socialrättsliga sällskapet i Finland r.f.



Council of Europe

F6/0/5 Strasbourg Cedex

France

Mr Henrik Kristensen

Deputy Head of the Department of the European Social Charter

Deputy Executive Secretary of the European Committee of Social Rights

ESC 41 LV/KOG

Collective complaint 107/2014 due to that Finnish legislation along the opinion of our Association violates the Article 24 in the European Social Charter

Registered at the Secretariat on 30 April 2014

Responses of our Association to the Government's submissions

10 May 2015

Finnish Society of Social Rights

Finnish Society of Social Rights sends you respectfully the attached response to the Government's submissions.

The person taking care of this complaint in the Society is:

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I Admissibility

The submissions of the Government of the admissibility

1. In its submissions the Government of Finland has questioned the right of our Association to make complaints in social rights concerning our complaint No. 107/2014. The main grounds of the Government are the following:
2. The present complaint has been lodged by the Finnish Society of Social Rights (Suomen Sosiaalioikeudellinen Seura r.y. – Socialrättsliga Sällskapet I Finland r.f. (“the applicant association”))
3. In accordance with Article 2 § 1 of the Additional Protocol of 1995 providing for a System of Collective Complaints to the Social Charter, any Contracting State may declare that it recognizes the right of any other representative national non-governmental organization within its jurisdiction which has particular competence in the matters governed by the Charter to lodge it with the European Committee of Social Rights.
4. Finland has ratified the Additional Protocol providing for a System of Collective Complaints (Finnish Treaty Series 75-76/1998) on 17 July 1998 and made a declaration enabling national non-governmental organizations to submit collective complaints on 16 August 1998.
5. The Committee has in its admissibility (hyväksyttävyyys) decision 14. May 2013 – concerning the applicant association’s complaint no. 88/2012 – assessed its “representativity” as required by Article 2 § 1 of the Protocol.
6. In that decision, having considered the applicant organization’s social purpose, competence, scope of activities, as well as the actual activities performed, the Committee found that the applicant association was representative within the meaning of Article 2 of the Protocol.
7. According to Articles 2 § 1 and 3 of the Additional Protocol, national non-government organizations may submit complaints only in respect of those matters in respect of which they have been recognized as having particular competence.
8. With regard to the recognition of particular competence of a non-governmental organization, your Committee has previously e.g. examined the statute of an organization and the detailed list of its various activities relating to the Articles of the Charter covered by the relevant complaint. (Complaint No. 30/2005, Marangopoulos Foundation for Human Rights (MFHR) v. Greece, decision on admissibility of 10 October, para. 15).
9. Nothing in the rules of the applicant association, nor anything in the list of previous activities found on the applicant association’s website (found at ssos.nettisivu.org) point to the applicant association’s particular competence in relation to the right to protection in cases of termination of employment protected under Article 24 of the Charter.

10. The Committee in its last admissibility decision in relation to the applicant organization (Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, and decision on Admissibility, 14 May 2013) neglects to attach significance to the question of recognized and particular competence. Instead the Committee considered general competence in relation to social rights, in toto, to be sufficient when it stated that “the Association’s sphere of activity concerns in a general way the protection of social rights including social security rights. Consequently, the Committee finds that the Finnish Society of Social Rights has particular competence with the meaning of Article 3 of the Protocol as regards the instant complaint.” (para.12).

11. Obviously, this has lead the applicant association to be of the erroneous opinion that the Committee has issued it with not more than a blank-cheque vis—à - vis the admissibility of its complaints, as is evident from the complaint file where the applicant association states that “in our previous complaint (Complaint 88/2012) the Committee noted that our association is admissible to make complaints to the Committee of Social Rights.

12. Such an idea is incorrect and rests on a, at best, questionable legal interpretation of Articles 2 § 1 and 3 of the Additional Protocol. This is because both of these provisions lay emphasis on the recognized particularity of expertise required from the representative national non-governmental organization.

13. According to the Explanatory Report to the Additional Protocol, (Explanatory Report to the 1995 Protocol) (para. 21), this recognized particularity of expertise in turn needs to be discerned in as similar manner as that of international non-governmental organizations.

14. Such an assessment then requires that that Committee needs to firstly be of the view that applicant non-governmental organizations are able to support their applications with detailed and accurate documentation, legal opinions, etc. in order to draw up complaint files that meet the basic requirements of reliability.

15. However, as is stated in the explanatory report in relation to international non-governmental organizations, this fact alone does not relieve the Committee “from the obligation to ascertain that the complaint actually falls within the field in which the NGO concerned has been recognized as being particularly competent.”

16. As the present case concerns a significantly different question than the applicant association’s previous complaint 88/2012 which concerned Article 12 of the Charter, the Government observes that the Committee is obliged by the provisions of the Additional Protocol to undertake an ascertainment of the recognized particular competence of the applicant association on the basis of the information submitted to it.

17. In light of this, observation on the provisions and interpretation of the Additional Protocol, any general statement by the Committee to any organization providing for a blank-cheque vis-à-vis the admissibility of its complaints is legally impossible and against the objective purpose of the whole mechanism created by virtue of the Additional Protocol.

18. In this respect, the Government underlines that in the circumstances of the present case there are serious doubts of an even greater magnitude compared to the applicant association's previous complaint (complaint no. 88/2012), as regards the so-called recognized particular competence of the applicant association in the specialized area of protection in cases, like the present one, concerning the determination of employment.

Comments of our Association to the Government's submissions on admissibility

19. The name of our association is *Finnish Society of Social Rights (in Finnish and in Swedish: Suomen Sosiaalioikeudellinen Seura r.y. - Socialrättsliga Sällskapet i Finland r.f.)* and it is called as "association" in this complaint.

20. Our association is a bilingual society concentrating in all kinds of social rights. It is based in Helsinki, Capital of Finland, but the scope and members of the association cover the whole Finland as it is a national NGO.

21. The association is established and founded 16.3.1999. At the same year the Register of Associations of Finland has officially registered it to the Register of Associations. We include a fresh register document of the Register of Associations concerning our association and the persons who are entitled to represent and act on its behalf. (Add 1). Our association is active and expert in the area of all kind of social rights covered in the Charter (Revised). This expertise can be seen from the codes of our Association. (Add 2 unfortunately only in Finnish).

22. Along the codes of our Association the purposes of our Association are a) to promote juridical research of social questions, b) to develop social jurisprudence as social rights are a special area of legal science and c) promote co-operation between researchers, officials and NGO's both in Finland and also internationally.

23. To reach the goals mentioned above our association organises lectures, seminars, congresses and education sessions, makes motions and proposals to officials and gives statements in social right legal motions and practices co-operation with colleagues abroad and operates and acts other ways similar to former activities in order to reach and achieve its the goals.

24. At the time our association was founded (1999) Finland had not ratified the Charter (Revised) so it was impossible to take to the codes a task to make complaints to the Committee of Social Rights.

25. In spite of that this task can be read from our rules indirectly "to promote juridical research of social questions". One way to promote social questions it is to clarify the compliance of legislation and practice in Finland with the in 2002 ratified Social Charter (Revised) by making complaints which the revised Charter made possible.

26. Also to raise complaints can be classified as operating "similar to former activities" along the codes of our Association. To raise complaints of the potential violations of the Charter (Revised)

promotes both juridical research of social questions, develops social jurisprudence as a special legal science and promotes co-operation between researches, officials and NGO`s both in Finland and internationally.

27. The Merits in 88/2014 have raised much interest in other NGO`s and also researches have taken contact to our Association after the Merits were allowed to publish to the public in February 2015. By making complaint in 106/2014 we are heading ahead on this path outlined by the code of our Association. By this way we are also doing co-operation internationally in social rights as said in our code.

28. As we have said in our complaint the Charter (Revised) has been ratified in Finland by the Parliamentary law and along our interpretation the Articles of the Charter have the power of law in Finland which also the courts and other officials should apply directly. Unfortunately this is not the case in Finland yet. The complaints made by our Association clarify how existing law should be implemented in Finland and by this ways our Association carries out its main goal: to promote social rights in Finland in accordance and spirit of the code.

29. Opposite to what the Government has noted, the code of our Association implicates our association`s representativeness *as national non-governmental organization which has particular competence in the matters governed by the Charter to lodge it with the European Committee of Social Rights*”.

30. Also the qualification of members of our board show particular competence in all social rights, including labour relations. The board is full of experts in social rights as can be seen e.g. from the CV of the chairperson of the Association a Vice Judge, Lis.Jur. and Doctor of Social Sciences, Senior Researcher (Social Insurance Institution) *Yrjö Mattila* (Add 3).

31. Mattila has during his 43 years at work has been 13 years as a full time trade union lawyer handling various labour law cases in general courts and Labour Court and written articles on labour law. The last one was in 2013 concerning EU flexibility rules in relation to collective dismissal protection in various countries. In 2014 Mattila has published a book “Income security” (Toimeentuloturva), which covered extensively Finnish social security system.

32. Also there are many other experts in our board like the vice-chairperson *Eila Sundman* who is a former leading social worker in the largest Central Hospital of Finland. Mrs Sundman has been active within Finnish social workers` union and by this way knows well Finnish labour law acting also as a patient ombudsman.

33. The other member of our board is Jur. doctor *Laura Kalliomaa-Puha*. She is an expert in informal carer`s social rights, which are very near social rights in labour relations. As a well-known expert Laura has been called as a professor of social law to Tampere University where she starts her work on August this year.

34. Other expert in our board is lawyer *Timo Mutalahti* who knows very well labour law and social rights in employment relations. Timo is a former trade union lawyer and is now starting as a HR director in A-Klinikka Foundation (over 800 employees). As a personnel director he has to know keenly labour law and social rights within it.

35. Our secretary *Marjatta Kaurala* is an “Ombudsman for offenders’ in Kriminaalihuollon tukisäätiö (Support Foundation for ex-convicts). She knows well the difficulties and in some cases even discrimination that ex-convicts meet in seeking work. The permanent advisor of the governing body, vice Judge *Marjo Tervo* is a former trade union lawyer and another permanent advisor and association’s science expert Jur. Doctor *Kalevi Ellilä* has been a municipal jurist implementing social rights in labour relations on employer’s side.

36. The membership of our association is open to all who are interested in social rights. A remarkable part of our members are lawyers or social scientists specialized in social rights. Still a specialization to social rights is not a must in our Association. An interest in social right matters is enough to membership regardless of the profession or education.

37. *To sum up:* A particular competence and expertise in labour relations, labour law and social rights exists within our Association. One part of our activities concern social rights in labour relations, which is the topic in this complaint 107/2014. The protection against illegal dismissals is one and quite essential part of social rights. The interest and activities of our Association include also these employment related social rights.

38. Our Association emphasizes that *the concept of social rights* should not be reduced to a so narrow space that only labour market partners would be entitled to make complaints of the Article 24 in the Charter (Revised). Our view is that the employment related social rights like protection against illegal dismissals are one and essential part of this concept and it should not be separated from other social rights covered in the Charter (Revised). We see that our association as a neutral institution has an opportunity to assess the social rights within labour relations without taking part from our position. Due to that we are the right organisation to make complaints also in dismissal protection matters.

39. If the right to make complaints in dismissal protection is denied from our Association we cannot see which other association in Finland could be more “recognized particularity of expertise” in these matters outside trade unions or employers’ associations. Labour market players are not making complaints, because they have been involved in the preparations of Labour Law in tripartite committees/working groups- The preparation of Employment Contracts Act (55/2001) has also been carried out this way

40. as a conclusion: The admissibility of our Association is clear in this complaint 107/2014.

II Relation of the present complaint

The submission of the Government

41. The Government notes that according to Article 4 of the Additional Protocol providing for a System of Collective Complaints, a complaint must relate to a provision of the Revised Charter accepted by the Contracting Party concerned and indicate in what respect the latter has not ensured the satisfactory application of this provision.

42. The Government observes that the applicant association alleges that the situation in Finland in respect to the right to protection in cases of termination of employment is not in conformity with Article 24 of the Charter.

43. In this respect, the Government notes that the claim of the applicant association fulfils the requirement set out in Article of the Additional Protocol.

Comments of our association

44. Our association agrees with the submission of the Government

III. MERITS

The submission of the Government

45. The Government observes that the heart of the complaint of the applicant association rests on its allegation that Finland allows for dismissals and redundancies that are in violation of Article 24 of the Charter (Revised) on the basis that the numerous unreferenced and unsubstantiated practices referred to by the applicant association do not constitute valid reasons for dismissal.

46. Therefore, due to this and abstract nature of the complaint of the applicant association the Government will in response outline in detail the relevant provisions of domestic law in order to show that as opposed to the allegation presented by the applicant association both in cases of individual and collective dismissals the position of employees is safeguard as required by the European Social Charter.

47. Chapter 7 of the Employment Contracts Act (55/2011) contains provisions on the grounds for dismissal for financial and production-related reasons. Chapter 7, Section 3 on the Act stipulates the following:

The employer may terminate the employment contract if the work to be offered has diminished substantially and permanently for financial or production-related reasons or for reasons arising from reorganization of the employer's operations. The employment contract shall not be terminated however, if the employee can be placed in or trained for other duties as provided in Section 4.

At least the following shall not constitute grounds for termination:

- 1) either before termination or thereafter the employer has employed a new employee for similar duties even though the employer's operating conditions have not changed during the equivalent period; or*
- 2) No actual reduction of work has taken place as a result of work reorganization.*

48. Chapter 7, Section 4 of the Act stipulates as follows:

Employees shall primarily be offered work that is equivalent to that defined in the employment contract. If no such work is available, they shall be offered other work equivalent to their training, professional skill or experience.

The employer shall provide employees with training required by new work duties that can be deemed feasible and reasonable from the point of view of both contracting parties.

If an employer which in fact exercises control in personnel matters in another enterprise or corporate body on the basis of ownership, agreement or some other arrangement cannot offer an employee work as referred to in subsection 1, it must find out if it is possible to meet the employer's obligation to provide work and training by offering the employee work in other enterprises or corporate bodies under its control.

49. When these sections are read together with Section 1 of Chapter 7 of the Employment Contracts Act, it is evident that the regulation of the grounds for collective dismissals consists of in the aggregate:

- 1) The general provision requiring that the reason for dismissal must be proper and weighty;
- 2) the general provision that the offered work must have diminished *substantially* and permanently for reasons referred to in Chapter 7, Section 3 (1) of the Act; and
- 3) The provision that the employer must offer other work to the employee *and* provide the employee with any training that the offered new work duties may require.

50. According to the *general provision* in Chapter 7, Section 1, the employer must not terminate an employment contract “*without proper and weighty reason*”. Any grounds for dismissal for financial and production-related reasons, too, must fulfil the requirements under the general provision, although such grounds are not to be considered from the perspective of reasonableness.

51. The most essential factors to be taken into account in the overall consideration are the degree of the diminution of work, the duration of the employment, relationship and the real opportunities of the employer (the enterprise, or the enterprise having control in a group) to offer the employee other work and to provide him or her with any training that the offered new work duties may require.

52. The Employment Contracts Act requires that the work must have diminished in the manner referred to in Chapter 7, Section 3 of the Act, *for financial or production related reasons or reasons arising from reorganization of the employer's operations.*

53. The reasons may arise from external factors e.g., declined demand, outdated products of the enterprise, or stepped-up competition, but also from the employer's measures, such as redirecting the business operations.

54. The provisions on grounds for dismissal and production-related reasons do not restrict the employer's right to wind up, cut down or expand its business operations. A managerial solution or decision e.g. a decision to outsource some operations, to start subcontracting or to use leased manpower, may constitute a ground to dismissal for financial and production-related reasons.

55. A decision to start leasing manpower does not automatically prove a lack of grounds for collective dismissal. This is the case when circumstances permit the conclusion that leased manpower is not used for the purpose of circumventing the protection of the employer's own employees against dismissal (judgement of the Labor Court, 2007:13). Collective dismissal must not even partly be based on the employee's person or behavior.

56. According to Chapter 7, Section 3 (1) of the Employment Contracts Act, a dismissal is lawful if the work offered under the employee's employment contract has diminished. However, the work may have diminished for multiple direct causes: the work may really have run out because of reduced orders or unprofitability, or it may have been divided between other employees (for financial reasons). Moreover, the opportunities to offer work may have weakened. This means that the employer, on grounds of the overall business performance showing a loss, may be entitled to dismiss some employees even if their work has not diminished.

57. According to the Employment Contracts Act, the preconditions for dismissal are fulfilled if the employee's work has diminished both substantially and permanently at the same time. If the work has diminished only substantially but not permanently, the employer is entitled to lay off the employee on the conditions stipulated in Chapter 5, Section 2 (1) of the Act. If the work has diminished only permanently but not substantially, the employer must equally take measures alternative to dismissal. Primarily, the employer must examine whether it could offer the employee some other suitable work in addition to the diminished work, and if this is possible, offer him or her other work.

58. In the Employment Contracts Act and the related case-law, the connection between the substantial and the permanent diminution of the work has meant that the longer the scarcity of work can be expected to continue, the more justifiable is to consider the scarcity of work substantial, and *vice versa*. In each employment relationship the length of the period of notice to be observed by the employer influences the overall consideration of the matter.

59. Even if the employee's work diminishes or has diminished substantially and permanently, the employer must not terminate the employment contract, if the employee can be placed in or trained for other tasks. The obligation of the employer to offer the employee other work instead of dismissing him or her remains unchanged throughout the validity of the employment relationship.

60. The Employment Contracts Act does not limit the territorial scope of the employer's obligation to offer work. The employer's departmental borders or other organizational borders do not reduce the obligation to offer work. The obligation usually also extends to any possible units that the employer may have elsewhere in Finland, if suitable work is available there. However, Chapter 13, Section 7 of the Act stipulates that national employer and employee associations are entitled to reduce, by collective agreements, the territorial scope of the obligation to offer work.

61. The obligation to offer work under the Employment Contracts Act applies both to permanent relocation and to offers of temporary work, the obligation to offer work continues and the purpose is that the employee should be placed permanently in tasks corresponding to his or her employment relationship, unless the employer and the employee agree mutually about other work.

62. According to the Employment Contracts Act the employer must, if possible, offer the employee primarily equivalent work in accordance with the employment contract. Chapter 7, Section 4(1) of the Act stipulates that if the employer cannot offer such work, it must offer other equivalent to the one under the contract, i.e. work that somehow resembles the work under the contract. If no such work is available, either, the employer must examine whether the employee could be offered some other work equivalent to his or her training, professional skill or experience. I.e. work which the employee has not performed for the employer earlier but which employee could manage on the basis of his or her training, professional skill or experience after a reasonable training period or after the training referred to in Chapter 7, Section 4(2) of the Employment Contracts Act.

63. On the basis of Chapter 9, Section 3(1) of the Employment Contracts Act the employer must, at its own initiative, examine the availability of work that could be offered to an employee at risk of dismissal, and the employee's capacity to manage this work.

64. The obligation of the employer to offer other work may, depending on the case, require that the employer rearranges or redistributes work duties, makes internal transfers or takes other measures in order to arrange work for an employee at risk of dismissal, to the extent this is possible, taking account of the employer's other employees. On the other hand, the employer is not required to make any arrangements that differ essentially from its ordinary operations.

65. The remuneration for the offered new work or the other related terms of employment need not correspond to those of the earlier work under the employment contract, but are determined on the basis of the offered work. The employer cannot fulfil its obligation under Chapter 7, Section 4(1) of the Employment Contracts Act by making an offer that is inappropriate from the perspective of the employee's education and training, skills or experience or the terms of employment.

66. The obligation of the employer to offer other work is part of the protection of employees against dismissal. The obligation of the employer to re-employ a dismissed employee, laid down in Chapter 6, Section 6 of the Employment Contracts Act, is secondary in relation to the obligation to offer other work: when it comes to access to other available work, an employee who has an employment relationship always has precedence over the employees referred to in Chapter 6, Section 6.

67. If the employer, instead of dismissing an employee, can offer him or her work other than the one under the employment contract, but if the employee would not be able to perform the work after a customary introduction to it, as usually arranged at the beginning of a new employment relationship, the employer must provide the employee with training required by the new work duties. The training must be appropriate and reasonable from the perspective of both parties to the employment contract. The obligation to provide training encompasses vocational updating, further training and retraining. The employer's obligation to provide training may arise only if the

employee has the necessary basic vocational skills or basic capacities, including the basic education and training necessary for the new work.

68. The training arranged by the employer must be 1) customary considering the nature of the branch in question, 2) customary considering the employer's financial and operational opportunities, 3) customary considering the size of the workplace (the employer), 4) necessary for the work and suitable for the employer's needs, 5) feasible to the employer, and 6) suitable for the employee considering his or her vocational skills, earlier experience and suitability for the work.

69. The provisions of the Employment Contracts Act on the obligation to offer work, together with the provisions on the obligation to provide training, require the employer to take some kind of preventive measures to avoid lay-offs or dismissals by training employees, e.g. to use new working methods, machines and devices.

70. Chapter 7, Section 3(2) of the Employment Contracts Act concretizes the existence or lack of grounds for collective dismissal by two examples: No ground for dismissal for financial or production-related reasons exists at least when either before termination or thereafter the employer has employed a new employee for similar duties even though the employer's operating conditions have not changed during the equivalent period. The main purpose of the provision is to prevent attempts by the employer to disguise reasons for dismissal related to the employee's person behind financial or production-related reasons.

71. The financial and production-related reasons referred to in Chapter 7, Sections 3 and 4 of the Employment Contracts Act do not exist, either, if no actual reduction of work has taken place as a result work reorganization (Chapter 7, Section 3, sub-section 2(2)). The provision refers to changes that work reorganization has caused in the quantity or type of the employee's work under the employment contract.

72. These changes may result from changes in courses of work or operation and acquisitions of machines, devices etc. which do not as such reduce the amount of work but change the competence requirements concerning the employee, e.g. , so that the person no longer manages the changed task or courses of work.

73. In such cases the out-datedness of the employee's skills does not in itself entitle the employer to dismiss the employee, if it is possible, on the basis of the employee's existing skills and learning capacity, to retrain the employee for the changed work. In such situations the employer may be obliged to take the above-mentioned preventive measures to ensure the continuity of the employment relationship.

74. Chapter 7, Section 4 of the Employment Contracts Act also contains a provision on the obligation of employers to offer work in a group of enterprises. If an employer which in fact exercises control in personnel matters in another enterprise or corporate body on the basis of ownership, agreement or some other arrangement cannot offer an employee new work as an alternative to dismissal, the employer must find out if it is possible to meet the obligation to provide

work and training by offering the employee work in other enterprises or corporate bodies under its control.

75. The applicability of the provision requires the exercise of *de facto* control, which may manifest itself as joint personnel administration of the group of enterprises (e.g. joint recruitment, pay administration, (real) work by employees in different enterprises of the group etc.), as well as similar branches and consistent business operations of the enterprises.

76. Chapter 7, Section 4(3) of the Employment Contracts Act refers to a group of two or more enterprises, regardless of their legal form. The group may consist of limited liability companies, cooperatives or different small enterprises. Moreover, an individual entrepreneur may be a member of a group of enterprises.

77. Chapter 9 of the Employment Contracts Act regulates procedures for dismissals. Prior to terminating an employment contract on collective grounds, the employer must at the earliest possible stage explain to the employee to be dismissed the grounds for terminating the employment and the alternatives to the termination, as well as the employment services available from the relevant employment and economic development office. If the termination concerns more than one employee, the explanation may be given to a representative of the employees or, if no such representative has been elected, to the employees jointly.

78. According to the Employment Contracts Act the employer must, without delay, notify the employment and economic development office of all dismissals to be made on collective grounds where at least ten employees are to be dismissed. The notification must specify the number and occupations of work duties of the employees to be dismissed and the dates when their employment relationships will expire.

79. Furthermore, the employer is obligated to inform the employees of their right to an employment plan referred to in the Act on Public Employment and Business Service (916/2012). These measures for so-called change security is intended the re-employment of dismissed employees.

80. In the enterprises falling within the scope of the Act on Co-operation within with Undertakings (334/2007), the provisions of the Act on the duty to negotiate apply instead of the provisions of the Employment Contracts Act.

81. If the employer is considering to serve notice of termination or-lay-off one or more employees or to reduce the employment contract of one or more employees or to reduce the employment contract of one or more employees into a part-time contract, the employer must issue a written proposal for negotiations in order to commence the co-operation negotiations and employment measures at the latest five days before the negotiations begin.

82. The Act on Co-operation within Undertakings also regulates the information to be provided by the employer, and the content and fulfilment of the duty to negotiate.

83. The co-operation negotiations must deal with the grounds for and effects of the measures to reduce labor force, the principles or plans of action, and the different options of limiting the number

of employees affected by the reductions and of alleviating the consequences of the reductions to the employees.

84. If the reductions of the labor force contemplated by the employer concern fewer than ten persons, the employer is considered to have fulfilled the duty to negotiate once 14 days have elapsed since the commencement of the negotiations, unless otherwise provided in the co-operation negotiations. However, the negotiation period is 14 days in an undertaking normally employing at least 20 but fewer than 30 employees in an employment relationship.

85. In disputes over the sufficiency of grounds for dismissal the employer must prove that the dismissal was based on grounds stipulated by law.

86. The Employment Contracts Act stipulates liability for damages as a legal consequence of an employer's terminating an employment contract unlawfully. The legislation on unemployment security ensures financial security to dismissed employees.

Comments of our Association:

87. In the conclusions from the 2008 report of Finland the European Committee of Social Rights found some problems in collective and productive grounded terminations of employment contract. The Committee came back to these issues in its next conclusions 2012. The Committee noted that no changes had taken place since the earlier assessments.

88. The European Committee of Social Rights has also asked the Government of Finland, whether courts have the competence to review the facts underlying a dismissal that is based on financial or production-related grounds invoked by the employer. The Committee had found out that the number of cases concerning these issues were not high in Finland.

89. Our Association views that the question of the Committee is relevant. The small number of cases shows problems in implementing employment protection in collective situations. It is often very complicated to the employee side to fight a court case in dismissals with economic and productive grounds. As an example of these difficulties our association mentions the following Supreme Court decision:

KKO 2013:48: A person A had worked as a responsible leader in a company which was part of a big concern. The board of the concern had decided to reform (renew) the employment contracts of the leaders. Along the concern decision the former company leader A would have been removed to a leadership post on a lower level of the hierarchy. A refused to sign the new contract offered to him. After that he was dismissed with economic and productive grounds. A regarded that the dismissal was illegal and complained in the court claiming that the dismissal was done to circumvent his individual employment protection. He noted in the court that the real reason to the dismissal refusal to sign the new leadership contract which was offered to him.

The decision of the Supreme Court was negative to A. Supreme Court discarded the complaint noting the there had economic and productive grounds enough to the dismissal of A.

90. The case above shows that to complain in dismissals on economic and productive grounds is quite complicated. The full proof of that the employer is circumventing individual employment protection by referring to financial and productive grounds is difficult and in many cases the

complaint is discarded. This may be the main reason why there are not many court cases concerning dismissals on financial and productive reasons.

91. The other example of the difficulties to fight cases in collective dismissals can be taken from Labour Court:

TT 2014-152: The employer had dismissed employee X on the grounds of economic, productive and rearrangement reasons. X had worked in Sales Support –tasks in the firm. As a main reason for dismissal of X the employer informed that Sales Support work had diminished essentially and permanently through structure changes in the company and the content of Sales Support as an assignment had also changed to a more demanding and varied direction.. After rearrangements successful Sales Support required fluent oral English language skills along the employer. The language skills of X were along the employer not good enough to manage the new duties of the Sales Support employee and the employer did not regard proportional to train the employee to these new skills demanded. The employer did not offer X such work tasks in the company which would have responded his earlier tasks and skills. Instead of that the employer offered X work in the warehouse and a new temporary employment contract.

The decision of the Labour Court was negative to X. The court noted that the employer had fulfilled the obligation to offer other job to the employee. The complaint of X of the illegal dismissal was discarded.

This case shows to our mind the weak position of employee when employee dismisses him on economic and productive grounds. It is very difficult to argue if the employer claims that the employee is not capable to do his job any more. The offer which the employer made to X was just temporary work in a warehouse and as X had worked Sales Supporter earlier it was difficult to him to accept this kind of “offer”.

92. Our Association notes that the description of the provisions in Labour Law concerning collective dismissals (para 37 – 67) is correct as such but we do not agree all interpretations that the Government has expressed. The provisions are difficult to implement especially in big concerns and firms in which there are many units both in-country and abroad. On the employee side it is difficult to control and get information in the negotiations of dismissals is there work available elsewhere if the employer does not actively inform of them. It is not always clear if or not the employer has hired employees to the same kind work tasks when workforce is dismissed with collective grounds. Also it is also difficult in big concerns to get knowledge of the ownerships and control powers; In which concern company the power of the employer is so strong the employer is obliged to offer work there when employees are dismissed? Which companies of the concern are not so near that this obligation does not exist. These and many other difficulties are reason that in most cases the employees has to accept the dismissals in collective situations without complaints in the court where there are difficulties to bring proof on the complaining side if the employer side does not cooperate.

93. Only if the violation of the law is quite clear may the complaint in collective dismissal cases be successful in the court. One example is from Labour Court, TT 2015-29 <http://www.edilex.fi/tt>):

A company had dismissed an employee, who had worked in HR –tasks on economic and productive reasons. The task of the employee had not been suspended after the dismissal but the task had gone on at least primarily unchanged and another employee who had worked earlier in the company as a salary computer was transferred to do the job. There had not been such changes in the function conditions of the employer with which could be justified that an employee has been replaced by another. The employer had not grounds enough to dismiss the employee, because the work of the dismissed had not diminished in a way that is said in the Employment Contract Act.

Still it is difficult to complain and often the complaint is discarded as here in Labour Court TT: 2013 – 106 <http://www.edilex.fi/tt>

From the company's unit in Jyväskylä had been dismissed four electricians, as the business had been diminished due to its unprofitableness. Although the work of two electricians had continued, the preconditions to offer work also for them had diminished along the rules in the collective agreement and Employment Contracts Act. The employer had been entitled to organise the work of the two employees and dismiss them on economic and productive reasons. There was disagreement with all four employees about the obligation to offer other work instead if dismissal. The court noted that there was a national wide recruitment system in the company in which the electricians had received a personal recruitment letters from all the open tasks for electricians during their notice time. The court noted that it was enough for that is required of the obligation to offer other work and the complaint was discarded due to that the company had grounds for dismissal.

94. There are also other reasons that prevent employees to complain in collective dismissals. The court process can take many years and the process costs may rise high. If the employees lose the case e.g. due to the difficulties to bring proof of the allegations they are normally obliged to pay the process costs of the employer. This obligation may ruin their economy permanently. In fear of costs most employees do not dare to raise complaint in the court in collective dismissals. They have to take what the employer suggests and in many cases it is the termination of employment contract.

95. The system of collective dismissals is very profitable to employers and unprofitable to the employees. As there is no severance pay system in Finland the dismissal on collective grounds is much used and cheap to the employer. In many companies dismissals are a continuous process. The employees wait termination notice every day when they come to the workplace. Negotiations concerning dismissals are only formalities with no will and aim to reach results on the employer side. As is said in the description of the Government's submission it is a obligation to the employer to negotiate and give information to the employee side before the dismissal notice can be given. In the negotiations the employer has to give information of the reasons to dismissal. Most often these "reasons" are simply to throw employees out to achieve "savings" and increase "competiveness" in throwing employees out. In Finland the most used way to increase profits to the shareholders is to reduce work force. This is due that the employer has no responsibilities towards employees after the notice time has passed it is the same to the employer what happens to the dismissed employee. (except the obligation to call employee back in 9 months if new work force is needed to the same kind of work).

96. Our association notes that in many other Western European countries there are much more obligations to the employer towards their employees. The balance between the interests of employer and employee in collective grounded dismissals are taken account there on the contrary to Finland. And in collective dismissals is taken care by the employer that the dismissed employee does not have to suffer agony. In Finland the Government supports and takes care only the interest of the employer which we regard is a violation of the art. 24 of the Charter (Revised). If the dismissed employee is not a member of unemployment fund (which is volunteer and the member has to pay contributions to fund) he/she gets only the low basic unemployment allowance at first and then labour market subsidy in which the amount does not reach to the decent life (see Merits 88/2014).

97. An example of the legislative difference between Finland and France is the Nokia/Alcatel-Lucentin trade and fusion which came to public in April 2015. As two big companies shall be fused the new company will combine 40 000 employees, of whose 6000 are working in Finland. In the

new situation the employees in Finland are in a much weaker position to keep their jobs compared to their French colleagues due to weak provisions in collective dismissals when instead in France the severance pay exists and its amount depends on the length of the employment relationship. Along the information in the newspaper (Iltalehti 16.4.2015) if the employer in the Alcatel-Lucentin is dismissed the employer has to pay a severance pay to every dismissed person. An example of French system can be mentioned an engineer, who has worked over 15 years in the Alcatel/Lucentin with a salary of 3000 Euros/month. If he is dismissed due to the fusion with economic and productive grounds the employer (new Nokia-Alcatel) is obliged to pay him 48 000 euros as a severance pay and in addition to that the employer has to support his re-employment with a sum responding one year salary. In Finland Nokia employees can be thrown to the street without any money after the notice time has passed. Probably so will happen because along the news the first co-operation negotiations have been started in the Finnish units to throw away employees.

98. The lack of any responsibility of employees affects also to the big multinational concerns, which operate in Finland. When these firms decide to reduce work force Finnish employees are first to leave. The concerns have found out that dismissing employees in Finland is cost-free. One example is a Finnish IT-company "Tieto Oy" which operates multinationally in many countries. The company has 13 720 employees in total of which 4122 works in Finland.

Helsingin Sanomat 6.2.2015: "The chairman of the Engineer Union was enraged of the affluent share-proposal of Tieto". Along the news profit in Tieto is increasing this year (2015). In October-December the profit in the company grew up nearly 6 per cent compared to the end of the year 2013 till 44 million Euros, although the turnover of the company came down slightly till 402,9 million Euros. ----The amount of new orders was in October – December 672 million Euros, which was 121 million Euros more than in the last quarter of the year 2013. The board of Tieto proposes that from the result of last year is paid dividend to share-holders 1,00 Euros/share. In addition to that the board proposes an additional dividend of 0,30 Euros/share to be paid, because the company has a strong cash flow and it is the aim to develop the capital structure of the company.

A proposal of the additional dividend enraged the chairman of the Engineer Union Pertti Porokari. In the middle of January (2015) the company announced that it shall diminish 500 jobs at most in Finland.

"As Tieto has thrown employees out in masses many years it feels obscene (rude)", comments Porokari the dividend proposal.

Helsingin Sanomat 17.3.2015: "IT –service company told on Monday that it estimates to dismiss 435 employees in Finland when the co-operation negotiations have ended".

"The amount sounds still to be too big, I wonder, how we can do the work after these dismissals" say the main shop-steward of Tieto *Esa Koskinen* to *Taloussanomat*.

The company tells that the grounds for dismissals are "a reform of services and know-how".

There has been co-operation negotiation also earlier in the company. Last year in August the company told that it diminishes 160 employees in Finland.

Comment of our association: The behaviour of Tieto Oy shows that a cost-free dismissal possibility is used also in Finnish multinationally operating companies. Finnish engineers are thrown out without mercy so that there is a possibility to share extra-dividends to share-holders. Our association sees that this kind of treatment towards own employees is not allowed along the Charter. The company is very affluent and still dismiss masses of employees. The dismissals in Tieto Oy also show that the collective dismissal protection is non-existent in Finland.

99. One important background to the difficult and partly even helpless position of employees in Finland is in the Finnish corporate law: the Finnish Incorporation Act (Osakeyhtiölaki 21.7.2006/624 <http://www.edilex.fi/lainsaadanto/20060624>). In that Act section 1 § 5 is ruled that *the meaning of the company is to produce profit to shareholders, if there are not said otherwise in the corporate charter*. As the companies have only one, to produce profit to the shareholders the interests of the employees who try to get on with the salary they receive from work, has no role. If dismissals bring profit to shareholders it is done without thinking other ways to make profit. By this law the state suggests to pass the interests of the employees and take account only the interests of the shareholders. Reducing work force may increase profit to the shareholders even if enterprise produces profit without dismissals. The interest of employees to keep their jobs and earn their income by working has been passed totally in the corporate law.

100. The effects of the Incorporation Law can be seen everywhere in the Finnish work environment. The employees are kicked-off “en masse” if these dismissals promise to bring profits to the shareholders. One good example are the main banks in Finland, Nordea and Op. Both banks have reached billions of euros profit in recent years but at the same time they have kicked-off and still kicking hundreds of employees with the aim to “*achieve savings and increase effectiveness*”. The reason for these actions is clear: As employment is reduced the profits may be still higher than before. Here is some information from newspapers from this year about the behaviour and actions in Finnish banks:

Taloussanomat 5.2.2015: The result of OP-group before taxes reached in October-December (2014) up till 176 million Euros as it was one year earlier 90 million Euros.

The net interest income of OP grew better up till 269 million Euros from 247 million Euros. The net income from insurance against loss and damage grew 44 per cent and remuneration profits grew 8 per cent.

Taloussanomat 9.2.2015: OP starts co-operation negotiations in its central community concern. In the circle of negotiations is the personnel in the OP co-operative and its subsidiary companies with some deviations.

The co-operation negotiations may result in cutbacks of personnel to 380 employees at most. In the circle of negotiations are 4 352 employees

Helsingin Sanomat 19.2.2015: OP-group which makes record results has diminished over 1000 jobs in 2010's. Work and result do not always go hand-in-hand. With these words one can compress the actions of one of the biggest employers in Helsinki. Finnish economic giant made last year profits before taxes 1,1 billion Euros. In spite of that the enterprise starts co-operation negotiations in which the aim is to reduce 380 jobs. The door has opened also in other units of OP in Helsinki. The amount of personnel has diminished by one 1000 in 2010's.

Taloussanomat 9.4.2015: The business result of Nordea grew up till 1 408 million in January-March (2015). -----One year earlier the result was 1 106 million Euros.

101. The banks are only one example of enterprise strategy in Finland and throwing employees to the street in many enterprises in Finland due to that kicking off employees is “cheap” to the employer. Also in other business areas one can find examples where more profits are aspired by throwing employees out. Outsourcing is one of those methods, own employees out and work is delivered out with subcontracting. One good example of these methods is state-owned Finnish Post,

which has made huge profits as Internet-shopping and due to that the delivery of packets has increased remarkably. This, however is not enough to the leadership of the Post institution.. They want more profits by throwing own personnel out and outsourcing and subcontracting customer services. Here is some information from Finnish newspapers about the behavior state owned undertaking towards its own personnel:

Along the news (Taloussanommat 24.4.2015) Finnish Post is dismissing hundreds of employees. The reason for diminishing personnel is to widen the service net with partners. The Post is starting co-operation negotiations with the personnel of its own stores. On the circle of negotiations there are 477 employees, the Post informs. A preliminary assessment is that the need for diminishing is 380 employees at most. The timetable for diminishing are the years 2015-2018. The reason to diminish own personnel is the plan of Post to change the course of action. Post is planning to widen the service net with a hundred new service points.

The comment of our association: The Post is throwing out hundreds of own personnel at the same time as it is widening it services. This kind of arbitrary and arrogant behavior towards own faithful personnel is possible only in Finland due to the non-existent collective employment protection. The enterprises which make huge profits like Finnish Post can dismiss own personnel “cost-free” and by this way receive even more profits. Many of those employees which has to leave Post now will be in the bread line to fetch food because as they have to live in the dependence of labour market subsidy the income is too small to decent living (See Merits 88/2014)

102. The other example outside banking world can be found from retail commerce . SOK is a giant co-operation acting mainly in retail-, hotel- and restaurant area with hundreds of service points in Finland and outboard. SOK has diminished jobs enormously. In 2013 the co-operative started co-operation negotiations though the result of the undertaking was superb. Still 270 employees had to go as the co-operative was “achieving 50 million Euros savings”. A good way to get even more profits is to throw own personnel out. In this case the dismissals concerned really small income employees in shops. Probably many of those dismissed are standing now in the bread queue fetching food for themselves due to the low labour market subsidy (See Merits 88/2014).

103. Except Finnish Post the state of Finland is in other areas also eager to throw own personnel out to “increase productivity”. One example is energy company “Kemijoki Oy” in which state owns over 50 per cent of the shares. The company has 20 hydro-electric power plants so that income to the company is certain in all business cycles. Still in 2013 the company decided to save 4 – 6 million Euros and “turn the result to the side plus”. The means to this aim was to outsource two thirds of jobs. Before the turnover the company had 185 own employees and after only 20-30. With throwing out almost all employees the result turned to plus. The reason for defeat in the company was not the salaries of those 185 employees but the debts of the company. It had built many plants and the interest for the debts were high. By losing their jobs the employees in the state owned company had to “offer themselves” so that this plant giant could pay its debts. In 2015 Kemijoki Oy makes huge profits at the same time as many of those who lost their jobs are unemployed. In northern Finland the unemployment situation is exceptionally bad.

Comment of our association: The behavior of state-owned Kemijoki Oy shows that outsourcing is carried out without taking care of the welfare of the employees even within state-owned companies. A good way to debt problem was to throw own personnel out and outsource. The debt problem was quite small and there would have been other ways than offer own employees. Because in Finland employers can throw out people cost-free even state-owned company behaves very unmercifully towards employees. As “profit to the shareholders” is the aim of Incorporation written in the law and no other values exist in the enterprises, all companies including state-owned pass the interest of the employees. Employees are thrown out without thinking what happens to them as unemployment is record high in Finland.

104. Along the law work must have diminished for financial or production related reasons or reasons arising from reorganization of the employer’s operations. The reasons may arise from external factors e.g., declined demand, outdated products of the enterprise, or stepped-up competition, *but also from the employer’s measures, such as redirecting the business operations.*

This last paragraph is much used when enterprises want to dismiss employees in order to increase profits. As the Government notes in the submission (para 44) “ The reasons may arise from external factors e.g., declined demand, outdated products of the enterprise, or stepped-up competition, *but also from the employer’s measures, such as redirecting the business operations*”. And (para 45): “*The provisions on grounds for dismissal and production-related reasons do not restrict the employer’s right to wind up, cut down or expand its business operations. A managerial solution or decision e.g. a decision to outsource some operations, to start subcontracting or to use leased manpower, may constitute a ground to dismissal for financial and production-related reasons.*”

105. In a word: The law gives many options to the employer when is planned to dismiss employees in order to increase profits. The Employment Contracts Act has similar values as the Incorporation Act. The Board of the enterprise may decide in a general way “to cut costs and increase effectiveness dismissing e.g. 100 employees by referring to the above mentioned provisions in the Employment Contracts Act. After the decision in the board of the enterprise “to reduce work force and increase productivity” there are beginning collaboration negotiations with the representatives of the employees. Those negotiations are however just a play to complete formalities set in the law. They are not serious negotiations because the decision of the board has to be completed. The dismissals will be done and the protests from the employee side are not taken account. A valid ground is always that *the dismissals are part of the employer’s measures to redirect the business operations.*

106. Our association admits that sometimes the collaboration negotiations result to a smaller amount of dismissals than what is decided in the board, but only rarely. In normal cases the collaboration negotiations are organized just in order to fulfil the time limits and obligations set up in the Act of Collaboration Proceedings (see Laki yhteistoiminnasta yrityksissä 30.3.2007/334, <http://www.edilex.fi/lainsaadanto/20070334>) (see § 34 – 40 and 45 – 51) The employer has to obey the time limits for negotiations along the Act of Collaboration Proceedings otherwise there is a threat of fine and compensation to the dismissed employees.

107. In making decisions to reduce work force the boards do not know at all if the work of the individual employee has diminished or not. In many cases the lower level in hierarchy has to “invent” legal grounds to the dismissals which have been decided beforehand in the board. The right to dismiss with collective grounds is implicated very positively in the law from the employer view: “*The employer may discharge the employer if the work available is through rearrangements of the employer’s activities decreased essentially and permanently.*” This paragraph gives many options to invent “rearrangements”. It is very difficult to the employee in complaining dismissal to bring proof in the court *that rearrangements have not been real.* The work especially in big firm can be made in different ways. After the employees have gone there may be not many in the work place to see what is happening after dismissals.

108. One option to find legal grounds to dismissals to transfer the work to those employees who are staying in the work place after dismissals. As it is the right of employer to lead and divide the work this “transaction” is quite legal. After the transfer the work formerly done by two employees shall

be done by one and the other is dismissed. After 9 months the employer is free to recruit new employees if they are needed.

109. As our association has said earlier due to the loose legislation in collective dismissals many employees have a constant fear of new collaboration proceedings. Most often the beginning of these proceedings mean mass dismissals in the near future and in some work places these proceedings are a constant continuing process. After one collaboration proceeding process has ended and the employees chosen to be dismissed have left the next collaboration proceeding begins with new dismissals. The legislation of Finland allows this kind of treatment of Finnish employees.

110. Our association has the opinion that the praxis in Finland which allows employers to reduce work force without economic compulsion just to increase profits is not in conformity with the art. 24 of the Charter (Revised) and dismissals without severe economic compulsion in the undertaking forms a violation of art. 24 in the Charter (Revised).

111. We are convinced that the Charter presumes that a legal ground for dismissal for financial and production-related reasons presume a severe economic compulsion to diminish work force. Also the Charter presumes that the grounds to dismiss on economic and productive are obliged to clarify deeply and comprehensively to the representatives of the employees by the employer in collaboration proceedings.

112. If these circumstances are not to be fulfilled in dismissals with financial and production-related reasons there exists a violation of art. 24 of the Charter (Revised). Finland in allowing collective dismissals arbitrarily is violating art. 24 of the Charter (Revised).

113. Our association also disagrees with the Government's submission on the notion that a managerial decision to

- outsource some operations,
- to start subcontracting or
- to use leased manpower

may constitute a ground to dismissal for financial and production-related reason.

114. Outsourcing and sub-contracting and dismissing own employees due to those operations are regarded legal along Finnish jurisdiction. The employer has legal ground to dismissals when outsourcing or sub-contracting. However our association views that outsourcing or sub-contracting entitle dismissing own employees along the art. 24 in the Charter only if there is a real economical compulsion by the employer to outsource or subcontract and dismiss own personnel.

115. If outsourcing is done and the own permanent employees are dismissed due to the that and there exists no economic compulsion in the enterprise outsource there exists a violation of art. 24 of the Charter (Revised). Dismissal due to the outsourcing without severe economic compulsion constitutes a violation of art. 24 in the Charter (Revised). In our opinion The Charter (Revised) presumes there must be a severe economic compulsion in the enterprise to outsource and diminish

own employment force due to it. Finland is allowing outsourcing without economic compulsion and dismissals of own employees due to the outsourcing Finland is violating art. 24. in the Charter (Revised)

116. Our association sees that the situation is the same concerning subcontracting. If subcontracting is made without economic compulsion in the undertaking and the own permanent employees are dismissed we see that there is a violation of art. 24 of the Charter (Revised). As Finnish jurisprudence allows dismissals of own employees in the context of subcontracting Finland is violating art. 24 in the Charter (Revised). The Charter (Revised) presumes there must be a severe economic compulsion in the enterprise to subcontract and diminish own employment force.

117. Also our association has the opinion that leasing work force in the undertaking were collective dismissals have been made is a violation of Art. 24 in the Charter (Revised). The collective dismissal cannot have *a proper and substantial reason* if after collective dismissals hired work force comes to do the same job as the dismissed employees.

118. In Finland the interpretation of law concerning hired work force after dismissals is not clear. In the Labour Court (TT) decision 2007-103 (See Add: Työtuomioistuimen tuomio Nro 103, Diaarinumero R21/07, Antopäivä A: 5.11.2007, <http://www.edilex.fi/tt>) the hired work force has been approved with some hesitation

119. There is also another Labour Court decision on hired work, TT 2014-185: (<http://www.edilex.fi/tt>)

In the technology company had the work of the bookkeeper due to economic and productive reasons diminished essentially and permanently. The company could not offer the bookkeeper other work during the time of dismissal. The fact that the company had after the employment contract of the bookkeeper used hired employee to do other tasks in the financial administration of the company did not prove lack of ground for dismissal of the bookkeeper. The company had had economic and productive reasons due to the reorganization of actions to the dismissal of the bookkeeper. Other non-objective reasons to the dismissal of the bookkeeper had not been proven.

Comment of our Association: It seems that hired work after dismissal is allowed to some extent, but the constraints and borders to do so are still unclear. The opinion of our association is that after dismissals hired work is not allowed along the art. 24 in the Charter (Revised).

120. Our association has the opinion that along the art. 24 in the Charter (Revised) using leased manpower to do the work of the dismissed employees is clearly a violation of art. 24 of the Charter (Revised). As Finland is allowing enterprises to use lease after dismissals to do the work of the dismissed (though with some constraints) Finland is violating art. 24. of the Charter (Revised)

121. As far as we know the Committee has not interpreted art. 24 in the collective dismissals this far (*“based on the operational requirements of the undertaking, establishment or service”*). The Committee has not specified yet whether economic reasons within the meaning of Article 24 must be limited to situations where firms are in difficulty or whether they can include other business strategies. Some remarks may have been made in earlier conclusions but this basic question which is crucial in Finland (see above) has not been solved.

122. Along the submission of the Government (para 77) the Employment Contracts Act stipulates liability for damages as a legal consequence of an employer's terminating an employment contract unlawfully. The legislation on unemployment security ensures financial security to dismissed employees.

123. Our Association disagrees the Government submission. We refer to our responses in Complaint 106/2012 and note that the Employment Contracts Act does not sufficiently stipulate liability for damages as a legal consequence of an employer's terminating an employment contract unlawfully. We refer to Merits 88/2014 and note that the legislation on unemployment security does not ensure financial security to dismissed employees especially because basic unemployment allowance and labor market subsidy has been noted insufficient in Merits 88/2014,

Cordially and with high respect

**Suomen sosiaalioikeudellinen seura ry.
- Socialrättsliga sällskapet i Finland r.f.**



Finnish Society of Social Rights

<http://ssos.nettisivu.org/>

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