



European
Social
Charter

Charte
sociale
européenne

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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

22 May 2014

Case Document No. 1

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

COMPLAINT

Registered at the Secretariat on 30 April 2014

14.04.2014

Finnish Society of Social Rights sends you respectfully the attached collective complaint due to Finnish legislation that along the opinion of our Association violates the Articles in the European Social Charter.

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

Mr Yrjö Mattila, chairman of the Society

Address: Koukkutie 4,

17200 Vääksy

Finland

E-mail: yrjo.mattila@kela.fi

Tel. +358407154166

With best regards

Yrjö Mattila

Chairman, Finnish Society of Social Rights

Helena Harju

Secretary, Finnish Society of Social Rights

Collective complaint I – III due to that Finnish legislation along the opinion of our Association violates the Articles 12 and 24 in the European Social Charter

1. Background to the complaint

The function of the European Committee of Social Rights is to assess the conformity of the situation in States with the European Social Charter and the Revised European Social Charter. The Revised Charter was ratified by Finland on 21 June 2002. The ratification process of the Revised Charter took place in Finland by passing a law in the Parliament concerning the implementing of legal rules of the Revised Charter in Finland (Laki uudistetun Euroopan sosiaalisen peruskirjan lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta 14.6.2002/486, SopS 78, <http://www.edilex.fi/valtiosopimukset/20020080?offset=1&perpage=20&phrase=14.6.2002%2F486&sort=relevance&searchKey=138478>).

In this law is noted that (1 §) *the rules which are in the area of legislation in the Charter (Revised) are in force as a law in Finland as far as Finland has committed itself in them*. Finland has committed itself and taken to be applied as a law amongst others the articles 12, 23 and 24 in the Charter (Revised) and the administrative officials and courts in Finland should apply these rules as a law. Also the interpretation assessments of the Committee should guide the applying of the rules and if the articles of the existing legislation in Finland are contradictory to the articles in the Charter the laws in Finland should be changed to be in harmony with the articles and interpretation guidelines applied and produced by the Committee. Unfortunately this is not the situation in Finland; some of the existing laws are still contradictory to the ratified articles and Committee guidelines. Some of the remarks made by the Committee on the violation of the Charter (Revised) in Finland are implied already some years ago and in spite of that no changes has made in Finland. Due to that our Association is obliged to make this Complaint even though our previous Complaint (88/2012) has not been decided yet in the Committee.

2. The right of the Finnish Society of Social Rights to make a complaint

The name of our association is *Finnish Society of Social Rights (in Finnish and Swedish: Suomen Sosiaalioikeudellinen Seura r.y. - Socialrättsliga Sällskapet i Finland r.f.)*, and it is called “Association” in this complaint. Our association is a bilingual society (Finnish, Swedish) and its home city is Helsinki, Capital of Finland. It has been established and founded 16.3.1999 and has been officially registered the

same year in the Register of Associations in Finland. We include a fresh document from the Register of Associations of our association to this complaint.

The membership of our association is open to all, but still the main part of our affiliates consist of lawyers and social scientists who are specialized or interested in social rights of citizens. The activities of the association are focused on the social rights of citizens. The activities of the association cover both scientific and practical matters including public venues and seminars, discussions, expert statements, scientific articles of the area of social and health matters. Also the right of employees are centrally included within the scope and activities of our association. The rights of the employees in employment contracts including protection of employees against illegal dismissals are one important part of social rights and are naturally also within the interest of our association. The rights of the employees are not constraint within the activities of trade unions because they are normally legal based and the labour protection concerns all salaried employees irrespective if they are organised in trade unions or not. Our association views to be entitled to make these complaints I and II described more specifically later on though they also belong to the area negotiated and contracted within labour market partners. Our association is a Finnish Association centralized in the issues of social rights and labour rights are part of social rights in the society.

With these complaints our association aims to clarify the situation of labour termination protection in Finland. Is it in conformity with the Revised European Social Charter (complaint I and II)? Also our association wants to clarify the economic situation of those dismissed (legally or illegally) employees who have stayed long-term unemployed. Are their economic situations and living conditions in conformity with the Charter (Revised).

In our previous complaint (Complaint 88/2012) the Committee noted that our association is admissible to make complaints to the Committee of Social Rights.

3. Remedies and sanctions in illegal dismissals (Complaint I)

The content of the Article 24

Art. 24 in the Charter (Revised) concerns the right to protection in cases of termination of employment

With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

- a) *the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;*

b) *The right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriated relief.*

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without valid reason shall have the right to appeal to an impartial body.

The Report of Finnish Government

According to the report of Finnish Government, the causal relationship between unjustified termination of employment and the loss incurred by the employee is deemed to have been broken when two years have elapsed from the termination, if not earlier. The Government notes that the amount of compensation is always determined individually based on consideration of all circumstances pertaining to the case.

In Finland the maximum of compensation of illegal dismissal is 24 month's pay, but the Government of Finland notes in the report that in addition to the compensation of a minimum of 3 and maximum of 24 months' pay, the victim may also seek redress under other legislation such as the *Non-Discrimination Act*, the *Act on Equality Between Women and Men* or the *Tort Liability Act*, provided that the special requirements in regard to these Acts are met. Due to that the Government of Finland Finnish implicates *that legislation in Finland does not establish a ceiling for compensation*; it only defines the maximum amount of the time over which the employer is responsible for the damages caused by his/her unjustified actions. It provides a system where the victim has several possibilities of seeking redress and which are not mutually exclusive: an employer may be obliged to pay the employee a sum of 24 months' pay and compensation under the Tort Liability Act (material losses and suffering).

The assessment of the committee

In assessing the report of Finnish Government the committee recalled that compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is compensation for non-pecuniary and non-pecuniary damage must decide within a reasonable time.

The Committee wished to be informed of cases, if any, where the employees have successfully sought compensation under Tort Liability Act in case of unlawful dismissal.

As regards the burden proof, the Committee noted that in disputes over termination of employment, the employer is required to prove that termination is based on a proper and substantial reason.

In conclusions 2012 (Finland, January 2013) The committee noted that the Finnish legislation does not provide for the possibility of reinstatement in case of unlawful dismissal. The committee recalled that Article 24 requires that such a possibility must be guaranteed by legislation. Therefore, the Committee considered that the situation is in contrary with the Charter (Revised).

Already in the earlier conclusions of the Committee was not satisfied with the report of Finland and a non-conformity with the Charter had been noted (Conclusions 2007 Finland, Conclusions 2008, Finland). In the conclusions 2008 the Committee noted that “the situation in Finland is not in conformity with Article 24 of the Revised Charter on the *ground that the compensation for unlawful termination of employment is subject to an upper limit*”. The Committee was unhappy to the situation in Finland in two points: 1. the compensation in unlawful dismissals has been limited to 24 months salary and 2. There exist no rules on reinstatement in the case of unlawful dismissals.

The level of remedies in Finland

Our Association refers to the Constitution of Finland § 18 mom. 2: “*No one is allowed to dismiss from work without a reason based on law*”. We note that in practice this constitutional rule has not much weight or meaning. Finland has no Constitutional Court and the assessing if constitution is obeyed or not is done in political level. In spite of the Constitution unfair and unlawful dismissals are quite general in Finland. Partly it is due to the low remedies and sanctions condemned to the employers in the illegal dismissals, which are not proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. The normal compensation determined by the court is varying 6-12 months’ salary and the employee is obliged to pay 30-50 % tax from compensation. So the real remedy is just a small part compared to the real loss to the employee. The ceiling of 24 months is an absolute limit and usually the courts very seldom condemn such a remedy.

Our association agrees with the opinion of the committee; the compensation for unlawful dismissal is not proportionate to the loss suffered by the victim and it is not sufficiently dissuasive for employers in Finnish system. This is especially true when elderly employees are dismissed illegally. The 6-12 salary is just a slice of damages which the elderly employees suffer in illegal dismissals. E.g. is a female employee who is unlawfully dismissed from the shop receives a compensation of 10 months’ salary, that makes around 15.000 euros. Of that sum she has to pay 5000 Euros as a tax and the real compensation is 10.000 euros which does not last long as Finland is the most expensive country within EU. Still the darkest follow-up of the illegal dismissal is that there exists no possibility to find new job if she is around 50 years. Most probably she has a very long unemployment time ahead before retirement age, around 15 years and as the employer is responsible of her living due to the limit of compensation in Finnish legislation she has to live on a very low labour market subsidy until retirement. In this case the real remedy condemned to her should be the

difference of salary and labour market subsidy in 15 years and also the loss of pension due to that labour market subsidy does not contribute her income-related pension so that also her pension shall be small. Compared to the condemnations due to the limit of remedies in Finnish legislation 10.000 euros as a compensation of illegal dismissal can be regarded almost as a joke.

Has Tort Liability Act, Non-Discrimination Act or the Act on Equality between Women and Men role in illegal dismissals?

The Government of Finland has made a claim in the report that the victim may also seek redress under other legislation than labour such as the *Non-Discrimination Act*, *the Act on Equality Between Women and Men* or the *Tort Liability Act* in the case of illegal dismissal. Our association comments this claim as follows:

1. The possibility to demand compensation of unlawful dismissal along Tort Liability Act is very rare in practice. In illegal dismisses the compensation is demanded as a basis of labour contract breaking. This means that the employer has dismissed the employee against the rules of Labour Contract Law and so the compensation of this contract is condemned along the rules of this law. In the chapter 12 in the Labour Contract Law (<http://www.edilex.fi/lainsaadanto/20010055>) § 2 mom. 1 is ruled very exactly that the sole compensation from illegal dismissals is a salary between 3 – 24 months.

Tort Liability Act (Vahingonkorvauslaki) can be applied if the employer does do some real harm or damage to the employee. This harm or damage is normally not connected to the illegal dismissal and it could happen outside also outside work place. Our association has no knowledge that in illegal dismissal cases the employee would have based the demand on Tort Liability Act. The committee wished to be informed of cases, if any, where the employees have successfully sought compensation under Tort Liability Act in case of unlawful dismissal. Our association is convinced that such cases cannot be found out.

2. The same conclusion concerns the *Non-Discrimination Act* (Yhdenvertaisuuslaki 20.1.2004/21) and *the Act on Equality between Women and Men* (Laki naisten ja miesten tasa-arvosta 8.8.1986/609). These laws have very little connection with illegal dismissals. If these laws are applied in illegal dismissal cases, they are separate cases and in practice very rare. Also the compensations that condemned if these laws are broken are quite low. Along the Non-Discrimination Act (<http://www.edilex.fi/lainsaadanto/20040021>) 9 § those who are guilty to have broken the law (e.g. an employer has discriminated somebody in hiring work force) can be condemned to a fine and in addition may be condemned to pay to the discriminated person some compensation. The

amount of the compensation is assessed along the severity of the violation. Still there is a maximum also in this law; 15 000 euros. In the court praxis the compensations are much smaller.

The compensations are also small in the *Act on Equality Between Women and Men* (<http://www.edilex.fi/lainsaadanto/19860609>). Along 11 § of the law the compensation to the person who has been discriminated due to his/her sex can be decided between 3 240 – 16 210 euros along the features of the case. This violation of equality may take place also in connection with illegal dismissal, but normally the compensation is combined and the total compensation never exceeds the 24 months' payment limit implicated in the Labour Law.

Cases from the Finnish Supreme Court

As a proof to the above mentioned our association refers to the cases from Finland's Supreme Court and especially to the following: KKO: 2010:74, 2010:93, 2013:10 and 2013:11 (<http://www.edilex.fi/kko/ennakkoratkaisut/>).

The case KKO 2010:74 concerned discrimination of a female priest. The discrimination was noted in the court, but follow-up to the guilty decision was merely fines and to the discriminated female priest was not condemned any compensation, though she had been discriminated.

The case KKO 2010:93 concerned equality between sexes in salaries. In this case Supreme Court condemned equal payment to all employees, but it did not condemn any separate compensation to those employees that had been discriminated.

In the cases 2013:10 and 2013:11 the Supreme Court came to the result that no discrimination had taken place.

As a conclusion our association notes that all three acts that the Government of Finland has referred in its reports are irrelevant in assessing the non-conformity with the Charter (Revised).

Elderly employees in illegal dismissals

Why is illegal dismissal so fatal to the elderly employees in Finland? Why is it so harmful that there is a compensation limit in the labour law? The main reason in the view of our association is the current big shortage of jobs in Finland. If an elderly employee has been dismissed illegally he/she may have to live with Labour market subsidy many years before he/she reaches retirement age. An elderly unemployed person very few chances to find a new job. Due to that it is not correct at all to claim that the causality between the illegal lay off and the damage it has caused stops within two years. May be it was so in good economical years but definitely not any more.

The real damage an illegal dismissal may cause to the elderly employee may be huge due to the hopeless unemployment after dismissal. Due to that the maximum limit of compensation in the Finnish labour law is not proportional and clearly in non-conformity with art. 24 in the Charter as the committee has already noted in its conclusions. The low compensations encourage the employers to get rid of elderly employees and insult the principality implicated in art. 24: Compensation must be *both proportionate* to the loss suffered by the victim *and sufficiently dissuasive* for employers. These both preconditions are lacking in Finnish system.

The employer could reduce the damages to the dismissed employee *by reinstating the employee back to work*, but also this element is lacking from Finnish labour law. Due to lack of legislative base reinstatement are highly rare in Finland. This happens however very rarely in Finland. The Law on Labour Contract does not recognize this option. Almost in all illegal dismissals the employee has to be content him/her to the small compensation the courts condemn to them though the dismissal may harm them the rest of their life.

The complaint of our Association (I):

The Committee has already noted in its conclusions to the report of Finland that there exists a violation of Charter (Revised) in two points: The compensation in unlawful dismissals has been limited to 24 months' salary and there exists no rules on reinstatement in the case of unlawful dismissals. In spite of these clear conclusions no changes has happened in Finland. Our association notes that the Government of Finland reacts indifferently to the conclusions of the committee and also to its obligations as a member country of the Council of Europe. This is very annoying and sue to that our association makes a complaint (complaint I):

- a) As in Finland the compensation in unlawful termination of employment is subject to an upper limit and as the committee has made several remarks of this, our association views this serious violation of art. 24 in the Charter (Revised). Finland has ratified art. 24 and it should abolish the limit as soon as possible.
- b) As the Finnish legislation does not provide any possibility to reinstatement in case of unlawful dismissal and as Finland has not done anything to the violation though the committee has made several remarks our Association views that this is also a serious violation of art. 24 in the Charter (Revised).

If Finland goes its indifferent treatment in the matters a) and b) the President of the Council of Europe should do something, because Finland is a full member CE and it has obligations connected with this membership.

Cordially and with high respect

Finnish Society of Social Rights

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

Helsinki 14.04.2014



Yrjö Mattila

Chairman



Helena Harju

Secretary

Adress: Koukkutie 4,

17200 Vääksy

Finland

E-mail: yrjo.mattila@kela.fi

Tel. +358407154166

Additions:

1. Court decisions:

Supreme Court of Finland (KKO: 2010:74, 2010:93, 2013:10 and 2013:11)
(<http://www.edilex.fi/kko/ennakkoratkaisut/>).

Labour Court 2007-103 <http://www.edilex.fi/tt/20070103>

2. Researches of the subject:

”Mitä eläminen maksaa?” How much cost to live?

http://www.kuluttajatutkimuskeskus.fi/files/5461/2010_04_julkaisu_perusturva.pdf

Mitä syöminen maksaa? How much cost to eat?

http://www.kuluttajatutkimuskeskus.fi/files/5462/2010_126_tyoseloste_ruokabudjetti.pdf

”Takaisin perusteisiin” Back to the basics

<https://helda.helsinki.fi/bitstream/handle/10138/42400/Takaisin%20perusteisiin.pdf?sequence=1>

”Huono-osaisten hyvinvointi Suomessa” The welfare of low income citizens in Finland”

https://helda.helsinki.fi/bitstream/handle/10138/40230/Huono-osaisten_hyvinvointi.pdf?sequence=1

"Toimeentuloturvan verkkoa kokemassa” Testing the network social protection (<http://hdl.handle.net/10138/38496>). (Pages 50 -74: *Minna Ylikännö. Työmarkkinatuki riittää, riittää, riittää – ei riittänytkään, in English "Labour Market Subsidy is enough, enough, not enough"*).

3. Legislation of Finland

<http://www.edilex.fi/valtiosopimukset/20020080?offset=1&perpage=20&phrase=14.6.2002%2F486&sort=relevance&searchKey=138478> Laki uudistetun Euroopan sosiaalisen peruskirjan lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta 14.6.2002/486, SopS 78, (Act of Ratification of the European Revised Social Charter concerning legislation area)

<http://www.edilex.fi/lainsaadanto/20060624> . Osakeyhtiölaki 21.7.2006/624
(Act on Incorporated companies)

<http://www.edilex.fi/lainsaadanto/20021290> Työttömyysturvalaki (The law
on unemployment protection)

<http://www.edilex.fi/lainsaadanto/20070334> Laki yhteistoiminnasta
yrityksissä (The law on co-operation in the undertakings)

<http://www.edilex.fi/lainsaadanto/20010055> Työsopimuslaki (Law on
Labour Contract)

<http://www.edilex.fi/lainsaadanto/19740412> Vahingonkorvauslaki (Tort
Liability Act)

<http://www.edilex.fi/lainsaadanto/19860609> Laki naisten ja miesten tasa-
arvosta (Act on Equality Between Women)

<http://www.edilex.fi/lainsaadanto/20040021> Yhdenvertaisuuslaki (Non-
Discrimination Act)

Guides to legislation

Guide to unemployment:

http://www.kela.fi/documents/10180/578772/Unemployment_brochure.pdf/38b7be62-6840-41ef-b7e0-82e1627a351e

Guide to family and housing allowances:

http://www.kela.fi/documents/10180/578772/Home_and_family_brochure.pdf/846580c1-5eba-4e93-b504-ae544013668f