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

03 February 2015

Case Document No. 2

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

**SUBMISSIONS BY THE GOVERNMENT ON ADMISSIBILITY
AND THE MERITS**

Registered at the Secretariat on 5 January 2015



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

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FRANCE

Helsinki, 5 January 2015

Complaint No. 106/2014

FINNISH SOCIETY OF SOCIAL RIGHTS (FSSR) v. FINLAND

Sir,

With reference to your letters of 26 May and 11 August 2014, I have the honour, on behalf of the Government of Finland, to submit the following observations on the admissibility and merits of the aforementioned complaint.

I. ADMISSIBILITY OF THE APPLICATION

I.1 General

1. The present complaint has been lodged by the Finnish Society of Social Rights (*Suomen Sosiaali oikeudellinen Seura r.y. – Socialrättsliga Sällskapet i Finland r.f.*) ("the applicant association").
2. The Government notes that 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 recognises the right of any other representative national non-governmental organisation within its jurisdiction which has particular competence in the matters governed by the Charter,

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to lodge against it complaints with the European Committee of Social Rights.

3. The Government observes that 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 organisations to submit collective complaints on 16 August 1998.

I.2 Admissibility criteria and their application

4. The Government notes that the Committee has in its admissibility decision of 14 May 2013 - concerning the applicant association's complaint no. 88/2012 - assessed its "representativity" as required by Article 2 § 1 of the Protocol. In that decision, having considered the applicant organisation'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.
5. The Government notes, however, that according to Articles 2 § 1 and 3 of the Additional Protocol, national non-government organisations may submit complaints only in respect of those matters in respect of which they have been recognised as having particular competence.
6. With regard to the recognition of particular competence of a non-governmental organisation, your Committee has previously, *e.g.*, examined the statute of an organisation 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 2005, para. 15).

7. In this respect, the Government notes, that 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.

8. Further, the Government also observes that the Committee in its last admissibility decision in relation to the applicant organisation ." (*Finnish Society of Social Rights v. Finland*, Complaint No. 88/2012, decision on Admissibility, 14 May 2013) neglects to attach significance to the question of *recognised* 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 within the meaning of Article 3 of the Protocol as regards the instant complaint." (para. 12). Obviously, this has led 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."

9. The Government submits that such an idea is incorrect and rests on a, at best, questionable legal interpretation of Articles 2 § 1 and 3 of the Additional Protocol.

10. This is because both of these provisions lay emphasis on the recognised particularity of expertise required from the representative national non-governmental organisation. According

to the Explanatory Report to the Additional Protocol, (*Explanatory Report to the 1995 Protocol*) (para. 21), this recognised particularity of expertise in turn needs to be discerned in a similar manner as that of international non-governmental organisations. Such an assessment then requires that that Committee needs to firstly be of the view that applicant non-governmental organisations 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. However, as is stated in the explanatory report in relation to international non-governmental organisations, this fact alone does not relieve the Committee "from the obligation to ascertain that the complaint actually falls within a field in which the INGO concerned has been recognised as being particularly competent."

11. 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 Addition Protocol to undertake an ascertainment of the recognised particular competence of the applicant association on the basis of the information submitted to it. In light of this, observation on the provisions and interpretation of the Additional Protocol, any general statement by the Committee to any organisation providing for a blank-cheque vis-à-vis the admissibility of its complaints is legally impossible and against the objective and purpose of the whole mechanism created by virtue of the Additional Protocol.
12. 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 recognised particular competence of the applicant association in the specialised area of protection in cases, like the present one, concerning the determination of employment.

I.3 Contents of the present complaint

13. 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.
14. 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.
15. In this respect, the Government notes that the claim of the applicant association fulfils the requirement set out in Article 4 of the Additional Protocol.

II. Merits

II.1 On the existence of an upper limit of 24 months' salary as compensation for unlawful dismissal

16. The Government observes that the applicant association has incorrectly cited the 2012 conclusions of the Committee of Social in relation to the question of the existence of an upper limit of 24 months' salary as compensation for unlawful dismissal. Indeed, while the Committee does state that "any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed," the Committee does not find in its conclusion on Article 24 that the situation in

Finland is not in conformity with that Article in relation to this question.

17. This is because while Employment Contracts Act (55/2001) expressly takes a stand on minimum and maximum limits to an employer's liability under that Act, the Employment Contracts Act is not the only piece of domestic legislation that deals with this issue and that needs to be considered when assessing the existence or not of a claimed upper limit of compensation. And it is noteworthy that this arrangement is again accepted by the Committee in its 2012 Conclusions.
18. In this regard the relevant provisions are as follows:
19. If an employment contract has been terminated on discriminatory grounds, compensation under Section 11 of the Act on Equality between Women and Men (609/1986) may be ordered in addition to compensation under Chapter 12, Section 2 of the Employment Contracts Act, if gender has been the ground for the discrimination. The compensation has no ceiling but is subject to a minimum amount.
20. If an unlawful termination of an employment relationship also fulfils the criteria of discrimination defined in the Non-Discrimination Act (21/2004), compensation may be imposed for the discrimination under Section 9 of the Act.
21. Any payment of compensation under both the Act on Equality between Women and Men and the Non-Discrimination Act does not prevent the injured party from claiming compensation for financial loss on the basis of another Act. Thus, compensation payable under both the Act on Equality between Women and Men and the Non-Discrimination Act may be ordered in addition to the compensation payable under Chapter 12, Section 2 of the Employment Contracts Act. The different types of compensation are

intended to make up for the suffering caused by the discrimination. Ordering such compensation does not presume an intentional or negligent act or evidence of the amount of the immaterial damage.

22. If an unlawful termination of an employment relationship is found to fulfil the essential elements of a work discrimination offence under the Criminal Code, damages under the Tort Liability Act may be imposed in criminal proceedings. According to the Tort Liability Act, damages may be ordered for both loss of income and suffering caused by the violation. The Act does not bind the ceiling of the damages to a maximum.

II.2 On the reinstatement of employees

23. As regards the issue concerning the reinstatement of unlawfully dismissed employees, the Government concedes that the applicant association is correct in stating that the Employment Contracts Act does not provide for such a practice. The Government, however, disagrees with both the applicant association as well as the 2012 Conclusion of your Committee that such a situation constitutes a violation of Article 24 of the Charter.

24. The Government's submission rests on the fact that while the old Employment Contracts Act did contain a provision on so-called alternative compensation applicable in reinstatement cases, it never worked in practice. No reinstatements were made under the provisions, because of the special nature of employment relationships. If an employer considers that no prerequisites exist for continuing an employment relationship and therefore decides to terminate it, no such prerequisites usually exist after legal proceedings, either. An agreement about reinstatement is, of course, possible. In such cases the parties agree about the procedure and conditions of reinstatement.

25. In the Finnish labour legislation, for its part, the intention has been to facilitate the re-employment of employees. The change security model based on the Employment Contracts Act was introduced in order to make transfers from one work to another as flexible as possible in connection with dismissals for financial or production-related reasons. Thus, the purpose of the change security measures connected with dismissals is to speed up and facilitate the re-employment of the dismissed employees. The model includes paid leave for dismissed employees for searching new jobs, intensive provision of information by the employer, the preparation of an action plan jointly with the employees to promote employment, and an employment plan prepared by the relevant employment and economic development office. Other change security services provided by the employment and economy administration include information and guidance meetings and special groups for new job seekers, web-based job search services, personal job search services, labour market training and specific projects in the context of mass dismissals.

26. Moreover, Chapter 6, Section 6 of the Employment Contracts Act stipulates on the re-employment of dismissed employees. The said section stipulates that if an employee is given notice for financial or production-related reasons and the employer needs employees within nine months of termination of the employment relationship for the same or similar work as the dismissed employee had been performing, the employer must offer work to this former employee if the employee continues to seek work via an employment and economic development office. The obligation of the employer to offer work safeguards the position of dismissed employees in situations where the former employer needs employees again. The employment relationship concluded on the basis of the re-employment obligation is a new relationship and thus does not amount to a reinstatement of the employee.

27. Finally, the unemployment security scheme, based on collective funding, safeguards the financial position of dismissed and unemployed employees. The scheme replaces the severance pay scheme applied by some other states.

III. CONCLUSION

28. Referring to the aforementioned observations on the admissibility of the complaint, the Government notes that in relation to the representativity of the applicant association as well as the formal requirements listed under Article 4 of the Additional Protocol there exists nothing to object to in the present complaint.

29. But the Government has serious doubts as to whether the applicant association meets the threshold of recognised particular competence required by the Additional Protocol, as outlined above. The Government is of the strong view that the Committee must undertake an assessment of the recognised particular competence of the applicant association in relation to the right to protection in cases of termination of employment, which forms the subject matter of the present complaint.

30. In respect to this assessment, and on the basis of the information provided by the applicant association in its complaint file, as well as on its website, the present applicant association does not have that recognised particular competence.

31. In respect of the merits of the complaint the Government notes that when in the present case the situation of the relevant Finnish domestic legislation is assessed holistically and comprehensively with the Charter, the only available conclusion is that the relevant provisions in aggregate do fulfil the obligations set by Article 24 of the Charter.

32. Therefore, there is no violation of the Charter in the present case.

Accept, Sir, the assurance of my highest consideration.

A handwritten signature in black ink, consisting of a stylized initial 'A' followed by a horizontal line.

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