



European  
Social  
Charter

Charte  
sociale  
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COUNCIL OF 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. 107/2014

## **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**

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**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.] Problems with dismissals based on financial or production-related grounds (Complaint II)**

#### **Views of the Committee**

In 2012 The European Committee of Social Rights produced conclusions to Finland about dismissals with financial or production-related grounds. The Committee noted that no changes had taken place compared to the earlier assessments of the Committee. Already in 2008 the Committee had noted problems in Finland in collective based dismissals and in 2012 the Committee referred to the previous conclusion. Previously the committee had asked Government of Finland, whether courts had 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 noted that the number of cases of this kind were not high in Finland.

### **Views of our Association**

The question of the committee raise is very relevant to the mind of our association. The rules of labour law in this matter are rather general and difficult to apply in concrete cases partly also due to the changing structures of enterprises. Most dismissals are based on collective grounds and there exists no legal-based severance payment. Reducing work force is very cheap to the employer compared to the situation in most European countries. The employer has to obey the notice time (1-6 months depending on the length of the employment) stabilized in law or collective agreements in dismissing employees with economic or productive grounds by the doesn't have to worry what happens to the employee after the employment has ended. As a follow-up to this easiness and as the dismissal does not bring any extra costs to the employer especially globally acting multinational companies (including Finnish origin) have regarded the legislation of Finland favourable to them and direct close-offs of production units often to Finland. When the global big concerns want to "*increase savings and effectiveness*" in spite of good profits the unit produces the diminishing of the work force take place very often in Finland.

### **The values in Finnish Incorporation Act**

The other reason to massive lay-offs in Finland in spite of good profits is the Finnish corporation legislation. In Finland the firms have no responsibilities towards society or even towards its own employees. Along Finnish Incorporation Act the Incorporation has only one task; *to produce profit to shareholders* (Osakeyhtiölaki 624/2006 section 1 § 5, <http://www.edilex.fi/lainsaadanto/20060624>). To maximize profit is the only aim and the views of society or interests of employees do not matter when the firm aims to produce profit to its shareholders. Especially in the treatment of workers this single value of enterprises comes up very clearly. Employees are valuable only if they contribute profits, otherwise they are laid-off mercilessly. It is normal in Finland that if it's profitable and produces "savings" and by this way increases profits, employees are dismissed "en masse" though the assets the firm are excellent and there is not a slightest economic reason to kick-off employees. As the only value is to maximise sized profits the fate of the dismissed employees does not annoy the decision makers in concerns and firms. The aim of the firm as is implicated in the Finland's Incorporation Act is fulfilled in trying to maximize profits with merciless ways and the hundreds or sometimes thousands dismissed employees and their families who lose their jobs as the employer is fulfilling this value "always can go to social office" in the minds of corporation leaders. Finland's corporation legislation is an example of neoliberal economic ideology which sets priority exclusively to "market values" and the enterprises within society and as bread giver to the citizens in the role of employer is totally overridden.

### **What labour law says?**

In the Law on Labour Contract (Työsopimuslaki 26.1.2001/55, (<http://www.edilex.fi/lainsaadanto/20010055>)) here exists rules about dismissals with economical and productive reasons in the chapter 7 § 3 – 4. Along these paragraphs the employer *may discharge* the employer if the work available is due economical or productive reasons or *through rearrangements* of the employer's activities decreased essentially and permanently. The employer is however not allowed to dismiss an employee if he/she can be replaced or can be trained to other assignments in which the employer can offer work. Separately is implicated that dismissing an employee is not allowed if the employer has before the dismissal taken a new employee to the same kind of work in the case that the operational preconditions of the employer have not changed or in the case that the reorganisation of the work has not caused a real decrease in the work the employee done by the employee. It has to be pointed out that when the preconditions in the law are fulfilled the employer can dismiss an employee though there are no economic reasons to reduce work force and the company produces good profit. Our association is not convinced that this kind of right to dismiss in Finland without any real economic reason to throw employees out is in conformity with the art. 24 of the Charter (Revised).

### **The application is complicated**

The application of the rules in law in economical and productive dismissals is difficult in practice especially in big concerns and firms. As was said above the employer in Finland has no economic responsibilities towards dismissed employees. The employees can be thrown to street without any “golden hand-shake” or any other aid to feed themselves and their families as they become unemployed. The only aid is the unemployment benefits and if the unemployment lasts over 500 days, labour market subsidy (575 euros/month, net). As the legislation is loose and difficult to apply and as the employers know that court processes in Finland are very expensive (If the employee loses the case the employee may have to pay tens of thousands euros to the employer as process costs) the employers treat employees in a very arbitrary way. If the quartile (1/4 year) results of the year in the concern or company look a little weaker than in the previous quartile many employees may be laid off to walk in the street as unemployed. In the leadership of companies this behaviour as employer is regarded “normal” because by laying off employees the profits of the concern or company may increase. The firm is just realizing the value set in the Finnish corporate legislation and the interests of employees have no place in it. The courts can be called up by summons raised by the dismissed employees and often with the help of trade union and its lawyers to consider whether the legislation has been obeyed but as the right to discharge in the labour law is implicated positively: the employer may discharge the employer if the work available is .... *Through rearrangements* of the employer's activities decreased essentially and permanently, it is very difficult in the court to claim that this has not happened. In practice the employers has a wide area to make rearrangements so that there is a big possibility to lose the case and along that to be obligated to pay tens of thousands euros as process cost to the employer. Due to

that normally mass dismissals are carried out in Finland without court cases. The mass reductions are carried out so that first there is collaboration proceeding and that the names of the dismissals are told to the employee side. In collective the employer has to obey the time limits for negotiations along the Act of Collaboration Proceedings (Laki yhteistoiminnasta yrityksissä 30.3.2007/334, <http://www.edilex.fi/lainsaadanto/20070334>). The employee-side has no arms in the negotiations. In big enterprises with many units in-country and abroad the employee side in one unit is difficult to control if its work available elsewhere or has the employer taken a new employer to the same kind of work in some other unit. As the employers no that the chanced on the employer side are very limited to defence themselves the collaborative negotiations in order to dismiss employees is going on all time In many concerns and companies. After the results from every quartile are received there is controlled is it necessary to lay off to increase profits. The employees can never be sure if they are employed during next quartile. When one negotiation round has ended the concern or company starting a new collaboration proceeding.

### **To maximize profit is not proper and substantial reason**

The Committee of Social Rights in conclusions to Finland's report is emphasizing that in disputes over termination of employment, the employer is required to prove that termination is based *on a proper and substantial reason*. Our association refers to the above said and notes that to dismiss employees just to maximize profit of concern or company is not a proper and substantial reason. Our association is convinced that only economic difficulties in the concern or company fulfil the preconditions set in art. 24 of the Charter (Revised) to dismiss employees on the basis of collective reasons.

### **Dismissals due to the subcontracting**

Our association also wants to point out that there are "pig-holes" in the protection of employees concerning collective dismissals. Along Finnish jurisdiction the employer is free as a *rearrangement* to outsource or sub-contract activities dismiss own employees due to the change. Outsourcing and sub-contracting is not based on the operational requirements of the undertaking if there is no economical compulsion in the enterprise to do so and there exists also option to go on with own salaried employees. Our association sees to dismiss employees in these situations is not a proper and substantial reason and not in conformity with art. 24 in the Charter (Revised).

### **The problem of hiring work force**

The other "pig-hole" concerns hiring work force after dismissals. In many concerns and companies own employees are dismissed collectively on "economic reasons" but hired work are taken to do the same job. They are in labours contract to the hiring firm but do the same job as the dismissed employees. Our association is convinced that there has not been a *proper and substantial reason* to the termination of employment if the hired employees can compensate the dismissed own employees along art. 24 in the



Charter (Revised). The interpretation of the rules along Finnish labour law is shaky in this point. We refer to the Labour Court decision 2007-103 (See Add: Työtuomioistuimen tuomio Nro 103, Diaarinumero R21/07, Antopäivä A: 5.11.2007, <http://www.edilex.fi/tt>) In the decision noted that the employer was entitled to dismiss employees with economic and productive grounds when new employees were not taken and the work of the dismissed was done by persons hired from the hiring firm. This principle (which is not said plainly in the decision, but probably means that) opens a possibility to a new way to dismiss employees collectively. It should be pointed out that this decision was done by a majority of the Court. The representatives of the employees disagreed with the majority members.

Our association sees that on all cases to dismiss employees and to use hired work to compensate the lacking work force is not a *proper and substantial reason* to dismiss employees and the situation is not in conformity with the art. 24 in the Charter (Revised). It should be also pointed out that to allow hired work instead of dismissed employees will also the possibility dismissed employees be endangered. Along the Law on Employment Contract (chapter 6 § 6) the employer who has dismissed employees with economical or productive reasons has to offer work to the dismissed employees if there comes new work to be done in the enterprise within 9 months from the dismissals. If hired employees compensate the work of the dismissed over 9 months this obligation to the employer becomes non-valid.

### **The complaint of our Association (II)**

Referring all that is said in this chapter our Association makes the following Complaints (Complaint II):

- a) A valid, proper and substantial reason for dismissals based on the operational requirements of the undertaking, establishment or service does is not regarded to be in conformity to art. 24 in the Charter (Revised) if there is not an economic necessity for the undertaking, establishment or service to reduce work force. A collective dismissal just to increase profit of the undertaking, establishment or service is not regarded a proper and substantial reason and violates art. 24 in the Charter (Revised).
- b) A valid proper and substantial reason for dismissal based on the operational requirements of the undertaking, establishment or service does not exist along art. 24 in the Charter (Revised). if the reason for dismissals outsourcing or subcontracting which has been done without economic necessity in the undertaking, establishment or service. A dismissal against this principal is not in conformity and is regarded a violation to art. 24 in the Charter (Revised)
- c) A valid proper and substantial reason for dismissal based on the operational requirements of the undertaking, establishment or service does not exist along art. 24 in the Charter (Revised). if the persons from the hiring firm are taken to do the job of the dismissed employees. A dismissal against this principal is not in conformity and is regarded a violation to art. 24 in the Charter (Revised)



- d) As Finland is allowing dismissals and redundancy of employees in the situations above (a–c) Finland is violating art. 24 in the Charter (Revised)

**Cordially and with high respect**

***Finnish Society of Social Rights***

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

**Helsinki 14.04.2014**



**Yrjö Mattila**

**Chairman**



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