EUROPEAN COMMITTEE OF SOCIAL RIGHTS
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Finnish Society of Social Rights v. Finland
Complaint No .107/2014

OBSERVATIONS BY THE EUROPEAN TRADE UNIONS CONFEDERATION (ETUC)

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Collective Complaints

Finnish Society of Social Rights v. Finland

Complaint No. 106/2014 and

Complaint No. 107/2014

Observations by the European Trade Union Confederation (ETUC)

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1 In availing itself of the opportunity provided in the Collective Complaints Procedure Protocol (CCPP - Article 7§2) the European Trade Union Confederation (ETUC) would like to submit the following observations.

2 Finland plays an important role in respect of the procedure concerning the (Revised) European Social Charter. Indeed, it is the only country to have accompanied the CCPP's ratification with the declaration offering national representative NGOs the right to complain collectively (Article 2 CCPP). Consequently, the complainant Finnish organisation uses this (rare) opportunity.

3 From the outset, the ETUC would like to clarify that these observations will not deal with complaint no. 108/2014. This complaint refers i.a. to complaint no. 88/2012. However, the European Committee of Social Rights (ECSR) has already adopted a decision on the merits[1] which has not yet been made public. Being deprived of any possibility to comment on the basis of the Committee's decision (which is obviously not to be attributed to the ECSR but to the content of Article 8(2) CCPP) any observation would thus remain speculative, at least to a certain extent.

4 The remaining two complaints address the problem of legal protection against dismissals including its consequences as asserted in Article 24 RESC (The right to protection against termination of employment). However, it appears useful to start with the grounds for dismissal before addressing the consequences of a dismissal. Accordingly, the ETUC observations will start the legal examination with the allegation of a violation of Article 24 RESC in relation to the valid grounds for a dismissal (in case 107/2014) and continue with the labour law consequences of an unlawful dismissal (in case 106/2014).

5 These observations have been drafted in consultation with the Finnish ETUC affiliates, i.e. the trade union confederations SAK, STTK and AKAVA.

I. General observations

6 In procedural terms, the ETUC would suggest that while the two complaints related to Article 24 RESC, possibly all three complaints would be joined for the purposes of one singular decision (on the admissibility and the merits). Although they might be separable from a formal standpoint they are, in substance, very much interrelated. In order to best assess the legal and practical situation the complaints should be considered in their totality.

7 In substantive terms, the two cases concerning Article 24 RESC are the first collective complaints dealing explicitly with the "right to protection in cases of termination of employment". Having provided in the past indication as to its general understanding the ECSR (see in particular Conclusions 2012) will therefore have (and probably wish to use) the opportunity to further develop its case-law on this important provision.

[1] According to the Synopsis of the (ECSR), 273rd session (08/09/2014 – 12/09/2014), Output, point 3, 1st indent.

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II. International law and material

8 The ETUC would like to start by referring to pertinent international law and material.[2] From the outset, it should be noted that Finland has ratified all instruments (as far as they are open for ratification) mentioned below.

A. International Covenant on Economic, Social and Cultural Rights (ICESCR)

1. The Right to work (Article 6 ICESCR)

9 The International Covenant on Economic, Social and Cultural Rights (ICESCR) does not contain a specific provision on the protection against unfair dismissal. In a more general way, however, it contains the recognition of the right to work:

> **"Article 6**
>
> 1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
>
> 2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual."

2. General Comment No. 18 on the Right to Work (Article 6 ICESCR)

10 Concerning the right to work the Committee on Economic, Social and Cultural Rights (CESCR) has elaborated a 'General Comment' on Article 6 ICESCR[3] which defines the content and legal obligations deriving from this provision. Several elements are to be highlighted:

11 In its description of the "Normative Content of the Right to Work" (II.) the CECSR i.a. refers to ILO Convention No. 158 (see below II.B.1.):

> "11. ILO Convention No. 158 concerning Termination of Employment (1982) defines the lawfulness of dismissal in its article 4 and in particular imposes the requirement to provide valid grounds for dismissal as well as the right to legal and other redress in the case of unjustified dismissal."

12 Concerning the possible violations of Article 6 ICESCR the Committee includes the necessity to protect workers against unlawful dismissals:

> "**Violations of the obligation to protect**

[2] As to legal impact of the 'Interpretation in harmony with other rules of international law' see the ETUC Observations in No. 85/2012 Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden - Case Document no. 4, Observations by the European Trade Union Confederation (ETUC), paras. 32 and 33.

[3] CESCR, The Right to Work - General comment No. 18 - Adopted on 24 November 2005 - E/C.12/GC/18 (6.2.2006) - http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/403/13/PDF/G0640313.pdf?OpenElement.

35. Violations of the obligation to protect follow from the failure of States parties to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to work by third parties. They include omissions such as the failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to work of others; or the failure to protect workers against unlawful dismissal."

13 Last but not least, the Committee also stresses the specific need to take measures to prevent discrimination on grounds of age in employment.

"**Older persons and the right to work**

16. The Committee recalls its general comment No. 6 (1995) on the economic, social and cultural rights of older persons and in particular the need to take measures to prevent discrimination on grounds of age in employment and occupation."

B. International Labour Organisation (ILO)

14 The ILO Convention No. 158 on Termination of Employment Convention, 1982 (No. 158)[4] contains the core of international regulation of the protection against unfair dismissal; this is all the more important since it has served as basis for Article 24 RESC.[5] Therefore, in the ETUC'S understanding the protection offered by this Convention should be considered as guaranteeing a minimum level of protection when defining the content of Article 24 RESC.

1. ILO Convention No. 158

15 In its "Part II. Standards of General Application" the Convention defines the substance of the requirements as far as these complaints are concerned.

16 Concerning 'valid reasons' "Division A. Justification for Termination" provides the following:

"**Article 4**

The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service."

17 As regards the consequences of a dismissal the Convention stipulates under the heading of "Division C. Procedure of Appeal Against Termination" the following:

"**Article 10**

If the bodies referred to in Article 8 of this Convention find that termination is unjustified and if they are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate."

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[4] Convention concerning Termination of Employment at the Initiative of the Employer (Entry into force: 23 Nov 1985). http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312303:NO.

[5] "86. The provision has been inspired by ILO Convention No. 158 (Termination of Employment) of 1982." http://conventions.coe.int/Treaty/en/Reports/Html/163.htm.

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18 "Division E. Severance Allowance and Other Income Protection" addresses the necessary financial consequences in case of a dismissal:

> "**Article 12**
>
> 1. A worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to-
>
> (a) a severance allowance or other separation benefits, the amount of which shall be based inter alia on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or
>
> (b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or
>
> (c) a combination of such allowance and benefits.
>
> 2. A worker who does not fulfil the qualifying conditions for unemployment insurance or assistance under a scheme of general scope need not be paid any allowance or benefit referred to in paragraph 1, subparagraph (a), of this Article solely because he is not receiving an unemployment benefit under paragraph 1, subparagraph (b).
>
> 3. Provision may be made by the methods of implementation referred to in Article 1 of this Convention for loss of entitlement to the allowance or benefits referred to in paragraph 1, subparagraph (a), of this Article in the event of termination for serious misconduct."

19 In its Part III. the Convention deals with (procedural) requirements as "Supplementary Provisions Concerning Terminations of Employment for Economic, Technological, Structural or Similar Reasons".

2. ILO Recommendation No. 166

20 ILO Convention No. 158 has been accompanied by Termination of Employment Recommendation, 1982 (No. 166).[6]

21 Under the heading of "Justification for Termination" in Part II. (Standards of General Application) it defines more precisely i.a. that age should not constitute a 'valid reason' for termination:

> "5. In addition to the grounds referred to in Article 5 of the Termination of Employment Convention, 1982, the following should not constitute valid reasons for termination:
>
> (a) age, subject to national law and practice regarding retirement;
>
> …"

[6] Recommendation concerning Termination of Employment at the Initiative of the Employer http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312504:NO.

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22 Under the heading "III. Supplementary Provisions concerning Terminations of Employment for Economic, Technological, Structural or Similar Reasons" the relevant accompanying Recommendation No. 166 states i.a.:

> "**Measures to Avert or Minimise Termination**
>
> 21. The measures which should be considered with a view to averting or minimising terminations of employment for reasons of an economic, technological, structural or similar nature might include, inter alia, restriction of hiring, spreading the workforce reduction over a certain period of time to permit natural reduction of the workforce, internal transfers, training and retraining, voluntary early retirement with appropriate income protection, restriction of overtime and reduction of normal hours of work."
>
> 22. Where it is considered that a temporary reduction of normal hours of work would be likely to avert or minimise terminations of employment due to temporary economic difficulties, consideration should be given to partial compensation for loss of wages for the normal hours not worked, financed by methods appropriate under national law and practice."

3. ILO supervisory bodies' case-law

23 The relevant case-law of the Committee of Experts on the Application of Conventions and Recommendation (CEACR) is contained in its General Survey 1995.[7]

24 Referring to Article 4 of the Convention (see above para. 16) the CEACR highlights the importance of the concept of 'valid grounds':

> "The need to base termination of employment on a valid ground is the cornerstone of the Convention's provisions. The adoption of this principle removes the possibility for the employer to unilaterally end an employment relationship of indeterminate duration …"[8]

25 In interpreting Article 10 of the Convention (see above para. 17) the CEACR clarifies that reinstatement has preference over other remedies:

> "The wording of Article 10 gives preference to declaring termination invalid and reinstating the worker as remedies in the case of unjustified termination of employment. …"[9]

C. Council of Europe

1. European Convention on Human Rights (ECHR)

26 In recent times, the European Court of Human Rights (ECtHR) has developed its jurisprudence on Article 8 ECHR as containing more and more the protection against unfair dismissals. In part, it refers to Article 24 RESC (as well as to ILO-Convention No. 158).

27 In its most recent judgment the Court[10] confirms prior case-law in this regard:

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[7] *ILO*, Protection against unjustified dismissal, General Survey on the Termination of Employment Convention (No. 158) and Recommendation (No. 166), 1982, International Labour Conference, 82nd Session 1995, Report III (Part 4B), Geneva 1995.
[8] Ibd., para. 76.
[9] Ibd., para. 219.
[10] ECtHR 2.12.2014 – Nr. 61960/08 - *Emel Boyraz / Turkey.*

"With regard to Article 8, the Court has already held in a number of cases that the dismissal from office of a civil servant constituted an interference with the right to private life (see *Özpınar v. Turkey*, no. 20999/04, §§ 43-48, 19 October 2010; and *Oleksandr Volkov v. Ukraine*, no. 21722/11, §§ 165-167, 9 January 2013)."[11]

28 Personal consequences of dismissals are described in the next paragraph of the judgment:

"the applicant's dismissal had an impact on her "inner circle" as the loss of her job must have had tangible consequences for the material well-being of her and her family (see *Oleksandr Volkov*, cited above, § 166). The applicant must also have suffered distress and anxiety on account of the loss of her post. What is more, the applicant's dismissal affected a wide range of her relationships with other people, including those of a professional nature and her ability to practise a profession which corresponded to her qualifications (see *Sidabras and Džiautas*, cited above, § 48; *Oleksandr Volkov*, cited above, § 166; and *İhsan Ay,* cited above, § 31). Thus, the Court considers that Article 8 is applicable to the applicant's complaint."[12]

2. Recommendation of the Committee of Ministers (CM) to member States on the promotion of human rights of older persons

29 The Recommendation on the promotion of human rights of older persons[13] also deals with employment rights, mentioning specifically 'dismissals':

"26. Member States should ensure that older persons do not face discrimination in employment, including on grounds of age, in both the public and private sectors. This should include aspects such as conditions for access to employment (including recruitment conditions), vocational initial and continuous training, working conditions (including dismissal and remuneration), membership in trade unions or retirement. Member States should ensure that any difference in treatment is justified by furthering a legitimate aim of employment policy and by being proportionate to achieve that aim."

III. The law

30 For logical reasons, the remaining two complaints will be dealt with in a different order. Complaint no. 107/2014 deals with the requirement of a valid reason for a lawful dismissal. Therefore, this will be the starting point. Instead, complaint no. 106/2014 addresses the problem of the consequences of a dismissal. That is why it will be addressed after complaint no. 107/2014.

31 The relevant article provides:

"**Article 24 – 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:

[11] Ibd. § 43.
[12] Ibd. § 44.
[13] CM/Rec(2014)2 - Adopted by the Committee of Ministers on 19 February 2014 at the 1192nd meeting of the Ministers' Deputies.

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 appropriate relief.

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

32 The Appendix (Part II) to Article 24 stipulates i.a.:

"1) It is understood that for the purposes of this article the terms "termination of employment" and "terminated" mean termination of employment at the initiative of the employer. …

4) It is understood that compensation or other appropriate relief in case of termination of employment without valid reasons shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions."

33 Generally speaking, the protection of workers against unfair dismissal is a cornerstone of workers' protection. It has a direct relationship to the basic principle and foundation of all human rights which is **human dignity**. It is also directly related to the '**right to work**' and forms an important part of this human right. Indeed, assuming that the right to work does guarantee the right to a specific working place it must be understood as protecting workers who are working in a specific working place from any undue interference with this right (see above paras. 11 and 12).

34 Moreover, as the ECtHR pointed out, dismissals have "tangible consequences for the material well-being" of the worker concerned as well as for his or her family. A dismissed worker will have to "suffer… distress and anxiety on account of the loss of (his or) her post"; the dismissal also affects "a wide range of (his or) her relationships with other people" (see above para. 28).

35 These elements require a high threshold for allowing termination of an employment relationship for an indefinite period by a dismissal. This is all the more true if the reason for a dismissal does not lie in the worker's but employer's sphere (as is the case in these complaints).

36 This approach is underlined by the explicit constitutional recognition of the right to be protected against unlawful dismissals in the framework of the right to work. Indeed, in Finland the protection against an unlawful dismissal is regarded as an important constitutional right: Section 18 (last paragraph) of the Finnish Constitution[14] provides for this right as follows:

Section 18 - The right to work and the freedom to engage in commercial activity

Everyone has the right, as provided by an Act, to earn his or her livelihood by the employment, occupation or commercial activity of his or her choice. The public authorities shall take responsibility for the protection of the labour force.

[14] The Constitution of Finland - 11 June 1999 (731/1999, amendments up to 1112/2011 included), Unofficial translation by the Ministry of Justice, Finland, https://www.finlex.fi/fi/laki/kaannokset/1999/en19990731.pdf.

The public authorities shall promote employment and work towards guaranteeing for everyone the right to work.

Provisions on the right to receive training that promotes employability are laid down by an Act.

No one shall be dismissed from employment without a lawful reason.

37 The ETUC therefore stresses the importance of this protection.

A. The valid reasons for a dismissal - Complaint 107/2014

38 Before going into any substance on the relevant provision it would appear important to explicitly refer to the relevant provision in the "Employment Contracts Act"[15] which provides the following in "Chapter 7 - Grounds for termination of the employment contract by means of notice":

"**Section 3. Financial and production-related grounds for termination**

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."

39 In general, the requirement for valid reasons is to be considered as a cornerstone of the whole protection against unfair dismissal (see above para. 24). In this respect, this complaint addresses three specific issues.

1. 'Profit dismissals'

40 As stressed in the complaint, Finnish law does not prevent in general terms dismissals done solely in order to increase the profit.

41 The main legal problem lies already in the heading of the relevant section 3, in particular in the word '(f)inancial'. Neither Article 24 RESC nor ILO Convention No. 158 mention financial aspects for employers. This type of reason for a dismissal is obviously not covered by the concept of a 'valid reason'. Allowing financial aspects as such for a justification of a dismissal would in the end deprive the concept of 'valid reasons' of all its content. Employers could just refer to any economic interest in order to 'lawfully' dismiss workers.

42 Even assuming that the financial reasons mentioned in the Employment Contracts Act, Chapter 7, Section 3, would not have an independent meaning and if the employer effected a permanent change in the production (reflecting the reduced possibilities to offer work) or a

[15] 55/2001, amendments up to 398/2013 included - Unofficial translation by the Ministry of Employment and the Economy, Finland, January 2014.
http://www.finlex.fi/en/laki/kaannokset/2001/en20010055.pdf

reorganisation in the business/production, it should be noted that dismissals as their consequence are usually accepted.

43 Anyway, if the employer bases the dismissal(s) purely and solely on financial reasons, a minor diminution of labour costs obviously does not justify it (them).

44 In particular it should be noted that Finnish law does not include the idea of *ultima ratio* as a precondition (threshold) for dismissals. As pointed out previously a high threshold level for allowing dismissals is required (see above para. 35) i.a. because legislation has to secure human dignity at the workplace (see above para. 33). Especially in the context of reasons of an economic, technological, structural or similar nature measures to avert or minimise termination should be taken account of (see above para. 22).

45 In conclusion, dismissals just for increased profits cannot be regarded as being in conformity with Article 24 RESC.

2. Outsourcing

46 In principle, the employers are free to organise the production/business on a permanent basis. However, they are not free in defining the respective (social) consequences. There is an obvious need for protection of workers. Especially in relation to outsourcing, several measures have been introduced at European[16] and national level, in particular the prohibition of dismissal. This complaint shows that there is a need for protection if outsourcing is used to circumvent protection against dismissal. Such measures should therefore not be considered as in conformity with Article 24 RESC.

47 Still, in order to provide a protection which is not afforded by law, the several Collective Bargaining Agreements (CBAs) usually include (based on a confederal agreement between the SAK and Confederation of Finnish Industries) a clause according to which dismissals due to outsourcing can be only exceptional. Surely, these CBAs contribute to a better implementation of the RESC's provision at stake.

48 However, even taking full account of these CBAs the implementation is still not sufficient. Indeed, proper implementation of an (R)ESC provision requires that all people concerned (here workers) are covered in law and practice by the relevant provision. As Article I § 2 RESC only allows a lower coverage of workers for specific provisions, full coverage is required for all the other provisions such as Article 24 RESC (*argumentum a contrario*). Since these CBAs do not cover all workers there is no excuse for the Government for not (fully) implementing the requirements stemming from the RESC.

49 In conclusion, there is also a case of non-conformity with Article 24 RESC in this respect.

[16] Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

3. Hiring-in of manpower

50 Hiring in of manpower whilst dismissing other workers for essentially the same work is absolutely contrary to the essential objective of requiring a 'valid reason' for the termination of employment.

51 In the case at hand, the Employment Contracts Act does not expressly regulate recourse to temporary agency work but the enterprises are free to act as they wish. Several CBAs within industries usually include thereupon restrictions essentially identical to those present in a preliminary reference case before the Court of Justice of the European Union (CJEU) in which the Advocate General has delivered his opinion.[17] They limit the use of temporary agency workers to work peaks and situations where the permanent staff cannot do the works concerned.

52 However, under the 'old' Employment Contracts Act (in force until 2001) the Supreme Court had found in 1985 that hiring-in of manpower was to be equated to recruitment of new employees, and, therefore, violated the dismissal protection rules applicable to own staff that had been given notice. The judgment (subject to vote) of the Labour Court (sole national instance) in 2007, referred to in the complaint, reflects the opposite line. That judgment was essentially based on one opinion in the doctrine and on two earlier Labour Court judgments on the same day in 2006 against the same employer (not the same as in the 2007 judgment). The judgments in 2006[18] meant in fact the quashing of the principle established by the Supreme Court in 1985 - both Labour Court judgments being subject to vote. A dissenting opinion to these 2006 judgments shows convincingly that the legislator did not mean to deviate with the Employment Contracts Act 2001 from the judgment of the Supreme Court.

53 This situation leaves the workers concerned with a situation that does not guarantee their right to being dismissed only in the case of a 'valid reason'. In conclusion, this lack of protection also means that this situation is not in conformity with Article 24 RESC.

B. The consequences of an unlawful dismissal - Complaint 106/2014

54 The consequences of an unlawful dismissal are also of great importance. The two aspects raised in the complaint (need for reinstatement and cap of compensation) have both been already criticised by the ECSR.

1. The reinstatement

55 The question of reinstatement as remedy in case of an unlawful dismissal is of utmost importance. The continuation of the employment contract is the 'normal' consequence in case of a violation of this right (*restitutio ad integrum*). Moreover, a limitation to financial consequences would deprive the workers' protection of its real effect. Indeed, if employers were allowed just to pay a certain financial amount as compensation to unlawfully dismissed workers they could simply choose what they want to do, and the main interest of the worker to keep his or her workplace in such a situation (see i.a. para. 28) would be totally neglected.

[17] Case C-533/13 AKT; Opinion Advocate General Szpunar of 20.11.2014 http://curia.europa.eu/juris/celex.jsf?celex=62013CC0533&lang1=en&type=TXT&ancre=

[18] Labour Court TT:2006-64 and TT:2006-65.

Finally this would have devastating consequences in particular in cases where a specific reason for termination is not permitted.[19]

56 The Employment Contracts Act ("Labour Contracts Act" in the complaint) does not include a general reinstatement possibility in case of unlawful dismissal. In this respect the ECSR had found in its Conclusions 2012:

> "that the situation in Finland is not in conformity with Article 24 of the Charter on the ground that the legislation does not provide for the possibility of reinstatement in case of unlawful dismissal."[20]

57 Even taking into account that the Employment Contract Act includes in Chapter 6 Section 6 the employer's obligation on re-employment if the employee has been dismissed based on financial or production-related reasons and the employer needs to recruit new manpower for the same or similar work during nine months:

> "**Section 6. Re-employment of an employee**
>
> If an employee is given notice on the basis of chapter 7, sections 3 or 7, and the employer needs new employees within nine months of termination of the employment relationship for the same or similar work that the employee given notice had been doing, the employer shall offer work to this former employee if the employee continues to seek work via an employment and economic development office.
>
> …"

this is not to be considered as an effective and sufficient remedy for an unlawful dismissal because it does not remedy the situation but requires that the employer "needs new employees". Moreover, this obligation appears to be a new contract or at least a continuation of the previous contract but without any remuneration or seniority consequences for the period between the point of time in which the dismissal of the worker has taken effect and the beginning of the re-employment contract. Finally, it puts the respective victims in the same place as workers who have been lawfully dismissed as this obligation applies irrespective of the lawfulness (lawful or not) of the earlier dismissal. (For the latter group it is surely an important protection.)

58 In conclusion, and taking into account that the ECSR's Conclusions have not led to any changes here either, the situation continues to be not in conformity with Article 24 RESC.

2. The 'cap' (upper limit for compensation for unlawful termination of employment)

59 The Employment Contracts Act includes since 2001 a cap (24 months' salary) for the dismissal indemnity. In its Conclusions 2012 the ECSR had started its examination by referring to its previous assessment:

> "In its previous conclusion the Committee held that the situation in Finland was not in conformity with Article 24 of the Charter on the ground that the compensation for unlawful termination of employment was subject to an upper limit."

[19] See Appendix Part II to Article 24 RESC point 3 and ILO Convention No. 158 Article 5.
[20] It might be recalled that the ECSR, in its Conclusions 2012, also found the situation in Albania as being not in conformity with Article 24 RESC on this point.

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The Conclusions then refer to the Government's justification according to which the "victim has several possibilities of seeking redress and which are not mutually exclusive". Finally, it asks the Government to provide more precise information on this issue:

> "The Committee wishes to be informed of cases, if any, where the employee has successfully sought compensation under the Tort Liability Act in case of unlawful dismissal."

60 The ETUC is of the opinion that the Government's reference to the general Tort Liability Act as allegedly opening the possibility to surmount the cap is not convincing. The Employment Contracts Act is *lex specialis* and the cap applies.

61 Moreover, the very difficult situation of unlawfully dismissed older workers on the labour market should be taken into account. Besides the information provided for in the complaint it should be noted that international instruments or material refer to necessity not only not to discriminate on the ground of age (Article E RESC – "or other status"; see above paras. 13, 21 and 29) but also promote employment of older workers.[21]

62 In conclusion and bearing in mind that the government has not given any follow-up to the earlier ECSR Conclusions regarding the cap, the situation continues to be not in conformity with Article 24 RESC.

IV. Conclusions

63 As demonstrated above, the ETUC considers that the measures criticised by the complainant organisations are not in conformity with Article 24 RESC as regards

- the 'valid ground' requirements for a dismissal in the cases of so-called 'profit dismissals (see above para. 45), the outsourcing (see above para. 49) and the hiring of manpower (see above para. 53),
- the consequences of unlawful dismissals concerning the lack of a reinstatement requirement (see above para. 58) and the (upper) limit for compensation (see above para. 62).

[21] See i.a. ILO Older Workers Recommendation, 1980 (No. 162) (para. 11 in general and para. 18 in particular: "18. In cases of reduction of the workforce, particularly in declining industries, special efforts should be made to take account of the specific needs of older workers, for instance by facilitating retraining for other industries, by providing assistance in securing new employment or by providing adequate income protection or adequate financial compensation.")

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