EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

24 August 2006

Case document No. 1

Federation of Finnish Enterprises
v. Finland
Collective complaint n° 35/2006

COMPLAINT

registered at the Secretariat on 19 June 2006

15.6.2006

Mr Terry Davis
Secretary General of the Council of Europe

The Federation of Finnish Enterprises sends you respectably the attached collective complaint due to Finnish legislation that violates the right to organise.

The persons taking care of this complaint in our office are:

Mr. Rauno Vanhanen, director in legal and labour market affairs
Email: rauno.vanhanen@yritttajat.fi
phone: +358922922935, +358500416937

Mrs. Merja Hirvonen, senior adviser in labour market affairs
email: merja.hirvonen@yrittajat.fi
phone: +358922922940, +358405880841

The postaddress of the Federation of Finnish Enterprises:
PL 999, 00101 Helsinki, Finland

With best regards

Rauno Vanhanen
director

Collective complaint due to Finnish legislation that violates the right to organise

Contents of the complaint:

The complaint is related to Article 5 of the European Social Charter (revised), concerning the right to organise. The State of Finland has through legislation placed stricter legal provisions on companies that are not members of the employer organisation in their sector than on other companies. With this procedure, the State of Finland violates the right to organise, as set out in Article 5 of the Charter, which also comprises the right not to belong to a certain organisation.

The right of the Federation of Finnish Enterprises to make the complaint is based on the following:

The Federation of Finnish Enterprises is an organisation that looks after the interest of Finnish enterprises, particularly small and medium-sized enterprises. The Federation has altogether about 90 000 members, which is more than one third of all companies operating in Finland. Of the members of the Federation, about 43 000 are employers, which corresponds to about half of all companies in Finland that use external employees. The member companies employ about 340 000 people. The Federation of Finnish Enterprises is a representative national organisation of employers, as defined in Article 1, paragraph c of the Additional Protocol to the European Social Charter providing for a system of collective complaints. In case the State of Finland contests this, the Federation of Finnish Enterprises can in any case be regarded as a national organisation that has particular competence in the matters included in this complaint, referred to in Article 2 of said Additional Protocol. When ratifying the Additional Protocol, the State of Finland has recognised the right of such organisations to lodge a complaint.

Grounds for the complaint:

In Finland, the Employment Contracts Act (55/2001) contains a system that makes national collective agreements generally binding, the aim being to guarantee reasonable working conditions. If a collective agreement concluded in any sector has been declared generally binding, even such companies operating in this sector that are not members of the employer organisation that has concluded the agreement must apply the terms of the collective agreement. There is a separate authority that decides which agreements are generally binding, the Board for Confirmation of Erga Omnes Applicability. The most important precondition for the confirmation is that the member companies of the employer organisation employ about half of all employees in the sector.

There are altogether about 231 000 companies in Finland, and 84 000 of them use external employees. About 20 000 of these are members of employer organisations that conclude collective agreements. The generally binding nature of collective agreement covers most of the remaining 64 000 companies, in any case almost 60 000 companies. This can be deduced from the fact that about 90% of the employees in the private sector are covered by collective agreements, either because their employer is a member of an employer organisation, or due to the generally binding nature of an agreement.

There are several sections in the Finnish labour legislation that state that it is possible to deviate from the employer obligations set by law through a national collective agreement. The legislation also makes it possible to agree, through a national collective agreement, that said possibility to deviate from legal provisions may only be used by agreeing on the matter locally between the employer end employees. According to our labour legislation, such right to conclude local agreements only applies to companies belonging to employer organisations that have concluded collective agreements, with some minor deviations. As a result, companies that are not members of any employer organisation must apply the provision of the law as it stands. A company belonging to an employer organisation can, consequently, get more advantageous terms of employment than those defined by law, by agreeing on the matter with its employees. Such matters may be, e.g. the compensation paid for overtime work or opportunities to make different work time arrangements.

The list below contains the provisions in Finnish legislation regarding which the State of Finland has given companies belonging to an employer organisation the opportunity to apply more advantageous terms of employment than those prescribed by law:

Employment Contracts Act, Chapter13, sections 7 and 8:

Chapter 1 section 5 (benefits depending on the duration of the employment relationship),
Chapter 2 section 5 (employer's obligation to offer work to a part-time employee)
Chapter 2 section 11 (pay during illness) and
Chapter 2 section 13 (payday and pay period),
Chapter 5 section 2, subsection 1, item 2 and subsection 2 (grounds for lay-offs),
Chapter 5 section 3 (advance explanation and hearing the employee),
Chapter 5 section 4 (lay-off notice)
Chapter 5 section 7, subsection 2 (the right of the employer to deduct the pay for the lay-off notice period from the pay for the period of notice),
Chapter 6 section 6 (re-employment of an employee),
Chapter 7 section 4 (regional coverage of the obligation to offer work)
Chapter 9 (procedure for terminating an employment contract)

Working Hours Act, sections 40 and 40 a:

Section 4 (working hours)
Section 5 (stand-by time)
Section 13, subsection 2 (flexible working hours)
Section 15, subsection 2 (reduced working hours)
Section 19, subsection 3 (maximum amounts of working time)
Section 22 (remuneration payable on additional work and overtime)
Section 23 (additional work and overtime compensated as free time)
Section 24 (terminating an employment contract during an ongoing reference period)
Section 25 (calculating the basic amount of remuneration for additional work and overtime)
Section 26, subsection 1 (night work)
Section 27 (shift work and nigh shifts in period-based work)
Section 28 (daily rest periods)
Section 29 (daily rest period)
Section 30 (the daily rest period of a motor vehicle driver)
Section 31 (weekly free time)
Section 32 (derogations from weekly free time)
Section 33 (Sunday work)
Section 34 (working hours adjustment system)
Section 35 (work schedule)

Annual Holidays Act, sections 30 and 31:

- definition of the holiday season
- calculation and payment of holiday pay and holiday compensation
- making winter holiday part of arrangements concerning shortened working hours
- carried-over holidays
- the right of fixed-term employees to get free time
- division of annual holidays
- time comparable to working time

Based on the above mentioned legal provisions, the collective agreements for different sectors contain regulations on the basis of which a company belonging to an employer organisation may apply terms of employment deviating from legislation by agreeing on the matter locally with its employees. In accordance with the collective agreement of the Technology Industry, for instance, it is possible to locally agree that the compensation for overtime is smaller than it is according to law. As a result, a company belonging to an employer organisation may, for instance, pay 20% extra for overtime, whereas a company that is not member of the employer organisation must pay 50 or 100% extra for overtime.

The right to establish organisations and join them, referred to in Article 5 of the Charter, also comprises the right not to belong to an organisation (negative right of organisation). This interpretation of the right to organise is confirmed, e.g. by the judgement given in the complaint of the Confederation of Swedish Enterprises against the State of Sweden (No. 12/2002). The fact that the negative right to organise is part of the right to organise is also shown by decisions of the European Court of Human Rights regarding the application of Article 11 of the European Convention on Human Rights in the following cases: Sigurd A Sigurjonsson v. Iceland (30.6.2003, A no. 264) and Gustafsson v. Sweden (25.4.1996).

Conclusion and claim of the Federation of Finnish Enterprises:

The Federation of Finnish Enterprises feels that the fact that the State of Finland has through legislation given companies that are members of employer organisations the right to apply more advantageous legal provisions than companies that are not members, violates the right to organise. As a consequence, the State of Finland applies stricter legal provisions on those who have used their right to organise in accordance with Article 5 of the Charter by not joining an employer organisation. Therefore the Federation of Finnish Enterprises feels that the State of Finland should be given a recommendation, referred to in the Additional Protocol, to amend such legislation that violates the right to organise.

Helsinki, 15 June 2006

FEDERATION OF FINNISH ENTERPRISES

Eero Lehti	Jussi Järventaus
Chairman	Managing Director