

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**



6 October 2006

**Case document No. 2**

**Federation of Finnish Enterprises  
v. Finland**  
Complaint n° 35/2006

**OBSERVATIONS FROM THE GOVERNMENT  
ON THE ADMISSIBILITY**

Registered at the Secretariat on 8 September 2006



Mr Régis Brillat  
Executive Secretary  
Secretariat of the European Social Charter  
Directorate of Human Rights  
Council of Europe  
F-67075 Strasbourg CEDEX

Helsinki, 28 September 2006

**Complaint No. 35/2006**  
**Federation of Finnish Enterprises v. Finland**

Sir,

with reference to your letter of 3 July 2006, I have the honour on behalf of the Government of Finland, to submit the following observations on the admissibility of the aforementioned complaint.

**Admissibility of the Complaint**  
**General**

1. The present collective complaint has been lodged by the Federation of Finnish Enterprises (*Suomen Yrittäjät, Företagarna i Finland*).
2. The Government notes that in accordance with Article 1(c) of the Additional Protocol of 1995 providing for a system with collective complaints, a complaint may be lodged by representative national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint.
3. According to the Explanatory Report to the Additional Protocol, to establish whether an organisation has the right to lodge a complaint or not, the European Committee of Social Rights takes into consideration, among other things, the number of the members of the organisation as well as its influence on national labour market negotiations.
4. The Government observes that according to your Committees case law, for the purposes of the complaints procedure, representativity is an autonomous concept, not necessarily identical to the national notion of representativity (Complaint No. 9/2000, *Confédération française de l'Encadrement CFE-CGC v. France*).
5. The Federation of Finnish Enterprises is an organisation with the aim to look after the interest of Finnish enterprises. It is not a party in labour market negotiations, but it represents a significant number of members. According to its own declaration, it represents approximately one third of all companies operating in Finland, and a little less than half of its members are employers. The members of the Federation of Finnish Enterprises include, in particular, small and medium-sized companies.

6. Because of the large number of employer companies it represents, the organisation may, without doubt, be considered a "representative national organisation of employers" as defined in Article 1(c) of the Additional Protocol.

7. In the Government's view, regardless of the Federation of Finnish Enterprises is considered an organisation of employers as defined above, it is, at any rate, to be regarded as having the right to lodge a complaint in accordance with Article 2 of the Additional Protocol.

8. In addition, the Federation of Finnish Enterprises fulfils the requirement of particular competence in the matters governed by the Social Charter.

9. Finally, the Government notes that the Federation of Finnish Enterprises has contributed to the periodical reporting with regard to the (Revised) Social Charter.

10. In this connection the Government wishes to note, that the complaint has been signed by Mr Eero Lehti, Chairman, and Mr Jussi Järventaus, Managing Director, on behalf of the Federation. There is, however, no documentation to show who is, or are, entitled to sign on behalf of the organisation.

#### **Unsatisfactory application of the Charter**

11. According to Article 4 of the Additional Protocol providing for a system with collective complaints, a complaint must relate to a provision of the Charter accepted by the Contracting Party concerned and indicate in what respect the latter has not ensured the satisfactory application of this provision.

12. The complaint of the Federation of Finnish Enterprises concerns Article 5 of the Revised European Social Charter providing for the right to organise.

13. In the complaint it is claimed that the State of Finland has, through legislation, set stricter provisions on companies that are not members of the employer organisation in their sector than on companies that are members of the national employer organisation of their sector. According to the complaint this violates the freedom of association ensured by Article 5 of the Charter since that provision also includes the so-called negative right of association or right not to join an employer organisation or a trade union.

14. The Federation of Finnish Enterprises further claims that Finnish labour legislation puts employers in different standings in several aspects since only employers belonging to an employer organisation have the right to deviate from the provisions of the Employment Contracts Act (*työsopimuslaki, arbetsavtalslagen*; 55/2001) or other laws through a collective agreement.

15. According to the complaint the legislation also makes it possible for employers and employees to use collective agreements to agree on a matter locally and that the provisions of law can be deviated from in the framework of the local agreement. In principle, legislation only makes it possible for companies belonging to an employer organisation operating in the framework of collective agreements to make local agreements. As a consequence, non-organised employers have to apply to stricter terms and conditions of employment than

organised employers. These terms and conditions may concern, among other things, pay for overtime and arranging of working hours.

16. In its complaint, the Federation of Finnish Enterprises presents a list of legal provisions in which the State of Finland has given organised employers leeway to apply more advantageous terms and conditions of employment than would otherwise be possible according to law. These legal provisions are included in the Employment Contracts Act, Working Hours Act (*työaikalaki, arbetstidslagen*; 605/1996) and the Annual Holidays Act (*vuosilomalaki, semesterlagen*; 162/2005).

17. According to the Explanatory Report of the Revised European Social Charter, an employee and employer who choose to use their right not to organise must be protected from any harm or detriment caused by not being organised by means of legislation.

18. Finland has declared that, after the ratification of the Revised European Social Charter, it will commit to comply with, among the other optional provisions, Article 5 concerning the right to organise.

19. Finally, without taking any stance on the merits of the case, the Government concludes that the complaint lodged by the Federation of Finnish Enterprises meets the procedural preconditions of being examined as defined in the Additional Protocol, by your Committee.

Accept, Sir, the assurance of my highest consideration.

Arto Kosonen  
Director,  
Agent of the Government of Finland  
before the European Committee on Social Rights