

23 April 2007

Case document No. 5

Federation of Finnish Enterprises

v. Finland

Complaint n° 35/2006

Response from the Federation of Finnish Enterprises

Registered at the Secretariat on 20 April 2007

Helsinki, 20 April 2007

Secretary General of the Council of Europe

Reply of the Federation of Finnish Enterprises to statements with reference to collective complaint No. 35/2006

With reference to your letter of 23 February 2007, the Federation of Finnish Enterprises respectfully wishes to present the following in reply to the statements of 16 February 2007, sent by the Finnish government and the European Trade Union Confederation (ETUC), concerning the collective complaint No. 35/2006 lodged by us.

In their letters, the Finnish government and ETUC present the current legislation of Finland, in detail and quite faultlessly. The letter by the Finnish government expressly states, in paragraphs 7 and 8, that an enterprise must not suffer damage (“may not be detrimental to the employer”) as a consequence of deciding not to join an organisation. In addition, the government letter, paragraph 30, states that the Employment Contracts Act, sections 7 and 8 of chapter 13, treats business enterprises differently, depending on whether or not they are members of an employers’ association.

Both letters state that the possibility, set out in legislation on employment contracts, for employers that are members of an employers’ association to conclude local agreements that deviate from the provisions of the law, is only a possibility, not a right. This is true as such. Under Finnish law, companies that are not members of an employer organisation lack precisely this opportunity, the exercising of which, in any specific company is naturally dependent on both employers and employees agreeing on the matter.

Both letters then continue with a list of reasons why treating companies unequally, and hence infringing on their right to organise, is justified. The grounds presented in these letters are identical with those originally presented by the Finnish government and parliament in support of their decision to introduce said legislation, which we claim is a violation of the right to organise. We now take up the grounds presented by the Finnish government and the ETUC in their respective statements.

The statements lay emphasis on the fact that various measures have been taken to safeguard the status of employees in companies that are members of an employers’ association, even where local agreements are made by way of derogation from statutory provisions.

First, the statements take up the issue of safeguards by pointing out that companies that are members of an employers’ association usually have a shop steward and that the shop steward concludes local agreements on behalf of the employees (Finnish government statement paragraph 42). We wish to point out that not even all companies that are members of an employers’ association have shop stewards, since the employees are not obliged to elect a representative for themselves. According to a study completed by the Central Organisation of Finnish Trade Unions (SAK), a member of ETUC, at least 85 per cent of companies with a personnel of 30 or more, which are generally members of employers’ associations, have elected a shop steward. Only 53 per cent of companies with fewer than 30 employees have a shop steward. On the other hand, the SAK study shows that small companies, which are generally not members of employers’ associations, have elected personnel representatives

more and more frequently: even among companies with fewer than 6 employees, 37 per cent have a shop steward, and in companies with 10-29 employees, 66 per cent have shop stewards. Many companies of this size are not members of any employer associations. Unfortunately, we have no statistics to show directly the number of companies with a shop steward that are members of employers' associations, and those that are not. In conclusion, it is a fact that all business enterprises that are members of employers' associations do not necessarily have shop stewards. Second, it is also a fact that there are shop stewards in many companies that are not members of employers' associations.

It should also be noted that our labour legislation allows local employment contracts without any particular conditions. Chapter 13, sections 7 and 8 of the Employment Contracts Act and similar legal provisions do not demand that a local agreement can be made only through a shop steward or that trade union approval is required.

Second, the statements also make the claim, regarding said safeguards, that the supervision of local agreements is more efficient in companies that are members of employers' associations than in companies that are not. This is a reference to the obligation of employers' associations to monitor their member organisations. Companies that are not members of employers' associations are supervised by labour protection authorities. The Finnish government (paragraph 47) and ETUC state that both the resources and legal means available to labour protection authorities for supervising employers that are not members of employers' associations are rather limited.

Our response is that Finland has a statutory supervisory authority that is responsible for supervising compliance with labour law and collective agreements in every company, whether or not they are members of an employers' association. The Finnish government itself is in a position to influence the scope of resources reserved for labour protection authorities. The Finnish government is also the organ that decides on the specific legislation that is designed to provide adequate legal means to support supervision. Thus, the Finnish government can not make the plea that the resources and legal means of the supervisory authorities are insufficient. The regional labour protection authorities employ a total of 450 people, in our opinion a substantial number, given the total number of companies that provide work.

The statements also refer to labour disputes, saying that disagreements can be resolved quickly and at a small cost in the case of companies that are members of an employers' association, since any dispute can be the subject of negotiations between the organisations that drafted the collective agreement and since there is a special Labour Court for settling such disputes. In the case of companies that are not members of an employers' association, such disputes are settled in general courts, which, in the opinion of the Finnish government and ETUC, is both time-consuming and costly. To these arguments we also respond that the Finnish government is in a position to expand the jurisdiction of the Labour Court to include disputes that concern companies that are not members of an employers' association. We feel that the Finnish government can not even raise the point that a court trial is more time-consuming and expensive for an employee of a company that is not a member of an employers' association. We would also like to remind that in principle, all civil disputes in Finland are settled in general courts, which is generally not considered a bad thing.

At the conclusion of its statement, the Finnish government states that if the position of a company that is not a member of an employers' association were to become significantly better than that of a member company, this could be construed as a restriction of the right of association. The Federation of Finnish Enterprises wishes to state that we do not demand a privileged position for companies that are not members of an employers' association, we simply want equal status.

We also want to focus attention on two other points in the ETUC statement. First, the statement, quite correctly, points out that even an individual company, i.e. even a company that is not a member of an employers' association, can make a collective agreement with a trade union. The ETUC statement creates the impression that such collective agreements at company level could deviate from the provisions of the labour law by making it possible for a company that is not a member of an employers' association to gain the same position as a member company. This, however, is not the case. Collective agreements that deviate from the provisions of labour legislation, can, as set out in chapter 13, section 7 of the Employment Contracts Acts and similar legal provisions, only be concluded between national employers' associations and trade unions. It is, however, not possible to deviate from the provisions of the labour law through a collective agreement between a company and a trade union

Second, concerning the collective agreement for the Technology Industries, ETUC states that, in practise, no local agreements are concluded that deviate from the labour law provisions to the detriment of employees. This might well be the case in practise. The collective agreement in question does, however, make such a deviation possible, through a local settlement, which means that companies that are members of an employers' association and that are not, are not treated equally

In conclusion, the Federation of Finnish Enterprises wishes to point out that the statements issued by the Finnish government and ETUC contain no support for the current system that was not already presented when the labour laws that are the object of our complaint were enacted. We feel that there are no grounds for limiting the employers' right to organise and that, therefore, Finnish legislation is in conflict with Article 5 of the European Social Charter.

Yours respectfully

FEDERATION OF FINNISH ENTERPRISES

Eero Lehti
Chairman

Jussi Järventaus
Managing Directo