

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



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Case Document No. 3

The Finnish Trade Union of Education (OAJ) v. Finland
Complaint No. 256/2025

COMMENTS OF THIRD PARTY (ETUC) ON THE MERITS

Registered at the Secretariat on 30 July 2026

Collective Complaint

Finish Trade Union of Education (OAJ) v. Finland

Complaint No. 256/2025

Observations by the European Trade Union Confederation (ETUC)

30.07.2026

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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 The ETUC would appreciate it if the European Committee of Social Rights (ECSR) would refer to those Observations not briefly at the beginning of its decision on the merits but following the European Court of Human Rights' (ECtHR) practice¹ summarise its arguments after described the complainant's and respondent Government's arguments for each provision at stake, thus providing it with the role of a 'third party' on an equal procedural footing with the other parties. This appears to be all the more required as the ETUC is a 'privileged' third party according to Article 7§2 CCPP.
- 3 The ETUC welcomes the fact that the respondent State has ratified not only the Revised European Social Charter (RESC) but also the Collective Complaints Procedure Protocol (CCPP).

I. General observations

- 4 The main content of the complaint is described in the Decision on admissibility of 19 May 2026 as follows:

OAJ alleges violations of Article 6§§1–4 of the Charter on account of certain legislative amendments adopted in 2024 and 2025, which introduced new modalities for conducting collective bargaining at the enterprise level with the aim of weakening the role of trade unions and reducing the normative impact of higher-level collective agreements, imposed a binding ceiling for wage increases established through conciliation, and restricted sympathy (secondary) strikes in a manner that is neither necessary nor proportionate within the meaning of Article G of the Charter....²

- 5 Three main issues are highlighted by the complainant:
 - 1) limiting the Social dialogue (this issue will be examined under Article 6§1, see below paras. 1)E.IV.4)1 seq),
 - 2) promoting the enterprise-level local bargaining and creating a parallel negotiation system as part of it, (this issue will be examined under Article 6§2, see below paras. 1)E.IV.4)3.1 seq),
 - 3) setting a wage ceiling for the conciliation system (this issue will be examined under Article 6§3, see below paras. 1--1 seq), and
 - 4) restricting sympathy³ strikes (this issue will be examined under Article 6§4, see below paras. 139 seq).⁴

¹ See, for example, ECtHR 17/10/2019, No. 1874/13 e.a., *López Ribalda e.a. v. Spain*, paras. 107-108 and 147-148, respectively.

² ECSR, [Decision on admissibility](#), 19.05.2026, No. 256/2025, *Finnish Trade Union of Education (OAJ) v. Finland*, para. 1.

³ The term 'sympathy' (strikes) is used as including also 'solidarity' (strikes). It is also considered as part of 'secondary action'.

⁴ [Case-document No. 1, Complaint registered on 18.12.2025](#), ('Complaint') under 3.2.

- 6 At editorial level, all quotations⁵ will be governed by the following principles: they focus on the issues at stake (while still showing the relevant context) and will be ordered chronologically (beginning with the newest text).

II. International and European law and material

A. General observations

- 7 The ETUC would like to start by referring to pertinent international and European law and material as the importance and legal significance of international and European standards and their interpretation and application is widely recognised and cannot be underestimated. From the outset, it should be noted that Finland has ratified all instruments (as far as they are open for ratification) mentioned below, unless otherwise mentioned.

1. Importance of rules of international law for interpretation according to the VCLT

- 8 For interpretation purposes it appears important to refer to the ECSR's own case law⁶ but also, most importantly, to the recent Advisory Opinion of the International Court of Justice (ICJ AO), in which the highest judicial world court has answered the question whether the right to strike is protected under ILO Convention No. 87 in the affirmative.⁷
- 9 Although this Opinion is focused on the right to strike in relation to ILO Convention No. 87 it contains nevertheless a holistic approach to interpretation in the field of (social) human rights treaties. Its reasoning can therefore be considered as model approach in particular in relation to international law material. It has taken account thereof in at least two ways:
- 10 First, it is particularly important to refer to the two UN Covenants and the case law of the two competent Committees as means of interpretation according to Article 31(3)(c) VCLT.⁸
- 11 Second, all other relevant instruments and respective case law can be taken into account as supplementary means of interpretation according to Article 32 VCLT, in particular
- ILO instruments and pronouncements,⁹
 - Regional instruments and pronouncements;¹⁰ in this respect the ICJ has referred extensively to the ECtHR case law¹¹ and to Articles 5 and 6 ESC.¹²

⁵ All quotations will be in *italics*; underlined emphases are added by the ETUC; eventual footnotes are, in principle, omitted.

⁶ 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.

⁷ ICJ, [Advisory opinion of 21 May 2026](#), General List No. 191; for all material, see <https://www.icj-cij.org/case/191>.

⁸ Ibid., paras. 90-98.

⁹ Ibid., paras. 116-119.

¹⁰ Ibid., paras. 120-137.

¹¹ See in particular *ibid.*, para. 128.

¹² Ibid., para. 130.

2. Statements by UN Treaty bodies

a) *Joint Statement of the Human Rights Committee (CCPR) and the Committee on Economic, Social and Cultural Rights (CECSR) on Freedom of Association*

- 12 In general terms and even more on the basis of the ICJ AO quoting its main parts,¹³ it appears more than relevant to refer at first to the Joint Statement of the CCPR and the CECSR dealing with the two Covenants International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICECSR) respectively.¹⁴ Adopted in 2019 at the occasion of the 100th anniversary of the ILO, they recognise the right to strike in their Joint Statement ‘Freedom of association, including the right to form and join trade unions’ in the following terms:

“... The Human Rights Committee and the Committee on Economic, Social and Cultural Rights, welcome the progress made by States to guarantee the freedom of association in labour relations. At the same time, the two committees note the challenges faced in the effective protection of this fundamental freedom, including undue restrictions of the right of individuals to form and join trade unions, the right of unions to function freely, and the right to strike. ...

Freedom of association, along with the right of peaceful assembly, also informs the right of individuals to participate in decision making within their workplaces and communities in order to achieve the protection of their interests. The committees recall that the right to strike is corollary to the effective exercise of the freedom to form and join trade unions. Both committees have sought to protect the right to strike in their review of the implementation of the ICESCR and the ICCPR by the States parties.”¹⁵

- 13 This Joint statement is all the more remarkable as Article 22 ICCPR refers in general terms to freedom of association whereas only Article 8(1)(d) ICESCR¹⁶ contains an express recognition of the right to strike.¹⁷ In interpreting those provisions the two supervisory bodies tend to refer to ILO standards and/or case law.¹⁸

b) *Draft General Comment No. 38 on Freedom of Association by the Human Rights Committee (CCPR)*

- 14 Although not be finally adopted Draft General Comment No. 38 on Freedom of Association CCPR provides already an important overview.¹⁹
- 15 In relation to trade union rights the CCPR intends to highlight i.a. the following:

As far as the collective dimension is concerned, article 22 implies that trade unions are established, carry out their activities and exercise their mandate based on the principles of autonomy and self-governance and without any interference from the State Party that is

¹³ Ibid., para. 97.

¹⁴ [E/C.12/2019/3-CCPR/C/2019/1](#), 23.10.2019.

¹⁵ Ibid., paras. 1 and 4, respectively.

¹⁶ United Nations (General Assembly). 1966. ‘International Covenant on Economic, Social, and Cultural Rights.’

¹⁷ In its case law, the CESCR also refers to this Joint statement, see e.g. Concluding observations, Belgium 2020, [E/C.12/BEL/CO/5 \(CESCR 2020\)](#), para. 29.

¹⁸ For a general reference, see Joint statement, n 14, para. 1. See also Concluding observations, Estonia 2019 [E/C.12/EST/CO/3 \(CESCR 2019\)](#), para. 27, Concluding observations, Belgium 2020, [E/C.12/BEL/CO/5 \(CESCR 2020\)](#), para. 29, Concluding observations, Germany 2018, [E/C.12/DEU/CO/6 \(CESCR 2018\)](#), para. 45, Cabo Verde 2018 [E/C.12/CPV/CO/1 \(CESCR 2018\)](#), para. 37 (“ILO principles concerning the right to strike”).

¹⁹ CCPR, Draft General Comment No. 38 on Article 22 (right to freedom of association) [English](#).

incompatible with article 22 (2). Accordingly, legislation allowing the authorities excessive control over the creation, functioning and activities of trade unions, including surveillance and interception of trade union data, sanctions such as the deregistration of trade unions for exercising their right to strike or criminal prosecution of their members, would be contrary to article 22. ...

Therefore, article 22, read in the light of ILO Conventions No. 87 and 98, includes the right of workers to participate in collective bargaining as a vehicle to defend their interests. Since the Covenant is a living instrument, as mentioned above, workers have also the right to strike without any undue restriction under article 22 (2). ...²⁰

B. Promotion of joint consultation (Article 6§1)

1. Previous references

- 16 Main elements have been referred to in the decision *CCOO CyL and UGT CyL* under 'Relevant international materials'²¹ comprising (sometimes only partly):

ILO Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113)

EU

- TFEU Articles 152(1), 154(1)-(3) and 155,
- European Pillar of Social Rights (EPSR), Principle 8,²²
- Recommendation of 12 June 2023 on strengthening social dialogue in the European Union (C/2023/1389).

- 17 In addition, several elements should be further taken into account:

2. United Nations

- 18 The CESCER has devoted many more words to describing the role that employers, trade unions and worker organisations should play in relation to social policy in general and certain elements in particular:

- 19 In its General Comment on the right to work (Article 6 ICESCR)²³ the CESCER made important statements in relation to consultation:

- *Trade unions play a fundamental role in ensuring respect for the right to work at the local and national levels and in assisting States Parties to comply with their obligations under Article 6. The role of trade unions is fundamental and will continue to be considered by the Committee in its consideration of the reports of States Parties.*²⁴
- *The promotion of employment requires effective involvement of trade unions.*²⁵

- 20 In its further General Comment on the right to just and favourable working conditions (Article 7 ICESCR)²⁶ the CESCER underlines the importance of consultation in formulating,

²⁰ Ibid., paras. 24 and 25, respectively.

²¹ ECSR, [Decision on the merits](#), 17.03.2026, No. 228/2023, *Comisiones Obreras de Castilla y León (CCOO CyL) and Unión General de Trabajadores de Castilla y León (UGT CyL) v. Spain*, paras. 18-21.

²² See below in more details, paras. 81 ff.

²³ CESCER, General Comment No 18, 2005, on: The right to work, E/C.12/GC/18.

²⁴ Ibid., para 54.

²⁵ Ibid., para 42.

implementing, reviewing and monitoring laws and policies related to the right to just and favourable conditions of work, not only with traditional social partners, such as workers and employers, and their representative organisations, but also with other relevant organisations,²⁷ highlighting in particular that States Parties are required to adopt the measures necessary to ensure the full realisation of the right to just and favourable conditions of work. This includes introducing measures to facilitate, promote and provide that right, including through collective bargaining and social dialogue.²⁸

3. International Labour Organisation

- 21 The [Consultation \(Industrial and National Levels\) Recommendation, 1960 \(No. 113\)](#), mentioned above para. 16, not only expressly covers consultation between trade unions and employers²⁹ but also provides i.a. that³⁰

Such consultation and co-operation should aim, in particular--

(a) at joint consideration by employers' and workers' organisations of matters of mutual concern with a view to arriving, to the fullest possible extent, at agreed solutions; ...³¹

- 22 More specifically, the CFA requires for consultations i.a.:

It is important that consultations take place in good faith, confidence and mutual respect, and that the parties have sufficient time to express their views and discuss them in full with a view to reaching a suitable compromise. The Government must also ensure that it attaches the necessary importance to agreements reached between workers' and employers' organizations.³²

- 23 The importance of consultations between trade unions and employers is also recognised by the CEACR, for example, for the purpose of application of Conventions No. 87 and 98 which are at stake in this case.

In general, the Committee encourages the use of methods of application for Conventions Nos 87 and 98 which have their origins in tripartism, social dialogue and full and frank consultations between the social partners.³³

²⁶ CESCR, General Comment No 23, 2016, on: The right to just and favourable conditions of work (Article 7), E/C.12/GC/23, para 56.

²⁷ Ibid., para 56.

²⁸ Ibid., para 60.

²⁹ Para. 1(1): Measures appropriate to national conditions should be taken to promote effective consultation and co-operation at the industrial and national levels between public authorities and employers' and workers' organisations, as well as between these organisations, for the purposes indicated in Paragraphs 4 and 5 below, and on such other matters of mutual concern as the parties may determine.

³⁰ See ILO, CFA, [Freedom of association - Compilation of decisions and principles of the Freedom of Association Committee](#). Sixth edition, 2018. §752-759. (see also eCompilation <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70001:0::NO::> (CFA Compilation 2018), Chapter [Collective bargaining](#), para. 1517, referring exactly to this provision.

³¹ Paragraph 5(a) Recommendation No. 113.

³² CFA Compilation 2018, n 30, para. 1533.

³³ ILO Report of the Committee of Experts on the Application of Conventions and Recommendations, [Report III\(1B\): Giving globalization a human face \(General Survey 2012\)](#), International Labour Conference, 101st session, 2012 (CEACR General Survey 2012), para. 169, referring in n 390 to 'for example, Cambodia – CEACR, observation, 2011; and Republic of Moldova – CEACR, observation, 2011'.

4. Council of Europe

24 In general terms, the ECSR has described its approach to Article 6§1 as follows:

Within the meaning of Article 6§1, joint consultation is consultation between workers and employers or the organisations that represent them on terms of equality with a view to consultation on all questions of mutual interest at every level. The expression “joint consultation” is to be interpreted as being applicable to all kinds of consultation between the two sides of industry – with or without any government representatives – on condition that both sides of industry have an equal say in the matter. In some States Parties, consultation takes place within the framework of joint bodies in which the government representative often acts as chairman. This form of joint consultation has been deemed to comply with the requirements of Article 6§1. The Committee interprets Article 6§1 to mean that States Parties must take positive steps to encourage consultation between trade unions and employers’ organisations.³⁴

25 In respect of the subjects to be covered, the ECSR states:

Consultation must cover all matters of mutual interest, and particularly: productivity, efficiency, industrial health, safety and welfare, and other occupational issues (working conditions, vocational training, etc.), economic problems (organisation and management of the firm, working hours, production rates, structures and number of staff, etc), and social matters (social insurance, social welfare, etc.).³⁵

5. European Union

26 Important parts of EU labour law are based on ‘social dialogue’. Its promotion is part of the Commission’s responsibilities:

The Commission promotes social dialogue at the EU level:

- by supporting the work of [the cross-industry Social Dialogue Committee](#) and the 44 [Sectoral Social Dialogue Committees](#)
- by involving social partners in policy- and lawmaking
- by providing financial support to transnational projects carried out by social partners through the two social dialogue call for proposals (support for social dialogue, information and training measure for workers’ organisations).³⁶

C. Promotion of collective bargaining (Article 6§2)

1. Previous references

27 Main elements have been referred to in the decision under ‘Relevant international material’ comprising (sometimes partly):³⁷

Council of Europe

- ECtHR, judgment *Demir and Baykara v. Turkey*³⁸
- Parliamentary Assembly (PACE), Resolution ‘Protection of the right to bargain collectively, including the right to strike’,³⁹

³⁴ CoE (ed.), [Digest of The Case Law of The European Committee of Social Rights](#) (ECSR Digest 2022), p. 86.

³⁵ Ibid., p. 87.

³⁶ https://employment-social-affairs.ec.europa.eu/policies-and-activities/eu-employment-policies/social-dialogue_en, see also for further information.

³⁷ ECSR, 05.12.2024, No. 226/2023, *Fédération SUD Santé Sociaux v. France*, paras. 30-37.

³⁸ ECtHR, Grand Chamber, 12.11.2008, No. 34503/97, [Demir and Baykara v Turkey](#), para. 154.

ILO

- [Right to Organise and Collective Bargaining Convention, 1949 \(No. 98\)](#), Article 4,
- Committee of Experts on Application of Conventions and Recommendations (CEACR), [General Survey 2012 \(Fundamental Conventions\)](#),⁴⁰
- [Promoting collective bargaining Convention, 1981 \(No. 154\)](#), Articles 2 and 3,
- [Collective Agreements Recommendation, 1951 \(No. 91\)](#)⁴¹
- [Declaration on Fundamental Principles and Rights at Work](#), 1998⁴²
- [Working Paper No.309 Collective Bargaining in the Public Service in Public in the European Union](#);

EU

- Treaty on the functioning of the European Union, Article 152,
- Charter of fundamental rights of the European Union, Article 28.

28 In addition, several elements should be further taken into account:

2. United Nations

- 29 While not having been mentioned expressly in neither the ICCPR nor the ICESCR, the right to collective bargaining has been fully recognised by the two Committees in their respective case law.
- 30 First, the CCPR has asked that ‘all workers – including public officials, teachers and workers in non-standard forms of employment – can fully exercise ... the right to collective bargaining’;⁴³ it has requested also ‘revising the procedures governing collective bargaining with a view to ensuring compliance with the Covenant’⁴⁴ or adopting ‘measures to safeguard workers’ freedom of association in practice, including ... the right to collective bargaining’.⁴⁵
- 31 Second, the CESCR it has expressed concern ‘that, in practice, restrictive conditions continue to impede the exercise of the rights to strike and to collective bargaining’⁴⁶ and recommended ‘that the State Party amend its Labour Law to explicitly recognize the rights to strike and collective bargaining’.⁴⁷ It also recommended to ensure ‘that all workers, including those in precarious and non-standard forms of employment, can fully exercise their rights to ... collective bargaining ..., without undue restrictions’ and refers for possible review to ILO Convention No 98.⁴⁸

³⁹ [PACE Resolution 2033 \(2015\). Protection of the right to bargain collectively, including the right to strike](#), adopted 28 January 2015, paras 1-5.

⁴⁰ CEACR General Survey 2012, n 33, paras. 167, 199.

⁴¹ Article 2(1).

⁴² Amended in 2022, para. 2(a).

⁴³ CCPR, Concluding Observations, Korea, 2023, [CCPR/C/KOR/CO/5 \(CCPR 2023\)](#), para 58(a), followed by ‘and that limitations on that right are in strict compliance with article 22 of the Covenant’.

⁴⁴ CCPR, Concluding Observations, Belarus, 2018, [CCPR/C/BLR/CO/5 \(CCPR 2018\)](#), para 55(d).

⁴⁵ CCPR, Concluding Observations, Dominican Republic, 2023, [CCPR/C/DOM/CO/6 \(CCPR 2017\)](#), para 32. It is to be welcomed that the CCPR rejected the idea of misuse of collective bargaining as a ‘domestic remedy’ (CCPR, 28 March 2017, No 2121/2011, [F.A.H. v Columbia](#), para 8.4).

⁴⁶ CESCR, Concluding Observations, Laos, 2025, [CESCR, E/C.12/LAO/CO/1 \(CESCR 2025\)](#), para 38.

⁴⁷ [Ibid.](#), para 39.

⁴⁸ CESCR, Concluding Observations, Netherlands, 2025, [E/C.12/NLD/CO/7 \(CESCR 2025\)](#), para 37(a) and (b), respectively.

3. International Labour Organisation

- 32 Further to the CEACR General Survey 2012, the Committee on Freedom of Association (CFA) in its Compilation defines the contours of that right in a comprehensive and detailed way,⁴⁹ ia concerning the [Workers covered by collective bargaining](#), [Subjects covered by collective bargaining](#), and [The principle of free and voluntary negotiation](#). In particular it should be ensured that collective bargaining be possible at all levels, including federal and confederal levels and that unjustified refusal to recognise the most representative organisation (insofar as provided for in national law and practice) is not permitted because it would impair the development of free and voluntary collective bargaining. In particular the two Committees have developed the following case law:

a) CEACR

- 33 For **negotiation with representatives of non-unionized workers** The CEACR stresses:

Since, under the terms of the Convention, the right of collective bargaining lies with workers' organizations of whatever level, and with employers and their organizations, collective bargaining with representatives of non-unionized workers should only be possible when there are no trade unions at the respective level. Indeed, the Committee considers that direct bargaining between the enterprise and its employees with a view to avoiding sufficiently representative organizations, where they exist, may undermine the principle of the promotion of collective bargaining set out in the Convention.⁵⁰

b) CFA

- 34 From the outset it should be noted that the CFA Compilation devotes a whole section to '**Collective bargaining with representatives of non-unionized workers**', stating as

The conclusion, with workers who are not union members or who leave their trade union, of collective accords which provide better terms than the collective agreements, serve to discourage collective bargaining as laid down in Article 4 of Convention No. 98.⁵¹

Collective agreements with the non-unionized workers should not be used to undermine the rights of workers belonging to the trade unions.⁵²

- 35 For the relationship between **elected** (non-unionised) **representatives** and **trade union representatives** the CFA requires a (prevailing) **protection for the latter**:

The Workers' Representatives Convention, 1971 (No. 135), and the Collective Bargaining Convention, 1981 (No. 154), contain explicit provisions guaranteeing that, where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures are to be taken to ensure that the existence of elected representatives in an enterprise is not used to undermine the position of the trade unions concerned.⁵³

- 36 As regards **decentralisation** the CFA stresses, first, the principle that the parties to a collective agreement themselves should freely determine the level of collective bargaining:

⁴⁹ See CFA Compilation 2018, n 30, Chapter [Collective bargaining](#).

⁵⁰ CEACR General Survey 2012, n 33, para. 239.

⁵¹ CFA Compilation 2018, n 30, para. 1342.

⁵² Ibid., para. 1347.

⁵³ Ibid., para. 1582.

The Committee does not adopt a stance either in favour of bargaining at the level of the branch of activity or at the enterprise level. The fundamental principle concerns the need for the level of collective bargaining to be freely determined by the parties concerned.⁵⁴

- 37 Second, and more specifically the CFA considers critically decentralisation:

The elaboration of procedures systematically favouring decentralized bargaining of exclusionary provisions that are less favourable than the provisions at a higher level can lead to a global destabilization of the collective bargaining machinery and of workers' and employers' organizations and constitutes in this regard a weakening of freedom of association and collective bargaining contrary to the principles of Conventions Nos. 87 and 98.⁵⁵

- 38 Concerning the **level of protection**, the CFA states that even a higher level individually consented for non-unionised workers compared to the level of the collective agreement creates problems with the principle of freedom of association:

When in the course of collective bargaining with the trade union, the enterprise offers better working conditions to non-unionized workers under individual agreements, there is a serious risk that this might undermine the negotiating capacity of the trade union and give rise to discriminatory situations in favour of the non-unionized staff; furthermore, it might encourage unionized workers to withdraw from the union.⁵⁶

- 39 Concerning legislation which provides that the validity of a collective agreement is conditional on **approval** by the government or by fulfilling certain productivity criteria is not in accordance with ILO standards, the CFA states:

Making the validity of collective agreements signed by the parties subject to the approval of these agreements by the authorities is contrary to the principles of collective bargaining and of Convention No. 98.

Legal provisions which make collective agreements subject to the approval of the ministry of labour for reasons of economic policy, so that employers' and workers' organizations are not able to fix wages freely, are not in conformity with Article 4 of Convention No. 98 respecting the promotion and full development of machinery for voluntary collective negotiations.⁵⁷

4. Council of Europe

- 40 In general terms, the ECSR states:

According to Article 6§2, domestic law must recognise that workers and employers organisations may regulate their relations by collective agreement. If the spontaneous development of collective bargaining is not sufficient, positive measures should be taken to facilitate and encourage the conclusion of collective agreements.⁵⁸

5. European Union

- 41 Besides the references to EU primary law already mentioned (see above, para. 27) the high relevance attributed to collective bargaining at EU level can be illustrated by further references to EU primary law, but also secondary legislation:

- 42 Concerning primary law, Article 153(1) TFEU provides legislative competence in relation to i.a. in the following terms:

⁵⁴ Ibid., para. 1407.

⁵⁵ Ibid., para. 1408

⁵⁶ Ibid., para. 1510.

⁵⁷ Ibid., paras. 1438 and 1439, respectively.

⁵⁸ ESCR Digest 2022, n 34, p. 87.

With a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields: ...

(f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5; ...

- 43 This provision has specific consequences for EU secondary legislation as recently shown by Minimum Wage Directive which, very importantly, which provides in its Article 4:

Article 4 - Promotion of collective bargaining on wage-setting

1. With the aim of increasing the collective bargaining coverage and of facilitating the exercise of the right to collective bargaining on wage-setting, Member States, with the involvement of the social partners, in accordance with national law and practice, shall:

(a) promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage-setting, in particular at sector or cross-industry level;

(b) encourage constructive, meaningful and informed negotiations on wages between the social partners, on an equal footing, where both parties have access to appropriate information in order to carry out their functions in respect of collective bargaining on wage-setting; ...

(d) for the purpose of promoting collective bargaining on wage-setting, take measures, as appropriate, to protect trade unions and employers' organisations participating or wishing to participate in collective bargaining against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

- 44 It should be particularly noted that the CJEU has confirmed the legality of this provision in its *Denmark v. Council* judgment.⁵⁹ Moreover, in its reasoning it explicitly referred to the ESC i.a. in the following terms:

the Kingdom of Denmark's argument that the authors of the Treaties intended to exclude from the competences of the European Union, in Article 153(5) TFEU, the subject of free participation in collective bargaining, as an element inherent in the right of association, while not supported by the Charter, is also not supported by the provisions of the European Social Charter and the Charter of Social Rights, which, for their part, precede the adoption of the Agreement on social policy. The European Social Charter and the Charter of Social Rights also treat the right of association and the right to collective bargaining as distinct rights, namely, as regards the former, in Articles 5 and 6 thereof and, as regards the latter, in Articles 11 and 12 thereof.⁶⁰

6. Other regional instruments and case law

- 45 Apart from the ECtHR case law mentioned above, the Inter-American Court of Human Rights (IACtHR) dealt i.a. with the right to collective bargaining without express recognition in the respective instrument.⁶¹

D. Promotion of conciliation and voluntary arbitration (Article 6§3)

1. United Nations

- 46 Examining a state report, the CESCR required the State to i.a.

⁵⁹ CJEU (GC), 11.11.2025, No. C-19/23, [Denmark v. Council](#), paras 76. seq.

⁶⁰ Ibid., para. 114.

⁶¹ For the IACtHR, Advisory Opinion, 5 May 2021, OC-27/21, Requested by the Inter-American Commission on Human Rights - Right to Freedom of Association, Right to Collective Bargaining and Right to Strike, and their Relation to Other Rights, with a Gender Perspective, https://www.corteidh.or.cr/docs/opiniones/seriea_27_ing.pdf (IACtHR AO), paras 88 seq.

*Take measures to improve the existing procedures for exercising the rights to strike and to collective bargaining, so as to remove undue restrictions and promote free and voluntary conciliation, ensuring that compulsory arbitration and mediation is avoided.*⁶²

2. International Labour Organisation

47 The supervisory bodies have developed important case law in relation also to conciliation:

- The conciliation of labour conflicts should promote, not restrict collective bargaining:

*Conciliation and mediation machinery should have the sole purpose of facilitating bargaining and should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness.*⁶³

*While various arrangements can facilitate negotiations and help promote collective bargaining, legislation or practices establishing machinery or procedures for arbitration or conciliation designed to facilitate bargaining between both sides of an industry should guarantee the autonomy of parties to collective bargaining.*⁶⁴

- The conciliator or conciliation body should normally be given large competence, which is independent from public authorities:

*In order to gain and retain the parties' confidence, any arbitration system should be truly independent and the outcomes of arbitration should not be predetermined by legislative criteria.*⁶⁵

- the conciliation process should enjoy the confidence of the labour market parties and the authorities should not restrict the freedom and autonomy of the conciliator

*The intervention of a neutral, independent third party, in which the parties have confidence, may be enough to break a stalemate resulting from a collective dispute, which the parties cannot resolve by themselves.*⁶⁶

- the State Authority may provide the parties in the negotiations with knowledge and information of the effects of a possible agreement, but this activity should be based on support not pressure and coercion. The objectivity of this type of knowledge must be ensured and the purpose of it is to help the labour market parties to assess the situation in a realistic manner and void misunderstandings and lack of communication

Certain rules and practices can facilitate negotiations and help to promote collective bargaining and various arrangements may facilitate the parties' access to certain information concerning, for example, the economic position of their bargaining unit, wages and working conditions in closely related units, or the general economic situation; however, all legislation establishing machinery and procedures for arbitration and conciliation designed to facilitate bargaining between both sides of industry must guarantee the autonomy of parties to collective bargaining. Consequently, instead of entrusting the public authorities with powers to assist actively, even to intervene, in order to put forward their point of view, it would be better to convince the parties to collective bargaining to have regard voluntarily in their negotiations to the major

⁶² CESCR, Concluding observations, Rwanda, 28.02.2025, E/C.12/RWA/CO/5, para. 35(c); see also the reference to ILO Conventions Nos. 87 and 98 para. 35(a).

⁶³ Ibid, para. 795. see also CEACR General Survey 2012, n 33, para. 144.

⁶⁴ CFA Compilation 2018, n 30, para. 324.

⁶⁵ Ibid., para. 823.

⁶⁶ Ibid., para. 1323.

*reasons put forward by the government for its economic and social policies of general interest.*⁶⁷

- in order to achieve settlements and to retain the confidence of the parties, conciliation should be impartial and the results of it should not be defined in advance by criteria set in legislation

*In order to gain and retain the parties' confidence, any arbitration system should be truly independent and the outcomes of arbitration should not be predetermined by legislative criteria.*⁶⁸

3. Council of Europe

- 48 The ECSR has developed specific case law for Article 6§3, certain elements may be quoted (in particular the prohibition of compulsory arbitration) as follows:

Conciliation is a process aimed at the peaceful settlement of a labour conflict, while arbitration can resolve the conflict on the basis of a decision taken by one or more individuals selected by the parties. The distinction is important as the result of a conciliation proceeding is not binding for the parties, and recourse to arbitration should be voluntary (subject to the agreement of the parties). However, once the parties have chosen to solve the dispute through arbitration, the result of the arbitration proceedings is binding on the parties.

All arbitration systems must be independent, and the outcome of arbitration may not be predetermined by pre-established criteria.

Any form of compulsory recourse to arbitration is a violation of this provision, whether domestic law allows one of the parties to defer the dispute to arbitration without the consent of the other party or allows the Government or any other authority to defer the dispute to arbitration without the consent of one party or both. Such a restriction is only allowed within the limits prescribed by Article G.

E. Right to strike (Article 6§4)

- 49 For the right to strike it appears particularly important to refer to all relevant material (without going into previous references).

1. United Nations

- 50 The starting point is the ICJ AO and in particular the Joint Statement recognising the right to strike, even more so because there is, to date, no General Comment on both relevant provisions, i.e. Article 8 ICESCR and Article 22 ICCPR respectively, have been adopted yet.⁶⁹ Accordingly, the 'Concluding Observations' on the countries concerned bear specific importance and which will be further specified below.

- 51 The ICESCR⁷⁰, refers expressly to the right to strike in Article 8 which reads as follows:

1. The States Parties to the present Convention undertake to ensure: ...

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country. ...

⁶⁷ Ibid., para. 1326.

⁶⁸ Ibid., para. 823, see also para. 1325.

⁶⁹ See paras. 14-15 with n 19.

⁷⁰ United Nations (General Assembly). 1966. 'International Covenant on Economic, Social, and Cultural Rights.'

52 In its case law, the CESCER has expressed its concern that

*owing to the restrictive definition of a strike as stipulated under section 244 (1) of the Labour Code, the right to strike may not be exercised to search for solutions to problems posed by major social and economic policy trends.*⁷¹

53 Specifically concerning **sympathy strikes**, the CESCER was ‘concerned about the prohibition against solidarity strikes’⁷²

54 As regards **sanctions** by imposing fines the CESCER expressed concern in the following terms:

*The Committee is concerned at the restrictions on freedom of association in the State party that have resulted from the reduction in the registration of unions and acts of interference by public authorities with respect to workers in the education sector, agricultural workers, public employees and transport workers in terms of the election of union leaders, collective bargaining rights, access to funding and acts of intimidation, in particular the disproportionate use of fines (art. 8).*⁷³

2. International Labour Organisation

55 The two fundamental ILO Conventions that deal with trade union rights such as the freedom of association and the right to collective bargaining are the [Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#)⁷⁴ and the [Right to Organise and Collective Bargaining Convention, 1949 \(No. 98\)](#).⁷⁵

56 While these Conventions do not refer explicitly to the right to strike, it is now confirmed by the ICJ AO⁷⁶ referring at least in terms of supplementary means of interpretation to the longstanding case law of the CEACR⁷⁷ and the CFA⁷⁸ and, which establishes that the right to strike forms an important corollary of the freedom of association and right to collective bargaining.

a) CEACR

57 In respect of **sympathy strike** the CEACR stated:

*With regard to so-called ‘sympathy’ strikes, the Committee considers that a general prohibition of this form of strike action could lead to abuse, particularly in the context of globalization characterized by increasing interdependence and the internationalization of production, and that workers should be able to take such action, provided that the initial strike they are supporting is itself lawful. It has noted in particular the recognition in Croatia of the right to call sympathy strikes in national legislation.*⁷⁹

58 A prohibition of sympathy strikes is seen as ‘severe limitation’ of the right to strike thus expressing a serious degree of violation.⁸⁰

⁷¹ CESCER, Concluding Observations, Lithuania, 2023, E/C.12/LTU/CO/3, para 42.

⁷² CESCER; Concluding Observations, Benin, 2020, E/C.12/BEN/CO/3, para 29.

⁷³ CESCER; Concluding Observations, Argentina, 2018, E/C.12/ARG/CO/4, para. 33.

⁷⁴ Entry into force: 4 July 1950.

⁷⁵ Entry into force: 18 July 1951.

⁷⁶ See n 7.

⁷⁷ CEACR General Survey 2012, n 33, para. 168.

⁷⁸ CFA Compilation 2018, n 30.

⁷⁹ CEACR General Survey 2012, n 33, para. 125.

⁸⁰ CEACR General Survey, para. 122, (iv).

59 In relation to **sanctions** the CEACR states in a general way that

*the legitimate exercise of the right to strike may not result in sanctions of any sort, which would be tantamount to acts of anti-union discrimination.*⁸¹

b) CFA

60 **Sympathy strikes** are considered as protected provided that the strike they are supporting is lawful.⁸²

61 It should also be noted that the CFA did **not accept (negative) economic impact** as justification for strike bans:

*By linking restrictions on strike action to interference with trade and commerce, a broad range of legitimate strike action could be impeded. While the economic impact of industrial action and its effect on trade and commerce may be regrettable, such consequences in and of themselves do not render a service “essential”, and thus the right to strike should be maintained.*⁸³

62 Concerning **sanctions**, in the present case the sympathy strikes (which would possibly be considered as ‘unlawful’ according to national legislation) have to be assessed as lawful under Article 6§4 because it violates this provision in several respects (see para. 169). In this event, the CFA is clear:

*Imposing sanctions on unions for leading a legitimate strike is a grave violation of the principles of freedom of association.*⁸⁴

63 Even when dealing with ‘unlawful strikes’ the CFA stated in relation to sanctions that it

*expects that any fines that could be imposed against trade unions for unlawful strikes will not be of an amount that is likely to lead to the dissolution of the union or to have an intimidating effect on trade unions and inhibit their legitimate trade union activities, and trusts that the Government would endeavour to resolve such situations by means of frank and genuine social dialogue.*⁸⁵

3. Council of Europe

64 While the right to strike is guaranteed by the CoE prominently and in different standards and ways there are certain pronouncements in relation to ‘political’ and sympathy strikes which require further consideration.

a) European Social Charter

65 In relation to **sympathy strikes** in the United Kingdom (UK), the ECSR had, first, taken note of

... that in 2012 the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO-CEACR) upheld the need to protect the right of workers to take industrial action in relation to matters that affect them, even though, in certain cases, the direct employer may not be a party to the dispute, and to participate in sympathy strikes, provided

⁸¹ CEACR General Survey, para. 122, (iv).

⁸² CFA Compilation 2018, n 30, para 770 (‘A general prohibition of sympathy strikes could lead to abuse and workers should be able to take such action provided the initial strike they are supporting is itself lawful.’) See also para. 771.

⁸³ Ibid., para. 848.

⁸⁴ Ibid., para. 951.

⁸⁵ Ibid., para. 969.

that the initial strike they are supporting is lawful. Moreover, ILO-CEACR recalled that the globalisation of the economy and the delocalisation of work centers may have a severe impact on the right of workers' organisations to organise their activities in a manner so as to effectively defend their members' interests, should lawful industrial action be too restrictively defined (Observation CEACR (adopted 2012) – Freedom of Association and Protection of the Right to Organise Convention, (No. 87)).⁸⁶

- 66 In the follow-up to its previous Conclusions and despite of the ECtHR judgment in the *RMT* case (see below, para. 69) the ECSR concluded:

In view of the extension of these work models and their impact on the ability of trade unions to represent the interests of their members, the Committee reiterates its finding that the restriction established in Section 244 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA), which limits lawful collective action to disputes between workers and their employer, constitutes an interference with the right of workers guaranteed in Article 6§4 of the 1961 Charter...⁸⁷

- 67 In relation to *Finland* the ECSR had asked a question:

In its previous conclusion, the Committee noted that sympathy strikes could in practice be legal under the system of collective agreements for state civil servants and that the situation appeared to be the same for municipal officials. It asked for observations on the claim that the limitations on the right to strike for civil servants who merely exercised technical functions effectively prevented them from taking protest action against the Government's economic or social policy or against the budget policy of municipalities aiming at savings in personnel costs. As the report contains no information on this point the Committee repeats its question.⁸⁸

b) European Convention on Human Rights (ECHR)

- 68 While not expressly referred to in ECHR the right to strike has been recognized that Article 11 ECHR on 'Freedom of assembly and association' by the European Court of Human Rights (ECtHR) on the basis of the Grand Chamber judgment in *Demir and Baykara*,⁸⁹ in its *Enerji Yapi-Yop Sen* judgment.⁹⁰ This judgment was followed by a series of similar rulings.⁹¹
- 69 While it would appear that there is no ECtHR case law on 'political' strikes the *RMT* judgment⁹² deals with the prohibition of **sympathy strikes** finding finally no violation of Article 11 ECHR. The Court, while admitting that

[t]he foregoing analysis of the interpretative opinions emitted by the competent bodies set up under the most relevant international instruments mirrors the conclusion reached on the comparative material before the Court, to wit that with its outright ban on secondary industrial action, the respondent State finds itself at the most restrictive end of a spectrum of national

⁸⁶ ECSR, Conclusions XX-3, 05.12.2014, [United Kingdom - Article 6§4](#).

⁸⁷ Ibid.

⁸⁸ ECSR, Conclusions XVII-1, 28.02.2005, *Finland* - Article 6§4.

⁸⁹ ECtHR, [Demir and Baykara v. Turkey](#), n 38.

⁹⁰ ECtHR, 21.04.2009, No. 68959/01, [Enerji Yapi-Yop Sen v. Turkey](#).

⁹¹ ECtHR, 15.09.2009, No. 30946/04, [Kaya and Seyhan v. Turkey](#); ECtHR, 13.7.2007, No. 22943/04, [Saime Özcan v. Turkey](#); ECtHR, 13.10.2010, No. 33322/07, [Çerikci v. Turkey](#); ECtHR, 27.6.2007, No. 6615/03, [Karaçaj v. Turkey](#). For an extensive analysis of the right to take collective action under Article 11 ECHR, see, F Dorssemont, in F Dorssemont K Lörcher and I Schömann (eds.), *The European Convention on Human Rights and the Employment Relation*, Oxford and Portland, Oregon, 2013, pp. 333-365.

⁹² ECtHR, 08.04.2014, No. 31045/10, [National Union of Rail, Maritime and Transport Workers v. The United Kingdom](#).

regulatory approaches on this point and is out of line with a discernible international trend calling for a less restrictive approach.⁹³

70 It nevertheless departed from these international criticisms by stating that

*the Court considers that the negative assessments made by the relevant monitoring bodies of the ILO and European Social Charter are not of such persuasive weight for determining whether the operation of the statutory ban on secondary strikes in circumstances such as those complained of in the present case remained within the range of permissible options open to the national authorities under Article 11 of the Convention.*⁹⁴

71 At least three elements should be highlighted in order to illustrate that this judgment is of no relevance in the present complaint. First, it is a judgment which is only related to the very specific circumstances prevailing in the UK. Second, there is no consequence of this judgment in relation to the ECSR:

*Nor should the conclusion reached in this case be understood as calling into question the analysis effected on the basis of those standards and their purposes by the ILO Committee of Experts and by the ECSR.*⁹⁵

72 Finally, the ECSR opposed the relevance of the RMT judgment by noting

*that Article 6§4 of the Charter is more specific than Article 11 of the Convention. It therefore considers that while the rights at stake may overlap, the obligations on the State under the Charter extend further in their protection of the right to strike, which includes the right to participate in secondary action.*⁹⁶

73 In relation to **(negative) economic consequences of a strike**, the ECtHR concluded that economic consequences and difficulties could be an important part of trade union freedom, and that ‘freedom of establishment is not counterbalancing fundamental right to freedom of association’ under the ECHR, but rather an element to take into consideration when assessing proportionality under Article 11.⁹⁷

*any strike implies certain economic losses, but it does not follow that any strike could be prohibited for risk of those losses. The ILO also does not consider negative economic consequences to constitute a sufficient reason justifying a complete ban on the right to strike (see paragraph 20 above, section 592).*⁹⁸

c) Parliamentary Assembly (PACE)

74 In its Resolution 2033 (2015) “Protection of the right to bargain collectively, including the right to strike”, the Parliamentary Assembly (PACE) highlights the following:

1. Social dialogue, the regular and institutionalised dialogue between employers’ and workers’ representatives, has been an inherent part of European socio-economic processes for decades. The rights to organise, to bargain collectively and to strike – all essential components of this dialogue – are not only democratic principles underlying modern economic processes, but fundamental rights enshrined in the European Convention on Human Rights (ETS No. 5) and the European Social Charter (revised) (ETS No. 163). ...

⁹³ Ibid., para. 98.

⁹⁴ Ibid.

⁹⁵ Ibid., para. 106.

⁹⁶ ECSR Conclusions UK, n 86.

⁹⁷ ECtHR, 10.06.2021, No. 45487/17, *Norwegian Confederation of Trade Unions (LO) and Norwegian Transport Workers’ Union (NTF) v. Norway*, paras. 117–118 (summary).

⁹⁸ ECtHR, 20.11.2018, No. 44873/09, *Ognevenko v. Russia*, para.73; the reference to the CFA is now contained in para. 61 above.

5. In particular, the rights to bargain collectively and to strike are crucial to ensure that workers and their organisations can effectively take part in the socio-economic process to promote their interests when it comes to wages, working conditions and social rights. “Social partners” should be taken to mean just that: “partners” in achieving economic performance, but sometimes opponents striving to find a settlement concerning the distribution of power and scarce resources.⁹⁹

75 Therefore, the PACE calls in this Resolution amongst others on the member states to take measures to uphold the highest standard of democracy and good governance in the socio-economic sphere including:

7.1. *protect and strengthen the rights to organise, to bargain collectively and to strike by:*
 (...) 7.1.2. *developing or revising their labour legislation to make it comprehensive and solid with regard to these specific rights;*
 7.1.3 restoring these rights wherever institutions and processes have already been undermined by recent legislative or regulatory changes; (...)

4. European Union

a) Charter of Fundamental Rights of the European Union (CFREU)

76 The right to collective action, including the right to strike is confirmed in the **Charter of Fundamental Rights of the European Union (CFREU)** which provides under ‘Chapter IV Solidarity’ in its Article 28 on ‘Right to collective bargaining and action’ that: ^{100 101}

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

77 The ‘Explanations’ on Article 28 CFREU show that this article is clearly based on and inspired by Article 6 ESC (and its case law) and should thus be interpreted in light of the ECSR requirements and case law:¹⁰²

This Article is based on Article 6 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 12 to 14). (...) The modalities and limits for the exercise of collective action, including strike action, come under national laws and practices, including the question of whether it may be carried out in parallel in several Member States.

⁹⁹ See n. 39.

¹⁰⁰ It is to be noted that the ESC is referred to in recital 5 of the Preamble of the CFREU which states: ‘This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights.’

¹⁰¹ For a recent extensive academic analysis, see Dorssemont, F. and Rocca, M. (2019), *Article 28 – Right of Collective Bargaining and Action*, Filip Dorssemont, Klaus Lörcher, Stefan Clauwaert and Mélanie Schmitt (eds.) (2019), *The Charter of Fundamental Rights of the European Union and the Employment Relation*, London: Hart Publishing, pp. 465-504; and Teun Jaspers, Frans Pennings and Saskia Peters (eds), *European Labour law*, Cambridge 2019, pp. 292-307.

¹⁰² [Explanations relating to the Charter of Fundamental Rights](#), O.J. C303, 14 December 2007, p. 17-35.

b) Other Fundamental rights texts

78 Next to the CFREU, the European Community/European Union has over the course of time developed several mainly politically binding catalogues of fundamental social rights.

79 Firstly, the **Community Charter of Fundamental Social Rights of Workers** (1989) (Community Charter) explicitly includes the right to strike:

13. The right to resort to collective action in the event of a conflict of interests shall include the right to strike, subject to the obligations arising under national regulations and collective agreements.

In order to facilitate the settlement of industrial disputes the establishment and utilization at the appropriate levels of conciliation, mediation and arbitration procedures should be encouraged in accordance with national practice.

80 Furthermore, the preamble mentions that in the implementation of this Charter:

"[...] inspiration should be drawn from the Conventions of the International Labour Organization and from the European Social Charter of the Council of Europe; (recital 10 of the Preamble)

81 Secondly, the solemnly proclaimed EPSR¹⁰³ provides (in Chapter II – Fair working conditions') the right to collective actions in Principle 8 as follows:

Social dialogue and involvement of workers

a. The social partners shall be consulted on the design and implementation of economic, employment and social policies according to national practices. They shall be encouraged to negotiate and conclude collective agreements in matters relevant to them, while respecting their autonomy and the right to collective action. [...]

82 It has also to be recalled that the Preamble to the EPSR refers at several occasions to the ESC and ILO Conventions in particular in relation to the interpretation and implementation of the EPSR:

The European Pillar of Social Rights shall not prevent Member States or their social partners from establishing more ambitious social standards. In particular, nothing in the European Pillar of Social Rights shall be interpreted as restricting or adversely affecting rights and principles as recognised, in their respective fields of application, by Union law or international law and by international agreements to which the Union or all the Member States are party, including the European Social Charter signed at Turin on 18 October 1961 and the relevant Conventions and Recommendations of the International Labour Organisation.

83 From the above it is clear that Principle 8 thus builds on 28 CFREU (and its interpretation), which in their turn draw amongst others on Article 6 ESC (and which in its turn draws on relevant ILO Conventions) and that both in interpreting and implementing Principle 8 due regard needs to be taken to the interpretation given to the latter mentioned norms (ESC and ILO).

5. Further Court's judgments

a) Interamerican Court of Human Rights

84 From the outset, it should be recalled that the ECSR's case law refers to other regional human rights courts, in particular the Interamerican Court of Human Rights (IACtHR).¹⁰⁴

¹⁰³ [Interinstitutional proclamation on the European Pillar of social rights](#), adopted 17 November 2017.

85 In respect of the right to strike, a specifically important development has taken place in 2021. Indeed, this Court has published an Advisory Opinion and in its follow-up a judgment on the right to strike. The Advisory Opinion¹⁰⁵ is of particular importance for several reasons:

- It recognises the right to strike in general terms requiring that
States must adopt measures aimed at ... fully recognizing the rights to freedom to form a union, collective bargaining, and strike.¹⁰⁶
- It finds in particular that the right to strike constitutes a
general principle of international law.¹⁰⁷
- It uses to a very important extent international standards and case law, in particular the relevant ILO Conventions and respective case law (in particular CFA) for interpretation purposes.¹⁰⁸

86 This approach and its results in relation to the right to strike have been confirmed by the more recent judgment, stating i.a.¹⁰⁹

*In its advisory role, this Court has already established that the right to strike is one of the fundamental human rights of workers, which may be exercised independently of their organizations. ...*¹¹⁰

*Thus, the Court has established that the protection of freedom of association fulfills an important social function, since the work of trade unions makes it possible to safeguard or improve the working and living conditions of workers, and to that extent its protection enables the realization of other human rights. In this sense, the protection of the right to collective bargaining and strike, as essential tools of the rights of association and freedom to organize, is fundamental.*¹¹¹

b) Supreme Court of Canada

87 In illustrative terms, the Supreme Court of Canada has expressed the essence of strikes as ‘placing economic pressure on employers’:

The inevitability of the need for the ability of employees to withdraw services collectively was also accepted by McLachlin C.J. and LeBel J. in R.W.D.S.U., where they recognized that the purpose of strikes — placing economic pressure on employers — is a legitimate and integral means of achieving workplace objectives:

Occasionally, . . . negotiations stall and disputes threaten labour peace. When this happens, it has come to be accepted that, within limits, unions and employers may legitimately exert economic pressure on each other to the end of resolving their dispute. Thus, employees are entitled to withdraw their services, inflicting economic harm directly on their employer and

¹⁰⁴ See e.g. ECSR, Decision on the merits of 6.12.2006, No. 30/2005, [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), para. 196, and ICJ AO, n 7, paras. 133-136.

¹⁰⁵ IACtHR AO, n 61.

¹⁰⁶ Press Release, Inter-American Court of Human Rights. I/A Court H.R. PR 47/2021, English https://corteidh.or.cr/docs/comunicados/cp_47_2021_eng.pdf

¹⁰⁷ IACtHR AO, n 61, para. 97 (‘The Court also notes that, in addition to being broadly recognized in international *corpus juris*, the right to strike has also been recognized in the national constitutions and laws of OAS member states. It can thus be considered a general principle of international law.’)

¹⁰⁸ Ibid, for freedom of association in general: paras. 59 – 62 in relation to international law in general, and in paras. 63 – 65, 75 - 87 in relation to the ILO; for the right to strike in relation to the ILO paras. 96 – 105,

¹⁰⁹ IACtHR, 17.11.2021, *Former Employees of the Judiciary v. Guatemala*, https://www.corteidh.or.cr/docs/casos/articulos/seriec_445_ing.pdf.

¹¹⁰ Ibid., para.106.

¹¹¹ Ibid., para.114.

indirectly on third parties which do business with their employer. [Emphasis added; para. 24.]¹¹²

6. Intermediate conclusions

- 88 From the above mentioned global international (UN and ILO) and European (CoE and EU) law and case law in particular concerning the right to collective action, including the right to strike, it is apparent that the right to collective action is a fundamental right and that it should be enjoyed fully. Such international and European standards are thus universally applicable to all workers and enterprises. Moreover, it can be concluded from the international material that **sympathy strikes** (ILO, ECSR) are protected.

III. The Law

- 89 Against the background of all references contained in the previous Part II., the following Part III. will analyse the main grounds of the complaint by, first, describing the general framework (III.A.) followed by, second, the examination of the specific provisions of Article 6 alleged to be violated by the complainant (III.B.).

A. General framework

- 90 Addressing the general framework, the following subsection will describe the general interpretative principles (III.A.1.) followed by the overview for the structure of the examination (III.A.2.).

1. General interpretative principles

- 91 Besides the general rules of interpretation (Article 31 VCLT) and supplementary means of interpretation (Article 32 VCLT) as developed by the ICJ AO,¹¹³ there are at least four further elements which have to be taken seriously into account when interpreting human rights treaties in general and fundamental social rights in particular.

a) Legal nature and importance of human rights

- 92 From the outset, it appears more than relevant to stress once again the importance of freedom of association as **human right** and the rights deriving therefrom. Only if the interpretation is fully placed in this perspective, it will be even more apparent that any restrictions or limitations have to be interpreted very strictly.
- 93 In relation to Article 6 it appears important to recall that this article is one of the ‘hard core’ provisions (Article A§1b). This underlines the nature of freedom of association (together with Article 5) as a human right.

¹¹² Supreme Court of Canada, 30.01.2015, Saskatchewan Federation of Labour v. Saskatchewan, <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/14610/index.do>, para. 50

¹¹³ See above, paras. 8-11.

b) Principle of effectiveness

- 94 Second, although representing a more general concept of interpretation, the ‘**principle of effectiveness**’ has its additional and particular value in relation to human rights treaties. It is aimed for securing the effectiveness of human rights in practice, i.e. in the every-day-life.
- 95 This element is genuine characteristic of the ESC because of its very wording. Indeed, each right enshrined therein is introduced by the requirement ‘*[w]ith a view to ensuring the effective exercise*’. Accordingly, for the ECSR it is important to, ‘*ensure that the rights embodied in the Charter are applied effectively in all the Council of Europe member States*’.¹¹⁴
- 96 Its overall importance is demonstrated by the fact that even in human rights instruments in which such a principle is not expressly mentioned, its relevance has nevertheless been developed and recognised in order to ensure human rights are guaranteed not only in theory but in every-day practice. In the words of the ECtHR, ‘*[t]he provisions of an international treaty such as the Convention must be construed in the light of their object and purpose and also in accordance with the principle of effectiveness*’.¹¹⁵

c) ESC as ‘living instrument’

- 97 Third, the interpretative “**living instrument**” concept is closely related to the “principle of effectiveness” (see above)¹¹⁶ and to “evolutive interpretation”¹¹⁷. Indeed, it is recognised by the ECSR in the following terms:

“The Committee interprets the rights and freedoms set out in the Charter in the light of current conditions and in the light of relevant international instruments, as well as in light of new emerging issues and situations, in other words, the Charter is a living instrument.”¹¹⁸

¹¹⁴ ESC Digest 2022, n n 34, Part III, Nature and aim of the Charter.

¹¹⁵ See ECtHR (GC), 10.02.2009, No. 14939/03, [Sergey Zolotukhin v. Russia](#), para. 80 (“The Court ... reiterates that the Convention must be interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory. It is a living instrument which must be interpreted in the light of present-day conditions (see, among other authorities, *Tyrer v. the United Kingdom*, 25 April 1978, § 31, Series A no. 26, and *Christine Goodwin v. the United Kingdom* [GC], no. [28957/95](#), § 75, ECHR 2002-VI). The provisions of an international treaty such as the Convention must be construed in the light of their object and purpose and also in accordance with the principle of effectiveness (see *Mamatkulov and Askarov v. Turkey* [GC], nos. [46827/99](#) and [46951/99](#), § 123, ECHR 2005-I)”; see also ECtHR (GC), 04.02.2005, No. 46827/99 e.a., [Mamatkulov e.a. v. Turkey](#), para. 101 (“The object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective, as part of the system of individual applications. In addition, any interpretation of the rights and freedoms guaranteed has to be consistent with “the general spirit of the Convention, an instrument designed to maintain and promote the ideals and values of a democratic society”). See as most recent authority ECtHR (GC), 14.09.2022, No. 24384/19 e.a., [H.F. e.a. v. France](#), para. 211 (“If Article 3 § 2 of Protocol No. 4 were to apply only to nationals who arrive at the national border or who have no travel documents it would be deprived of effectiveness in the context of the contemporary phenomena mentioned above”).

¹¹⁶ See e.g. G A Serghides, *The European Convention on Human Rights as a ‘Living Instrument’ in the Light of the Principle of Effectiveness*, in R Spano, I Motoc, B Lubarda, P Pinto de Albuquerque, M Tsiarli (eds.), *Fair Trial: Regional and International Perspectives – Procès équitable: perspectives régionales et internationales* – Liber Amicorum Linos-Alexandre Sicilianos, Limal, 2020, 537, at pp. 541-543.

¹¹⁷ See e.g. G Abi-Saab, K Keith, C Marquet, *Evolutionary Interpretation and International Law*, Hart Publishing, London, 2019, or E Bjorge, *The Evolutionary Interpretation of Treaties*, Oxford University Press, 2014.

98 This concept is also deeply rooted in (if not invented by) the ECtHR's jurisprudence:

*"The Court has on numerous occasions indicated that the Convention is a living instrument which must be interpreted in the light of present-day conditions and of the ideas prevailing in democratic States today."*¹¹⁹

d) Importance of other international instruments as minimum level of protection

99 The ESCR interprets the Charter in the light of other international treaties which are relevant in the field of rights guaranteed by the Charter as well in light of the interpretation given to these treaties by their respective monitoring bodies.¹²⁰

100 However, these references should not be understood as limiting the level of protection provided by the ESC to those standards. Conversely, as international standards have to take account of their world-wide context, the ESC protects fundamental social rights at a higher level. This was also the understanding when the original 1961 Charter was drafted as well as its revised version in 1996.

2. Structure of the legal examination of the complaint

101 The complaint refers mainly to different specific aspects limiting the (effective) exercise of the rights contained in Article 6. Their examination will be structured according to the claims contained in the complaint (see para. 5).

102 But before going into details, it appears important to address the general problem of regression:

B. Principle of non-regression

103 The respect of the principle of non-regression is an over-arching problem in the present case because of the new legislation introducing regression. This general problem is very relevant because protection levels for human rights, once achieved, should be safeguarded in legal terms. This is all the more the case if no financial or budgetary are involved.

104 This principle is relevant at least in two respects: first, in general and, second, in respect of Article 6 in particular.

1. General requirements

a) Principle of non-regression in general

105 This principle was (probably first) developed by the CESCR¹²¹ in General Comment No 3, in 1990, when interpreting States Parties' obligations under Article 2(1) ICESCR and defined as follows:

¹¹⁸ See above ESC [Digest](#) 2022, n 34, Part III, The Charter as a Living Instrument.

¹¹⁹ ECtHR, 24.01.2017, Nos. 60367/08 961/11, *Khamtokhu and Aksenchik v. Russia*, para. 73, referring to *Tyrer v. the United Kingdom*, 25.04.1978, para. 31, Series A no. 26; *Kress v. France* [GC], no. [39594/98](#), para. 70, ECHR 2001-VI; and *Austin and Others v. the United Kingdom* [GC], nos. [39692/09](#), [40713/09](#) and [41008/09](#), para. 53, ECHR 2012). See also IACtHR, Advisory Opinion OC-16/99, 1 October 1999, para. 114.

¹²⁰ See above ECSR [Digest](#) 2022, n n 34, Part III, Interpretation of the Charter in the Light of other international Instruments; see also ICJ AO in paras. 8 seq. above.

*any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available.*¹²²

106 While admitting that retrogression is not totally banned, it should anyhow be strictly justified. The respective criteria were further developed in 2007 indicating that the CESCR would look carefully at whether:

- (a) there was reasonable justification for the action;
- (b) alternatives were comprehensively examined;
- (c) there was genuine participation of affected groups in examining the proposed measures and alternatives;
- (d) the measures were directly or indirectly discriminatory; ... and
- (f) whether there was an independent review of the measures at the national level.¹²³

107 In the same vein, the IACtHR's approach (developed in relation to climate and environmental policies) could be used (*mutatis mutandis*):

*Furthermore, in compliance with the obligation of respect, States must refrain from adopting retrogressive measures. This obligation derives from the principle of progressivity and non-retrogression which is applicable to all the rights that are under threat in this context, and requires that any setback in climate and environmental policies that harm human rights must be exceptional, duly justified based on objective criteria, and comply with the standards of necessity and proportionality.*¹²⁴

108 It might be particularly interesting that the CCPR in its (still) Draft General Comment No. 38 on Freedom of Association foresees currently

*In addition, to achieve the full realization of the right to freedom of association pursuant to articles 2 and 22 of the Covenant, States Parties should refrain from adopting retrogressive measures or introducing new barriers and de jure or de facto obstacles to the enjoyment and exercise of freedom of association. Any retrogressive measure must be carefully justified by States Parties and must fully meet all the conditions of legality, legitimacy, necessity, proportionality and judicial guarantees set out in the previous sections.*¹²⁵

b) Principle of non-regression in particular in relation to Article 6

109 The problem of regression is particularly at stake when the legal obligation deriving from an ESC provision requires the Contracting States 'to promote' as enshrined in Article 6 at least in paragraphs 1-3. In its ordinary meaning and by its very essence it is directly contrary to any regression.

¹²¹ CESCR, [General Comment No. 3: The Nature of States Parties' Obligations](#), para. 9.

¹²² Ibid., para 9; the CESCR further elaborated this doctrine in subsequent General Comments, Concluding Observations etc.

¹²³ CESCR, [General Comment No 19](#), 2007, on: The right to social security (Article 9), E/C. 12/GC19, para 42.

¹²⁴ IACtHR, 29 May 2025, AO-32/25, Requested by the Republic of Chile and the Republic of Colombia – Climate Emergency and Human Rights, https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf, para 222.

¹²⁵ Draft General Comment No. 38, n 19, para. 60.

2. Application to the present case

110 Being obviously a retrogression for the complainant in respect of the previous legislation it has to be assessed whether the criteria mentioned above (in particular in para. 106) were respected.

111 The criteria mentioned above are assessed as follows:

(a) there was reasonable **justification** for the action;

From the outset, it would appear that the regression was not justified in substance: if ever only very general and vague reasons were provided but no justification for any pressing need of the specific measures imposed, no legitimate aim, no evidence by statistics and figures etc. The reasons were mainly of general political-economic nature.

(b) **alternatives** were comprehensively examined;

The Bill and its discussions in Parliament did not examine, at least not comprehensively any relevant alternatives.

(c) there was **genuine participation** of affected groups in examining the proposed measures and alternatives;

There was no substantive, let alone genuine participation of the most affected group(s), i.e. the trade unions.

(d) the measures were directly or indirectly discriminatory; ... and

Since the negative legislative measures were directed only against trade unions, they appear to be (at least indirectly) discriminatory.

(f) whether there was an independent review of the measures at the national level.

So far, no independent review has taken place.

112 Summing up, the criteria for permissible regressive measures were not fulfilled.

C. Promotion of joint consultation (Article 6§1)

1. New domestic legislation and its consequences

113 The new legislation (Employments Contracts Act 7a) undermines the position of collective bargaining. The organisations that have entered into an agreement cannot freely decide on binding provisions for local bargaining which is binding for all parties that conduct local negotiations based on their agreement. Local non-unionised workers and non-organised employers can agree on local agreements without following the collective agreements provisions regarding the negotiation procedures.

114 The new legislation reduces the incentive for employers to join the employers confederations because they can use clauses on local bargaining in local agreements by making agreements with locally elected so called workers representatives for which there are no formal requirements regarding knowledge or competence.

2. Legal assessment

115 The framework for assessing the Finnish law at issue is the effective exercise of the right to promotion of joint consultations (Article 6§1 ESC). Before going into details, the General interpretative principles (see paras. 90 seq.), in particular

- [the Legal nature and importance of human rights](#)
- [the Principle of effectiveness](#)
- [the ESC as 'living instrument'](#)
- [the Importance of other international instruments as minimum level of protection](#)

and the principle of non-regression (see paras. 105-112) should be recalled and specifically taken into account in the process of interpretation and application of Article 6§1 to the present case.

116 In the Finish context (and in the context of the right to bargain collectively) the obligation for the State to promote 'joint consultation between workers and employers' mean consultations between trade unions and employers/employers confederations. This is confirmed by the ILO supervisory bodies (see para. 21-23) and the ECSR (see paras. 24-25).

117 In this case the State has interfered in adequate consultation procedures which are in place (within the context of the collective bargaining system) by introducing rights for non-organised employers to avoid bargaining with trade union representatives by supporting election of non-unionized local workers representatives and making local agreement with them.

3. Interim Conclusions

118 Against this background, the ETUC is of the opinion that Article 6§1 has been violated by not promoting joint conciliation machinery but interfering unduly in the existing well-balanced consultation procedures.

D. Promotion of collective bargaining (Article 6§2)

1. New domestic legislation and its consequences

119 The new legislation not only does not 'promote' but obviously reduces collective bargaining between 'employers or employers' organisations and workers' organisations' in several ways:

120 First, the Employment Contracts Act Section 7 a gives the **non-unionized** workers not only a right to elect a **representative** (a right which has been guaranteed in the Employment Contracts Act since long), but also a competence for this representative to conduct bargaining locally in accordance with the clauses in a generally binding collective agreement. This 'representative' cannot be considered as 'workers' organisation'. Additionally, the effect of this regulation is that there are less incentives for an employer to join the employers' confederation since the 'flexibility' clauses can be used regardless of being part in the agreement.

121 Second, by introducing the **decentralisation** in favour of non-unionised representatives the collective bargaining autonomy of the 'employers or employers' organisations and workers'

organisations' is reduced because they cannot freely decide on the applicable procedures and parties to local bargaining.

- 122 Third, in a similar way there are less incentives for workers to join trade unions because they can 'freeride' on clauses in the collective bargaining by electing a local representative.

2. Legal assessment

- 123 The framework for assessing the Finnish law at issue is the effective exercise of the right to promotion of collective bargaining (Article 6§2 ESC). Before going into details, the General interpretative principles (see paras. 90 seq.), in particular

- [the Legal nature and importance of human rights](#)
- [the Principle of effectiveness](#)
- [the ESC as 'living instrument'](#)
- [the Importance of other international instruments as minimum level of protection](#)

and the principle of non-regression (see paras. 105-112) should be recalled and specifically taken into account in the process of interpretation and application of Article 6§2 to the present case.

- 124 Generally speaking, the State party has undermined the collective bargaining system in Finland on both at confederal level as well as at local level as described above by establishing an alternative system for local bargaining where non-organised employers and non-unionised workers representatives are allowed to make derogations from mandatory labour law to which earlier only nationwide employer and trade unions were allowed. The argumentation for the earlier practice was the existing power balance between the social parties on nationwide level. Such a power balance is not present between individual workers and an elected workers representative (by non-unionised workers).
- 125 Turning to the specific issues, the most important is the election of **representatives of non-unionised workers** for bargaining purposes against the existing trade unions (see para. 120). This contradicts ILO requirements expressed by the CEACR (see para. 33) and the CFA (see paras. 34-35).
- 126 The **decentralisation** of the bargaining level at the disadvantage of trade union (see para. 121) is also seen critically by the CFA (see paras. 36-37).
- 127 For the **level of protection** (see para. 122) the CFA even saw a problem for a better level of protection (see para. 38). This is all the more a problem if agreements with non-unionised representatives lead to a lower level of protection.
- 128 Apart from the elements just mentioned, the further context of a series of legal measures that aim to weaken and/or undermine the position of trade unions and collective bargaining on the Finnish labour market should also be taken into account. For example, the fact that in the national taxation system the trade union membership fees or membership fees in employer confederations have been regarded as deductible costs for income in the national taxation have functioned as an important way of promotion of the collective bargaining system. The government abolished this system in 2025 as a part of the reforms of the Finnish labour law system.

3. Interim Conclusions

- 129 Against this background, the ETUC is of the opinion that Article 6§2 is violated by not promoting but undermining the collective bargaining system at the severe disadvantage of trade unions.

E. Promotion of conciliation and voluntary arbitration (Article 6§3)

1. New domestic legislation and its consequences

- 130 The new amendment to the Act on the Mediation in Labour Disputes and Conditions for Certain Forms of Industrial Action (816/2024; 'Mediation Act') determining the work of the National Conciliator for the settlement of labour disputes and resultless bargaining entered into force on 1 January 2025. Its Section 11(2) of the Act stipulates as follows:

Achieving a settlement

*In order to safeguard the overall interests of the national economy, the conciliator shall discharge the conciliation duties in a way that ensures the wage formation process operates effectively and the functioning of the labour market is not jeopardised.*¹²⁶

- 131 The wording of the amendments being same as in the Governmental Bill (142/2024) it appears relevant to look which explanations the Bill provided all the more because they will finally frame its interpretation:

*The conciliator should act in their conciliation work in a way that protects the overall interest of the national economy, making sure wage formation works as well as possible and the functioning of the labor market isn't at risk. The conciliator should also follow this principle when making a settlement proposal. By following established practices in the labour market, like the general trend of wages, the aim is to avoid starting a wage-price spiral that would fuel inflation.*¹²⁷

- 132 The aim of 'avoid[ing] the start of a wage-price spiral' clearly leads to a ceiling of wage increases for which the conciliator is responsible.
- 133 This is all the more serious, as this provision sets the ceiling not only for regular wage increases as a precondition for the conciliation. It applies also even if the sectorial wages had lagged in previous negotiation rounds. That is obviously the situation with most service sector employees, particularly with teachers and others working within the public services.

2. Legal assessment

- 134 The framework for assessing the Finnish law at issue is the effective exercise of the right to promotion of conciliation and voluntary arbitration (Article 6§3 ESC). Before going into details, the General interpretative principles (see paras. 90 seq.), in particular
- [the Legal nature and importance of human rights](#)
 - [the Principle of effectiveness](#)
 - [the ESC as 'living instrument'](#)
 - [the Importance of other international instruments as minimum level of protection](#)

¹²⁶ Translation by the Ministry.

¹²⁷ Explanations in the Governmental Bill (142/2024), translation by AI.

and the principle of non-regression (see paras. 105-112) should be recalled and specifically taken into account in the process of interpretation and application of Article 6§1 to the present case.

- 135 More specifically, the new legislation restricts the competence of the existing machinery for conciliation and voluntary arbitration for the settlement of labour disputes at the dispense of trade unions.
- 136 In particular, it introduces a 'ceiling' for wages increases for which the National Conciliator is responsible. In practice, this leads in the very end to compulsory arbitration which is obviously violating already the requirement of 'voluntary' arbitration in Article 6§3.
- 137 Compared to the general requirement of "Promotion of conciliation and voluntary arbitration" in Article 6§3 Section 11(2) of the Mediation Act de facto obstructs negotiations and conciliation on catching up with previous wage lags and gaps whereas Article 6§3 ESC requires the opposite, i.e. promotion of the use of appropriate machinery for conciliation.

3. Interim Conclusions

- 138 Against this background, the ETUC is of the opinion that Article 6§3 is violated by not promoting conciliation and voluntary arbitration but restricting the competence of the existing machinery for conciliation and voluntary arbitration for the settlement of labour disputes.

F. Right to strike (Article 6§4)

- 139 In respect of the right to strike sympathy strikes, respectively, although linked together by a possible limitation of strikes to the conclusion of collective agreements:

1. New domestic legislation and its consequences

a) Regulations on sympathy strike in Collective Agreements Act

- 140 The Government's programme of 20.06.2023 includes, regarding solidarity strikes (sympathy strikes), the following intention:

The Government will amend the legislation so that solidarity action will become subject to the duty to notify in accordance with the proportionality assessment and the Act on Mediation in Labour Disputes. In future, solidarity action that is proportionate in relation to the objectives and the effects of which only affect the parties to the labour dispute, will be legal.¹²⁸

- 141 In order to realise the governmental programme, the Government and Parliament have amended the Collective Agreements Act with law 246/2024 which entered into force 18.05.2024. The wording now runs at sympathy strikes, as follows:

Section 8a¹²⁹

[1] During the period when the obligation to maintain work peace referred to in Section 8 above is in effect, an industrial action supporting demands made in another labour dispute (sympathy strike) may not be carried out if it is considered disproportionate as referred to in Subsections 2 or 3.

[2] A compassionate industrial action (sympathy strike) shall be considered disproportionate if:

¹²⁸ Section 4.1, translation by the Government.

¹²⁹ Translation by AI.

- 1) the employer's service or production activities are restricted to a greater extent than those activities that serve or benefit the employer in the primary dispute; and
- 2) the restriction causes such harmful consequences to the employer whose employees are participating in the compassionate industrial action or to its contractual partner that cannot be considered reasonable in the circumstances.

^[3] If a sympathy strike is carried out to show support without having a direct effect on the operations of the employer involved in the main dispute, it must not cause disproportionately harmful consequences for the main dispute.

b) Specifically: Proportionality test

- 142 Applying proportionality assessment into the lawfulness of a sympathy strike is not a totally new element in Finnish labour law. Traditionally it has been lawful if the main strike has been lawful. While proportionality assessment is a novelty at the level of the very wording of law, it has been sometimes applied by the Labour Court and the Supreme Court. However, in the parliamentary process of the Governmental Bill (142/2024, 'Bill'), the Constitutional Law Committee of the Parliament gave the Employment and Equality Committee its opinion where it referred to problems in proportionality assessment. Hence, the Constitutional Law Committee drew attention to the fact that in the Bill the borderline between allowed and forbidden sympathy strikes was obscure and open to interpretations, due to certain general expressions, notably 'disproportionately harmful consequences' and 'broader than needed'.
- 143 The position of the Constitutional Law Committee led the Employment and Equality Committee to propose amendments. The second Subsection of Section 8a ('A compassionate industrial action...' etc.) resulted that way. However, point 2 of the second Subsection is still highly open to interpretation – especially if read in isolation. Still, this Subsection must be read literally. Thus, its two points are intertwined with 'and'. This means that both points must be realised simultaneously, to render the sympathy strike disproportionate. The Employment and Equality Committee's Report (TyVM 4/24) states this in the detailed grounds of Section 8a. Based on the combined effect of its points 1 and 2, it is clear that Subsection 2 nails that the sympathy strike is lawful if it's delimited to the activities and/or services that serve or benefit the employer in the primary dispute. At the same time the Bill confirmed that in so far as the sympathy strike would affect the actors within the sphere of the main dispute, the new constraints would not have any effect.
- 144 As linked to point 1 in Subsection 2, the Report of the Employment and Equality Committee confirmed the contours of the amendment at issue. It noted that, notwithstanding the appropriate delimitation of the sympathy strike, due to the fact the workers in service of the employer take part in the sympathy strike, harmful consequences can be under the circumstances at issue assessed reasonable. The Committee continued by stating that notwithstanding the proper delimitation of a sympathy strike, it can cause certain sorts of harm, such as slowing down of activities or services, both to the employer's activities and for contract partners.
- 145 Subsection 3 of Section 8a outlaws disproportionately harmful consequences in a separate situation where the sympathy strike is carried out without direct impact on the operations of the employer involved in the main dispute. This is a remarkable constraint of sympathy strikes by trade unions with more substantial resources for the benefit of weaker unions. At the same time, it establishes with full force – the compensatory fine of individual workers included - the chilling effect of Section 8a in such a situation (see below). In the Bill this Subsection was founded with the need to minimize the harm for outsiders in relation to the

main dispute while, however, upkeeping at the same time the sufficient pressure effect of the industrial action in main dispute.

- 146 The Committee further reasoned that according to Subsection 3 of Section 8a, if a sympathy strike is carried out to show support without having an immediate effect on the employer involved in the main dispute, the sympathy strike must not cause disproportionate harmful consequences in relation to the main dispute. Consequences are considered disproportionate if they are significantly larger or wider than the damage caused by the main dispute. The disproportionality of harmful consequences must, however, be so obvious that it can be objectively observed.
- 147 The Committee also noted six positive qualifications linked to cases under Subsection 3. It stated that, based on information received from the Ministry of Employment and the Economy,
- (i) it is not possible in all sectors to target a sympathy strike clearly only at the part serving the employer involved in the main dispute, but even then, sympathy strikes must still be allowed under the regulations.
 - (ii) In those cases, even somewhat larger harmful consequences can be considered reasonable.
 - (iii) When assessing the reasonableness of harmful consequences, the possibilities of the person carrying out the sympathy strike and the means available to limit the harmful consequences must be considered.
 - (iv) Even incorrectly defined sympathy strikes can be considered allowed, for example, if the short duration of the sympathy strike or otherwise minor disruptions support the idea that the harmful consequences can be considered reasonable.
 - (v) Unreasonableness must be so obvious that it can be objectively observed.
 - (vi) The organiser assesses the legality of the sympathy strike based on the information available to them when initiating the sympathy strike.
- 148 The above qualifications do not neutralise the fact that in the preparatory works, in the Bill and in Employment and Equality Committee's Report, costs and economic losses are mentioned as covered by the notion of 'unreasonable costs' and 'unreasonable harm'. This builds up the risk related to a decision on sympathy strike and is not in conformity with the ILO's Committee on Freedom of Association practice. Even the Bill admitted that bare economic losses do not justify restrictions on the right to strike. However, the other grounds, i.e. the collective agreement in force and protecting the outsiders in relation to the main dispute, were found as stronger. In fact, the amendments by the Employment and Equality Committee show how case-by-case basis and unsure their effect is. The Committee e.g. noted how at some sectors it is not possible to delimit the sympathy strike clearly and only to the part which serves the activities of the employer in the main dispute, but the action must anyway be allowed. This reasoning supports the argument that the legislation at issue is built in practice on a highly unclear holistic assessment ex post.
- 149 In cases where the purpose in the main dispute is something else than conclusion of a collective agreement the trade union must announce the planned sympathy strike seven

days in advance to the National Conciliator, under Mediation Law (247/2024). However, the Conciliator is not competent to mediate the dispute which means that the mediation takes place only within the main dispute. The supporting union's announcement on borders of its sympathy action is anyway binding, i.e. irreversible. Next to this, the law (247/2024) sets for sympathy strikes outside the peace obligation the same proportionality requirements as under those in Section 8a of the Collective Agreements Act. Criticism presented above regarding that provision is *mutatis mutandis* valid under the Mediation Law, too. There, too, the sympathy action must not broaden the sphere of the main dispute, and it must have a direct impact on it.

c) *Additionally: Sanctions based on 'unlawful' sympathy strikes*

- 150 Enactment of the law 246/2024 also included a radical amendment in consequences of sympathy strikes deemed unlawful on basis of the Collective Agreements Act or Mediation Act. The Bill declared that the level of compensatory fines for unlawful industrial action would be increased, with the maximum amount set at EUR 150,000 and the minimum amount set at EUR 10,000. Besides, an employee who continues a strike which the Labour Court has found to be unlawful industrial action has become subject to a penalty payment of EUR 200 for participating in such an industrial action. Thus, the Bill became law, as such.
- 151 It appears important to note that the minimum fine has already made some small local trade union units collapse which breaches the principle of proportionate sanctions.
- 152 Prior to law 246/2024 the Collective Agreements Act included a fine scale EUR 0-37.400, without the minimum. In percents the maximum was raised by about 300%, i.e. being now quadruple. Next to these figures, notable is the fact that the fine can be repeated without limiting the judgments' number.

2. *Legal assessment on Restrictions of Sympathy Strikes*

- 153 The framework for assessing the Finnish law at issue is the effective exercise of the right to strike (Article 6§4 ESC). Before going into details, the General interpretative principles (see paras. 90 seq.), in particular
- [the Legal nature and importance of human rights](#)
 - [the Principle of effectiveness](#)
 - [the ESC as 'living instrument'](#)
 - [the Importance of other international instruments as minimum level of protection](#)

and the general elements of the principle of non-regression (see paras. 105-108, 110-112) should be recalled and specifically taken into account in the process of interpretation and application of Article 6§4 to the present case.

a) *General elements*

- 154 From the outset, it should be noted that
- as new **regressive** legislation is **not justified** *per se* (see above para. 112),
 - **sympathy strikes** are generally **protected** under international law material (see above para. 88), whereas the new legislation only allows them in theory, not in practice, thus having an effective chilling effect.

- at least in a strike context, pressure by **economic losses** (or harm) is the **very essence of a strike** (see paras. 61, 73, 87, respectively), otherwise trade unions would be put in the role of 'collective begging', this making the right to strike devoid of substance.

Already these elements should lead to finding a violation of Article 6§4.

b) Additional specific elements

- 155 This should be sufficient to find a violation of Article 6§4, in respect of the new legislation. Additionally, the following elements could be taken into account:
- 156 First, the **economic losses** suffered by employers and their contractual partners they are now (because of the legislative structure) attributed a central role in restricting sympathy action, thus becoming in the end the decisive factor.
- 157 Second, additional burden is put on trade unions in respect of **ex-ante duties** leading to **uncertainty** because the new Section 8a in the Collective Agreements Act impose a trade union to assess in advance,
- (i) whether the sympathy strike's connection or impact to employer in main dispute sufficiently 'direct',
 - (ii) does the action restrict other business activities 'broader than needed',
 - (iii) are the damages for employer or his contract partner (who can invoke a business secret, impossible to open and assess by a trade union) 'reasonable in the given circumstances' and
 - (iv) are consequences in relation to main dispute 'disproportionate harmful consequences'.
- 158 Thus, expressions such as 'disproportionate harmful consequences' and 'broader than needed' remaining entirely open and other assessments are very difficult, the borderline between lawful and unlawful strikes becomes difficult, if not impossible, to predict.
- 159 Third, the **sanctions** newly imposed are contrary to the right to strike guarantees. Indeed, according to international law material (see paras. 59, 62 and 63) they are not permissible in case of 'lawful' strikes; any new unlawfulness of sympathy strikes would be violating Article 6§4 (see para. 154) and could therefore not be considered as 'unlawful' for the purposes of this provision. If ever
- 160 Moreover, in terms of discrimination it is important also to note the fact that the fine of an employer organisation neglecting its supervisory duty, meant to guarantee the correct application of provisions in a collective agreement is judged with the old scale, whereas to a trade union neglecting its supervisory duty, regarding the peace obligation, the new scale does apply. In this respect, the parity between the social partners' rights and obligations, aged about a century, is broken.
- 161 In any event, the new sanctions are completely unproportional.

c) Cumulative effect

162 Taken alone, each of the elements examined above is violating Article 6§4. However, additionally, these violations are further enhanced when taking them together in their mutually reinforcing negative effect on trade unions. Their cumulative effect undermines the protection provided by Article 6§4 even more thus making solidarity actions exceptionally risky exactly at the moment when they would have weight in supporting a weaker position in negotiations.

d) No justification for restriction under Article G§1

163 As developed above, the regressive legislation in this case is not justified (see paras. 111-112) and should therefore be assessed as violating Article 6§4 as such.

164 But even referring to the ECSR's interpretation of Article G§1 which is interpreted as follows:

The right to strike may be restricted provided that any restriction satisfies the conditions laid down in Article G which provides that restrictions on the rights guaranteed by the Charter must be prescribed by law, serve a legitimate purpose and be necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. In providing that restrictions on the enjoyment of Charter rights must be "prescribed by law", Article G does not require that such restrictions must necessarily be imposed solely through provisions of statutory law. The case law of domestic courts may also comply with this requirement provided that it is sufficiently stable and foreseeable to provide sufficient legal certainty for the parties concerned. Moreover the terms of Article 6 includes the respect of fair procedures.¹³⁰

the respective criteria are not fulfilled:

165 Already concerning condition of 'prescribed by law' is not fulfilled, i.e. that the enacted legislation (which is clearly the case in a formal sense) must also be substantively 'sufficiently stable and foreseeable to provide sufficient legal certainty for the parties concerned' not only for domestic courts but also for the legislation as such according to the ECtHR's case law. This not the case here because too many vague and unclear formulations are used which 'on top' – as shown above (see i.a. para. 157) – are introduced only at the disadvantage of trade unions.

166 Moreover, the economic policy consideration do not appear in the (exhaustive) catalogue for legitimate aims. They cannot amount to 'rights and freedoms of others' because this would give pure economic interests the character of 'rights' (see also para. 156).

167 Finally, and in any event, the requirement of 'necessary in a democratic society' is not fulfilled. A legislation which leads to the weakening of only one part (i.e. trade unions) which is, additionally, the part created and responsible for 'compensating' the weaker position of workers cannot be considered as balanced.

168 Summing up, neither in relation to the requirement for regressive legislation nor in relation to the criteria according to Article G§1 the restrictions could be considered as justified.

¹³⁰ ECSR Digest 2022, n n 34, p. 91.

3. Interim Conclusions

169 Besides the general reasons for a violation of Article 6§4 (see above para. a)), additionally, specific elements of the new Finnish regulation are violating this provision – enhanced by their cumulative effect – may be summarized as follows:

- no real, only a theoretical possibility for sympathy action is existing, thus becoming devoid of substance (see para. 155, 2nd and 3rd indents);
- the obligation for the trade union to assess the economic consequences of a sympathy strike for the employer and the contract parties of the employer is out of all proportionalities (see para. 157 above);
- the sanctions are not permissible, in any event completely unproportional (see paras. 159-161 above).

Against this background, the ETUC is of the opinion that Article 6§3 is violated by introducing far reaching limitations to sympathy strikes which in practice lead to a prohibition.

V. Conclusions

170 For all the reasons stated above, the ETUC suggests to hold that Finland has violated Article 6 ESC in the following respects:

- (1) Article 6§1 by not promoting joint conciliation machinery but interfering unduly in the existing well-balanced consultation procedure (see para. 118);
- (2) Article 6§2 by not promoting but undermining the collective bargaining system at the severe disadvantage of trade unions (see para. 129);
- (3) Article 6§2 by not promoting conciliation and voluntary arbitration but restricting the competence of the existing machinery for conciliation and voluntary arbitration for the settlement of labour disputes (see para. 138);
- (4) Article 6§2 by introducing far reaching limitations to sympathy strikes which in practice even lead to a prohibition (see para. 169).

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