20/02/2018

EUROPEAN SOCIAL CHARTER

Comments by The Federation of Finnish Enterprises (FFE)

on the 13th national report

on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF FINLAND

(Follow-up to the decisions relating to the Collective Complaints)

Report registered by the Secretariat on

20 February 2018

CYCLE 2018

Translation of the statement by the Federation of Finnish Enterprises (FFE)

Council of Europe; Revised European Social Charter; Thirteenth Periodic Report
by Finland

The Federation of Finnish Enterprises (FFE) states the following:

The Federation of Finnish Enterprises (FFE) fully supports the Government's views regarding report on complaint no. 106/2014.

On question of coverage of compensation, the Employment Contracts Act (hereafter ECA) contains wide margin of discretion when it comes to compensation for unlawful dismissal. The court must take into account various factors when determining the amount of compensation. As the Government notes on section 32 of its report, the Act covers both material and immaterial damage incurred by the employee. It is therefore crucial to acknowledge that the compensation is not dependent on the actual damage caused to the employee. The employee does not have to present evidence on the damage either. Therefore, the sums of compensation tend to be higher than without current scheme, where overall assessment of the factors are being done for determination of compensation.

Furthermore, the FFE would like to point out, as also the Government states in its report (sections 37-38), that any compensation of damages must be in causal connection between unlawful dismissal. As the general principles of tort law require causal connection, thus it cannot be regarded otherwise in the context of labour law. The time limits for claiming compensation and the upper limit for compensation ensure that the causality is taken into account sufficiently. As mentioned before, the ECA de facto provides better possibilities for compensation since it does not have to correspond actual damage. It would be unreasonable if an employee could claim damages years after dismissals and if the sum of compensation could be without any upper limit. The compensation shall also be proportional. This very core principle could be jeopardized, if no upper limit for compensation exists.

On reinstatement, the FFE considers that the Article 24 of the revised European Social Charter cannot be interpreted in a way that reinstatement is included as a remedy in Article 24, as it is not explicitly mentioned in it. The discretion of the content of *other appropriate relief* is left to national practices, which is also mentioned in the appendix. Therefore, the non-existence of reinstatement from ECA is not violation of Article 24 as such.

Furthermore, as the Governments notes in sections 45-47 of its report, the possibility for alternative compensation did exist in the previous ECA, but it was never used. This fact alone confirms that an obligation for reinstatement is not appropriate tool for compensation in cases of dismissal. In addition, it must be acknowledged that private employment relationships are based on contracts, so general rules and context of civil law shall apply. An obligation for reinstatement, i.e. forcing contractual parties to continue their contractual relationship against mutual will, is not compatible with common principles of contractual relations.