No. 87

REPORT

for the period 1 June 2016 to 31 May 2019, drawn up by the **Government of Finland**, in accordance with article 22 of the Constitution of the International Labour Organization, on the measures taken to give effect to the provisions of the

Freedom of Association and Protection of the Right to Organise Convention, 1948, No. 87,

the ratification of which was registered on 20 January 1950.

I LEGISLATION AND REGULATIONS

Nothing new to report.

II – III

Nothing new to report.

COURT RULINGS RELATED TO THE CONVENTION'S SCOPE OF APPLICATION

Supreme Court

KKO 2017:16, summary:

J work as a sheet iron worker at K Ltd, where employees did not have a shop steward. With the exception of 3 persons, J asked all the employees who belonged to the trade union whether they were in favour or wanted J to be elected shop steward. Once support was given, J submitted a filled out notification on the appointment of a shop steward to the employer. When the employer requested that J organise a candidate nomination meeting in accordance with the election guidelines of the trade union, J collected eleven signatures from the company's 14 employees who were trade union members in a document on the selection. The trade union's section approved J's selection as shop steward in its meeting on 5 December 2012.

K Oy terminated J's employment contract on 30 November 2012 for reasons related to J as a person.

The Supreme Court found that a mistake has occurred in the selection of a shop steward, which may have violated the rights of some employees. As the employer had been notified of J's selection as shop steward and because the section of the trade union has approved the selection later on, the employer should have complied with the provision on election procedure in chapter 7, section 10, subsection 1 of the Employment Contracts Act when terminating J.

Applied legal provisions: chapter 7, section 10, subsection 1 of the Employment Contracts Act.
Unofficial translation of the Employment Contracts Act (55/2001)

KKO 2017:29, summary:

The members of an employee organisation that was a participant in a collective agreement that bound employer companies had selected a shop steward for a company. The reasoning in the Supreme Court's Decision makes it clear that that this would not prevent employees in another personnel group, who are not members of an employee organisation participating in a collective agreement, but rather members of another employee organisation having the right to elected the elected representative referred to in chapter 13, section 3 of the Employment Contract Act, even in the instance where the collective agreement that binds the company is partly applied also to their employment contracts.

Co-operation negotiations had been underway in the employer company to which the case applied. However, the employees who were members of another employee organisation had not elected a cooperation representative referred to in the Act on Cooperation within Undertakings (334/2007) as their representative. In its reasoning for its decision, the Supreme Court referenced e.g. provisions in ILO Conventions 87, 98 and 135. An excerpt from the final reasons for the decision:

29. The Supreme Court finds that the election of the cooperation representative referred to in cooperation legislation may minimise the damage that some personnel groups may incur and these who belong to this group cannot elect an elected representative from among themselves. However, the employee trustee's tasks are more extensive than those of the shop steward and the Cooperation Act is not applied to undertakings with fewer than 20 employees. For these reasons, when interpreting chapter 13, section 3, subsection 1 of the Employment Contracts Act, the importance of electing a cooperation representative cannot be determined.

30. The secondary status of the employee trustee in comparison to the shop steward has been reasoning in the law's preliminary work by referencing provisions in ILO Convention No. 135. As is stated in more detail in section 15 above, according to the collective agreement in question, the signatory states must aim to ensure that the existence of representatives that are independent of trade unions such as the employee trustee is not used to weaken the status of trade unions of their representatives. However, the provisions in the agreement do not support the interpretation that a shop steward and employee trustee could not work in cooperation at a workplace representing those that had selected each of them. Article 3, section 1 of ILO Convention No 87 confirms the principle according to which workers shall have the right to elect their representatives in full freedom instead supports the belief that the member of TEA ry, which was established to oversee the interests of senior employees must have the right to elect an employee trustee as their representative although the company already has a shop steward elected by employees who are members of the Vakuutusväen Liitto trade union.

31. The employees' right to join a trade union of their choice and to elect their own representative is a key part of freedom of association and of professional freedom of organisation which are secured as fundamental and human rights. The Supreme Court found that when interpreting chapter 13, section 3, subsection 1 of the Employment Contracts Act, it is plausible to select one of the two possible interpretations. The option that A chose for the case, which better secure the realisation of the right to organisation. Another reason why this option should be chosen is that a more extensive possibility for electing an elected representative will be more effective than electing a cooperation representative in providing the protection that the Mass Terminations Directive and Cooperation Procedure Directive aim at also to employees who are not members of an employee organisation that is a participant in a collective agreement that binds employers.

32. For these reasons, the Supreme Court see that chapter 13, section 3, subsection 1 of the Employment Contracts Act must be interpreted so that it does not act as an obstacle for A's elections as the elected presentative of senior employees at LocalTapiola Group.

Applied legal provisions: chapter 13, section 13, subsection 1 of the Employment Contracts Act, and section 13, subsection 2 of the Constitution of Finland.
The Constitution of Finland, unofficial translation.

A case that was no mentioned during the previous reporting period was case **KKO 2016:12**, where the Supreme Court based the reasoning for its decision on ILO Conventions 87 and 98. A summary of the case:

According to a restriction clause in the company's performance bonuses system, participation in an illegal industrial action removed the right of persons to performance bonuses from the salary term during which the illegal industrial action took place. The company's employees had initiated a work stoppage while their obligation to industrial peace had been valid and as a result of this the company had withheld performance bonuses from those who had participated in the work stoppage.

The reasoning given in the Supreme Court's decision demonstrates that the work stoppages had not been implemented by the trade union but rather the industrial actions had been independently organised by employees and had not been connected to the freedom to assembly by unions. The company had not acted contrary to the prohibition on discrimination or the prohibition on preventing or limiting freedom of association when they withheld performance bonuses.

Applied legal provisions: chapter 2, section 2, subsection 1, chapter 12, section 1 and chapter 13, section 1 of the Employment Contracts Act (23/2004), and section 13 of the Constitution of Finland.

Labour Court

TT 2017:161, summary:

The case dealt with whether a labour market organisation broke the industrial peace obligation provided in the Public Servants' Collective Bargaining Act, the State Civil Servants' Collective Bargaining Act and the Collective Agreements Act when its members took part in a demonstration organised at Helsinki Railway Station on 18 September 2015. Finland's trade union confederations announced the demonstration only after the Government had published planned measures to improve Finland's cost competitiveness on 8 September 2015. The demonstration was thus a political industrial action in opposition of the Government's plans.

The decision by the court stated that participation in a political demonstration by members of the trade union who were employed by the Government could not be prevented. The claim was dismissed in this regard.

The decision also found that civil servants, as a rule, have a permanent obligation to industrial peace, but provisions limiting their right to strike must be interpreted according to provisions on the freedom of assembly and association in international obligations and the Constitution of Finland. The actions of the members of the trade union were seem as prohibited according to the Public Servants' Collective Bargaining Act in that public servants, who use public authority, participated

in the strike. However, it could not be determined from the report on the matter that the industrial action would have been contrary to section 9 of the Public Servants' Collective Bargaining Act and section 8 of the Collective Agreements Act.

As the trade union did not engage in measures to stop the industrial action despite being notified of it, the court found that it had violated the State Civil Servants' Collective Bargaining Act and the trade union was sentenced to pay a compensation fine. (Voted)

Labour Court:

TT 2019:78 (issued on 25 June 2019)

The reasons for the industrial action were the co-operation procedures conducted in the company and the employer's announcement that reductions in the workforce were required. The industrial action was thus targeted against the collective agreement's provisions on the employer's right of direction.

Although the shop stewards at the factory did not participate in the industrial action, the chief shop steward was considered to have played an active role in its implementation. The local trade union had thus breached its duty to maintain industrial peace. A compensatory fine was also imposed on the trade union for neglecting its supervisory duty.

V

Nothing new to report.

VI

A copy of this report has been sent to the following labour market organisations:
1. The Confederation of Finnish Industries (EK)
2. The Central Organization of Finnish Trade Unions (SAK)
3. The Finnish Confederation of Salaried Employees (STTK)
4. The Confederation of Unions for Academic Professionals in Finland (Akava)
5. The Commission for Local Authority Employers (KT)
6. The State Employer's Office (VTML)
7. The Federation of Finnish Enterprises
8. The Commission for Church Employers

Statements issued by labour market organisations:

The Federation of Finnish Enterprises has presented following statements on Conventions No.87 and 98:

"The Federation of Finnish Enterprises is of the view that the freedom of association is strongly protected in Finland. It should be noted, however, that the freedom of association does not mean an obligation to join an organisation and that it has both a positive and a negative dimension. Freedom of association also means the right not to join a labour market organisation. Both employees and employers have this right.

Finland's legislation specifies a position for both employer and employee organisations, which limits employers and employees who use unreasonably negative freedom of association. Even though the labour market organisations have the right to collective bargaining and the other rights secured under ILO Conventions, the use of these rights should not limit the legal status of other employers and employees.

The general nature of collective agreements that are valid in Finland contains elements that are questionable from the perspective of freedom of association and non-discrimination. When we say that collective agreements are generally applicable this means that employers and employees who are not members of labour market organisations are bound by the agreements concluded by such organisations. The general nature thus limits the contractual freedom of employers and employees who use of negative freedom of association, as collective agreements often contain far more conditions for employment than legislation does.

Such workers and employers are bound by agreements on employment terms and conditions concluded by other parties even if they were not satisfied with them. This arrangement also prevents employers that are not members of labour market organisations from concluding workplace-level agreements containing terms and conditions that differ from generally applicable collective agreements.

Additionally, Finland's key employment legislation includes a provision prohibiting employers who are not member of a labour market organisation from deviating from the regulations laid down in collective agreements with local agreements (chapter 13, section 7 and 8 of the Employment Contracts Act, sections 40 and 40 a of the Working Hours Act, and sections 30 and 31 of the Annual Holidays Act; as well as sections 13 and 13 a of the Study Leave Act.

Therefore, even if a collective agreement gives the right to local agreements, employers who are not members of labour market organisations cannot agree locally on whether a regulation in the collective agreement applies to one of the matters listed in the aforementioned provisions. This means that, compared with employers that are members of labour market organisations, such employers are treated unfairly in terms of their legal status.

It should be noted that ensuring the negative freedom of association does not in any way limit the positive freedom of association of workers and employers. The Federation of Finnish Enterprises would like to emphasise that the legislation ensuring the freedom of association should not lead to a situation where employers and employees are treated unequally on the basis of the use of the freedom of association."

"The Federation of Finnish Enterprises is an organisation representing entrepreneurs and employers that has 115,000 member companies nationwide. Of the companies, 55,000 are employer firms, amounting to over half of the employer firms in the private sector (in total around 90,000). The companies belonging to the federation employ around 660,000 of the around 1.5 million employees in the private sector in Finland (including entrepreneurs).

Some of the member companies in the Federation of Finnish Enterprises are also members of employer associations in their industries. These organisations conclude the collective agreement in

their industry. The federation also includes industrial associations, of which six are parties to collective agreements.[1] As a result, the federation widely represents different employer firms, including employers belonging to an employers' association.

In its statement on the ILO conventions 87 and 98, the Federation of Finnish Enterprises has paid attention to the general applicability of the collective agreements valid in Finland and the system included in the labour legislation which involves excluding the employers that are not members of employers' associations from local agreement based on a collective agreement. It its statement, the federation has drawn attention to the shortcomings of this regulation in relation to the negative freedom of association safeguarded under the ILO conventions. The statement has not taken a stand on the activities of other associations operating in the labour market.

The Federation of Finnish Enterprises considers the statement by the Central Organisation of Finnish Trade Unions (SAK) inappropriate, as this presents views on the federation's activities that are misleading and disconnected in view of the comments presented by the federation on the ILO conventions 87 and 98. The aforementioned organisation presented no observations during the preparation of Finland's report submitted to the ILO before the statement by the federation. As a result, the Federation of Finnish Enterprises considers it necessary to also present its observations concerning the factors referred to in the statement by the aforementioned organisation.

First, the Federation of Finnish Enterprises points out that while the Constitutional Law Committee of the Parliament of Finland has noted that the general applicability of collective agreements is an arrangement feasible under the Constitution, the committee has also detected potential problems related to fundamental rights in the context of general applicability.[2] Considering the fact that the situation in Finland's labour market has changed and the statement by the Constitutional Law Committee is nearly 20 years old, the statement by the committee cannot be perceived as unambiguous evidence of a lack of problems in the system of general applicability.

Furthermore, the Federation of Finnish Enterprises notes that the general applicability specifically prevents agreement at the level of workplaces in unorganised companies. While general applicability requires all employers under the scope of application of the collective agreement to comply with the collective agreement, it only provides employers belonging to an employers' association with access to use the opportunities for making other agreements included in the collective agreement. This is also a matter of allowing the collective agreement parties to, directly pursuant to law, agree on a part of the contents of a collective agreement that would only allow deviation by employers belonging to an employers' association. In this context, the protection of employees serves as a poor

[1] The Finnish Association of HPAC Technical Contractors, Association of Finnish Woodworking and Furniture Industries, Koneyrittäjien liitto ry (Association of machine entrepreneurs), the Electrical Contractors´ Association of Finland STUL, Suomen Sairaankuljetusliitto ry (the Finnish association of medical transports), and the Dental Laboratories Association.

[2] PeVL 41/2000 vp. p. 4-5: "In the context of this sort of regulation closely connected to fundamental rights, it is **not fully unproblematic that, under chapter 13 (8), the status of an unorganised employer is completely dependent on the issues that national labour market organisations transfer as subject to local agreement under a collective agreement.** Overall, the most unambiguous solution could involve an act laying down the conditions or purposes under which the matters referred to in chapter 13 (7) may be subject to local agreement under a national collective agreement. -- Based on the proposal, **it is nonetheless necessary to follow the development of the collective agreement practice and take legislative action in case there is a change in the collective agreement practices compared to the current practices.** The Committee emphasises the importance of monitoring and notes that this **must pay attention to** the implementation of employee's protection **from the perspective of the Constitution, possible changes in the status of employers within the scope of general applicability, particularly from the perspective of negative freedom of association**, and the development of the competitive situation."

argument, as the agreements by the collaborative agreement parties can also be used to undermine better terms agreed on an individual basis.[3]

The statement of the aforementioned organisation also refers to certain disputes between individual companies and trade unions. The statement also claims that the Federation of Finnish Enterprises has attacked the freedom of association. The example used in this context includes reimbursing the membership fee of an unemployment fund provided by an employer as a staff benefit which has not concerned such "sector-specific unemployment funds that have traditionally also been connected to the trade unions".

It must be generally noted that referring to disputes between individual companies and trade units is inappropriate in this context, particularly considering the fact that these disputes have not been referred to processing in independent courts. The remark made in the statement is also particularly questionable as, under Finland's Act on Unemployment Funds (603/1984), unemployment funds should be separate from trade unions. The Federation of Finnish Enterprises points out that, despite this, the communications and marketing of many of the member unions in the central organisation present earnings-related unemployment security (which requires membership in an unemployment fund) as a benefit provided by membership in a trade union. In fact, by doing this, many of the trade unions misleadingly link the membership of an unemployment fund to the membership in a trade union even through, under law, trade unions and unemployment funds must be kept separate. It must also be noted that employers are at full liberty to decide which benefits they provide to their staff and who implements these benefits, and this issue has no relevant connection to the ILO conventions referred to above.

The statement also makes reference to the right to negotiate benefits only to members related to the right to collective bargaining. From the perspective of the freedom of association, a problem arises not from this but rather the structure of Finland's labour legislation, which puts employers at an unequal position based on association. The Federation of Finnish Enterprises also points out that, under the system currently valid in Finland, collective agreements can be intentionally used to influence the status of all employees and employers, even in a manner that allows overriding the agreed, more favourable conditions agreed for employees.[4] The employer's prohibitions to local agreements included in labour legislation[5] provide employees' and employers' associations with an opportunity to agree on more favourable terms for their members without a possibility of unorganised companies to influence or apply these. These opportunities may be substantial in contexts such as labour costs and various crises faced by companies.

In conclusion, the Federation of Finnish Enterprises notes that the freedom of association is a fundamental right of both employees and employers, and that neither the positive nor negative dimension of this right may be restricted. However, the rights and responsibilities of employees and employers may not depend on whether or not they have exercised this fundamental right."

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[3] See also decision by the Labour Court TT 2019:74, which involved an agreement between trade unions that prevented the application of an individual condition that would have provided the employee with an even more favourable employment relationship.

[4] See decision by the Labour Court TT 2019:74.

[5] Chapter 13, sections 7 and 8 of the Employment Contracts Act, sections 40 and 40 a of the Working Hours Act, sections 30 and 31 of the Annual Holidays Act, and sections 13 and 13 a of the Study Leave Act.

The Central Organization of Finnish Trade Unions (SAK) has presented the following statement on Conventions No.87 and 98:

“The freedom of organisation and the social partners’ right to negotiate and agree on the terms of employment are safeguarded as a fundamental right based on the freedom of association referred to in subsection 2 of section 13 of the Constitution of Finland. International human rights obligations, including the ILO Conventions, have also contributed to this provision. The general applicability of collective agreements is based on specific provisions in the Employment Contracts Act and its objective is to ensure the minimum level of terms of employment to all employees regardless of whether the employer is a member of an employers’ association that negotiates collective agreements. In addition to ensuring the minimum terms of employment for employees, the general applicability of collective agreements guarantees healthy competition. Generally applicable collective agreements prevent wage dumping, the trampling of terms of employment and unhealthy mutual competition between companies on the basis of terms of employment.

Under subsection 2 of section 7 of the Employment Contracts Act, the employer shall observe at least the provisions of a national collective agreement considered representative in the sector in question (*generally applicable collective agreement*) on the terms and working conditions of the employment relationship that concern the work the employee performs or nearest comparable work. If a term of an employment contract is in conflict with a provision in the generally applicable collective agreement, the term is null and void under the law and the minimum provision in the generally applicable collective agreement must be observed instead.

The Federation of Finnish Enterprises, the association representing entrepreneurs, has been trying to erode the general applicability of collective agreements by referring to the negative right of association on the one hand and to non-discrimination of employers on the other. The general applicability of collective agreements means that employers not belonging to any employers’ association (unorganised employers) also have the obligation to comply with the provisions safeguarding the minimum level of terms of employment for employees in the collective agreement considered to be representative in the sector.

General applicability does not mean a duty to organise, however. The freedom of association is safeguarded as the right to organise on the one hand and the right not to organise on the other. In connection with the parliamentary review of the Employment Contracts Act, the Constitutional Law Committee of the Finnish Parliament has noted that general applicability of collective agreements is a possible arrangement in terms of the Constitution. As noted by the Committee in its statement (PeVL 41/2000 vp - HE 157/2000 vp), general applicability does not limit the negative freedom of association, either.

General applicability does not prevent workplace-level agreements that deviate from the collective agreement. When agreeing on the terms of employment, it must be taken into account that a generally applicable collective agreement guarantees the minimum terms of employment observed in the sector in question. If there is a desire to agree on provisions of the collective agreement in a manner that will undermine the employee’s interests, in order to observe the objective of protecting employees, the procedure defined by the social partner organisations that agreed on the provisions of the collective agreement should be followed in the agreements and negotiations. This will safeguard a balance in negotiations and agreements also at the local level and ensure that the provisions of collective agreements are observed, for example, by means of the supervisory duty concerning organised social partners.

SAK also notes that some unorganised employers in Finland have attacked the freedom of organisation by using a procedure that discriminates against organised employees. The Federation of Finnish Enterprises representing unorganised employers has advised its member companies to offer to reimburse the membership fee of a private unemployment fund to their employees as an employee benefit. However, the reimbursement of the unemployment fund membership fee has not been offered as an employee benefit to those employees who are members of such sector-specific unemployment funds that have traditionally also had links with the trade unions.[1] The Federation of Finnish Enterprises has also proposed that unorganised companies should stop deducting trade union membership fees from salaries.[2]

The Federation of Finnish Enterprises refers to the negative right of association and the non-discrimination of employers when the terms of employment are agreed. SAK emphasises that, in addition to the legislation on the freedom of association and the right to collective bargaining, the current Non-discrimination Act provides that the freedom of association and the right to collective bargaining specifically include a possibility to negotiate benefits only for own members, as long as the intention is not discriminatory.

The supervision of the interests of their members is naturally the responsibility of both sides of industry, the employees and the employers. Therefore, employers' organisations may also negotiate with employees' organisations for benefits or rights concerning only their own members, such as rights to local agreements as agreed on in collective agreements. The intention is to specifically safeguard the social partners' freedom of association and the right to collective bargaining at different levels. Finally, SAK notes that the objective of the above-mentioned activities of the Federation of Finnish Enterprises and some of its member companies seems to be to destabilise the long-standing Finnish tradition of employee membership in employees' organisations and respecting the freedom of association and the right to collective bargaining."

The Finnish Confederation of Salaried Employees (STTK) has presented the following statement on Conventions No.87 and 98:

"In Finland, the freedom of organisation and the social partners' right to negotiate and agree on the terms of employment are safeguarded as a fundamental right based on the freedom of association referred to in subsection 2 of section 13 of the Constitution of Finland. International human rights obligations, including the ILO Conventions, also contribute to the regulation.

The general applicability of collective agreements, based on specific provisions in the Employment Contracts Act, ensures a minimum level of terms of employment for employees. The objective of the regulations is to guarantee the minimum terms of employment for employees and their equal and non-discriminatory treatment. Generally applicable collective agreements also prevent wage dumping and unhealthy mutual competition between companies on the basis of terms of employment.

Under subsection 2 of section 7 of the Employment Contracts Act, the employer shall observe at least the provisions of a national collective agreement considered representative in the sector in question (*generally applicable collective agreement*) on the terms and working conditions of the employment relationship that concern the work the employee performs or nearest comparable work.

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[1] https://www.yrittajat.fi/blogit/yrittajat-tarjoavat-turvaa-tyopaikoille (in Finnish)
[2] https://www.kauppalehti.fi/uutiset/suomen-yrittajilta-raju-ehdotus-ay-maksujen-perinta-pois-tyonantajilta/d1f16e11-bf5b-3560-8f58-abf9d0f67c18 (in Finnish)

If a term of an employment contract is in conflict with a provision in the generally applicable collective agreement, the term is null and void under the law and the minimum provision in the generally applicable collective agreement must be observed instead.

The freedom of association is safeguarded as the right to organise on the one hand and the right not to organise on the other. In connection with the parliamentary review of the Employment Contracts Act, the Constitutional Law Committee of the Finnish Parliament has noted that general applicability of collective agreements is a possible arrangement in terms of the Constitution. General applicability does not mean a duty to organise. As noted by the Committee in its statement (PeVL 41/2000 vp - HE 157/2000 vp), general applicability does not limit the negative freedom of association, either.

General applicability does not prevent workplace-level agreements that deviate from the collective agreement. Collective agreements contain a large number of provisions on local agreements. If there is a desire to agree on provisions of the collective agreement in a manner that will undermine the employee's benefits, in order to observe the objective of protecting the employee, the agreement should take place between parties determined by those social partner organisations that agreed on the provisions of the collective agreement. This would safeguard a balance in negotiations and agreements also at the local level and ensure that the provisions of collective agreements are observed, for example, by means of the supervisory duty concerning organised social partners."