

No. 135

Article 22 of the Constitution of the ILOReport for the period 1 June 2014 to 31 May 2023, made by the **Government of Finland**

on the

Workers' Representatives Convention, 1971 (No. 135)

(ratification registered on 13 January 1976)

I LEGISLATION AND REGULATIONS

[The new Co-operation Act \(1333/2021\)](#) entered into force on 1 January 2022.

New Co-operation Act improves dialogue between employers and employees. The Act applies to companies and organisations employing at least 20 persons. The Act is not applied to central or local government agencies or public bodies.

In accordance with the new Act, the employer and employees or their representatives shall engage in a regular dialogue. The dialogue can address, for example, financial situation of the company or organization, workplace rules and practices, personnel structure and competence needs wellbeing at work. A plan for developing the work community is formulated as part of the dialogue.

The role for employee representatives in change negotiations has been strengthened. Before the employer makes a decision on matters that have a significant effect on the employees, such as reductions in workforce, the employer must consult the employees or employee representatives. This process is called change negotiations.

The employee representative has more rights than before to make proposals and propose alternative solutions (section 22 of the Act). In addition, the new Act specifies the time when negotiations must start.

The provisions on administrative representation were transferred from the Act on Personnel Representation to the Act on Co-operation within Undertakings. Employees shall be presented in the body of the company or organisation, which deals with important business matters, finances and personnel issues. The provisions on administrative representatives apply to companies that employ at least 150 people in Finland.

II Direct request

III Information on the practical application of the Conventions

Supreme Court decision KKO 2022:35. The Supreme Court considered that the provision on the violation of employees' freedom of association protected the right of union workers to choose a shop steward. Representatives of an enterprise not belonging to an employers' association had terminated the position of shop steward in the enterprise. The scope of the general applicability of a collective agreement was irrelevant to the fulfilment of the essential elements of an offence. The company's representatives were convicted on violating employees' freedom of association under the Finnish Criminal Code. The Supreme Court stated that based on the Constitution of Finland and binding ILO conventions (nos 87 and 98) union workers have the right to freely choose a shop steward.

Supreme Court decision KKO 2017:29. The members of an employees' association party to a collective agreement that was binding on the employer undertaking had elected a shop steward for the undertaking. On the grounds indicated in the decision of the Supreme Court, it was held that this did not preclude employees in another personnel group, who were not members of the employees' association that was party to the collective agreement but instead belonged to another employees' association, from electing from among themselves an elected representative as referred to in chapter 13, section 3 of the Employment Contracts Act, even though the collective agreement that was binding on the undertaking applied also to their employment relationships. In its decision, the Supreme Court made reference to i.a. ILO Conventions Nos. 87 and 135.

The Supreme Court held that the provisions of ILO Convention No. 135 do not lend support to interpreting that a shop steward and elected representative could not cooperate in the workplace, each representing their respective electors. On the contrary, the principle enshrined in Article 3(1) of ILO Convention No. 87, that workers' organisations shall have the right to elect their representatives in full freedom, supports the view that the members of TEA ry, an association established to safeguard the interests of upper-level employees with administrative, managerial, professional and related occupations, must have the right to elect an elected representative even though there already was a shop steward in the undertaking elected by the employees who were members of the Union of Insurance Employees.

IV

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 (SY)

Statements by the labour market organisations:

Akava's and SAK'S statements on Convention no. 135 are attached to the report on Convention no. 87.

STTK

There have been situations in workplaces where the employer refused to accept the shop steward elected by the workers. This has been seen especially in workplaces that comply with the collective agreement on the basis of general applicability. Unionised workers have been denied the right to elect a shop steward from among themselves mainly on the grounds of the non-unionised undertaking's interpretation that it is under no obligation to recognise a shop steward as referred to in the generally applicable collective agreement. In such cases, the workers may have been offered the opportunity to elect an *elected representative* instead. In relation to this theme, Finland's Supreme Court has issued a precedent ruling in labour offence case KKO 2022:35.

Precedent ruling KKO 2022:35 had to do with the abolition of the position of shop steward. In the case, the representatives of an undertaking that did not belong to an employers' union had abolished the position of shop steward in the undertaking. The Supreme Court found that the provision concerning violation of workers' freedom of association protected the right of unionised workers to elect a shop steward. The extent of the general applicability of the collective agreement was not relevant to the fulfilment of the essential elements of the offence. The representatives of the undertaking were found to have committed the offence of violating workers' freedom of association. The ruling made reference to the freedom of association safeguarded under the Constitution of Finland as well as to ILO Conventions Nos. 87, 98 and 135.

In Finland, shop stewards are a part of the system of collective agreements that is based on the freedom of association. Supreme Court case law has already earlier expressly stated that the workers in the employ of a non-unionised employer can elect from among themselves a shop steward, to whom the provisions of collective agreements concerning shop stewards shall apply (decisions KKO 1991:174 and KKO 2001:119).

In Finland, the provisions on elected representatives are laid down in chapter 13, section 3 of the Employment Contracts Act, according to which employees who do not have a shop steward referred to in a collective agreement applicable to the employer under the Collective Agreements Act may elect an elected representative from among themselves. The drafting history of the said chapter 13, section 3 of the Employment Contracts Act (Government proposal HE 157/2000) states that the provisions of the said section will have no impact on the application of the system of shop stewards also in non-unionised undertakings, any more than on such proceedings and the related agreements in the first place. The drafting history speaks of the right of workers to elect an elected representative in cases where workers are not represented by a shop steward elected on the basis of a collective agreement. It also states that the elected representative is secondary to the shop steward referred to in the collective agreement as required under Article 5 of ILO Convention No. 135 that is binding on Finland.

Despite the foregoing, the prevailing legal situation has long been challenged by non-unionised employers in particular. The challenge is largely evidenced by the following interpretation of the legal situation: Employers which apply a collective agreement on the basis of general applicability are not obliged to recognise the election of a shop steward – and the alternative of an elected representative is offered instead. In addition, it has been argued that the provisions of the collective agreement concerning the system of shop stewards would not extend to non-unionised undertakings, i.e. for all

intents and purposes those employers which comply with the collective agreement on the basis of general applicability.

STTK holds the interpretation described above to be incorrect and to constitute an attempt to undermine the fundamental rights of workers. The said interpretation would lead to a situation where workers could not exercise their freedom of association with full independence and freedom. The freedom of association entails the right of workers freely to elect their representative, and employers have no right to interfere with this process. The election of a shop steward or the conditions that allow the shop steward function cannot in any way depend on the employer's approval or recognition. Electing a shop steward is a condition for the freedom to form trade unions and organise that is safeguarded as a fundamental right. This right cannot be made conditional upon the employer being bound by a collective agreement on the basis of the Employment Contracts Act.

STTK points out that Article 5 of ILO Convention No. 135 states that where there exist in the same undertaking both trade union representatives and elected representatives appropriate measures shall be taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives –. Taking into account the said Article 5 and the challenge to the national legal situation, Finland needs legislation to be clarified so as to safeguard the rights of workers and the status of shop stewards in the manner required under the ILO Conventions.

The Federation of Finnish enterprises (SY)

SY considers Finnish legislation to fulfil the requirements of the Convention. In Finland, workers may be represented by an elected representative as provided in chapter 13, section 3 of the Employment Contracts Act (55/2001) or by a shop steward elected on the basis of a collective agreement. Special legislation moreover contains provisions on representatives in situations where the said special Acts become applicable (co-operation representative as provided in the Co-Operation Act (1333/2021); occupational safety and health representative as provided in the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006)).

Under law, all said workers' representatives enjoy the same protection against dismissal and the same right of access to information and are subject to the same non-disclosure obligations.

Elected representatives have the same status and protection, based on law, as shop stewards elected under a collective agreement. The elected representative, as the person representing the workers, is relevant especially in those undertakings where the employer is not a member of an employers' union and those undertakings where no collective agreement applies.

SY remarks that the terms used in the Finnish translation of Convention No. 135 differ from the concepts used in the versions of the Convention in the ILO working languages (English, French, Spanish), which clearly differentiate between trade union representatives and elected representatives.¹

In the Finnish, these are translated as 'ammattiyhdistysedustaja' and 'valittu luottamusmies,' respectively. However, in Finnish legislation and practice, 'luottamusmies' is the term expressly used for shop stewards under collective agreements, i.e. persons equivalent to the trade union representatives

¹ In English, "trade union representatives / elected representatives"; in French, "représentants syndicaux / représentants élus"; in Spanish, "representantes sindicales / representantes electos".

referred to in the Convention, whereas ‘luottamusmies’ as used in the Finnish translation of the Convention is equivalent in Finland with ‘luottamusvaltuutettu’ under the Employment Contracts Act, a representative of workers freely elected in the workplace as provided in the Employment Contracts Act and referred to in Finnish legislation and practice in English as an elected representative.

SY also notes that legislation does not give shop stewards primacy over elected representatives despite positions to this effect having been taken in legal literature.²

SY notes that Article 5 of the Convention expressly confirms that measures shall be taken to promote cooperation between elected representatives and trade union representatives, i.e. elected representatives and shop stewards in the Finnish practice. This view has gained support in legal literature as well³ and it has subsequently been confirmed in Supreme Court decision KKO 2017:29, according to which an elected representative could be elected even when there already was a shop steward elected in the undertaking on the basis of a collective agreement.

Paragraph 30 of the said decision states outright that ILO Convention No. 135 does not lend support to interpreting that a shop steward and elected representative could not cooperate in the workplace, each representing their respective electors. In other words, the Supreme Court expressly rejected this specific interpretation. Additionally, the Supreme Court found that the view of it being possible to elect an elected representative despite there already being a shop steward in the undertaking was expressly supported by the principle enshrined in

Article 3(1) of the Freedom of Association and Protection of the Right to Organise Convention (No. 87).

Supreme Court decision KKO 2022:35 confirms that the unionised workers of a non-unionised employer may elect a shop steward as provided in a collective agreement even though the employer complies with the collective agreement pursuant to general applicability. In its reasoning, the Supreme Court made reference to ILO Convention No. 135, among others.

Nonetheless, in its ruling the Supreme Court only weighed in on whether or not unionised workers had the right to elect a shop steward as provided in the collective agreement. The Supreme Court refrained from comment as to the rights and obligations of a shop steward as provided in the collective agreement and instead held that the right to elect a shop steward shall be evaluated separate from its legal effects. SY considers that in this respect as well, the principle of cooperation among the different representatives enshrined in Article 5 of the Convention can be realised in Finland.

EK

The EK considers that the ratified Conventions have been implemented appropriately in Finland. As regards Convention no. 135, EK refers to its statement in connection with the previous reporting.

See e.g. Tiitinen-Kröger: Työsopimusoikeus (2012) [Employment Contracts Law], p. 86–87.

³ See Hölttä: Luottamusvaltuutetut järjestäytymättömien työntekijöitten edunvalvojiksi. Työoikeudellisen yhdistyksen vuosikirja 2001–2002 [Elected representatives to represent the interests of non-unionised workers. Finnish Society for Labour and Social Security Law yearbook 2001–2002] p. 50–51.