No. 151

Article 22 of the Constitution of the ILO

Report for the period 1 June 2014 to 31 May 2023, made by the **Government of Finland**

on the

Labour Relations (Public Service) Convention, 1978 (No. 151)
(ratification registered on 5 June 1981)

I LEGISLATION AND REGULATIONS

Nothing new to report.

II Direct request

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III Information on the practical application of the Conventions

Labour Court decision 2017:161. The matter concerned whether the trade union had violated the Civil Service Collective Agreements Act (664/1970) and the obligation of industrial peace under the aforementioned Act and the Collective Agreements Act (436/1946) when its members participated in a demonstration organised in Helsinki on 18.9.2015. The trade Union confederations announced that a demonstration would be organised after the Government had announced on 8.9.2015 the planned measures to improve Finland's competitiveness. This was a political industrial action that opposed the Government's plans.

The judgment held, first, that the participation of State employees who are members of a trade Union in political demonstrations could not be prevented. The claim was dismissed in that regard.

The judgment stated that civil servants generally have a permanent duty of industrial peace, but the provisions restricting strike rights must be interpreted in accordance with international obligations and the provision of the Constitution of Finland on the freedom of assembly and association. The measures taken by trade Union members were considered prohibited under the Civil Service Collective Agreements Act in so far as public officials exercising public authority took part in the strike. However, it could not be concluded from the account presented in the case that the industrial action would have been contrary to section 9 of the Civil Service Collective agreements Act or section 8 of the Collective Agreements Act (436/1946).

Since the trade Union did not take any action to prevent the industrial action despite the inspection letter, it was found to have knowingly violated section 8 of the Civil Service Collective Agreements Act and was sentenced to a compensatory fine. (Dissenting opinion)

See also TT 2006:107, TT 2001:65 and TT 2000:55.

The Labour Court found that ILO Convention No. 87 does not protect purely political strikes directed at political decisions or issues that do not directly concern the social or economic situation, working conditions or terms of employment of workers. However, trade unions must have the opportunity to organize protest strikes against the Government's social and economic policy in particular. Such a strike must be merely a protest and must not attempt to break industrial peace. On the other hand, the ILO has acknowledged that a “purely” political strike does not fall within the competence of the Committee on Freedom of Association.

The Labour Court held that the participation of state employees in a political strike could not be prevented. In that regard, the claim was dismissed as unfounded.

The majority of the Labour Court considered that consideration of the right of trade union members to participate in a political industrial action must take into account, in particular, the provision of Article 11(2) of the European Convention on Human Rights.

The Labour Court considered that in the case in question, the participation of state civil servants exercising public authority (e.g. the police officers, customs, Regional State Administrative agencies) in a political industrial action could be prevented under section 8(2) of the collective agreements Act, also taking into account the provision of Article 11(2) of the European Convention on Human Rights.

In this consideration, the Labour Court also took into account that the provision of section 8(2) of the Civil Service Collective Agreements Act meets the proportionality requirement required by the European Court of Human Rights. The Finnish Government currently employs both public officials and employees, of whom only public officials' participation in political strikes is restricted by national law.

According to a dissenting opinion, the protection of the state civil servants’ right to strike must also be assessed in the light of ILO Convention 87. Dissenting member referred to the supervision practice concerning the Convention 87, according to which: “While purely political strikes do not fall within the scope of the principles of freedom of association, trade unions should be able to have recourse to protest strikes, in particular where aimed at criticizing a government’s economic and social policies” (Freedom of Association: Digest of decisions and principles of the freedom of Association Committee of the governing body of the ILO, Fifth revised edition, 2006, paragraph 529). The dissenting member was also of the opinion that, under the CFA practice, the right of civil servants to strike may be prohibited only in the case of civil servants exercising public authority or of employees who are responsible for securing essential services. (Freedom of Association: Digest of decisions and principles of the freedom of Association Committee of the governing body of the ILO, Fifth revised edition, 2006, paragraph 541).

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

Statements made by the labour market organisations:

The Central Organization of Finnish Trade Unions (SAK)

The freedom of association is governed by the Constitution of Finland. Under the Constitution, everyone has the freedom of association, which entails the right to form an association without a permit, to be a member or not to be a member of an association, and to participate in the activities of an association. The freedom to form trade unions and freedom of association in order to safeguard the interests of other are likewise safeguarded. This applies to workers, officials, employers, employer representatives and parties to collective agreements in the private and public sectors alike. The terms of the employment relationship in the public sector are determined on the basis of both legislation and the private and public sector collective agreements.

The Convention protects the right to organise in the public sector and Article 9 of the Convention states expressly that public employees shall have, as other workers, the civil and political rights which are essential for the normal exercise of freedom of association, subject only to the obligations arising from their status and the nature of their functions.

In terms of realisation of the obligation under the Convention, it is problematic that government officials' right to bargain is restricted by law and their right to industrial action only concerns matters that are subject to the right to bargain. There are unjustified differences in the right to industrial action of those in a contractual employment relationship and those in a public-service employment relationship, the former enjoying a right that is broader than the industrial action which the latter are permitted to undertake.

The interpretative practice of the ILO Conventions has found the opportunity to bargain and the right to undertake industrial action to be essential components of the freedom of association. The full realisation of the obligations under the Conventions requires approximating the rights to bargain and undertake industrial action of those in a public-service employment relationship with the equivalent rights of those in a contractual employment relationship.

The right to industrial action of government officials is restricted only to strike and only to matters which may be agreed by public-sector collective agreement. The relevant Act expressly lays down provisions on matters that are not subject to bargaining, such as work arrangements, division of duties,

working methods and pensions. Restricted right to industrial action applies to the officials of central and local government, the Office of the President of the Republic of Finland, Parliament and the Bank of Finland.

One of the consequences of the restrictions on government officials' right to industrial action is that any ban on overtime as a form of industrial action is prohibited. In addition, the requirement that industrial action must be based on the matter being subject to bargaining also eliminates the right to political industrial action and sympathy strikes. Government officials may only participate in strikes decided by the officials' association and they may also incur personal liability for their industrial action.

In addition to the ILO Conventions, SAK also wishes to draw attention to Finland's national system of fundamental rights. Some of the provisions now discussed that concern government officials predate the fundamental rights reform of 1995, some have been laid down since. However, even after 1995, law-drafting documents fail to address the acceptability of the restrictions on government officials' right to industrial action with regard to our system of fundamental rights or with regard to ILO Conventions or other international human rights instruments.

Finally, SAK notes that the European Court of Human Rights has criticised Finland for the permanent industrial peace obligation that applies to government officials. These differences should be harmonised by removing the restrictions concerning government officials.

The Finnish Confederation of Salaried Employees (STTK)

The Convention protects the right to organise in the public sector. Article 9 of the Convention states expressly that public employees shall have, as other workers, the civil and political rights which are essential for the normal exercise of freedom of association, subject only to the obligations arising from their status and the nature of their functions.

In Finland, the right to industrial action differs significantly depending on whether the employment relationship is one of public service or contractual. In the public sector, workers in a public service employment relationship are subject to a permanent industrial peace obligation irrespective of whether a public-service collective agreement is in force. All other industrial action against an existing public service relationship except lockout and strike are prohibited to central and local government officials under the Acts on public-service collective agreements. Central and local government officials may only take industrial action against the terms of the service relationship governed by the collective agreement.

The above is provided in section 8 of the Act on Collective Agreements for Public Officials in Local Government and the Wellbeing Services Counties and in section 8 of the Act on Collective Agreements for Public Officials in Central Government. Section 8, subsection 4 of both Acts moreover provides that central or local government officials may not take part in a strike except by virtue of a decision of the association of central or local government officials that has undertaken the strike.

In addition to the foregoing, central and local government officials are obliged to perform essential work during industrial action. The essential work obligation applies to central and local government officials who are not covered by the strike. Workers in a contractual employment relationship are not subject to the same obligation. Essential work refers to work that must be carried out during industrial

action in order to prevent harm coming to the life or health of the population or *to protect any property that is particularly jeopardised by the industrial action*. The last-mentioned reason for restriction is integrally linked to the right to industrial action and may be considered problematic from the perspective of the ILO Conventions.

As described above, the right of central and local government officials to strike is restricted by law. Workers in a contractual employment relationship enjoy a much broader right to industrial action than those in public service employment relationships. STTK holds that the full realisation of the ILO Conventions would require the right to industrial action of central and local government officials to be nationally approximated to that of workers in a contractual employment relationship.

Besides the above, also the officials in the employ of the Evangelical Lutheran Church of Finland are subject to a restriction of the right to industrial action laid down by law. Section 12 of the Act on Collective Agreements for Officials of the Evangelical Lutheran Church of Finland provides the following:

An official is not obliged to perform duties subject to a permitted lockout, strike or embargo concerning matters that are covered by the collective agreement under section 2. Officials outside the scope of the industrial action are required to fulfil their ordinary official duties and also obliged to carry out essential work. The provisions of section 8, subsection 2 do not preclude an official covered by a strike from performing essential work.

Essential work refers to work that must be carried out during industrial action in order to prevent harm coming to the life or health of the population or to protect any property that is particularly jeopardised by the industrial action.

However, an official covered by the industrial action shall nonetheless carry out the duties referred to in chapters 4–13 of the Church Act (635/64) that have been assigned to the official.

The provision of section 12, subsection 3 of the Act on Collective Agreements for Officials of the Evangelical Lutheran Church of Finland differs from the equivalent provisions of other Acts on public-service collective agreements. Under the provisions, official are required to carry out the duties referred to in chapters 4–13[1] of the Church Act (635/64) that are assigned to the official. The intent of the reference is to require officials to carry out their spiritual duties also during industrial action.

The referenced spiritual duties account for a significant portion of the officials' total workload. Hence the restriction under law for all intents and purposes prevents Church officials performing spiritual duties from undertaking effective industrial action. This is highly problematic with regard to the full national realisation of Conventions Nos. 87, 98 and 151. It should moreover be mentioned that the said section 12, subsection 3 makes reference to an obsolete Act. This, too, many be considered highly problematic when significant restriction of the right to industrial action that is protected as a fundamental right is concerned.[2]

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[1] Chapters 4–13 of the Church Act 635/1964: Chapter 4, public and private worship service; chapter 5, holy baptism; chapter 6, Christian upbringing and instruction; chapter 7, receiving Christians into the Church in certain cases; chapter 8, Holy Communion; chapter 9, wedding ceremony; chapter 10, Christian burial; chapter 11, private ministering and confession; chapter 12, Church discipline; and chapter 13, diaconal work.

[2] In Finland, any restrictions of fundamental rights are subject to the following requirements: 1) they shall be laid down at the level of an Act, 2) they shall be clearly specified and precise; 3) the grounds for the restrictions shall be acceptable, 4) they shall be proportionate,
5) the core substance of the fundamental right shall remain intact, 6) adequate remedies shall be provided,

The Confederation of Unions for Academic Professionals in Finland (Akava)

Convention No. 151 protects the right to organise in the public sector and its Article 9 states expressly that public employees shall have, as other workers, the civil and political rights which are essential for the normal exercise of freedom of association, subject only to the obligations arising from their status and the nature of their functions.

Public sector collective agreements, in a manner equivalent to agreements under the Collective Agreements Act, provide an industrial peace obligation linked to the term of the agreement and, alongside it, a permanent industrial peace obligation in respect of influence over matters not covered by the agreement. The permitted types of industrial action in respect of existing public service employment relationships are limited to strike and lockout.

In other words, the right of central and local government officials to engage in industrial action in the intervals when a collective agreement is not in force only applies to matters that are covered by the collective agreement under the Collective Agreements Act. Unlike in private sector collective agreements, public sector collective agreements limit the tools available and the scope of matters.
The permitted forms of industrial action for central and local government officials are strike, ban on applications and boycott, whereas partial strikes, bans on overtime, mass resignations, and political and sympathy strikes are prohibited. Certain central government positions are subject to a blanket ban on industrial action.

The limited right of central and local government officials in the public sector to engage in industrial action is unfair and questionable from the viewpoint of the Constitution of Finland, international treaties and equality alike. The European Committee of Social Rights has repeatedly held that central government officials' right to strike should be examined from the perspective of the nature of their duties, not their legal status.
Central and local government officials should have full and equal right to industrial action in order to speed negotiations along and to agree on the terms of the public service employment relationships.

Central and local government officials are moreover subject to an essential work obligation. Essential work refers to work that must be carried out during industrial action in order to prevent harm coming to the life or health of the population or to protect any property that is particularly jeopardised by the industrial action. Central and local government officials outside the scope of the industrial action are required to fulfil their ordinary official duties and also obliged to carry out essential work. Central and local government officials taking part in the industrial action have the right but not an obligation to carry out essential work.

With regard to fulfilment of the obligations under the Convention, it is problematic that there are unjustified differences in the right to industrial action between those in government under an employment relationship and those under a public service relationship. In the interpretation of ILO Conventions, the right to industrial action has been held to be an integral element of the freedom of association. The complete fulfilment of the obligations under the Convention requires the right to industrial action of persons working in government in a public service employment relationship be changed to correspond to that of persons in a contractual employment relationship.

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and 7) they shall be consistent with Finland's international human rights obligations.

Akava notes that the form of employment relationship cannot constitute an acceptable reason for laying down different provisions in legislation concerning the right to industrial action. The right to industrial action must be provided equally regardless of form of employment relationship.

The Confederation of Finnish Industries (EK)

EK considers that the ratified Conventions have been implemented appropriately in Finland