No. 87

Article 22 of the Constitution of the ILO

Report for the period 2 September 2020 to 31 May 2023, made by the **Government of Finland**

on the

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

(ratification registered on 20.1.1951)

I LEGISLATION AND REGULATIONS

The Act to ensure necessary healthcare and home care during industrial action (862/2022) ("Patient Safety Act") was in force from 20 September 2022 to 31 January 2023. Underlying its enactment were the industrial action notices issued and mass resignations planned in the health and social services sector. Enactment was necessary, as the legislation in force was judged not to provide the tools to combat serious endangerment of life or health in a situation where the workers' union and the municipality could not reach agreement on the essential work required. The Patient Safety Act applied in healthcare and home care organised by a municipality or a joint municipal authority.

The purpose of the Patient Safety Act was to ensure the municipal healthcare and home care specified in the Act in situations where the life or health of patients was seriously endangered by inadequate staffing resulting from the industrial action. The tools provided in the Act were measures of last resort, i.e. applicable only when all tools available to the municipality other than those under the Act were insufficient to prevent the life or health of patients from being seriously endangered. The tools were available for use only to the extent necessary and measures concerning any individual worker could not be unreasonable in terms of that worker's personal circumstances. The tools provided in the Act could not in any respect be used to break the strike or to address problems arising from labour shortages.

The Patient Safety Act obliged the workers' union, when implementing a work stoppage or mass resignation, to ensure, in cooperation with the municipality, that regardless of industrial action, the municipality subject to the industrial action had access to a sufficient number of suitable workers so as to allow the municipality or joint municipal authority to ensure the necessary healthcare and home care specified in the Act. The workers' union was required to negotiate with the municipality regarding essential work before any work stoppage or mass resignation was implemented. Where the parties failed to reach agreement or the workers' union, in the view of the employer, was not in compliance with the agreement, the Act allowed the Regional State Administrative Agency, at the application of the employer, to defer or suspend the work stoppage or mass resignation by no more than one week when it was apparent that the life or health of patients was seriously endangered by the said industrial action targeting necessary healthcare or home care.

The Patient Safety Act also made it possible for the employer to resort to measures against individual workers when the obligations on the workers' union described above proved insufficient to ensure necessary healthcare during the industrial action. Employers had the right to order healthcare or social welfare professionals in their employ to perform also duties other than their ordinary duties that nonetheless were consistent with their professional skills. Employers could also order workers to work in another healthcare or social welfare unit maintained by them. The Act laid down provisions

on the right of workers to compensation for any extraordinary expenses incurred by them. Where necessary, employers could also exceed the working hours agreed-upon or working hours laid down by the Working Time Act and derogate from the provisions on annual holidays within certain limits on which further provisions were laid down in the Act.

The Patient Safety Act also laid down provisions on the powers of the Regional State Administrative Agency to order striking healthcare or social welfare professionals to perform duties consistent with their professional skills in a healthcare or social welfare unit maintained by their employer. Issuance of such an order was conditional upon no agreement having been reached on essential work and there being no other way to guarantee the safety of patients. Such an order had to be necessary to prevent the life and health of patients from being seriously endangered and it could be issued for a period not exceeding two weeks at a time. The order could only be issued for the provision of necessary care specified in the Act, such as intensive care.

In addition, the Patient Safety Act laid down provisions on a last-resort tool of ordering persons who had resigned as a form of industrial action to work in patient safety. When even the tools described above were insufficient to ensure necessary healthcare during industrial action, the Regional State Administrative Agency, at the application of an employer, could order also healthcare and social welfare professionals who had resigned from the employ of the municipality as a form of industrial action to work with customers or in patient safety. Such an order had to be necessary to prevent the life and health of patients from being seriously endangered and it could be issued for a period not exceeding two weeks at a time. The order could only be issued for the provision of necessary care specified in the Act, such as intensive care.

For regular working hours with customers or in patient safety, persons ordered to work with customers or in patient safety in the manner described above were entitled to receive from the municipality or joint municipal authority compensation that was at least 1.3 times higher than their ordinary pay for regular working hours, as well as compensation for any extraordinary expenses incurred.

The drafting of the Patient Safety Act involved assessment of its relation to obligations arising from ILO Conventions Nos. 87 and 98. In supervision practice, ILO Conventions Nos. 87 and 98 have been considered to include the right to industrial action.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has on several occasions taken a position on restrictions of the right to industrial action in the public sector. In accordance with the Committee's positions, the measures laid down in the Patient Safety Act only concerned persons working in essential services or duties, the interruption of which would endanger the life, personal safety or health of the population. According to the ILO's Committee on Freedom of Association (CFA), the prohibition of strikes could only be acceptable in the case of public servants exercising authority in the name of the State or of workers in essential services in the strict sense of the term, i.e. services whose interruption could endanger the life, personal safety or health of the whole or part of the population (CFA Compilation of 2018, para 779) E.g. the hospital sector constitutes essential services.

Section 5, subsection 2 of the Patient Safety Act specified, to the level of detail required in practice by the CEACR, the care duties that were essential to the life and health of the population. The Act expressly mentioned the most critical health care sectors, such as intensive care, emergency medicine, child delivery care and the necessary or other ongoing care of long-term illnesses, without which the

healthcare of the patient is seriously endangered. The Act secured sufficient staffing to maintain the minimum services necessary for the life and health of the population in a situation where all other tools except those laid down in the Act were insufficient. The Act did not entirely prohibit healthcare personnel in the municipal sector from engaging in industrial action. According to the Finnish Constitutional Law Committee, regulation left an extensive opportunity to take industrial action in the healthcare and social welfare sector (PeVL 41/2022, paragraph 22). The measures under the Act to restrict the right to industrial action were of limited time scope, possible only in essential duties defined in the Act, and also in other respects permissible only insomuch as they were necessary. The right of the parties to seek review of the decisions referred to in the Act was safeguarded.

II Direct request

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III Information on the practical application of the Conventions

Recent development in the Finnish labour market system

In 2020, The Finnish Forest Industries Federation decided to withdraw from national collective bargaining, meaning that the terms of employment in forest industries are negotiated at company level. Furthermore, the activities of the Finnish Technology Industries were divided into two different associations in 2021. The Federation of Finnish Technology Industries withdrew from national collective bargaining, and responsibility for national collective agreements was transferred to the new employers' association, the Federation of Finnish Technology Industry Employers.

The freedom of association under section 13 of the Constitution of Finland guarantees also a negative freedom of association, i.e. the right not to belong to an association. Section 1, Chapter 13 of the Employment Contracts Act lays down further provisions on freedom of association. Employers and employees have the right to belong to associations and to be active in them. They also have the right to establish lawful associations. Employers and employees are likewise free not to belong to any of the associations referred to above. Prevention or restriction of this right or freedom is prohibited. Any agreement contrary to the freedom of association is null and void.

Safeguarding employees' collective rights

Employees' collective rights based on freedom of association are safeguarded in the Finnish labour legislation (chapter 13, section 1-3 of the Employment Contracts Act).

An employer must treat all employees equally, unless deviating from this is justified in view of the duties and position of the employees (section 2, chapter 2 of the Employment Contracts Act). Employee's participation in industrial action arranged by an employee organisation or in accordance with the Collective Agreements Act nor the employee's political, religious or other opinions or participation in social activity or associations cannot be regarded as legitimate ground for termination of the employment contract (section 2, chapter 7 of the Employment Contracts Act).

Discrimination based on trade union activity is prohibited under the section 8 of the Non-discrimination Act (1325/2014).) A person who has been discriminated against is entitled to receive compensation from the employer or who has discriminated against the person contrary to the Discrimination

Act (section 23). Violation of the right to organize, violation of the rights of an employee representative and work crimination on the basis of vocational activities (i.e trade union activities) are criminal offences under Chapter 47, sections 3 4, and 5 of the Criminal Code.

Employees belonging to a trade union have a right to elect a shop steward even if their employer is unaffiliated. The Supreme Court of Finland considered in its precedent KKO 2022:35 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 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.

Postponing the start of a work stoppage

Section 8 of the Act on Mediation of Labour Disputes lays down provisions on postponement of a work stoppage. The purpose is to reserve sufficient time for mediation of work stoppage that affects essentials functions of society or substantially harm the public interest. A work stoppage concerning employees' terms of employment may be postponed only once and for a limited period of time.

The start of a work stoppage or its extension may be postponed by a maximum of 14 days so that there would be more time for the mediation process. Under Section 8 of the Act, the conciliator or the conciliator board may request the Ministry of Employment and the Economic Affairs to postpone the start of the industrial action if the work stoppage resulting from the dispute or its extension would, on account of its scope or nature, affect essential functions of society or substantially harm the public interest. The purpose of the postponement is to give enough time to reach a settlement. In a dispute concerning the terms of employment of public servants, the ministry may postpone the work stoppage for an additional seven days.

In February 2023, a work stoppage concerning logistic companies in the trade sector was postponed by two weeks.

It was considered appropriate to postpone a work stoppage which focused on the vital functions of society and significantly harmed the public interest. The work stoppages were particularly targeted at foodservice wholesalers that produce services that are critical to security of supply. The companies affected by the work stoppage delivered most of the ingredients of meals to parties providing statutory food services. Such catering services, which are the responsibility of the authorities, include catering services provided by hospitals, sheltered housing with 24-hour assistance, prisons, day care centres and schools, and catering services provided by the Finnish Defence Forces.

As the work stoppage endangered the supply of daily consumer goods and food for the most vulnerable groups of people, the national Conciliator decided to request the MEAE that the work stoppage would be postponed. (Source 2.2.2023 Kaupan logistiikkayrityksiä koskevaa työnseisausta siirretään kahdella viikolla - Valtakunnansovittelija.fi).

In March 2023, the MEAE postponed a work stoppage concerning rail transport on the proposal of the National Conciliator. The work stoppage focused on the vital functions of society. Rail transport plays a key role in securing the functioning of society and security of supply (e.g. supply of materials critical to security of supply and safety, industrial raw materials and finished products). The halt in public transport also has a strong impact on people's mobility. For many groups of people, public transport is the only way to get around, and overlapping work stoppages interrupt essential travel for work and services. Since the work stoppage in view of its nature and scope would have been targeted at the vital functions of society and would have substantially harmed the public interest, it was decided on postponing the work stoppage in order to allow more time for mediation. (Source 2.3.2023 RAU hylkäsi veturimiehiä koskevan sovintoehdotuksen - asiakaspalvelua ym. toimistotehtäviä koskeva ehdotus hyväksytty - Valtakunnansovittelija.fi).

In the above-mentioned labour disputes, settlement was not reached during the first 14 days of mediation following the notice on the implementation of a work stoppage. However, the conciliator considered that a settlement could be reached if the negotiations continued in accordance with section 8 of the Act on Mediation of Labour Disputes.

According to the CFA's decisions, what is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country (837). For example, the provision of food to pupils of school age may be considered to be an essential service (84). In the case mentioned above, work stoppages in the specific logistic companies would have endangered health and well-being of the most vulnerable groups.

Recent case law on prohibiting industrial actions as a precautionary measure

In Finland claimants in civil proceedings can obtain precautionary measures in their favour. The purpose of precautionary measures is to ensure that any ruling given later on the merits of the case can be enforced. General precautionary measures require prima facie evidence of another right and a danger that the defendant may infringe that right. By way of general precautionary measures, the court can, for example, prohibit the defendant, under the threat of a penalty, from doing something or from entering into something.

Supreme Court decision KKO 2018:61. The Finnish Seafarers' Union imposed a blockade to prevent the completion of the loading and departure from port of a Vietnamese merchant ship. The owner of the ship considered the blockade to be unlawful and petitioned for a precautionary measure that would order the blockade to be ended on pain of a fine.

The Supreme Court found the shipping company to have rendered it very probable that the objective of the blockade had been unlawful, as it had been used to seek a collective agreement that would not be binding under the Vietnamese law that applied to employment contracts on the ship and could not produce the legal effects intended by the agreement. Therefore the District Court had lawfully imposed the precautionary measure ordering the Finnish Seafarers' Union to end the blockade.

The Supreme Court referred to the precedent KKO 2000:94, where it was considered that prohibiting an allegedly unlawful blockade, as a precautionary measure is in itself possible under the Finnish Code of Judicial Procedure. However, the alleged unlawfulness of the blockade could not be adjudicated in the precautionary measure case, which only covered an assessment of the requirements

for imposing a precautionary measure under chapter 7, section 3 of the Code of Judicial Procedure. The alleged unlawfulness of the industrial action and the probability of such unlawfulness could indeed be only summarily examined in the context of the precautionary measure proceedings. Except in the case of conduct prohibited under national or the law of European Community, a blockade can be prohibited by a precautionary measure for being unlawful only when the blockade, owing to its manner of implementation, objectives or consequences, was on grounds established in case law to be considered in breach of the law or good practice, or unreasonable.

The use of the blockade as an industrial action is not expressly restricted by legislation. In case law, the blockade has been considered lawful industrial action if its purpose or implementation is not contrary to the Finnish judicial system (Supreme Court, 1987:85 and 1987:86). The decisions of the Supreme Court have assessed when the blockade can be considered to be contrary to law or good practice. In the Supreme Court decision, KKO 1985 II 118 blockades were considered to be contrary to good practice in a situation where trade unions used them to force the company to pay to them claims for which the company was not legally liable. Decision KKO 1987:85 stated that the purpose of the blockade may render the blockade unjust from the point of view of the Finnish legal order if the blockade is aimed at an agreement prohibited under the Finnish legal order. In decision KKO 1987:86, the blockade was considered unlawful in so far as it was aimed at investigating the pay of the crew of another vessel belonging to different owners, as the owner of the encircled vessel was not responsible for the salaries of the crew of that vessel.

In KKO 2018:61, the Supreme Court considered that in light of the facts of the case known at the time of deciding on the precautionary measure, it was apparent that the ship’s employment contracts were to be governed by Vietnamese law. The Supreme Court found it to be very probable that the Finnish Seafarers’ Union, in pressuring the shipping company, had sought a collective agreement which, according to the law applicable to it, would not have been binding and could not have produced the legal effects intended in the agreement. The shipping company had therefore also demonstrated to a high degree of probability that the demand of the Seamen's Union for the conclusion of an international collective agreement was to be deemed unlawful.

The Supreme Court found that in accordance with Article 9 (2) of the Rome I Regulation, the provisions of said Regulation did not restrict the application of the overriding internationally mandatory provisions of the law of the forum. At the time that the blockade had been implemented, Vietnam had not undertaken to be bound by ILO Recommendation No. 187 concerning seafarers’ wages, hours of work and the manning of ships, to which the Seamen's Union had referred in the case. However, according to information put forward in the case, the wages paid to the crew of the ship had not been at such a level that these wages would have been deemed to be in violation of internationally mandatory provisions applicable in Finland, had the matter been submitted to the consideration of a Finnish court.

The Supreme Court stated however that: ”Although the question of whether or not something is internationally mandatory is generally assessed narrowly, the prerequisites for applying certain national provisions as internationally mandatory provisions could have been fulfilled for reasons related to the protection of workers, since part of the crew had been in service on board consecutively for up to 15–20 months without holiday.”

In this case, however, the claims made by the Finnish Seafarers’ Union mainly concerned the conclusion of an international collective agreement and compliance with the wage provisions laid down in it. Based on the above, the Supreme Court considered that the shipping company had demonstrated

that it is quite probable that the blockade implemented by the Finnish Seafarers' Union had been unjust in its goal. According to the Supreme Court, it was thus possible to order the blockade to be lifted by precautionary measures.

Degree of unionisation in Finland (2021)

At the end of 2021, there were a total of 1,316,000 members in Finland whose interests were represented, and the degree of unionisation calculated accordingly was 54.7 per cent. The degree of unionisation in 2017 was 60.2 per cent, which means it has fallen by 5.5 percentage points. The degree of unionisation among women was 60.9 per cent in 2021 compared to 48.5 per cent among men. The degree of unionisation in public services was 76.7 per cent, 63.4 per cent in industry, and 41.6 per cent in the private services sector. (Study on Organisation of Wage and Salary Earners in 2021).

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 of the labour market organisations

Statement by the Central Organization of Finnish Trade Unions (SAK) on the following conventions:

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
Workers' Representatives Convention, 1971 (No. 135)

Right to collective bargaining

Employers in Finland are attempting to undermine the system of collective bargaining and agreements that has become established over the past decades. This first cracks in the system were made when the Confederation of Finnish Industries (EK), the employers' central union, withdrew from the collective negotiations for a national incomes policy agreement among the social partners' central organisations. These bipartite and tripartite negotiations concerned not only wages and salaries but also many other elements of the working conditions and livelihoods of workers.

At the next stage, the Finnish Forest Industries Federation, the organisation for forest industry employers, announced that going forward, they would no longer conclude collective agreements with national coverage and general applicability, instead seeking to negotiate undertaking-specific agreements on the terms of employment of their workers.

UPM-Kymmene Corporation, a leading Finnish forest industry undertaking, has sought to break the trade union movement and workers' right to collective bargaining. The undertaking refused to discuss a collective agreement and announced that it would determine terms of employment on the basis of legislation, UPM's earlier policies and workers' individual employment contracts. For all intents and purposes, this meant that terms of employment would be dictated by the employer. A calculation put forward by the undertaking indicated that workers' wages would have fallen by one third as of the start of 2022 and many of the benefits under the collective agreement would have been lost. Ultimately the undertaking was unsuccessful, as business-specific collective agreements were concluded for the undertaking after a lengthy strike. The undertaking's actions were reported in the annual report of the ITUC on violations of workers' rights, mentioning not only bargaining but also dismissal of the shop steward. https://www.globalrightsindex.org/en/20222

The way paved by the Finnish Forest Industries Federation was followed by Technology Industry Employers of Finland, where a re-organisation made collective bargaining a separate entity which employers willing to engage in collective bargaining were required to re-join. For now, the ultimate impacts of this decision on the coverage of the system of collective agreements are difficult to estimate.

SAK finds that taking into account the actions of employers to undermine the system of collective bargaining and agreements, Finland's Government has failed to act to promote the realisation of the right to collective bargaining.

General applicability of collective agreements and freedom of association
Freedom of association and the right of the social partners to negotiate and agree on terms of employment are safeguarded as a fundamental right under section 13, subsection 2 of the Constitution of Finland, the freedom to associate. Underlying this provision are also international human rights obligations, including the ILO Conventions. The general applicability of collective agreements is based on express provisions in the Employment Contracts Act and its objective is to guarantee a minimum level of terms of employment for all workers regardless of whether an individual employer is a member of an employers' union that is a party to collective bargaining. The general applicability of collective agreements safeguards not only workers' minimum terms of employment but also fair competition. Generally applicable collective agreements prevent social dumping and wage-dumping as well as undertakings competing unfairly with each other through terms of employment.
In Finland, under chapter 2, section 5 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. Any term of an employment contract that is in conflict with an equivalent term in the generally applicable collective agreement is null and void, and the equivalent provision in the generally applicable collective agreement shall be observed instead

Employers have sought to undermine the general applicability of collective agreements by invoking, on the one hand, the negative freedom of association and on the other, the equality of employers. The general applicability of collective agreements means that employers which do not belong to an employers' union (non-unionised employers) are also obliged to comply with the provisions of the representative collective agreement in the sector that safeguards a minimum level of terms of employment for workers.

However, general applicability does not translate into an obligation to associate. The freedom of association protects the right to associate on the one hand and the right not to associate on the other. The Constitutional Law Committee of Parliament in Finland, in the context of consideration of the Employment Contracts Act in Parliament, found that the general applicability of collective agreements is an arrangement that is permissible under the Constitution of Finland. As the Committee finds in its report (PeVL 41/2000 – Government proposal HE 157/2000), it also does not restrict the negative freedom of association.

General applicability does not preclude the conclusion of workplace-specific agreements that derogate from the collective agreement. When agreeing on terms of employment, it must be noted that a generally applicable collective agreement only guarantees the minimum terms of employment to be complied with in the sector. Where the aim is to derogate from the provisions of the collective agreement to the detriment of the worker, it is consistent with the objective of worker protection that such negotiations and agreement comply with a procedure determined by the social partners that concluded the collective agreement. This serves to safeguard balanced negotiations and agreements also at the local level and ensures compliance with the provisions of collective agreements through tools including the obligation of oversight applicable to unionised social partners.

SAK also holds that certain employers have attacked the freedom of association through discriminatory conduct against unionised workers in Finland. For example, the Federation of Finnish Enterprises, which represents non-unionised employers, has urged its member undertakings to offer its workers the fringe benefit of reimbursing their membership dues in a private unemployment fund not affiliated with trade unions. However, the same fringe benefit has not been offered to workers who are members in various industry-specific unemployment funds which are traditionally also connected to trade unions. The Federation of Finnish Enterprises has also put forward the proposal that non-unionised undertakings should cease to deduct union membership dues from their workers' wages and salaries.

In defence of its proposals, the Federation of Finnish Enterprises argues the negative freedom of association and the equality of employers when agreeing on terms of employment. SAK emphasises that besides the legislation on freedom of association and the right to collective bargaining, also under the current Non-Discrimination Act the freedom of association and right to collective bargaining expressly involve the right to negotiate benefits for members only, provided the intent is not discriminatory.

Representing the interests of their membership is a natural duty for both social partners: workers and employers. Employers' organisations can thus negotiate with wage-earners' organisations only for benefits or rights for their members, such as the right to local bargaining provided in the collective agreement. The aim here is expressly to safeguard the social partners' freedom of association and right to collective bargaining at various levels. Finally, SAK points out that the objective of the actions on the part of employers described above seems to be to undermine the long-standing Finnish tradition of respect for unionisation as well as the freedom of association and the right to collective bargaining.

Freedom of association and discrimination against unionised workers

SAK conducted an extensive survey of its affiliated organisations on the realisation of the freedom of association and the right to collective bargaining. The responses revealed that discrimination against unionised workers occurs in Finnish workplaces. They also indicated that employers have

offered a range of benefits to non-unionised workers. As the affiliated organisations report it, the aforementioned UPM-Kymmene, for example, paid a 'bonus' of 30 euro to strike-breakers.

In the mechanical forest industry, in turn, the employer has offered to pay the membership dues for the private, i.e. non-union affiliated, YTK unemployment fund, but not those for any other unemployment funds. The employer has also paid additional increments to non-unionised workers and extra pay premiums to strike-breakers.

The employer in the mechanical forest industry has resorted to every possible means of pressure against the workers involved in the industrial action, including intimidation, scare tactics, extortion, bribery, and working the media. The names of workers going on strike were collected on lists and attempts were made to pressure them to come to work. While the counter-measures in other industries were less severe, all manner of tricks to escape coverage of the strike were witnessed. These were particularly common among undertakings in the chemical industry and plastic products industry.

In the service industries, employers offered strike-breakers rewards of chocolates and workplace meals. In the lorry transport sector, some employers gave extra bonus pay to strike-breakers who agreed to carry out work covered by the strike.

In addition to the above examples of attempted strike-breaking, employers have sought to overcome the ban on overtime by paying patently over-compensatory overtime rates to reward those who work overtime regardless of the ban. In another case, the employer discriminated against workers involved in trade union activities by paying them a performance bonus of only 7.5% while those who worked during the strike received a performance bonus of 17.5%.

Other recent examples of discrimination against union members includes action by the employer to retroactively deny sick pay for all sick days falling on the duration of the strike in a situation where the worker had fallen ill before the strike began and had only joined the strike after finishing sick leave. The employer announced that the chief shop steward at a non-unionised undertaking only represented unionised workers and that non-unionised workers had the right to elect an elected representative to represent them, or the employer announced that a non-unionised employer need not make an email account available for the chief shop steward or refused to pay salary to chief shop steward wholly released from any work obligation even though they were able to perform the duties of chief shop steward.

A lockout implemented by the employer as a means of pressure only applied to unionised workers.

The examples above are illustrative of the harder line adopted by employers against trade unions and unionised workers.

Restriction or prevention of right to strike

Organisations affiliated with SAK report on employers' counter-measures during industrial action and their attempts to break lawful strikes. Pressure has been exerted against workers taking part in the strike and attempts have been made to break strikes by using outside labour or agency workers, or by transferring other employees of the undertaking to the work subject to strike.

Means of pressure used by employers have included threats of dismissal, collecting lists of names of striking workers, removing materials posted by the shop steward from communal bulletin boards,

forbidding talk of strike, engaging in verbal abuse and inappropriate language, withholding the shop steward's pay for the period of strike even though not all workers served by the shop steward were on strike, and suspending collection of trade union dues due to the strike, this taking place in the retail sector.

On the other hand, employers have sought to break the strike by offering extra benefits to non-striking workers. UPM-Kymmene, for example, paid strike-breakers a daily 'scab allowance' of 30 euro.

In addition to the pressure exerted by employers themselves, undertakings have been instructed by the employer's union to apply for record numbers of exemptions, which clearly has been used as a counter-measure by employers. Other counter-measures undertaken by employers include motions to defer strikes and applications to court for precautionary measures that *de facto* wholly preclude any exercise of the right to strike.

Restriction of lawful industrial action through deferral of work stoppage
In Finland, the procedure for implementing industrial action and the dispute mediation institution are governed by the Act on Mediation in Labour Disputes (420/1962). Under section 8, subsection 1 of the Act, if a labour dispute is intended to give rise to a work stoppage or the extension of the same that is considered, in the light of its scope or the nature of the sector involved, to affect essential functions of society or to prejudice the general interest to a considerable extent, the Ministry of Economic Affairs and Employment may, at the proposal of the conciliator or conciliation board involved, and with the object of reserving sufficient time for mediation, prohibit the intended stoppage or its extension or commencement for a maximum of fourteen days from the announced date of its commencement.

Based on the wording of the provision alone, it is clear that the provision neither applies nor is intended to apply in acute national emergencies. However, since the strike deferral allowed by the Act must nonetheless be considered a restriction of the right to strike based on the freedom of association, it, too, shall be examined in light of the ILO Conventions and the related supervisory practice. In addition, it should be emphasised that the reference to "essential functions of society" in section 8 of the Act on Mediation in Labour Disputes has a direct substantive link to 'essential services,' a term which has become an established concept in the supervisory practice of the ILO Committee on Freedom of Association and which has its own independent meaning.

While the reasoning, in terms of conciliation, that underlies the provision of section 7 of the Act on Mediation in Labour Disputes concerning advance notice may be taken to consist of realising a 'cooling-off period', for example before industrial action against services that are key to society, i.e. essential services, section 8 of the same Act in turn responds to the need to protect the provision of such services. Section 8 of the Act on Mediation in Labour Disputes provides the legal foundation for deferring industrial action that concerns essential services, provided that guarantees sufficient for interest representation are safeguarded through mediation. The deferral cannot apply to the notified industrial action as a whole when not all workers taking part in the industrial action work in essential services. In other words, it should not be possible to restrict, pursuant to section 8 of the Act on Mediation in Labour Disputes, the right to strike of workers whose work input concerns duties, the performance of which has no immediate impact on anyone's life, health or safety.

The provision of section 8 of the Act on Mediation in Labour Disputes does not allow a partial deferral of industrial action, for example only in respect of a minimum level of services. In situations that do not involve functions coming under the umbrella of essential services, narrowly construed, industrial

action cannot be deferred pursuant to section 8 of the Act on Mediation in Labour Disputes. Where the industrial action, when implemented, would in its entirety concern essential services, the intended industrial action may be deferred by no more than 14 days on condition that the workers' organisation together with other parties has had the opportunity to seek mutual understanding, through negotiation, on the contents, extent and level of secured services, but such understanding has not been reached. In other words, the provision of section 8 of the Act on Mediation in Labour Disputes ensures that the organisation of minimum services is accomplished in respect of essential services.

The practical application of the said section 8 is contrary to the ILO Conventions and the supervisory practice of the CFA. In the first part of 2023, the Ministry of Economic Affairs and Employment deferred lawful industrial action by 14 days pursuant to section 8 of the Act on Mediation in Labour Disputes and on the motion of the national conciliator at least in two cases which in no way involved essential services. In the first case, the industrial action in retail logistics undertakings notified by Service Union United PAM was restricted, citing reasons of security of supply in particular. The strike that was intended to start on 6 February 2023 was deferred to start no earlier than 20 February 2023 by a decision dated 2 February 2023. In the said situation, the trade union had no opportunity to discuss securing minimum services before their right to industrial action was restricted. The notified industrial action moreover did not concern functions that could be deemed essential services in the narrow meaning of the concept. In fact CFA supervisory practice counts the logistics and transport services which the work stoppage mainly concerned to be services which are not eseential in the aforementioned sense. The question of how those essential services that in part depended on functions of the retail logistics undertakings that were subject to industrial action, such as meals in prisons and schools, had organised their particular activities is not relevant in this case where the industrial action does not concern these services. The unilateral restriction of the said industrial action by the Government does not stand up to scrutiny in light of CFA supervisory practice.

In the second case, the Ministry of Economic Affairs and Employment on the motion of the National Conciliator's Office deferred the industrial action by train drivers that was notified by the railway workers' union Rautatiealan Unioni RAU ry to start on 6 February 2023 so that the work stoppage could start no earlier than 20 March 2023. This deferral decision, too, was primarily based on the aforementioned criterion of 'security of supply' which as such is not among the requirements for application of section 8 of the Act on Labour Dispute Medication in Finnish legislation any more than in the CFA oversight practice concerning ILO Conventions. More specifically, the railway sector as a whole is among those services which do not count among essential services in the narrow meaning of the concept. The blatant inconsistency of the said decision with CFA supervisory practice is only underscored by the fact that in this case, the parties – RAU for the workers and Palta for the employer – before the start of the industrial action and the deferral decision had negotiated and agreed on securing minimum services during the industrial action. There is no question that the deferral in this case was wholly without foundation and it does not stand up to scrutiny in light of CFA oversight practice.

Restriction of right to strike by precautionary measure decisions issued by courts of law

Orders of precautionary measures in Finland are governed by chapter 7 of the Code of Judicial Procedure. It has been found in case law that the provision of chapter 7, section 3 of the Code of Judicial Procedure can also be applied to industrial action. However, the application practice of this provision is haphazard, decisions are issued with incomplete information, and precautionary measure decisions issued by district courts as court of first instance in particular are often legally untenable. While economic and financial considerations are no reason to restrict the right to industrial action, these are

nonetheless often taken into account in cases of precautionary measure applications under chapter 7, section 3 of the Code of Judicial Procedure.

In this context, precautionary measures integrally involve the issue of what is referred to as 'advance enjoyment'. Case law defines the term as a situation where the imposition of the precautionary measure means that the precautionary measure applicant, already during the legal proceedings, can enjoy in full the right which it is claiming in the proceedings. In situations of advance enjoyment, when considering a precautionary measure order, courts should set the bar for the degree of probability of the applicant's right considerably higher than for the degree of probability of a financial claim in a case involving attachment, for example. In cases of industrial action, application of chapter 7, section 3 of the Code of Judicial Procedure routinely leads to a situation where the precautionary measure applicant, in these cases the employer, gains all the rights which in fact the employer could only claim for itself by an action on the principal issue of the case. In other words, a precautionary measure that prohibits or suspends industrial action started or planned by a trade union already delivers all of the legal effects that the employer absolutely should not be able to claim except by an action on the principal issue of the case filed in a court of law.

A somewhat similar situation was at hand in a case that ultimately resulted in Supreme Court judgment KKO 2014:14. In spring 2012, Helsinki District Court ordered a precautionary measure and conditional fine to prohibit a strike started by the salaried employees of an airline's technical services companies. As part of these proceedings, the Labour Court in its decisions TT 2012:74 and 75 held that such use of a precautionary measure was linked to the question of whether the said activities could be prohibited by an enforceable injunction issued in proceedings in the principal issue of the case. Issuing such an injunction did not fall within the competence of the Labour Court, at least. While with their actions, the workers' union and its sub-association were in violation of their industrial peace obligation, the request to have the precautionary measure reversed was ruled inadmissible, as under the provisions of the Code of Judicial Procedure, it was not to be considered by the Labour Court in the context of the proceedings.

The idea on which the decision was based can easily be developed further such that the sanction exhaustively provided by law for industrial action that breaches the industrial peace obligation is the financial penalty under the Collective Agreements Act; the issue of an injunction or a precautionary measure order with the same effect is not an option. This approach has since been confirmed in Supreme Court decision KKO 2016:14 concerning the same industrial action. However, the fact remains that the interim precautionary measure decision alone nullified the workers' right to industrial action despite the said decision having been subsequently found by the Supreme Court to have been incorrect.

In the practice of the courts, assessment of the degree of probability is not accomplished in an acceptable manner and the problem is particularly conspicuous in cases of interim precautionary measures under chapter 7, section 5, subsection 2 of the Code of Judicial Procedure. As the wording of the provision states, an interim order of precautionary measure is granted without reserving the opposing party an opportunity to be heard and thus solely on the basis of evidence put forward by the applicant. In case T 706/2021/6649, for example, Helsinki District Court granted an application for an interim order of precautionary measure to prohibit industrial action without hearing the opposing party and on grounds that were subsequently proven to be untrue *per se*. No assessment of the said case could conclude that the threshold for a very high degree of probability would have been met. Even though the said interim order of precautionary measure was subsequently reversed in consequence of a claim filed by the trade union on its own initiative, there was the risk that the interim

order alone would have resulted in the workers' wholesale forfeiture of the right to industrial action in a situation where such industrial action was perfectly lawful. It was wholly up to the activeness of the trade union to prevent the unjustified restriction of the right to industrial action in this case where there was no lawful impediment to implementing the industrial action in the first place.

The problems associated with interim orders of precautionary measure in cases of industrial action will always far outweigh any acceptable benefit that may be achievable. Interim orders of precautionary measure are non-appealable. While a respondent may seek judicial review of an interim order of precautionary measure by filing a complaint under chapter 31, section 1 of the Code of Judicial Procedure, complaints as a means of judicial review are challenging and slow when compared to a process that in all other respects takes place in summary proceedings. The greatest problem, however, is the fact that in cases of industrial action, the issue of even an interim order of precautionary measure results in advance enjoyment for the benefit of the applicant/employer. When the application for an interim precautionary measure is granted and this is enough to effectively put an end to the industrial action, the applicant will have considerably less interest in taking to a conclusion the matter of the final precautionary measure, let alone the action in the principal claim of the case that should follow. In these cases, the guarantees of legal protection for trade unions are non-existent. Likewise, once the decision on the final precautionary measure has been issued, for all intents and purposes it is solely up to the applicant whether any action in the principal issue of the case is ever even filed. After all, the employer has already reached its key objectives by the precautionary measure that effectively prohibited the industrial action. As it now stands, the legal situation is untenable, both as far as due process is concerned and also in respect of using precautionary measure decisions to summarily restrict the right to industrial action.

The randomness of the courts' practice and the consistent disregard for the ILO Conventions and other norms concerning restriction of industrial action, particularly in consideration by district courts, may be considered an even greater problem than advance enjoyment, however. Whereas earlier case law concerning precautionary measures has largely been clear and consistent as far as concerns the problems with the 'general industrial peace obligation' and its categorical dismissal (e.g. Supreme Court decision KKO 2000:94 and Helsinki Court of Appeal decision HelHO 2981 of 11 October 2010), later case law, particularly from district courts, has departed from these – and even from the approaches that have subsequently been clearly outlined by the Supreme Court – to the detriment of workers.

In decision KKO 2018:61, the Supreme Court weighed in on an interim order of precautionary measure, issued by a district court and enforced with a conditional fine of 500,000 euro, that prohibited the blockade of a Vietnamese ship by seafarers' trade unions. The aim of the blockade was to obtain for the crew a collective agreement that would have aligned with the level of wages commonplace in the Baltic Sea region. The wages paid were below the level based on the then ILO Recommendation No. 187. There were also workers on the ship who had worked for up to 15–20 months without any annual holiday .

The Supreme Court approved the precautionary measure obtained by the shipping company and found the shipping company to have rendered it very probable that the objective of the blockade had been unlawful, as it had been used to seek a collective agreement that would not be binding under the Vietnamese law that applied to employment contracts on the ship and could not produce the legal effects intended by the agreement. The reasoning of the Supreme Court's decision relies strongly on the assumption that the agreement would not have been binding under Vietnamese law because at the time of the blockade, ILO Conventions Nos. 87 and 98 had not been ratified by Vietnam. What the

Supreme Court ignored was the fact that Vietnamese law was not up to the standard required by the ILO Conventions for the reason alone that CFA supervisory practice, for example, had for decades held that the said Conventions obliged ILO Member States even without ratification, solely on the basis of their membership in the Organization. The Vietnamese system where only a workers' association operating under the direct control and guidance of the State can conclude binding collective agreements cannot constitute an impediment to the implementation of industrial action in Finland and the conclusion of a collective agreement under Finnish legislation that would be binding on the parties.

Recently, district courts have also issue decisions in which the unlawfulness or contrariness to good practice of industrial action is justified by the imbalance between the trade unions' demands and the industrial action implemented. Such decisions relying on the principle of proportionality (for example in cases T 706/2022/4201 and T 706/2022/9292) do not stand up to any critical assessment regarding restriction of fundamental and human rights. Unlike as held by the Supreme Court, for instance, that it is not possible to broadly assess the realisation of rival fundamental rights in the summary proceedings concerning precautionary measures (Supreme Court decision KKO 2020:50), these recent rulings rely solely on such an assessment of proportionality.

What the cases have in common is that the assessment by the district courts is wholly or nearly lacking in any consideration of the fact that the extent and manner of implementation of industrial action is solely up to the organisation concerned and its membership and constitutes an essential component of the freedom of association. Nonetheless, district courts have restricted industrial action in summary proceedings without any strong evidence and ignoring the effect of international conventions. Economic and financial fundamental rights do not counter-balance the freedom of association. Application of the principle of proportionality, when such application is assessed, should assess expressly the effectiveness of the industrial action relative to the objectives set. In these cases, it was held that the industrial action was an excessive measure and thus disproportionate either for economic and financial reasons or because it was deemed too harsh a measure relative to the benefits sought. At this point, one may well ask what might have been the less severe measure that the trade union could have relied on in order to pressure the employer into bargaining for a collective agreement when even the industrial action implemented did not deliver the desired outcome?

Standing of shop stewards

The standing of shop stewards is challenged especially in undertakings that are not members of an employers' union, i.e. non-unionised undertakings. Even though the standing and rights of shop stewards are largely based on collective agreements and unionised communities of employer shall comply with the provisions on shop stewards, workers nonetheless have a universal right to elect a shop steward. This right has been called into question and the shop stewards elected have either not been recognised or their rights and standing have been challenged after the fact.

Based on the responses to a survey conducted by SAK among its affiliated organisations, shop stewards have been harassed in the performance of their duties and attempts have been made to prevent them from such performance altogether, for example by refusing to recognise the standing of the shop steward and refusing to negotiate terms of employment with the shop steward.

Some respondents said that the employer had actively promoted the election of an elected representative and in doing so, facilitated the sidelining of the shop steward. Shop stewards had also been threatened with dismissal.

Non-unionised employers have also prohibited shop stewards from taking part in training sessions organised by the trade union, or at the very least denied them the compensation for loss of earnings required under the collective agreement for the duration of participation in such training.

One response spoke about a shop steward being offered a promotion to make the shop steward a supervisor and thus a representative of the employer. The situation had harmed the standing of the shop steward.
Based on one response, the employer considered elected representatives to take priority over shop stewards representing trade union members.

At one undertaking in the mechanical forest industry sector, the shop steward representing trade union members also became the elected representative, with the help of the employer. The intention was to undermine the standing of the shop steward and to get them to relinquish their position of trust. It also allowed the employer to prevent an undertaking-specific collective agreement from being concluded for the said undertaking.

In some situations, shop stewards have been terminated without justified cause. One such case is a court case from 2022 where the shop steward was terminated without the consent of the workers represented. This was a violation of the shop steward agreement and also contrary to chapter 7, section 10, subsection 1 of the Employment Contracts Act.

Supplement (24.8.2023) to the SAK's statement

Although the International Labour Organization (ILO) has requested reports concerning 2023, the Central Organisation of Finnish Trade Unions (SAK) would like to draw the ILO's attention to measures currently planned and prepared in Finland, which will significantly weaken the position of employees. Significant cuts to employees' rights are part of the Programme of Prime Minister Petteri Orpo's Government, which took office on 20 June 2023. The Government's objective is to enact legislation that will considerably limit the right of employees to strike and that will weaken the opportunities of trade unions to engage in collective bargaining and negotiations. In addition, the Government plans to undermine the National Conciliator's ability to settle labour disputes by amending the Act on Mediation in Labour Disputes so that the general level of pay adjustments could not be exceeded by a settlement proposal issued by the National Conciliator's Office or a conciliation board. If the Government's planned changes in the mediation system are implemented, Finland will no longer have a voluntary and impartial mediation mechanism for labour disputes referred to in the ILO Conventions. This will lead, among other things, to a situation where low-wage sectors dominated by female employees will have even fewer opportunities than before to bridge pay gaps. The Finnish Government also intends to enact reductions in employees' protection against unjustified dismissal, their social security and cooperation at the workplace level. The weakening of the position of employees and the operating conditions of trade unions are incompatible with the obligations, which have been adopted in ILO conventions, recommendations and other documents, to promote such matters.

SAK emphasises that the Government's package of measures will weaken the rights and security of employees, but will not increase the responsibilities and obligations of employers in any respect. The measures are in no way balanced, and the Government Programme does not reflect the aim to achieve such a balance in any way.

With regard to the right to strike, the restrictions will apply to political industrial action and solidarity strikes. In addition to purely political labour disputes to which the planned restrictions on political industrial action will apply, the Government also specifically aims to restrict employees' ability and opportunity to influence economic and social policy issues. Moreover, the Government intends to impose a fine of EUR 200 on employees involved in unlawful industrial action, even if the strike is organised by a trade union.

As concerns the right to collective bargaining, the Government aims to increase local (company-specific) bargaining on terms of employment and remove the current ban on local bargaining in companies without a shop steward. In contrast to the current practice, a local agreement on terms of employment could be concluded not only by a shop steward, but also by an elected representative, another representative of the personnel or the entire personnel.

SAK expresses its grave concern over the ongoing preparations. Although the matter is being prepared by a so-called tripartite working group, it is not a genuine negotiation. Instead, the outcome of the working group's work has already been decided in advance and the Government plans to submit the legislative proposals to Parliament within a short period of time.

After the above-mentioned legislative amendments have entered into force, preparations for further weakening of labour legislation will continue. It is obvious that the restrictions on political industrial action and the sanctions against employees aim to prevent employees from opposing the reductions to labour and social security legislation. The Government aims to implement the above-mentioned reductions in employees' rights within two years. SAK hopes that the International Labour Organization will pay attention to these negative developments taking place in Finland.

Statement by the Finnish Confederation of Salaried Employees (STTK) on the following conventions:

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

General applicability of collective agreements and conclusion of local agreements

Freedom of association, the right to organise and the right to collective bargaining are fundamental rights protected under the Constitution of Finland (section 13, subsection 2). Interpretation of this provision has been informed by international human rights obligations and the ILO Conventions, including their interpretative practice.

In Finland, the terms of employment are for the most part laid down by collective agreements. Minimum wages expressed in euro, for example, are not governed by law and are instead largely determined on the basis of collective agreements.

The general applicability of collective agreements is an integral element of the Finnish system.

General applicability is provided for in the Employment Contracts Act. Under chapter 2, section 7 of the 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.

The general applicability of collective agreements does not involve any *obligation* to organise. Section 13, subsection 2 of the Constitution of Finland also safeguards the right not to belong to any association. This is commonly referred to as a negative freedom of association. General applicability does not translate into an obligation to organise, nor does it bind a non-unionised employer to the collective agreement in the manner referred to in the Collective Agreements Act (Constitutional Law Committee report PeVL 41/2000 – Government proposal HE 157/2000).

In practice, the general applicability of a collective agreement means that in a sector with a generally applicable collective agreement, all employers must comply with the provisions of the agreement regardless of whether the employer or the workers are unionised. In other words, general applicability secures minimum terms of employment also for workers who are employed by non-unionised employers.

An important objective of general applicability is to safeguard minimum terms of employment and a minimum standard of working conditions. General applicability prevents undertakings from competing against each other by undermining terms of employment, as a collective agreement that is complied with on the basis of general applicability determines the level of labour costs in the sector concerned. However, general applicability does not prevent undertakings from competing for labour, as the terms of employment laid down in the generally applicable collective agreement are expressly *minimum terms*.

The concept of local bargaining is intertwined with the debate on general applicability in Finland. While local bargaining is not defined in legislation, the term commonly refers to the option, based on the collective agreement, of concluding an agreement in respect of certain terms of employment that differs from those under the collective agreement. In practice, local bargaining allows the parties to the collective agreement to derogate in certain respects from the provisions of the collective agreement in a given unit or undertaking. Local bargaining may involve agreements that undercut the collective agreement in some respect.

The system has come under criticism especially because local bargaining, for the most part, is only possible among unionised employers when the aim is *to undercut the collective agreement*. In this context, it must be mentioned that general applicability does not preclude local bargaining that aims to provide workers with terms of employment that are better than the minimum under the collective agreement. As stated, one of the most important elements of general applicability is to safeguard a minimum level of terms of employment. In this respect, its aims align with those of labour legislation.

Local bargaining requires fair structures and negotiating culture so that the parties are on an equal footing when discussing minimum terms of employment. In practice, local bargaining calls for a great deal of expertise and support in order for the local agreement actually to be concluded in a fair and balanced manner. Trade unions play a particularly important role in enhancing such expertise and providing such support. Support provision also extends to the resolution of disputes. In addition, the system of shop stewards linked with trade unions, along with other tools, makes it

possible to ensure compliance with provisions of the agreements.

In other words, a balance in negotiations and agreements must be secured when engaging in local bargaining. Were the current agreement-based system changed, it would in all likelihood be necessary to resort to a considerably larger set of legislative tools in order to safeguard minimum terms for workers. This, in turn, would make it very difficult to cater for the particular characteristics of individual sectors.

Use of precautionary measure in the context of industrial action

Precautionary measures are governed by chapter 7 of the Code of Judicial Procedure. Precautionary measures are intended to safeguard, in advance, any compensation or claims adjudicated payable at a later date, when their realisation involves risks related to the actions of the opposing party.

Under the Code of Judicial Procedure, the application for a precautionary measure shall be considered as a matter of urgency. The application may not be granted without reserving the opposing party an opportunity to be heard. However, if the purpose of the precautionary measure may otherwise be compromised, the court may, on request of the applicant, give an interim order on the precautionary measure without reserving the opposing party said opportunity. The purpose of precautionary measures is to ensure the enforcement of the subsequent judgment on the principal issue of the case.

Precautionary measures have traditionally been used in disputes between undertakings or individuals. The original purpose was to safeguard the position of the creditor in particular, as a precautionary measure could be used to prevent the debtor from squandering assets. Although the provisions on general precautionary measures allow a wide scope of application, such measures were not intended as a tool to interfere with the right of industrial action that is safeguarded as a fundamental right. However, precautionary measures have been used for this purpose in recent decades. Applying to a court of first instance for a precautionary measure has been a particularly prevalent practice. The opposing party need not be heard in order for an interim precautionary measure order to be issued. Conditional fines of up to millions of euro have been imposed on trade unions in the context of precautionary measure decisions.[1]

The Finnish Confederation of Professionals STTK holds that the use of precautionary measures in industrial action situations is highly problematic, firstly with regard to the purpose of the provision and particularly because of the potential consequences of a precautionary measure. Applying for a precautionary measure can nowadays have a significant impact on the right to industrial action. In case of a strike, for example, an interim precautionary measure order can deliver those legal effects that in actual fact should only be obtained in legal proceedings on the principal issue of the case. When a court of first instance issues an interim precautionary measure order that prohibits a strike, the sole aim of the applicant that is sought in the principal issue of the case is already accomplished by the interim order. In these cases, proceedings that for all intents and purposes are summary in nature have succeeded in stopping workers from engaging in industrial action, which is a fundamental right safeguarded for them.

[1] For example: In the context of a precautionary measure, the district court imposed on the Paperworkers' Union a conditional fine of two million euro in the union's industrial action against the undertaking UPM. https://yle.fi/a/3-12280897

The right to industrial action is protected in Finland as a fundamental right. Fundamental rights can only be restricted by legislation enacted by Parliament and any restrictions must be precisely and clearly expressed. These requirements are not currently met when precautionary measure applications are filed in the context of industrial action. In addition, any restrictions of fundamental rights must be consistent with international human rights obligations that are binding on Finland. STTK holds that the current national situation is unacceptable in light of the ILO Conventions.

Act to ensure necessary healthcare and home care during industrial action ("Patient Safety Act")

In autumn 2022, the President of the Republic of Finland approved a temporary bill for an Act to ensure necessary healthcare and home care during industrial action. Under the transitional and entry into force provisions of the Act, it was to be in force from 20 September 2022 to 31 January 2023. The Act was drafted at the Ministry of Social Affairs and Health as part of the ministry's official duties after the workers' unions in the health and social services sectors had issued a strike notice.

Under section 1 of the Act, its purpose was to safeguard the necessary healthcare and home care referred to in section 5, subsection 2 in situations where the life of social welfare clients or of patients was endangered or the health of clients or patients was seriously endangered due to insufficient staffing resulting from industrial action in healthcare or home care organised by a municipality or joint municipal authority.

STTK holds that the Act in its entirety was highly problematic. The key issues with the Act have to do with the extent of the grounds on which the right to industrial action could be restricted. The scope of the Act was so broad that for all intents and purposes, it could have negated nearly in full any right of workers in the health and social services sector to go on strike. Section 5 of the Act was not formulated with sufficient precision and clarity. The grounds for necessary treatment and care to be provided in the form of working with clients and in patient safety very broadly covered nursing in basic and specialised healthcare. STTK holds that the scope and lack of precision of the definitions were highly problematic in light of the interpretative practice of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), according to which the right to industrial action can be restricted to essential services in the narrow meaning of the term. The CEACR has held that when essential services are given an excessively broad definition in legislation, the provision becomes irrelevant.

Subject to conditions laid down in the Act, the employer could change the duties and place of work of workers (section 4) and derogate from working time provisions (section 7) as well as annual holiday provisions (section 8). STTK holds that the powers of the employer under chapter 3 of the legislative proposal (measures and orders concerning workers) to unilaterally decide on a worker's place of work and working hours were excessively broad.

The Act did not provide for adequate legal remedies to protect the worker and intervene in situations where the worker unjustifiably was ordered to perform new duties or work in a new place (section 4) or ordered by the Regional State Administrative Agency to work with clients and in patient safety (sections 5 and 6). Under the Act, the aforementioned orders could not result in the worker being put in an unreasonable situation. STTK pointed out that any assessment of unreasonableness is subject to interpretation and based on a subjective assessment by the employer. Adequate legal remedies for the worker were also lacking in respect of sections 7 (derogation from working time provisions), 8 (derogation from annual holiday provisions) and 9 (ordering employees who had resigned to carry out work with clients or in patient safety).

According to the Labour Force Survey (2021) of Statistics Finland, 85% of workers in the health and social services sector are women. In practice, the Act not only interfered with the right to industrial action – it also had an effect on the opportunities to promote equal pay. Despite this, the Government proposal (HE 130/2022) contained no gender impact assessment.

STTK points out that at the same time as the Act entered into force, workers' unions in the health and social services sector had already been prohibited from starting a strike by an interim precautionary measure decision issued by Helsinki District Court. Without hearing the unions, the District Court imposed an interim precautionary measure order on pain of a conditional fine of one million euro for each hospital district (for a total of six million euro). The use of precautionary measures in the context of industrial action was discussed in the previous sub-chapter.

STTK survey of trade unions

STTK conducted a survey of the trade unions affiliated to it when preparing this statement. The aim of the survey was to gather information for the purpose of this statement on industrial action measures during the most recent round of collective agreement negotiations and on any countermeasures used by employers. In the same context, the unions were also asked to evaluate more broadly certain matters relating to the freedom of association and the status of workers' representatives. STTK asked that this evaluation concern the years 2022 and 2023. The survey responses revealed that in the said years, the responding unions had engaged in industrial action. The national system of collective agreements is in flux and STTK finds that this was also reflected in the responses received.

The survey asked if employers had sought to circumvent or prevent industrial action. No was the reply of 56% of respondents. Of the respondents whose reply was Yes, 44% reported the means used to have been intimidation, 22% as the use of agency workers or other outside labour, 33% reported use of precautionary measures, 22% deferrals of strike, and 22% reported other means. The last-mentioned included the payment of increased or extra compensation to those who showed up for work.

The survey also asked if employers had enquired whether workers intended to take part in industrial action. Of the respondents, 42% said Yes and 33% said No, while 25% said Don't know. Among those responding with Yes, 58% estimated that the enquiry had had no impact on participation in industrial action, while 42% didn't know if the enquiry had had any impact.

A further question in the survey concerned employers' discrimination of union members. Of the respondents, 31% replied Yes, 61% No and 8% Don't know.

In relation to industrial action, the trade unions were asked if non-unionised workers had been offered benefits, for example in relation to taking part in industrial action. Of the respondents, 38% said Yes, 31% said No and 31% said Don't know. When asked if employers had tried to influence workers about being unionised/non-unionised, 15% of respondents said Yes, 46% No and 39% Don't know.

When asked if shop stewards had been terminated by one-sided notice or in mutual agreement, 23% of the respondents said Yes, 69% said No and 8% said Don't know. The trade unions were also asked whether there had been any actual or attempted harassment of shop stewards in their activities:

15% said Yes, 62% No and 23% Don't know. To the question of whether the employer had refused to recognise the shop steward elected, 15% said Don't know and 85% said No.

Statement by the Confederation of Unions for Academic Professionals in Finland (Akava): Conventions nos. 87 and 98.

Freedom of association and the right to bargain collectively are protected under International Labour Organization Conventions No. 87 and 98.

Under Convention No. 135, workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements. Akava, Confederation of Unions for Professional and Managerial Staff in Finland finds that effective protection of workers' representatives against any act prejudicial to them, including dismissal, is safeguarded regardless of the legislation on which the representative's status is based. The election, status and powers of the shop steward are determined in accordance with the collective agreements generally applicable to the sector. Legislation contains provisions on shop stewards elected on the basis of a collective agreement with regard to their right of representation, right of access to information and enhanced protection against dismissal.

Akava emphasises that not all groups of workers are covered by collective agreements in all respects. Upper-level employees with administrative, managerial, professional and related occupations are not covered by a collective agreement in all sectors and they thus lack an agreement-based right to elect a representative from amongst themselves.

Moreover, in some sectors the election of a shop steward is based on the provisions of a generally applicable collective agreement. In these sectors, there has been some dispute as to whether non-union employers are required to comply with the provisions concerning shop stewards on the basis of the general applicability of the agreement and which provisions shall be complied with. For example, the provisions of shop steward agreements concerning the right of a shop steward or elected representative to gain access to financial information on the company and its employees has not been considered an obligation within the scope of general applicability. In addition, the question of whether the provisions of shop steward agreements concerning the election of a shop steward obligate a non-union employer that complies with a generally applicable collective agreement has been addressed in both general courts and the Labour Court.

The judgment of Turku Court of Appeal issued on 29 December 2020 in case R 19/1158 found the question to be open to interpretation and the employer was thus not found to have violated the workers' freedom of association. According to the Court of Appeal, based on the law it cannot be unequivocally concluded that a non-union employer would be obliged to accept the establishment of a shop steward and hence, when preventing it, would be committing an offence under chapter 47, section 5 of the Criminal Code. Judgment L 17/5781 issued by Eastern Uusimaa District Court in case 21/6204 found that it did not follow from workers' freedom of association that a non-union employer would be obliged to accept the election of a shop steward as referred to in the collective agreement.

The case law of the Labour Court (e.g. TT 2011:5) has held that the provisions of shop steward agreements, including those concerning election, are binding on unionised employers as normative

provisions. According to the judgment, the right to elect a shop steward may be taken to constitute an element of the freedom of association. One of the rights secured under ILO Convention No. 87 is the right of workers' organisations to elect their representatives in full freedom. The above judgment of the Labour Court concerns unionised organisations, meaning that the employer, too, must be unionised.

The matter is addressed in Supreme Court decision KKO 2022:35. 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 question of whether a non-unionised employer that complies with a generally applicable collective agreement is obligated by the provisions of shop steward agreements concerning election of shop steward remains without a definitive answer at the level of legislation.

The Federation of Finnish Enterprises (Suomen Yrittäjät, SY)

Supplement (28.8.2023) to the SY's statement

The Federation of Finnish Enterprises (Suomen Yrittäjät, SY) considers the statement by the Central Organisation of Finnish Trade Unions (SAK) inappropriate, as this presents that SY has "attacked the freedom of association through discriminatory conduct against unionised workers in Finland". SY highlights that 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.

SY also notes that, likewise the trade unions, also organizations representing employers has the duty to represent and defend interests and rights of employers by all means that are safeguarded in the Finnish law and the ILO Conventions. In fact, the ILO Convention 87 safeguards these rights also to the employers. The fact that an organization representing employers, or an individual employer, uses these rights and opportunities in accordance with the legal order does not mean that the freedom of association is threatened or attacked. In addition, contrary to what SAK implies, the freedom of association as promoted by the ILO Conventions, does not mean that the employer would be obliged to negotiate with trade unions.

Due to the above, SY considers that the comments made by SAK about the activities of SY are inappropriate and irrelevant from the point of view of the application of the ILO Conventions and Finnish legislation. The references and claims made by SAK in its statement about the activities of Suomen Yrittäjät concern situations in which SY has acted in a manner fully in accordance with its Finnish legal order and its own rules.

SAK has referred in its statement to a situation where companies have offered an unemployment fund membership fee as an employee benefit, which has been directed to an unemployment fund that is "not affiliated with trade unions". In this regard, SY first states that according to the Finnish Act on Unemployment Funds (603/1984), unemployment funds should be separate from trade unions. SY points out, however, that the communications and marketing of many of the member unions of SAK in 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 present that the membership in a trade union is a precondition for entitlement of earnings-related unemployment benefit even through, under law, trade unions and unemployment funds must be kept separate. Secondly, SY states that the employer has full freedom to decide which benefits they provide to their employees and who implements these benefits, and this issue has no relevant connection to the ILO conventions referred to above. Furthermore, the employee has full freedom to decide which unemployment fund he belongs to or whether he belongs to any.

SAK has also referred to SY, when it comes to the collection and payment of the employee's membership fee to the trade union. SY emphasizes in this respect that Finnish legislation does not require - and has never required - an unorganized employer to take care of collecting and paying the trade union membership fee of its employees to the trade union. Such an obligation is not based on ILO Conventions either. SY mainly represents unorganized employers, so monitoring their rights and interests is naturally part of the duties of SY. An essential part of these duties is to inform members about what rights and responsibilities they have.

Even though a collective agreement can be declared generally applicable in Finland, the obligation to comply with provisions of certain generally applicable collective agreement does not apply to provisions of the collective agreement that can be classified as provisions concerning relations between the unions that have signed the collective agreement. The provisions of which concern the relations between the unions that have signed the collective agreement are not subject to general applicability. These kind of provisions (työolonormit in Finnish legal literature) does not, according to established practice and legal literature, belong to the scope of general applicability. Furthermore, the collection and payment of the trade union membership fee is not related to the minimum terms of employment. It is purely a provision serving the interests of the trade union, based on an agreement made by the central organizations of social partners in 1969. SY has never been part of that agreement. The collection and payment of the trade union membership fee has also not been the prevailing practice in all sectors of industries.

SY also emphasizes that the problems regarding freedom of association are not related to the fact that trade unions negotiate collective agreements. Quite on the contrary, the problems are related to the fact that Finnish labor legislation is structured in such a way that employers are placed in an unequal position in terms of their rights and obligations based on whether they are organized or not.

Regarding the general applicability of collective agreements, SY notes that even though the Constitutional Law Committee of the Parliament of Finland has noted that the general applicability of collective agreements is an arrangement that is feasible under the Constitution, the committee has also detected potential problems related to fundamental rights in the context of general applicability. In its statement (PeVL 41/2000 vp) – in which also SAK refers – the Constitutional Law Committee has stated that “it is not fully unproblematic that 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.” The Constitutional Law Committee has also stated that “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, particu-

larly from the perspective of negative freedom of association, and the development of the competitive situation.” The status of general applicability of collective agreements from the point of view of the freedom of association is neither unambiguous nor clear.
In addition, regarding the general applicability, it can also be mentioned that it is not unproblematic in light of the jurisprudence of the European Court of Justice (see especially judgments in cases C-499/04 ja C-426/11), according to which the freedom of business requires that the employer has the opportunity to effectively defend his interests in the collective agreement processes and that in a situation where a collective agreement affects an employer who has not participated in their negotiation, the principle according to which the contract binds only its parties is violated. The Finnish Employment Cotracts Act Chapter 2, section 7, however, which contains the provision on general applicability, has not been subject to the examination of European Court of Justice.

Furthermore, contrary to what SAK argues, SY 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 gives opportunity to use the flexibilities of the collective agreement to the organised employers only. In other words, the unorganized employers are obliged to comply with the collective agreement without possibility of using flexibilities of the collective agreement.

In defence of its position, SAK agues that the arrangement is needed to ensure the protection of workers. However, this justification seems vague, as an organized employer may undermine the working conditions of employees, as it is expressly possible in the situation described above. The only difference is whether the employer is organized. The protection of employees is not a relevant justification for restricting local bargaining, as nothing would prevent employees, even in an unorganized company, from turning to the union when negotiating a contract. Deviating from the collective agreement also always requires that it is specifically agreed with employees and/or their respective representatives, and it is not a matter that falls within the scope of the employer's management rights.

SY emphasizes that Finnish legislation is largely in line with ILO Conventions 87, 98 and 135 and it safeguards workers’ interests at high level. Finnish legislation protects the freedom of association for both employees and employers, the right to industrial action and the right of employees to choose a representative for themselves – irrespective whether they are organized or unorganized. Finnish legislation, however, contains provisions that are problematic in terms of negative freedom of association, as stated SY’s statement.

It should also be noted that, with a few exceptions, the use of the freedom to association and the right to industrial action is not regulated in more detail in the Finnish law. Like other fundamental rights, the use of the right to industrial action can also be restricted, as long as the general conditions for restricting fundamental rights are met. It must also be remembered that the employer also has the right to industrial actions. SY notes that the use of precautionary measures in disputes related to industrial action is fully in accordance with the Finnish legal order. In the event of an industrial action, the employer has the right to continue its operations and to try to use legal means to mitigate the effects of the industrial action.

SY considers that the Finnish legislation is fully in line with the ILO Conventions when it comes to the possibility of the Ministry of Employment and the Economic Affairs, based on the Act on Mediation of Labour Disputes, to prohibit industrial action or postpone it. It is important that functions critical to society can be secured even in industrial action situations.

Please notice that the SY’s statement attached to the report on Convention no. 98 covers also Convention no. 87.

The Confederation of Finnish Industries (EK)

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

Supplement (28.8.2023) to the EK’s statement

As regards Convention nro 87, 98 and 135, EK notes that the argument made by Trade Unions (SAK, STTK and Akava) that EK would seek to undermine Finland's collective bargaining system by withdrawing from the Central Level collective bargaining is not correct. EK's decision is purely about the allocation of tasks, i.e. which entity in the employer's side conclude collective agreements. The negotiation of collective agreements has been shifted from the central level to the sectoral level. The coverage of collective agreements in EK’s member federations has not decreased but it has remained the same.