No. 98

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

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

ratification of which was registered on 22 December 1951

I LEGISLATION AND REGULATIONS

The National Conciliator's mediation of labour disputes has been reformed so that parties negotiating a collective agreement can request a mediator to support the negotiations before the labour dispute threatens industrial peace. Please see the report on Convention no. 154 for further information on voluntary conciliation.

II Direct request 2020

The Committee takes note of the Government's report which includes observations made by the Federation of Finnish Enterprises, the Central Organization of Finnish Trade Unions (SAK) and the Finnish Confederation of Salaried Employees (STTK). The Committee notes that: (i) these observations refer to the general applicability of national or sectoral collective agreements; and (ii) the Federation of Finnish Enterprises alleges that the impossibility for employers who are not members of an employers' association to deviate from such collective agreements through the conclusion of workplace-level agreements is contrary to the Convention. ***Taking note of the opposite views expressed by the social partners in this respect, the Committee requests the Government to provide its comments thereon.***

Finnish labour legislation allows derogating from certain legal provisions under a national collective agreement. However, companies that observe generally applicable collective agreement may observe these derogations within the scope of application of collective agreement only if such application does not call for a local agreement. Please see Employment Contracts Act (section 8, chapter 13), Working Hours Act (section 35), Annual Holidays Act (section 31) and Study Leave Act (273/1979) (section 13a).

Please also see section 36 of the Working Hours Act (872/2019), which allows local agreement on regular working time based on generally applicable collective agreement under certain conditions. Local agreement on regular working time may also be concluded by the elected representative referred to in chapter 13, section 3 of the Employment Contracts Act or by another representative authorised by the employees or, when no such person exists, by the employees or a group of employees collectively, if a shop steward has not been elected.

General applicability seeks to ensure that certain minimum conditions are fulfilled in the employment relationships of all workers in the sector concerned, also when the employer is unaffiliated. This aim is consistent with the aims of the ILO Conventions.

Constitutional Law Committee of the Parliament of Finland has held general applicability to be permissible in term of the Constitution of Finland. In addition, the Constitutional Law Committee has assessed Finland's labour legislation from the viewpoint of the negative freedom of association safeguarded under section 13 of the Constitution and the requirement of equal treatment under section 6 of the Constitution. The Committee has found that provisions that do not permit an employer that complies with a generally applicable collective agreement to apply provisions that require local agreement to be permissible in terms of the Constitution of Finland. In the context of the enactment of the new Working Time Act in 2018, the Committee reiterated its position adopted in 2000.

According to the Committee, general applicability seeks to ensure that employment contracts in a given sector fulfil certain minimum conditions when the employer is unaffiliated. The Committee finds that the aims relating to general applicability are aligned with the public authorities' responsibility for the protection of the labour force laid down in section 18, subsection 1 of the Constitution of Finland. General applicability is based on express provisions of law. The conditions for general applicability and the procedure in which a national collective agreement is confirmed to have general applicability are laid down by law.

Even though, under the Employment Contracts Act, Working Time Act, Annual Holiday Act and Study Leave Act currently in force, an employer that complies with a generally applicable collective agreement does not have exactly the same status as an affiliated employer complying with the same collective agreement, the Constitutional Law Committee of Parliament has held that the situation has not resulted in differentiation of such significant impact between employer groups as to be considered excessive with regard to the realisation of the negative freedom of association also in practice, taking into account the aim of protection of the labour force under section 18, subsection 1 of the Constitution of Finland.

III Information on the practical application of the Conventions

Please see the report on Convention no. 87.

IV

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

Statements by Central Organization of Finnish Trade Unions (SAK), Finnish Confederation of Salaried Employees (STTK) and Confederation of Unions for Academic Professionals in Finland (Akava) on the Convention no. 98 are attached to the report on Convention no. 87.

The Federation of Finnish enterprises (**Suomen Yrittäjät, SY)**

In respect of Conventions Nos. 87 and 98, Suomen Yrittäjät (SY) refers to its earlier statements of 2019 and 2020 regarding application of the said Conventions.[1]

Taking into account the observations of the CEACR (Direct Request, 2020), SY states that labour legislation in Finland continues to put non-unionised employers and their workers in a legally unequal position when compared to unionised employers.

Freedom of association is strongly protected in Finland. It does not translate into forced association; instead, it also entails the right not to belong to a trade union, as expressly stated also in section 13 of the Constitution of Finland. This right is held by workers and employers alike.

The general applicability of collective agreements that is based on the Employment Contracts Act limits the freedom of contract of both employers and workers who choose to exercise their freedom not to associate, as in many respects collective agreements lay down provisions on the terms of employment beyond the scope of legislation.

Moreover, the express prohibitions under Finnish legislation for non-unionised employers to derogate from the provisions of the collective agreement through a local agreement (Employment Contracts Act, chapter 13, sections 7 and 8; Working Time Act, sections 34 and 35; Annual Holidays Act, sections 30 and 31; and Study Leave Act, sections 13 and 13a) are problematic with regard to freedom of association. These prohibitions prevent non-unionised undertakings from entering into local agreements with their employees concerning the matters within the scope of the bans even when the applicable collective agreement permits the conclusion of local agreements. Developments in labour legislation have increased the number of topics subject to such prohibitions.[2]

The legislation thus puts these employers and their workers on an unequal footing compared to employers who are members of an employers' union that have concluded a collective agreement. SY emphasises that the said problem with regard to freedom of association has nothing to do with the fact that unions enter into collective agreements with each other (which, naturally, they have every right to do because of the freedom of association). The problem lies in the structure of Finnish labour legislation that is discriminatory against those employers and workers that have chosen not to join a union.

The freedom of association is a fundamental right that belongs to all workers and employers. Neither of its dimensions, the positive or the negative, should not be restricted. The rights and obligations of workers and employers laid down by law cannot be dependent on the manner in which they have chosen to exercise this particular fundamental right.

[1] SY statement of 29 May 2019 and additional statement of 30 August 2019 on ratified Conventions; SY statement of 31 August 2020 on reports to be submitted to the ILO in 2020.
[2] Amendment (744/2022) of the Employment Contracts Act and amendment (746/2022) of the Working Time Act entering into force on 1 August 2022.

The Confederation of Finnish Industries (EK)

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