

REPORT

for the period 1 June 2019 to 1 September 2020, drawn up by the **Government of Finland**, in accordance with Article 22 of the Constitution of the International Labour Organization, on the measures taken to give effect to the provisions of the

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

the ratification of which was registered on 20 January 1950.

I LEGISLATION AND REGULATIONS

Nothing new to report.

II – V

Nothing new to report.

VI

A copy of this report has been sent to the following labour market organisations:

1. The Confederation of Finnish Industries (EK)
2. The Central Organisation of Finnish Trade Unions (SAK)
3. The Finnish Confederation of Salaried Employees (STTK)
4. The Confederation of Unions for Academic Professionals in Finland (Akava)
5. The Commission for Local Authority Employers (KT)
6. The State Employer's Office (VTML)
7. The Federation of Finnish Enterprises
8. The Commission for Church Employers

Statements issued by labour market organisations:

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

“The Federation of Finnish Enterprises refers to the statements submitted earlier and additionally states the following with regard to Conventions No. 87 and 98:

A new Working Hours Act replacing the earlier Act from 1996 entered into force on 1 January 2020. The new Act also to some extent discriminates against employers and the employees working for them based on unionisation, as the Act contains an express ban on non-union employers to derogate from the provisions of the collective agreement through local agreements (sections 34 and 35). The ban and the structure of the regulation are similar to that in the earlier, now revoked Act. The Federation of Finnish Enterprises considers the ban to be questionable in terms of the freedom to organise guaranteed by the Conventions (in particular the negative dimension of this freedom).

The ban on agreement lets unions of employees and employers to agree more advantageous terms for their members without non-union enterprises having an opportunity to influence and apply

these. With regard to working hours in particular, this has a significant practical impact on the scope available for enterprises to organise their activities in response to competition in the market.”

The Central Organisation of Finnish Trade Unions has stated as follows:

“The question of whether the collective agreement concluded by Suomen Mainosjakajien Etujärjestö SME ry and Suoramainonnan ja kaupunkilehtien erillisjakelun yhdistys SKE ry concerning the distribution of unaddressed mail constitutes a ‘yellow union’ agreement has been pending before various courts in Finland since 2009.

In 2015, the claim by an employee who was the claimant in the case before Helsinki District Court was upheld by Helsinki Court of Appeal, which found that the aforementioned collective agreement was a ‘yellow union’ agreement and ordered the respondent employer to pay the claimant’s outstanding wages in accordance with the collective agreement for the communications and logistics sector. The Supreme Court refused the employer leave to appeal and also declined to reverse the judgment of the Court of Appeal. Suomen Mainosjakajien Etujärjestö SME ry and Suoramainonnan ja kaupunkilehtien erillisjakelun yhdistys SKE ry subsequently sought to have the collective agreement found to be a ‘yellow union’ agreement confirmed as universally binding. However, in 2016 the Board for the Ratification of Validity of Collective Agreements held the agreement to be a ‘yellow union’ agreement and declined to confirm it as universally binding. The decision of the Board was upheld by the Labour Court.

The question of whether the collective agreement concluded by Suomen Mainosjakajien Etujärjestö SME ry and Suoramainonnan ja kaupunkilehtien erillisjakelun yhdistys SKE ry concerning the distribution of unaddressed mail constitutes a ‘yellow union’ agreement was most recently addressed in the Labour Court on 5 November 2019. In its statement to the Western Uusimaa District Court, the Labour Court held that the collective agreement was a ‘yellow union’ agreement. This case was also about an employee claiming outstanding wages in the District Court in accordance with the collective agreement for the communications and logistics sector while the employer had paid wages in accordance with the collective agreement found to be a ‘yellow union’ agreement. The case remains pending before the District Court despite the collective agreement having been found, on multiple occasions and by different court instances, to be a ‘yellow union’ agreement. Should the respondent employer lose the case, it is likely to appeal to the Court of Appeal and onward to the Supreme Court.

The Central Organisation of Finnish Trade Unions SAK holds that Finland is in breach of ILO Conventions No. 87 and 98 by allowing different courts again and again to consider the question of whether a given collective agreement is a ‘yellow union’ agreement.”