FIFTH PERIODIC REPORT ON THE IMPLEMENTATION OF THE REVISED EUROPEAN SOCIAL CHARTER

SUBMITTED BY THE GOVERNMENT OF FINLAND

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for the period from 1 January 2005 to 31 December 2008, made by the Government of Finland in accordance with Article C of the Revised European Social Charter and Article 21 of the European Social Charter, on the measures taken to give effect to Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29 of the Revised European Social Charter (Finnish Treaty Series 78-80/2002), the instrument of acceptance of which was deposited on 21 June 2002. In addition, the report contains answers to the conclusions made by the European Committee of Social Rights in 2006 and 2007 on the basis of Finland's periodic reports

In accordance with Article C of the Revised European Social Charter and Article 23 of the European Social Charter, copies of this official report in the English language have been communicated to the Central Organisation of Finnish Trade Unions (SAK), the Finnish Confederation of Salaried Employees (STTK), the Confederation of Unions for Academic Professionals in Finland (AKAVA), the Confederation of Finnish Industries (EK) and the Federation of Finnish Enterprises (FFE).

CONTENT

ARTICLE 2: THE RIGHT TO JUST CONDITIONS OF WORK

Article 2 para. 1: Reasonable daily and weekly working hours

Questions 1) and 2)

In respect of this paragraph the Government refers to Finland’s second periodic report on the implementation of the Revised European Social Charter. The working hours are regulated by the Working Hours Act (605/1996). No legislative changes have been carried out during the reference period.

In principle the Working Hours Act, applicable in both the private and the public sector, is peremptory legislation. However, it is possible to deviate from some of its provisions by agreements concluded between the national labour market parties. Many other Acts, too, contain provisions on working hours. These include the Seamen's Working Hours Act (296/1972), the Act on Working Hours on Vessels in Domestic Traffic (248/1982), the Young Workers' Act (998/1993) and the Act on the Employment of Household Workers (951/1997).

Parliament is considering a government proposal for extending the scope of application of the Working Hours Act (Government Proposal HE 100/2010 vp) to cover the work of family day care workers. Such an extension is justifiable from the viewpoint of the EU Working Time Directive (2003/88/EC). The proposal is intended to improve the working time protection of family day care workers and to promote their equal treatment, both within their own vocational group and in the labour market in general. Currently, the working hours of municipal family day care workers are regulated by the general collective agreement for municipal personnel. Their weekly working time is at most 43 hours and 15 minutes, or in average the same number of weekly working hours during a period of at most four weeks. Extending the Working Hours Act to cover the work of family day care workers would mean a reduction of their regular weekly working time to 40 hours. Consequently, their regular working time would be shortened by 7.5 % from the time applied currently. Moreover, it has been proposed to amend the provision of the Working Hours Act concerning working hours in period-based work to apply also in family day care work. Extending the applicability of working hours in period-based work to the work of family day care workers would mean that their maximum regular working time could be 120 hours during a three week period or 80 hours during a two week period.

Question 3)

Breakdown of weekly working hours by sector during reporting period 2005-2008.

SECTOR	2005	2006	2007	2008
ALL SECTORS	36.9	36.7	36.7	36.8
Agriculture, hunting, forestry and fisheries	38.7	38.3	38.2	38.2
Industry	38.7	38.7	38.7	38.9
Construction	39.7	39.6	39.8	39.9
Trade	35.2	35.1	35.1	35.5
Accommodation and food service activities	32.5	32.4	32.4	32.2
Transportation	38.5	38.6	38.1	38.2
Financial, insurance and business services	36.2	36.6	36.5	37.0
Public and other services	36.1	35.8	35.8	35.5

Source: The Labour force survey of the Statistics Finland

Answers to the Committee's conclusions

The Working Hours Act provides that the daily rest periods may be reduced to seven and even five hours.

Section 29(2) of the Working Hours Act provides that an employer may, if necessary because of the organization of the work or the nature of the operations, reduce the daily rest period temporarily to 5 hours. This can be done during 3 consecutive rest periods at a time, provided that the worker is given compensatory rest periods as soon as possible or within 1 month at the latest.

The daily rest period may be reduced only for a short period. Such reduction is permissible only for unforeseen and exceptional reasons related to work arrangements. In practice, reducing the daily rest period means that the employee works overtime in addition to his or her regular working hours. For such arrangements, a separate consent of the employee is required. If the daily rest period is reduced temporarily, also the work shift schedule must be revised, and it must fulfil the stipulated requirements. A work shift schedule provided to the employees can be altered only with the consent of the employees concerned or for some compelling reason related to the arrangement of work which was not known when the schedule was written. Thus, the right

of an employer to revise a work shift schedule unilaterally is limited to situations where it is necessary to ensure the arrangement of services, production or other activities in a workplace because of unforeseen incidents. In such situations it is also required that the employees concerned must be informed about the changes in the schedule as soon as possible.

If it is necessary to reduce the daily rest period in order to reorganize work shifts, the reduction must also be based on important reasons listed in section 29(2) of the Working Hours Act. According to this provision, temporary deviations are possible

1) when an employee's work shift changes in the way prescribed in section 27 of the Act;
2) if the work concerned is done in several periods within the day;
3) if an employee's workplace and residence or other workplace are far apart;
4) in order to clear an unexpected rush in seasonal work;
5) in connection with an accident or risk thereof;
6) in security and guard work requiring continuous presence to protect persons or property;
7) in work necessary for continuity of operations.

Article 2 para. 2: Public holidays with pay

In respect of this paragraph the Government refers to Finland's second periodic report on the implementation of the Revised European Social Charter. The relevant legislation and the practice of applying it remained unchanged during the reporting period.

Answers to the Committee's conclusions

In this regard the Government refers to the presentation in Finland's 8th report on the European Social Charter on effects of public holidays on the rate of pay agreed in collective agreements. The occupational safety and health authorities are responsible for supervising the payment of the remuneration. Section 33 of the Working Hours Act concerning Sunday work is peremptory legislation, which may be deviated from only by national collective agreements.

Section 33(1) of the Working Hours Act provides that employees can be required to work on a Sunday or church holiday only when the work concerned is regularly carried out on the said days due to its nature, or when agreed upon in the employment contract, or with the separate consent of the employees.

According to section 33(2) of the Working Hours Act the remuneration payable for Sunday work performed as part of regular working hours is twice the regular remuneration. If the work is additional work, overtime or emergency work, a remuneration determined as laid down in section 22 or section 23 of the Act must also be paid. This remuneration is calculated on the basis of the employee's regular hourly remuneration.

Article 2 para. 3: Annual holiday with pay

Questions 1), 2) and 3)

The report is accompanied with the Annual Holidays Act (163/2005), which took effect in April 2005. The new Act expanded the scope of the Annual Holidays Act by making it, with certain restrictions, applicable to work carried out both in employment relationships and in civil service relationships. Depending on the duration of their service relationship, employees still earn either 2 or 2.5 days of annual holiday for each full holiday credit month, according to a rule of either 14 days or 35 hours of work per month. Unlike before, the provisions on the equivalent of days or hours at work apply as such also to employees covered by the 35 hours rule.

The position of employees excluded from the scope of the holiday earning rules and working less than the average (*i.e.* less than 14 days or 35 hours per month) was already earlier improved by legal provisions on the right of employees to a paid leave equivalent to annual holiday. Such employees may be given paid leave during two weekdays per month of work. An employee whose employment relationship has continued longer than a year may, if he or she so wishes, have a holiday of four weeks with holiday compensation. On conditions prescribed by law, this rule applies also to employees working at home and to family members of employers. An employee has the right to paid leave also if he or she has been working for one employer on the basis of fixed-term employment contracts which are renewed with at most short interruptions. In such cases the maximum length of the leave is determined on the same grounds as the length of annual holiday.

According to the new general provision on holiday pay, an employee is entitled to at least his or her regular or average pay for the duration of his or her annual leave. Employees with weekly or monthly pay get their regular pay also during their annual leave. The holiday pay of an employee with hourly pay or incentive pay and covered by the 14 days earning rule is still determined on the basis of coefficients based on the average daily pay and the number of days of holiday. The holiday pay of employees who, under a contract, work less than 14 days per month with hourly pay or incentive pay is determined on a percentage basis. Depending on the duration of the employment relationship, the holiday pay is either 9 or 11.5 per cent of the total pay earned during the holiday credit year. Unlike before, the basic amount of holiday pay is increased by the calculatory outstanding pay of any period of absence due to special maternity, maternity, paternity and parental leave, temporary care leave or absence for compulsory family reasons. Any calculatory outstanding pay for periods of absence due to sickness, rehabilitation or lay-offs is added to the sum. At the expiry of the employment relationship the employee is paid holiday compensation for the outstanding holiday.

The Act has been supplemented with new provisions permitting agreements between employers and employees. For instance, in the case of consecutive fixed-term employment relationships renewed with at most short interruptions, the employer and the employee may agree on transferring annual holiday benefits earned by the employee to the next employment relationship. Further, the employer and the employee may agree on the employee's carrying over annual holiday and on the timing of this holiday, or on the employee's taking the portion of his or her holiday exceeding 12 weekdays during the next holiday season. At the employee's initiative they may agree on converting the amount of annual holiday in excess of 24 weekdays into shortened working hours.

The revised Act expanded the possibility of deviating from the peremptory provisions of the Act by national collective agreements to a larger extent than before.

Answers to the Committee's conclusions

Postponement of annual holidays exceeding 2 weeks

Chapter 5 of the Annual Holidays Act (162/2005) contains provisions on granting annual holiday. According to Section 21 of the Chapter an employer and an employee may agree on the division and the timing of an annual holiday during an employment relationship. Consequently, it is possible for the employer and the employee to agree

- that the employee takes the portion of the holiday exceeding 12 weekdays in one or more periods
- that the annual holiday is set in a period that starts at the beginning of the calendar year which includes the holiday season and ends the following year before the start of the holiday season (for example, holiday earned between 1 April 2010 and 31 March 2011 can be taken between 1 January 2011 and 30 April 2012)
- that the employee takes the portion of the holiday exceeding 12 weekdays within one year of the end of the holiday season (for example, in conjunction with the next summer holiday)
- that the employee takes the annual holiday earned up to the end of his/her employment relationship before the employment relationship ends, and
  on the initiative of the employee, that the portion of the holiday exceeding 24 weekdays is converted into shortened working hours. The agreement must be in writing.

Article 2 para. 4: Reduction of working hours or additional paid holidays for workers engaged in inherently dangerous or unhealthy occupations

In respect of this paragraph the Government refers to earlier periodic reports. During the reporting period, the relevant legislation and the practice of applying it remained unchanged.

Answers to the Committee's conclusions

Workers in the radiation sector

Section 8 of the Occupational Safety and Health Act (738/2002) obligates employers to take care of the safety and health of their employees while at work, by taking the necessary measures. For this purpose, employers must have an occupational safety and health policy (section 9 of the Act). In addition, employers must analyse and identify the hazards and risk factors at the workplace and assess their consequences to the employees' safety and health (section 10).

The Occupational Safety and Health Act pays particular attention e.g. to risks caused by physical agents. Section 39 of the Act provides that employees' exposure to such agents as radiation that causes hazards or risks to safety or health must be reduced to such a level that no hazard or risk is caused to the employees' safety or health or reproductive health.

The Decree on Protecting Workers from Optical Radiation (146/2010) was adopted by virtue of the Occupational Safety and Health Act. The decree contains more detailed provisions than the Act on the procedures to be followed by employers in order to protect employees from exposure to artificial optical radiation. The Occupational Safety and Health Department of the Ministry of Social Affairs and Health is drafting a corresponding government decree concerning electromagnetic radiation.

The Radiation and Nuclear Safety Authority Finland (STUK) is an expert organisation belonging to the administration of the Ministry of Social Affairs and Health. Its objective is to ensure that people in Finland, including employees, will be exposed to radiation as little as possible, whether it is natural radiation or radiation caused by man. To achieve this objective STUK has, among other things, published a large number of detailed material on radiation and procedures for protecting people against detrimental radiation. STUK prepares detailed guides and decisions on radiation and nuclear safety[1].

In addition, the use of radiation is, as a rule, subject to a safety licence granted by STUK. Decisions to grant a safety licence may contain additional conditions necessary for ensuring radiation safety.

Article 2 para. 5: Weekly rest period

The legislation on the weekly rest period and the practice of applying it remained unchanged during the reporting period. In respect of this paragraph the Government refers to Finland's second periodic report on the implementation of the Revised European Social Charter.

Answers to the Committee's conclusions

Section 32 of the Working Hours Act permits agreeing with the employee that he or she works more than 12 consecutive days if he or she accepts extra pay instead of compensatory rest

Section 32 of the Working Hours Act concerns derogations from the weekly rest period. If employees are temporarily required to work during their weekly rest period to enable work performed in an undertaking, corporation or foundation to be carried out in a regular fashion, or if the technical nature of the work does not allow certain workers to be completely released from their duties, derogations can be made from the provisions of section 31(1) and section 31(2),

The provision for derogation in section 32(1) of the Act is applicable if it is temporarily necessary to perform work required to maintain the flow of the regular work. If the maintenance, reparations, arrangements etc. referred to in the provision are needed regularly during weekends, the weekly rest period must be given at another time during the working week.

The National Labour Council has interpreted the concept of temporariness (statement TN1262-90) so that if a work is performed repeatedly and regularly during a weekly rest day for instance

[1] Most up-to-date guides and decisions of STUK are available in electronic format also in English at the website of STUK at address www.stuk.fi/en_GB/.

every fourth or sixth week under a working hour schedule, it is not regarded as temporary work performed during the weekly rest period.

Categories of workers outside the scope of the Working Hours Act

The Working Hours Act does not apply to work where the applicable working hours are agreed separately. The legislation on such work includes the following:

Act on the Employment of Household Workers (951/1977)

The Act on the Employment of Household Workers applies to workers who carry out household work at the employer's home, with the exceptions provided in the Act.

Chapter 2, section 10 of the Act contains provisions on a weekly rest period. According to the section, workers must be provided with an uninterrupted rest period of no less than 30 hours on a weekly basis, either on a Sunday or, if this is not possible, on some other day. The weekly rest period can be shortened temporarily:
1) because of emergency work as referred to in the Act; or
2) with the worker's consent, if required for a compelling special cause.
Workers who have not undertaken to work on a Sunday under the terms and conditions of their employment contract cannot be required to do so without their consent, except in the case of emergency work.

If a weekly rest period is temporarily shortened with the worker's consent in cases other than emergency work, the time by which the rest period was reduced must be deducted from the worker's regular working hours no later than the next calendar month or, with the worker's consent, remunerated as provided separately in the Act.

Seamen's Working Hours Act (296/1976) and Act on Working Hours on Vessels in Domestic Traffic (248/1982)

The Seamen's Working Hours Act shall apply, subject to the exceptions specified in the Act, to work performed by persons serving on board a Finnish vessel plying in foreign trade, for the said vessel or otherwise on the orders of a superior on board the vessel or elsewhere. The provisions of the Act shall be observed even when a vessel plying in foreign trade makes voyages between ports in Finland.

Chapter 4, section 9a of the Act contains provisions on minimum periods of rest. Section 9a(1) provides that an employee shall be allowed a rest period of at least ten hours within each 24 hours (daily rest period) and a rest period of at least 77 hours during each period of seven days.

The daily rest period may be divided into no more than two parts so that one of the parts continues uninterruptedly for at least six hours. The rest period may be shortened to six hours at a time over a maximum of two consecutive 24-hour periods, provided that the employee is given a rest period of at least 77 hours during each period of seven days. Thus, if the work so requires, an employee's daily rest period of 10 hours may be reduced to 6 hours at a time over a maximum of two consecutive 24-hour periods. However, it must be ensured that the employee is given

compensatory rest periods so that he or she gets a continuous rest period of at least 77 hours during each period of 7 days. The rest period of 10 hours referred to in section 9a(1) of the Act may also be given before the reduction of the rest period, if the total duration of the minimum rest period is fulfilled during each period of 7 days.

Section 9a(3) of the Act contains provisions on rest periods of watch-keeping personnel. They must be given at least ten hours of rest during each period of 24 hours. The rest period may be divided into no more than two parts so that one of the parts continues uninterruptedly for at least six hours. The timing of the rest period is not connected with the definition of a day or the time when the work shift or watch-keeping begins. Dividing the rest period permits e.g. three-shift arrangements in which each employee works in two periods of four hours on watch-keeping duty and has a rest period of eight hours between the shifts.

The minimum rest period of watch-keeping personnel may be reduced to six hours at a time over a maximum of two consecutive 24-hour periods, provided that the employees are given a rest period of at least 70 hours during each period of seven days. Temporarily, i.e. over a maximum of two consecutive 24-hour periods at a time, the rest period of watch-keeping personnel may be reduced to six hours, whereafter they must be given a rest period of at least 10 hours. The rest periods compensating for the reduction of the minimum rest period must be given so that the employees get the rest period of at least 70 hours stipulated in section 9a(3) during each period of seven days. The compensatory rest periods must be recorded in the work shift and watch-keeping schedules.

Section 12 of the Act on Working Hours on Vessels in Domestic Traffic contains corresponding provisions on rest periods. The Act applies, subject to the exceptions specified in the Act, to work performed under contract for an employer by an employee, under the former's direction and supervision, against pay or other consideration on a Finnish vessel used in domestic traffic or, on the employer's instructions, temporarily elsewhere.

Act on the Working Hours of Defence Forces Civil Servants (218/1970)

Section 8 of the Act on the Working Hours of Defence Forces Civil Servants provides that a civil servant must be given a continuous weekly rest period of at least 30 hours, unless the necessary official duties warrant otherwise. If possible, the weekly rest period must be given in conjunction with a Sunday.

Part of the Defence Forces personnel is subject to the Working Hours Act on the basis of the Decree on the Working Hours of State Civil Servants (822/1996). The working hours of the Defence Forces and the civil servants are agreed upon by a collective agreement.

Article 2 para. 6: Information about the essential aspects of the contract or employment relationship

Questions 1), 2) and 3)

In respect of these paragraphs the Government refers to Finland’s second periodic report on the implementation of the Revised European Social Charter.

During the reporting period, Chapter 2, section 4 of the Employment Contracts Act (55/2001) was supplemented with a new subsection 4, which took effect after the reporting period, on 1 January 2009. It provides that in lease work, in the case of a fixed-term employment relationship shorter than one month, the employer is obliged to inform the leased employee about the principal terms of work as prescribed in the section if the employee requests such information.

Chapter 2, section 4(4) is a special provision applicable only to those employment relationships concerning lease work which are valid less than one month. Lease work relationships concluded for an undetermined period or for a fixed term longer than one month are subject to the same provisions as all other employment relationships. The employer must provide the employee whose employment relationship is valid indefinitely or for a term exceeding one month with written information about the principal terms of work by the end of the first pay period at the latest, unless the terms are laid down in a written employment contract.

According to the reasoning for the government proposal concerning Chapter 2, section 4(4) of the Employment Contracts Act, lease work relationships are typically short, and they are agreed upon orally more often than other employment relationships. The obligation to inform leased employees about the principal terms of work is intended to ensure that the employees can have this information. However, in all cases employers need not give a written account in respect of all employment relationships in order to fulfil the purpose of section 4(4) of the Act, for the employees are often aware of the principal terms of work on the basis of oral agreements. On the other hand, it is important for the legal security of the employees that they get written information about the principal terms of their work if they so wish. Therefore such information should be given whenever an employee requests it.

Article 2 para. 7: Measures that benefit workers performing night work

The legislation on night work remained unchanged during the reporting period. In respect of this paragraph, reference is made to Finland's earlier periodic reports.

Answers to the Committee's conclusions

Information on the possibility to transfer to daytime work

According to section 26 of the Working Hours Act (605/1996) work carried out between 23.00 and 06.00 is considered night work. In shift work and period-based work, night shift refers to a work shift of which at least three hours take place between 23.00 and 06.00. Employees can be ordered to night work only under restrictions laid down by law. Section 30 of the Occupational Safety and Health Act (738/2002) provides that an employee performing night work shall, when necessary, be provided with an opportunity to change tasks or move over to day work if this is possible in consideration of the circumstances and if changing tasks is necessary, in view of the employee’s personal capacities, in order to eliminate risks arising from the conditions of the workplace or the nature of the work to the employee’s health.

Section 30 of the Occupational Safety and Health Act is one of the provisions implementing the EU Council Directive concerning certain aspects of the organization of working time

(93/104/EC). Article 9 of the directive requires that Member States take the measures necessary to ensure that night workers suffering from health problems recognized as being connected with night work are transferred, whenever possible, to day work to which they are suited.

It may be necessary to give workers an opportunity to change work tasks or to transfer them to day work if their health risks can thus be eliminated. The need to change work tasks may be temporary, e.g. based on medical treatment or pregnancy, or it may be permanent. The right of a worker to change work tasks or working hours also depends on the extent of the employer's activity and production methods as well as the number of its staff. Moreover, the change must be necessary because of the worker's personal qualities. Large employers often have better opportunities to arrange such changes. Thus, section 30 of the Occupational Safety and Health does not give an employee an absolute right to change over from night work to day work. When assessing employees' need to change work tasks, employers must consult occupational health services.

ARTICLE 4: THE RIGHT TO A FAIR REMUNERATION

Article 4 para. 2: Right of workers to an increased rate of remuneration for overtime work

The legislation on increased rates of remuneration for overtime work and the practice of applying it remained unchanged during the reporting period. In respect of this paragraph the Government refers to Finland's second periodic report on the implementation of the Revised European Social Charter.

Answers to the Committee's conclusions

Level of protection in the collective agreements

According to Finnish legislation the social partners may through mutual agreements regulate working time. As a rule the collective agreements contain regulations concerning overtime remuneration that is paid on bases of hours exceeding the regular daily working hours. In agreements the compensation is by and large better than the compensation provided by the Working Hours Act. Only in some rare collective agreements the overtime remuneration has been less beneficial to the employee than the remuneration provided by the Working Hours Act. Nevertheless, this cannot be interpreted as a breach of Article 4§2 since the paragraph only states that an increased remuneration must be paid for overtime work.

Family day care workers

The Working Hours Act applies only to those family day care workers who work in day care centres, family day care centres or in other facilities provided by the employer.

The terms of employment of those family day care workers who work in their own homes are based on the appendix of the general collective agreement for the municipal sector, which was amended in autumn 2007 and is valid until 31 December 2010. The provisions on working hours and remuneration are applied in line with the principles regarding the terms of employment of other municipal office holders in the social and health care sector.

Overtime and compensation

The aforementioned appendix contains provisions on overtime and compensation. According to the appendix, overtime is work that is done on the employer's initiative and exceeds 43.15 hours in a week's time, or if the period of work is longer than one week, exceeds the weekly working hours multiplied by the number of weeks in the period.

The amount of overtime compensation is equal to the worker's regular hourly pay without increases. Alternatively, the overtime compensation may be given as free time corresponding to the overtime hours.

The Government is aware that the terms of employment of family day care workers need attention. The issue has been taken up in a working group which is currently looking into the problems inherent to work done in employees' homes – in other words "home work". In this

respect, reference is also made to the information about the pending legislative amendment given in the present report in relation to Article 2 para. 1.

Article 4 para. 3: The right to a fair remuneration

As the Government has accepted Article 20 of the European Social Charter (revised), the Article 4§3 will be reported in the answers on Article 20, according to the Form for the Reports to be Submitted in Pursuance of the European Social Charter (revised) 2008.

Article 4 para. 5: Restrictions on deductions from wages

Questions 1), 2) and 3)

The new Enforcement Code (705/2007), in effect from 1 January 2008, repealed the earlier Enforcement Act. The provisions of the Enforcement Code concerning the garnishment of wages or salaries are based on a partial reform of the Enforcement Act made in 2005. In this reform, the regulation of the garnishment of wages or salaries as well as pensions and other recurring income comparable with wages or salaries was essentially maintained because it functioned well. However, the protected portion for debtors with low income was increased slightly and the portion for debtors with high income was reduced. The reform intended to simplify the calculation of the amount to be garnished from wages or salaries and emphasised the obligation of bailiffs to give advice to payers of wages or salaries. In addition, the position of debtors was improved by improving the reliefs from enforcement, e.g. the system of payment-free months.

Garnishment from earned income

As a general rule, one third of wages, salaries, pensions, unemployment benefits and maternity benefits can be garnished. In this context, also holiday pay, perquisites, commissions and various fees are considered as earned income. The amount to be garnished is calculated from the debtor's income net of tax. Social subsidies, such as rent support and child subsidies, cannot be garnished.

In garnishment, it is always required that a protected portion, *i.e*. the amount needed for the livelihood of the debtor and his or her family, and one third of the net income exceeding the protected portion are left ungarnished. In the calculation of the protected portion, due note is taken of the persons whom the debtor-supports, including the spouse and the minor children and adopted children of the debtor or the spouse, if residing in the same household. The spouse may be a married spouse, a common-law spouse of the opposite sex or a partner in a registered partnership. If the spouse or the children have an income of their own exceeding the protected portion (€624.60 per month), they are disregarded in the determination of the protected portion.

Earned income or other income means in the context of attachment the net wages or salaries or income, i.e. the sum which the debtor is left with after the subtraction of the tax and the mandatory premiums from the gross wages or salary.

The debtor must be left with a protected portion, which as of the beginning of 2009 is €20.82 per day for the debtor and €7.48 per day for each dependant (e.g. child).

To the protected portion of the debtor (€20,82 per day) is added €7.48 per day for each dependant. The number of dependants is indicated in the withholding notice which the enforcement authority sends to the payer of the debtor's wages or salary.

The protected portion is calculated by multiplying the protected portion per day by the number of days in the payment period of the wages or salaries or other income subject to withholding. If the wages or other income is paid for a calendar month the number of days is always 30.

The protected portions are adjusted annually in accordance with the national pension index.

Protected portion per calendar month as of 1 January 2009:

Single debtor: €624.60

Debtor
+1 dependant: €849

Debtor
+2 dependants: €1 073.40

Debtor
+3 dependants: €1 297.80

Withheld amounts (in the list below wages mean all income):

1. If the wages are less than the protected portion there will be no garnishment.
2. If the wages exceed the protected portion but are at most double the portion, the amount to be withheld equals 2/3 of the amount that exceeds the protected portion ("income limit garnishment" 2/3 x (wages – protected portion)).
3. If the wages are more than double the protected portion but at most four times the portion, the amount to be withheld equals 1/3 of the net wages.
4. As of the beginning of 2009 the following scale is used in garnishment from net wages that are higher than those mentioned above:

If the wages are more than 4 times the protected portion, 36 % of the wages are withheld
If the wages are more than 4.5 times the protected portion, 39 % of the wages are withheld
If the wages are more than 5 times the protected portion, 42 % of the wages are withheld
If the wages are more than 5.5 times the protected portion, 46 % of the wages are withheld
If the wages are more than 6 times the protected portion, 50 % of the wages are withheld.

The provisions on restricting garnishment from earned income, *i.e.* Chapter 2, section 17 of the Employment Contracts Act, Chapter 15, section 60 of the State Civil Servants' Act, Chapter 11, section 56 of the Act on Civil Servants in Local Government and Chapter 4, sections 45-58 of the Enforcement Code are annexed to the report.

Answers to the Committee's conclusions

Information on references and relevant extracts of legislation

Attached to the report are the Employment Contracts Act (55/2001) Chapter 2, section 17; the State Civil Servants' Act (750/1994) Chapter 15, section 60; and the Enforcement Code (705/2007) Chapter 4, section 48.

The Act on Civil Servants in Local Government (304/2003) has not been translated into English. However, the relevant provision is to be found in Chapter 11, section 56 of the said Act.

ARTICLE 5: THE RIGHT TO ORGANISE

Questions 1) and 2)

The legislation on the right to organise and the practice of applying it remained unchanged during the reporting period. In respect of this Article the Government refers to Finland's second periodic report on the implementation of the Revised European Social Charter.

Question 3)

Statistical information on organisation in trade unions and membership in unemployment funds

In 2008, 73% of all employees were members of trade unions, and 11.2% were members of unemployment funds only. The percentage of those who only belonged to unemployment funds had increased by only a half percentage unit from 2007. The rate of organisation in trade unions had risen by one percentage unit from the previous year.

The rate of organisation is highest in the age group 45-54 years, for in 2008 at total of 92% of these were organised. The percentage had risen by one percentage unit from 2007. The rate of organisation is lowest among employees under 25 years of age. In 2008 the rate of organisation in the young age groups remained unchanged from the previous year, i.e. at 47%. In the age group 35-44 years, the rate of organisation had risen by three percentage units from 2007, whereas it had declined by three percentage units among employees over 55 years of age.

The largest group of employees who are only members of unemployment funds is those aged 35-44 years (16%), together with the age groups 25-34 and 45-54. The youngest age group (less than 7%) and the oldest group (8 %) have the smallest number of employees who are only members of unemployment funds.

Members of trade unions and unemployment funds (% of all employees)

Age group	2005	2006	2007	2008
All	85 %	83 %	83 %	84 %
under 25	51 %	43 %	47 %	47 %
25-34	82 %	77 %	79 %	79 %
35-44	90 %	88 %	84 %	87 %
45-54	89 %	88 %	91 %	92 %
55 +	91 %	90 %	92 %	89 %

Members of unemployment funds only (% of all employees)

Age group	2005	2006	2007	2008
All	-	-	10.7 %	11.2 %
under 25	5.1 %	5.4 %	9.5 %	6.7 %
25-34	11.1 %	12.0 %	11.7 %	15.1 %
35-44	11.3 %	13.5 %	16.9 %	16.1 %
45-54	9.0 %	10.1 %	14.1 %	14.7 %
55 +	10.2 %	7.1 %	6.3 %	7.8 %

Source of statistics: Working Life Barometer published by the Ministry of Employment and the Economy, October 2008, s. 175-177.

ARTICLE 6: THE RIGHT TO BARGAIN COLLECTIVELY

Article 6 para. 1: Joint consultation

In respect of this paragraph the Government refers to Finland's second periodic report on the implementation of the Revised European Social Charter.

Article 6 para. 2: Machinery for voluntary negotiations

In respect of the legislation related to this paragraph and the practice of applying the legislation the Government refers to Finland's second periodic report on the implementation of the Revised European Social Charter.

Article 6 para. 3: Machinery for conciliation and voluntary arbitration

Questions 1), 2) and 3)

Disputes arising from the interpretation of employees' collective agreements and public service collective agreements are heard and resolved before the Labour Court, which is subject to the Act on the Labour Court (646/1974). The Act has undergone some amendments, which entered force on 1 January 2007. The president of the Court and its labour court councillor are now appointed permanently to their offices. In addition, the age of resignation of the president, the labour court councillor and the members and deputy members of the Court is now 68 years instead of the earlier 67, consistently with the general age of resignation laid down in the State Civil Servants' Act. The Act on Mediation in Labour Disputes (420/1962) was amended during the reporting period. The amendments took effect on 15 June 2009. The conciliation and mediation of labour disputes between employers and employees or civil servants has been reorganised by abolishing the district conciliator system and replacing the district conciliators by the necessary number of conciliators, whose sphere of activity covers the whole Finland. The mediators are directed by the National Conciliator, whom the Government appoints for a fixed period. The reorganisation of the conciliation and mediation of labour disputes is intended to meet the challenges posed by the changing labour market. The national coverage of sectoral collective agreement negotiations and the decreased need for regional negotiations have made it necessary to amend the relevant legislation.

Article 6 para. 4: Right to bargain collectively

Questions 1) and 2)

Section 2(4) of the State Civil Servants' Collective Bargaining Act (664/1970) contains provisions on so-called civil servant employers, *i.e.* officeholders who are regarded to represent the State as an employer and whose right to collective action has been restricted. Section 10 of

the State Civil Servants' Collective Bargaining Decree (1203/1987) defines the civil servant employers in more detail.

In Finland, the Labour Court is the court of the highest instance with jurisdiction over disputes and matters of labour market peace arising from the application and interpretation of employees' collective agreements and public service collective agreements. In the reasoning for its ruling TT:2007-105, the Labour Court invoked the Revised European Social Charter and the right to bargain collectively under its Article 6.

In the aforementioned ruling the Labour Court clarified the scope of application of permitted collective action under the Municipal Collective Bargaining Act by stating that mass resignation by municipal office holders is not permitted as collective action. The ruling was based on section 8(1) of the Act, which provides that only lockouts or strikes are permitted as collective action concerning valid employment relationships. The State Civil Servants' Collective Bargaining Act, among other legislation, lays down corresponding regulation.

Question 3)

The number of industrial actions in 2005-2008

Year	Industrial actions	Participating employees	Participants per industrial action	% of employees	Lost working days	Lost working days per participant
2005	365	106 796	409	4.4	672 904	6.3
2006	97	48 276	498	2.0	85 075	1.8
2007	91	89 729	986	3.7	94 579	1.1
2008	92	15 992	174	0.6	16 352	1.0

Source: Industrial actions 2009, Statistics Finland.

Answers to the Committee's conclusions

Permitted objectives of collective action

The Committee refers in its conclusion to Finland’s first report on the application of the Revised European Social Charter, according to which "strikes pursuing objectives other than those covered by collective agreement are prohibited". Unfortunately, the wording is misleading. The report should read "strikes pursuing objectives other than those which, according to the Act on Collective Agreements for State Civil Servants, can be agreed upon in a collective agreement are prohibited".

According to the Act on Collective Agreements for State Civil Servants, strikes may be called to support an objective relating to issues which, under the said Act, may be agreed upon by the parties to that collective agreement. Issues that have been agreed upon in a Collective Agreement which is still valid cannot be supported with a strike.

Those contractual issues which can be agreed upon by a collective agreement are not defined in detail in the Act. It only provides a list of issues that cannot be agreed upon.
Contractual issues usually relate to financial and social benefits accruing to civil servants from an employment relationship, such as salaries and various types of additional pay; working hours – except working time arrangements, and allocation and scheduling of working hours –; the length of annual leave and holiday pay; reimbursement of medical care and conditions on which accident compensation is paid; the perquisites of civil servants, and the reimbursement of expenses incurred in performing official duties.

Non-contractual issues usually relate either directly or tangentially to the right of political bodies (Parliament, municipal councils etc.) and administrative authorities to decide on the general and specific goals of public administration, its organizations, structures and scopes, and the number and nature of workers to be employed. Non-contractual issues mainly fall within the employers' sole scope of authority also in the private sector.

To sum up, a strike may be used for supporting issues which

i) are not regulated by a valid collective agreement
ii) relate to the terms of employment for civil servants
iii) are not listed in the Act on Collective Agreements for State Civil Servants as a non-contractual issue.

ARTICLE 21: RIGHT TO INFORMATION AND CONSULTATION

Question 1)

During the reporting period, Finland improved the national legislation on codetermination and the provision of information to personnel.

Co-determination procedure and other personnel involvement systems in companies

Act on Co-operation within Undertakings
The purpose of co-operation under the Act is to develop the activities and working conditions in undertakings. The cooperation comprises consulting and informing the employees. The revised Act on Co-operation within Undertakings (334/2007) entered into force on 1 July 2007. This Act applies to slightly fewer than 900,000 employees, who work in approx. 8,000 undertakings.

The new Act on Co-operation within Undertakings takes account of the international commitments binding on Finland and underlines more emphatically than before the spirit of cooperation and the pursuit of consensus. The scope of application of the Act has been extended to cover, in principle, undertakings with at least 20 regular employees. It has also been extended to apply to all undertakings, other corporations and foundations irrespective of whether their activities are intended to bring profit and how they are funded. The parties to cooperation are still the employer and the personnel. The Act defines the personnel groups and their representatives, which, as a rule, are shop stewards elected in accordance with the relevant collective agreement or elected representatives referred to in Chapter 13, section 3 of the Employment Contracts Act. It is also possible to elect a cooperation representative.

Further information is provided in the booklet published by the Ministry of Labour (currently the Ministry of Employment and the Economy) concerning the new Act on Co-operation within Undertakings, and in the Act itself (334/2007), which are annexed to this report.

Co-determination in the State and municipal sectors

The cooperation between the State employer and its personnel is based on the Act on Co-operation in Government Agencies and Institutions (651/1988).

The Act on Co-operation between Municipal Employers and Employees (449/2007), took effect on 1 September 2007. The Act regulates cooperation in municipalities and joint municipal authorities. The new Act regulates the cooperation between employers and personnel at the level of law. Earlier the labour market organisations agreed on this cooperation by a general cooperation agreement, which has the legal effects of a collective agreement for employees and public service. The legal basis for enacting this Act is section 14(3) of the Constitution of Finland, which provides that the public authorities must promote the opportunities for the individual to participate in societal activity and to influence the decisions that concern him or her. It is mentioned in the government proposal for the Act that, in addition to the Constitution, the cooperation directive of the European Union and the European Social Charter require that the right of municipal employees, too, to be informed and consulted must be confirmed at the of level of law.

Cooperation within Finnish and Community-wide Groups of Undertakings

The Act on Co-operation within Finnish and Community-wide Groups of Undertakings 335/2007), which entered force on 1 July 2007, largely corresponds to the provisions of the earlier Act on Co-operation within Undertakings, but its provisions are more detailed. The scope of application of the Act to Finnish groups of undertakings has been expanded. Currently, the Act applies to Finnish groups of undertakings which have a total of at least 500 employees in Finland and to undertakings with at least 20 employees in Finnish groups of undertakings.

Personnel funds

A personnel fund is a fund which is owned and managed by the personnel of a company, agency or government department and whose purpose is to manage profit-share monies paid into it by the company, agency or government department and any other funds pursuant to the Act on Personnel Funds (814/1989). The membership of a personnel fund consists of the entire personnel, with the exception of senior management. Personnel fund practices are regulated under the Act on Personnel Funds.

Personnel Representation in the Administration of Undertakings

The Act on Personnel Representation in the Administration of Undertakings (725/1990) gives personnel the right to participate in the handling of matters related to business operations and the position of the personnel. The purpose of personnel representation is to improve the flow of information between the personnel, the management and the owners of the business, thus making effective use of the expert knowledge of the personnel in decision-making concerning the business. Another purpose of personnel representation is to safeguard the competitiveness of the business. The Act on Personnel Representation in the Administration of Undertakings has been partly amended with effect from 15 December 2007. Under the amended Act, it is possible in cross-border mergers and divisions of limited liability companies to arrange participation of the employees in the administration of a company to be established in Finland, if the employees of some of the companies involved in the merger or division have already participated in the administration of the company. The Act implements the provisions on employees' right of participation laid down in the EU directive on cross-border mergers of limited liability companies.

The European company and the European cooperative society are new forms of company which make it possible to engage in business in one company’s name throughout the European Union. By enacting the Act on Employee Involvement in European Companies (SE) and Cooperative Societies (SCE) (758/2004) Finland implemented EU directives 2001/86/EC and 2003/72/EC on supplementing the statutes for a European company and a European cooperative society with regard to the involvement of employees. The involvement of employees means an opportunity of personnel representatives to influence company decisions. During the reporting period the Act was supplemented with provisions on arranging the involvement of employees in European cooperative societies (SCE), where it is arranged essentially in the same manner as in European companies. However, the Act also contains specific provisions on arranging the involvement of employees in European cooperative societies with fewer than 50 employees. In addition,

employees' representatives elected in Finland may, in certain cases, participate in meetings of European cooperative societies.

Supervision of systems for personnel representation

In 2010, pursuant to the government proposal for the Act on Cooperation Ombudsman (216/2010) drafted by the Ministry of Employment and the Economy, the office of a specific authority, the Cooperation Ombudsman, was established at the Ministry of Employment and the Economy. The task of the Ombudsman is to advise employers on how to comply with the legislation on different systems for personnel representation. Primarily, the Ombudsman gives instructions and advice on how to apply the legislation in individual cases. Moreover, the Ombudsman has the powers to

- issue an improvement notice to an employer to remedy the illegitimate procedure or prevent its recurrence,
- if a punishable violation of law is suspected, notify the police of the act for pre-trial investigation, and
- in certain cases referred to in the Act, request a court to impose a conditional fine on an employer in order to encourage compliance with legislation.

The Cooperation Ombudsman monitors compliance with the relevant legislation and promotes the cooperation between employers and employees also by other means. In addition, the Ombudsman supervises the activities and administration of personnel funds and maintains a personnel funds register. Occupational safety and health authorities are obliged to notify the Ombudsman of any suspected violations of the relevant legislation which they have noticed during their inspections or been informed of otherwise.

The Act on Cooperation Ombudsman (216/2010)was drafted by a tripartite working group, which had representatives from the Ministry of Labour (currently the Ministry of Employment and the Economy), the major labour market organisations representing employees, the Confederation of Finnish Industries and the Federation of Finnish Enterprises.

Question 2)

When adopting the new legislation on cooperation within undertakings, Parliament obligated the Government, *inter alia,* to monitor jointly with the labour market organisations the implementation of the cooperation legislation in practice, its effects on the use of atypical employment relations and labour leasing, and the consequences of the extended scope of the legislation for small enterprises, especially regarding the development of the numbers of their permanent employees.

When the revised Act on Co-operation within Undertakings entered into force, the Ministry of Employment and the Economy published a booklet explaining the content and purpose of the Act extensively and comprehensibly. This booklet, intended to raise awareness of the substance and interpretation of the Act, is annexed to the report.

The first research on the functioning and effects of the new Act on Co-operation within Undertakings in working life was completed in 2010 (”Uusi yhteistoimintalaki yrityksissä – Uuden yhteistoimintalain vaikutusten arviointitutkimus”). The research, financed by the Ministry

of Employment and the Economy, was carried out when the Act had been in force only slightly longer than one year. It was studied how well known the Act is, how it has influenced the numbers and training of employees in undertakings as well as their opportunities of being informed and trained, and what opinions employers and employees have regarding the Act. The research showed that employers and employees know the Act only fairly well or do not know it very well. Only every second undertaking had handled the plan regarding personnel and the training objectives in a cooperation procedure as prescribed by the Act. The Act had not influenced the number of staff in undertakings or the willingness of small undertakings to employ people. Employees are reasonably satisfied with their opportunities under the Act to obtain information and to influence decisions on their own work. The research showed that organising into trade unions increases the awareness of both employers and employees on the cooperation obligations. No differences between undertakings of different sizes were noticed in respect of the practices of applying the Act.

Question 3)

In the public sector, all employees are covered by cooperation procedures. In the private sector, slightly fewer than 900,0000 employees are covered by cooperation procedures and the scope of application of the Act on Co-operation within Undertakings.

Answers to the Committee's conclusions

Rules governing the right of workers to be informed and consulted within the undertaking

Reference is made to the information provided in relation to Article 21.

ARTICLE 22: RIGHT TO TAKE PART IN THE DETERMINATION AND IMPROVEMENT OF THE WORKING CONDITIONS AND WORKING ENVIRONMENT

Question 1)

Cooperation between employers and employees is regulated by the Act on Co-operation within Undertakings (334/2007), the Act on Co-operation within Finnish and Community-wide Groups of Undertakings (335/2007), the Act on Co-operation in Government Agencies and Institutions (651/1988) and the Act on Co-operation between Municipal Employers and Employees (449/2007). The Act on Co-operation Ombudsman (216/2010) regulates the supervision of co-operation, and the Act on Personnel Representation in the Administration of Undertakings (725/1990) regulates employees' opportunities to influence their work. The Act on Personnel Funds (814/1989) governs personnel funds, which are intended to increase the interest of employees in developing the undertaking and to improve their motivation for work. Regarding these Acts, reference is made to the information given in this report in relation to Article 21.

From the standpoint of Article 22, a central legal basis is the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006; hereafter "the Enforcement Act"), which took effect on 1 February 2005. The Act is intended to ensure compliance with the provisions on occupational safety and health, and to improve the working environment and conditions by means of supervision by occupational safety and health authorities and cooperation between employers and employees. On the whole, the content of the Act corresponds to that of the earlier Act on the Supervision of Occupational Safety and Health and Appeal in Occupational Safety and Health Matters, enacted in 1973. This earlier Act was replaced by the Enforcement Act in order to meet the current, altered needs and the requirements of legal protection.

The key instrument for implementing the right of employees to participate in decisions on working conditions and the working environment, as well as the right to treatment worthy of human being, is the cooperation between employers and employees prescribed in section 26 of the Enforcement Act. The Act of 1973 did not define clearly the matters to be handled in cooperation.

The Enforcement Act is based on two central principles. Firstly, section 26 of the Act, concerning cooperation, lists the most important matters to be handled in cooperation. The list is not exhaustive. On the other hand, the Act does not require the handling of all listed matters in cooperation procedures, but only matters of relevance to the workplace in question. Secondly, the Act prescribes the manner of handling cooperation matters.

It is important to handle the cooperation matters at a sufficiently early stage, so that they can effectively influence reforms and decisions. The monitoring of the implementation and effects of decisions, too, is a cooperation matter.

Section 26 of the Enforcement Act provides that matters to be handled in cooperation between the employer and employees include, in addition to what is otherwise provided, and taking account of the circumstances of the work and the workplace, among other things:

1) matters immediately affecting the safety and health of any employee, and any changes in those matters;
2) principles and manner of investigating risks and hazards at the workplace, as well as such factors generally affecting the safety and health of employees that have come up in connection with the investigation or a workplace survey carried out by an occupational health care organisation;
3) development objectives and programmes relating to workplace health promotion or otherwise affecting the safety and health of employees;
4) matters affecting the safety, health and working ability of employees and relating to the organisation of work or workload, or to any essential changes in the organisation or workload;
5) need and arrangements for training, guidance and induction to be given to employees pursuant to Acts enforced by the occupational safety and health authorities;
6) statistics and other follow-up information relating to the work, work environment and the state of the work community and describing safety and health at work; and
7) follow-up of how the matters referred to in paragraphs 1-6 above have been carried out, and follow-up of their effects.

The matters referred to in paragraphs 1-7 must be dealt with in due time considering the objectives of the cooperation, taking account of the time schedule for preparing them and carrying them out.

Section 27 of the Act contains provisions on the handling of cooperational issues. Under the Act, cooperation arrangements at workplaces may be agreed upon in a manner suitable for the circumstances of each workplace. However, employees must in all cases be provided with at least the opportunities laid down in the Act to participate in the handling of matters of occupational safety and health.

Question 2)

The Ministry of Social Affairs and Health has published a brochure on the Enforcement Act (”Työsuojelun valvontalaki”), which is annexed to this report, in order to raise awareness of the Act and its content and application.

The Ministry's Department for Occupational Safety and Health, which is responsible for supervising occupational safety and health, has prepared supervision instructions for its subordinate administration. The instructions were updated in 2008 and last in 2010. They are intended to make the supervision of occupational safety and health more uniform, to improve the quality of related inspections and to increase transparency in the activities. For instance, the instructions require inspectors to ensure that matters raised by employers and employees at workplaces are taken into account appropriately.

In 2007 the Ministry of Labour (currently the Ministry of Employment and the Economy) completed a study of local bargaining (”Shall we make a local agreement?”) under its employment policy research programme 2008-2011. This study, based on interviews with representatives of employers and employees, showed that the most common objects of local bargaining were issues related to wages and salaries, working hours, the position and job descriptions of employees, and also personnel representation and different personnel benefits. The study did not indicate an absolute need for increased local bargaining among the different parties.

Question 3)

Cooperation on occupational safety and health, as required by the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces, concerns interaction between employers and employees in contractual employment relationships or public-service or other employment relationships. Consequently, groups of employees without such employment relationships are excluded from cooperation under the Act. Such groups of employees include apprentices and students in connection with education, persons involved in employment measures, persons in rehabilitation and rehabilitative work, persons serving a court sentence, persons undergoing treatment or kept in a place for treatment or a comparable institution, conscripts and women in voluntary military service, persons in non-military national service and persons belonging to a contractual fire brigade while voluntarily participating in rescue services, referred to in section 4 of the Occupational Safety and Health Act (738/2002).

Answers to the Committee's conclusions

The rules governing the participation of workers

Regarding the right of employees to participate in decisions on working conditions and the working environment, and regarding up-to-date information about the improvement of working conditions and the working environment, reference is made to the information provided in relation to Article 22 in this report.

ARTICLE 26: RIGHT TO DIGNITY AT WORK

Article 26 para. 1: Sexual harassment

Question 1)

An overall reform of the Act on Equality between Women and Men (609/1986), below 'the Equality Act', took effect in 2005. In the reform the scope of application of the Act was expanded, especially regarding discrimination at work. Section 3(2) of the Act provides that the provisions of the Act concerning employers apply correspondingly to a company hiring labour from another employer (a user enterprise), where the company exercises the authority of an employer as referred to in the Employment Contracts Act (55/2001). Section 7 of the Equality Act prohibits discrimination in general, and section 8 of the Act prohibits discrimination in working life.

The obligation to promote equality laid down in section 6 of the Act has been expanded by including in section 6(2) a new paragraph 6, which obligates employers to act to prevent the occurrence of discrimination based on gender. The obligation includes the prevention of sexual harassment but requires employers to prevent other forms of discrimination, too. The new section 8 d of the Act contains specific provisions on harassment at workplaces and employers' obligation to eliminate it.

Section 7 of the Equality Act prohibits direct and indirect discrimination based on gender and defines the meaning of direct and indirect discrimination for the purposes of the Act.

According to section 7(5) of the Act, sexual harassment, gender-based harassment and any order or instruction to engage in discrimination based on gender are deemed to constitute discrimination under the Act.

An amendment of the Equality Act concerning sexual harassment and gender-based harassment as well as compensation entered force on 15 June 2009. In the reform of the Act made in 2005, definitions of the different concepts of harassment were not included in the Act. The concepts were only described in the rationale for the government proposal to amend the Act (government proposal HE 44/2009 vp). This solution did not fulfil the requirements of the Equality Directive (2006/54/EC), which required that equality legislation should contain express definitions of harassment and sexual harassment. By the amendment of the Equality Act in 2009 these definitions were included in the Act, as required by the Equality Directive. Thus, the amendment essentially meant recording in legislation the prevailing legal situation.

After the amendment, sexual harassment means, according to section 7 of the Act, verbal, non-verbal or physical undesired behaviour of a sexual nature, the purpose or effect of which is to violate the mental or physical integrity of a person, especially by creating a threatening, hostile, degrading, humiliating or oppressing atmosphere. Gender-based harassment means under the Act undesired behaviour which relates, without a sexual nature, to a person's gender and the purpose or effect of which is to violate the mental or physical integrity of this person, and which creates a threatening, hostile, degrading, humiliating or oppressing atmosphere.

According to section 7 of the Equality Act, any order or instruction to engage in discrimination based on gender constitutes discrimination prohibited by the Act. The prohibition of orders or

instructions to engage in discrimination has a general scope of application. Anyone who orders or instructs others to engage in discrimination commits discrimination, even if the order or instruction did not lead to acts violating the Act. However, the person issuing the order or instruction must have competence to issue them or have, in relation to the person ordered or instructed, a position which involves a possibility of issuing orders or instructions to this person, e.g. in the capacity of his or her superior or client.

Section 8 of the Equality Act contains a special provision on discrimination in working life, which supplements the general prohibition of discrimination. On the basis of this provision, the action of an employer is deemed to constitute discrimination prohibited under the Act if the employer, after becoming aware that an employee has been subjected to sexual or other gender-based harassment in his or her work, fails to take the available measures in order to eliminate the harassment.

In the adjudication of cases of discrimination prohibited by the Equality Act, the principle of divided burden of proof is applied by virtue of section 9a of the Act. The section provides that if a person considers that she or he has been a victim of discrimination under the provisions of the Act and presents a matter referred to in the Act to a court of law or to a competent authority and the facts give cause to believe that the matter is one of gender discrimination, the defendant must prove that there has been no violation of equality between women and men but that the action was for an acceptable reason and not due to gender. The provision on divided burden of proof does not apply to the consideration of criminal cases or actions for damages, which, too, are possible ways of adjudicating harassment claims.

The prime liability for harassment lies with the perpetrator, who may incur not only criminal liability for the act but also liability for damages under the Tort Liability Act. The employer becomes responsible for eliminating the harassment when informed about the incident. From that point of time the employer is obliged to take measures to eliminate the harassment e.g. by making the perpetrator liable for his or her conduct and preventing the perpetrator from continuing the harassment. The employer may also give the perpetrator a reminder or a warning or arrange his or her tasks or place of work so as to minimise the perpetrator's contacts with the harassed person. In serious cases the employer may, among other things, be compelled to reorganise the work of employees in order to prevent continued harassment. In such cases the employer must avoid impairing the working conditions of the harassed employee. As the last resort the employer may terminate the perpetrator's employment relationship by virtue of related legislation.

In 2010 the minimum amount of compensation ordered for violations of the prohibition of discrimination under the Equality Act is EUR 3,240.

Similarly, section 28 of the Occupational Safety and Health Act provides that if harassment or other inappropriate treatment of an employee occurs at work and causes hazards or risks to the employee’s health, the employer, after becoming aware of the matter, must take measures for remedying this situation by available means. The employer may give the perpetrator an admonition or warning or arrange his or her tasks or place of work so as to minimise the perpetrator's contacts with the victim. In serious cases the employer may, among other things, be compelled to reorganise the work of employees in order to prevent continued harassment. In such cases the employer must avoid impairing the working conditions of the harassed employee. As the last resort the employer may terminate the perpetrator's employment relationship by virtue of related legislation. If the perpetrator is the employer himself or herself (e.g. the managing

director, a board member or a person in a corresponding position), the harassed person need not inform other representatives of the employer separately about the harassment in order to make it qualify as prohibited discrimination. In principle, however, the harassed person is obliged to show to the perpetrator that his or her behaviour is undesired, unless warranted otherwise by special reasons.

Occupational safety and health authorities supervise compliance with the prohibition of discrimination and harassment in contractual and public-service employment relationships and corresponding activities laid down in the Non-Discrimination Act (21/2004), the Occupational Safety and Health Act (738/2002) and other labour legislation, in accordance with the new Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006). In respect of the handling at workplaces of discrimination and harassment issues under the Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces, reference is made to the information provided in relation to Article 22.

Questions 2) and 3)

In 1977–2008 Finland completed Quality of Work Life Surveys (“Three decades of working conditions, Statistics Finland 2009”), which clarify the picture of violence, harassment, bullying and discrimination at workplaces. Also some other studies have included sexual harassment as a special work-related factor. The Gender Equality Barometer (Publications of the Ministry of Social Affairs and Health 2009:2) shows that every second woman aged 15 to 34 has been harassed sexually in the last two years. At workplaces, women are harassed most often by male colleagues and clients, and less often by superiors. In practice, occupational safety and health authorities are most often the only competent authorities in such problem situations. These authorities are informed yearly about 200–300 of all 500,000 cases of sexual harassment at Finnish workplaces.

The Gender Equality Unit of the Ministry of Social Affairs and Health and the Equality Ombudsman have published a brochure on the Equality Act (”Tasa-arvolaki 2005”), which provides a comprehensive description of the reformed Act.

The occupational safety and health administration has published guides and instructions dealing with inappropriate treatment and harassment at work. The guides describe such conduct and instruct employees and employers how they should act in related cases at work.

The Ministry of the Interior has published a study on discrimination in working life (“Syrjintä työelämässä”, Publications of the Ministry of the Interior 2009/43”). The study is based on the data on work discrimination recorded by occupational safety and health authorities. The material pertains to cases of discrimination at work, harassment or other inappropriate treatment in which one or more prohibited grounds of discrimination are recognisable. One key finding of the study is that it is important to raise awareness of anti-discrimination legislation and the rules of working life among both employers and employees.

The occupational safety and health administration has published a guide entitled “Inappropriate treatment” and another guide dealing with control of harassment and inappropriate treatment ("Häirinnän ja epäasiallisen kohtelun hallinta").

Answers to the Committee's conclusions

Sexual harassment

Information on relevant case law

Cases of sexual harassment may be referred to such authorities as courts and the Equality Ombudsman. No precise information is available about the number of harassment cases adjudicated by courts. Reluctance to refer harassment cases to courts is typical, and therefore hardly any case-law exists on such matters. One example of harassment cases adjudicated by courts is Supreme Court judgment KKO:2010:1.

In 2010 the Supreme Court adjudicated case KKO:2010:1, which concerned sexual abuse, an occupational safety and health offence and discrimination at work. In this case the male managing director of a company had molested and touched a number of young female employees at work. The court considered that the managing director's conduct fulfilled the essential elements of the alleged offences. In this case the Supreme Court also held that the prosecutor, on grounds of a very important public interest, had the right to institute proceedings in the case in respect of an injured party who had not reported the alleged offence for prosecution within the period of one year laid down in the Criminal Code.

Decision TT:2005-12 of the Labour Court concerned the dismissal of a chief shop steward on account of physical sexual harassment. The Labour Court found it unsubstantiated that the perpetrator's conduct, despite its reprehensibility, could be regarded as such a serious violation of a contractual obligation that the employer, as a first resort, should have dismissed the perpetrator without notice. The employer was obligated to pay the perpetrator an amount corresponding to six months' pay as compensation for the pay of the period of notice. Part of the earnings-adjusted unemployment allowance paid to the perpetrator was to be deducted from the amount of compensation. In addition, the employer was ordered to pay the perpetrator a sum of EUR 25,515, corresponding to twelve months' pay, as compensation for the unlawful dismissal.

Liability of employers and means of redress

Complaints to the Equality Ombudsman

Pursuant to section 16 of the Equality Act, the Equality Ombudsman and the Equality Board shall supervise compliance with the Act in private activities, public administration and public business all over the country. In addition, the activities of the Equality Ombudsman are regulated by the Act on the Equality Ombudsman and the Equality Board (610/1986).

The Equality Ombudsman has no independent right of action in courts. However, the Ombudsman may assist victims of discrimination with safeguarding their rights in different procedures. By virtue of their general competence, ordinary courts, too, may process claims falling under the scope of the Equality Act. The most important categories of claims before ordinary courts are actions for compensation and claims for punishment of discrimination.

The Equality Ombudsman supervises compliance with the Equality Act, especially with the prohibitions of discrimination. She gives instructions and advice free of charge to those who suspect discrimination. The contacts received by the Ombudsman are often connected with recruitment, pregnancy, the use of family leave and remuneration. Approximately 30% of all contacts come from men. In addition to individuals, such actors as trade unions, different organisations and authorities request advice and instructions from the Ombudsman. Being responsible for the promotion of equality, too, she promotes equality planning at workplaces. Moreover, the Ombudsman provides information about the Equality Act and its application and monitors the realisation of equality in different sectors of society. The Ombudsman has extensive powers to obtain information from both authorities and employers and individuals. She may also conduct inspections at workplaces, if reasonable grounds exist to suspect that an employer violates the Equality Act.

The Equality Ombudsman is contacted rather seldom concerning sexual harassment. In 2009 the Ombudsman received one written contact concerning harassment at work, and by the end of October 2010 two written contacts. As a rule, the Ombudsman is contacted by telephone in matters related to sexual harassment. In those cases the Ombudsman mainly provides advice and instructions.

Prevention

Other preventive measures

In respect of information about the prevention of sexual harassment, reference is made to the information provided in relation to Article 26, paras. 1 and 2 in this report.

Article 26 para. 2: Recurrent reprehensible or distinctly negative and offensive actions in the workplace or in relation to work, other than sexual harassment

Question 1)

In respect of the legislation against harassment and discrimination and the practice of applying it, reference is made to Finland's second periodic report on the implementation of the Revised European Social Charter. In respect of gender-based harassment, reference is made to the information provided above in relation to Article 26, para. 1.

The Non-discrimination Act (21/2004) applies to both public and private activities in the following contexts:

1) conditions for access to self-employment or means of livelihood, and support for business activities;
2) recruitment conditions, employment and working conditions, personnel training and promotion;
3) access to training, including advanced training and retraining, and vocational guidance; and
4) membership and involvement in an organization of workers or employers or other organizations whose members carry out a particular profession, including the benefits provided by such organizations.

According to the prohibition of discrimination laid down in section 6 of the Act, nobody may be discriminated against on the basis of age, ethnic or national origin, nationality, language, religion, belief, opinion, health, disability, sexual orientation or other personal characteristics. The prohibition of discrimination based on gender is covered by the provisions of the Act on Equality between Women and Men (609/1986).

The prime liability for harassment lies with the perpetrator. The employer becomes responsible for eliminating the harassment when informed about the incident. Section 28 of the Occupational Safety and Health Act (738/2002) provides that if harassment or other inappropriate treatment of an employee occurs at work and causes hazards or risks to the employee's health, the employer, after becoming aware of the matter, must take measures for remedying this situation by available means. The employer may give the perpetrator an admonition or warning, rearrange his or her tasks etc. As the last resort the employer may terminate the perpetrator's employment relationship by virtue of related legislation. Chapter 47, section 1 of the Criminal Code provides that an employer who intentionally or negligently neglects to intervene in conduct violating the Occupational Safety and Health Act is sentenced for a work safety offence to a fine or to imprisonment for at most one year.

Occupational safety and health authorities supervise compliance with the prohibition of discrimination and harassment in contractual and public-service employment relationships and corresponding activities laid down in the Non-Discrimination Act (21/2004), the Occupational Safety and Health Act (738/2002) and other labour legislation, in accordance with the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (the Enforcement Act (44/2006). As to the handling of discrimination and harassment issues at workplaces under the Enforcement Act, reference is made to the information provided below in relation to Article 22.

A project has been launched to reform the non-discrimination legislation. The objective of the Equality Committee appointed in 2007 for the reform is to strengthen the protection of non-discrimination by making the legislation cover more clearly all different grounds of discrimination and by making it apply more uniformly to all areas of life. Moreover, the legal remedies and sanctions applicable in different cases of discrimination should be as uniform as possible. The status, duties and powers of the different authorities responsible for discrimination issues may also be adjusted to the extent necessary.

One example of the related case law is ruling TT:2005-125 of the Labour Court. The ruling concerns inappropriate treatment, i.e. harassment, as a ground for dismissal. In the case an employee acting as the chief shop steward and the occupational safety and health representative of a workplace was given, on the same day, warnings on account of inappropriate treatment and of conduct related to the change of work shifts. The Court held that because the person had continued the inappropriate treatment, the employer had, in the prevailing circumstances, very important grounds for dismissing the person. In this case the Court weighed between the right to dignity at work and the increased protection of chief shop stewards against dismissal.

Questions 2) and 3)

Government authorities coordinate a number of projects against discrimination and harassment.

The Legal Affairs Unit of the Ministry of the Interior maintains the *Equality.fi* website, which is a data and material bank on equality and non-discrimination[2].

The campaign on a discrimination free zone (*"Syrjinnästä vapaa alue"*) is an information campaign against all discrimination, bullying and harassment. In this campaign, organisations and work communities declare commitment to the principle of non-discrimination.

The *Equality is priority (YES)* project is based on a national anti-discrimination action plan. The project is intended to raise public awareness about equal treatment and non-discrimination, to build capacity for them and to promote the tolerance of diversity in society.

In relation to the *Equality is priority* project the Ministry of Employment and the Economy published in 2009 a guide entitled *"Diversity – an opportunity in working life. Guide to promoting equality and preventing discrimination in the workplace"*.

"For Diversity. Against Discrimination" is an information campaign coordinated by the European Commission's Directorate-General for Employment, Social Affairs and Equal Opportunities. The campaign is carried out in Finland, too.

The Centre for Occupational Safety and the occupational safety and health administration, e.g. at their websites, provide information about occupational safety and health, including the prohibition of inappropriate treatment and the means of addressing it[3].

In 2008 the Ministry of the Interior set up a project to introduce a national system for the monitoring of discrimination. The purpose of the monitoring system is to provide up to date and objective information about the amount, type, reasons and consequences of discrimination. A research on discrimination at work carried out under the project examined material from certain occupational safety and health inspectorates. This material had not been examined earlier from the standpoint of discrimination in a comprehensive manner. A report on the research was published in 2009 (*"Syrjintä työelämässä – pilottitutkimus työsuojelupiirien aineistosta"*). The material pertained to cases of work discrimination, harassment or other inappropriate treatment handled by the occupational safety and health inspectorates in their supervision activities during the period from 1 January 2008 to 30 August 2009. The material included altogether 198 cases involving prohibited grounds of discrimination. Ethnic or national background or nationality (32 %) and health (32 %) were the two most common grounds of discrimination at work. In all 86 % of the discrimination incidents had taken place in the private sector.

In addition, reference is made to the information on measures against discrimination and harassment given in relation to Article 26 para. 1.

[2] www.equality.fi
[3] www.tyoturva.fi/en/
www.tyosuojelu.fi/fi/workingfinland

Answers to the Committee's conclusions

Precise information on laws, administrative acts or case laws' motivations to implement the two mentioned aims, independently from the facts being or not held to be discriminatory

In respect of discrimination and harassment, reference is made to the information given about the relevant legislation and the practice of applying it in relation to Article 26, paras. 1 and 2. Further, reference is made to Finland's second periodic report on the implementation of the Revised European Social Charter.

Information on relevant case law

As to case law, reference is made to the information given in relation to Article 26, paras. 1 and 2.

Referring to the Equality Ombudsman

The Act on Equality between Women and Men enables complaints to the Equality Ombudsman about sexual harassment and other gender-based harassment. In respect of the legislation and practice related to complaints, reference is made to the answers to the Committee's conclusions regarding Article 26 para. 1.

Liability of employers and means of redress

Liability of employers

According to section 2 of the Occupational Safety and Health Act, the Act applies to work carried out under the terms of an employment contract and to work carried out in an employment relationship in the public sector or in a comparable service relationship subject to public law. Thus, under this provision the employer is not liable for inappropriate treatment of an independent worker in the employer's premises, even if the perpetrator is an employee of the employer.

Damages

Compensation for pecuniary and non-pecuniary damages

The right to compensation of a person harassed as referred to in the Occupational Safety and Health Act is determined in accordance with the Tort Liability Act (412/1974). Chapter 5, section 1 of this Act contains the basic provision on the injury or damage to be compensated for: damages constitute compensation for personal injury and damage to property, and for suffering on conditions laid down in sections 4a and 6 of the Act. Where the injury or damage has been caused by an act punishable by law or in the exercise of public authority, or in other cases where there are especially weighty reasons for the same, damages also constitute compensation for economic loss that is not connected to personal injury or damage to property.

Section 6 of the Tort Liability Act lays down the preconditions for entitlement to damages, also for suffering (immaterial damage).

A person is entitled to damages for suffering caused by a violation if
1) the person's freedom, peace, honour or privacy has been violated by a punishable act,
2) the person has been discriminated against by a punishable act,
3) the person's personal integrity has been seriously violated either intentionally or by gross negligence,
4) the person's human dignity has been seriously violated either intentionally or by gross negligence in another manner, comparable with the violations referred to under paragraphs 1–3.

The amount of compensation

Compensation under the Tort Liability Act is determined on the basis of the suffering which the violation is conducive to causing, taking into account, in particular, the nature of the violation, the position of the victim, the relationship between the perpetrator and the victim, and the publicity of the violation.

Prevention

In respect of measures to prevent harassment, reference is made to the information given in relation to Article 26 para. 2.

ARTICLE 28: RIGHT OF WORKERS' REPRESENTATIVES TO PROTECTION IN THE UNDERTAKING AND FACILITIES TO BE ACCORDED TO THEM

Questions 1) and 2)

The Government refers to Finland's earlier periodic reports on the implementation of the Revised European Social Charter.

During the reporting period the provisions of the Employment Contracts Act (55/2001) on the protection of personnel representatives remained unchanged. Accordingly, Chapter 7, section 10 of the Act provides protection against dismissal for shop stewards and elected representatives. According to section 10 of the Act, the employer is entitled to terminate the employment contract of a shop steward or an elected representative on the basis of grounds related to these persons only if a majority of the employees whom the shop steward or the elected representative represents agree. Where financial and production-related grounds for termination exist, the employer is entitled to terminate the employment contract of a shop steward or an elected representative only if their work ceases completely and the employer is unable to arrange work that corresponds to the persons' professional skill or is otherwise suitable, or to train them for some other work.

Chapter 13, section 2 of the Employment Contracts Act contains a provision on employees' right of assembly in facilities under the employer's control.

During the reporting period, Finland enacted the following new provisions on the protection and freedom of activity of personnel representatives:

Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces

The Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (the Enforcement Act (44/2006)) took effect on 1 February 2006. The Act and a brochure on the application thereof are annexed to the report. The employment contract of an occupational safety and health representative elected by virtue of the Act may be terminated on the same conditions as the contract of a shop steward or an elected representative under the Employment Contracts Act, as described above.

The employer must ensure that it is possible for the occupational safety and health representative and the vice representative, free of costs or loss of income, to receive appropriate training for carrying out their cooperational duties. The training must cover provisions and instructions concerning occupational safety and health, as well as other matters within the representatives' duties, as provided in more detail in the Enforcement Act.

The employer must release the occupational safety and health representative from his or her regular work for a reasonable period for carrying out the representative's duties related to occupational safety and health.

The employer must compensate the occupational safety and health representative for any loss of income incurred due to taking care of the representative's duties during working hours. The employer must also pay a reasonable remuneration for the occupational safety and health representative's necessary duties carried out outside working hours of which the representative has informed the employer.

Members of an occupational safety and health committee elected by virtue of the Enforcement Act have the right to be released from their regular duties for carrying out the necessary occupational safety and health duties. In addition, they are entitled to compensation for any loss of income due to such duties, or to pay for their duties and meetings with the committee outside working hours.

According to the Enforcement Act the employer must assign a room on its premises for the occupational safety and health representative and the occupational safety and health committee for keeping and studying the documents relating to their duties, and a room for meetings that are necessary with regard to their duties. These rooms must be free of charge for the users. The occupational safety and health representative has the right to use any common office and communication equipment at the workplace as much as his or her duties require, and in a way agreed at the workplace.

Chapter 5 a of the Enforcement Act contains provisions on cooperation and the rights of an occupational safety and health representative at the workplace.

Cooperation legislation

The Act on Co-operation within Undertakings (334/2007) entered force on 1 July 2007. Regarding this Act, reference is made to the information given in relation to Article 21, as well as to the Act itself and a booklet explaining it, which are annexed to the report. The protection of cooperation representatives against dismissal is, under section 8(5) of the Act, determined in accordance with the provisions of the Employment Contracts Act on the dismissal of shop stewards and elected representatives.

Chapter 9, section 56 of the Act on Co-operation within Undertakings provides that a representative of a personnel group is entitled to be released from his or her work for such time as is required to carry out the duties referred to in this Act as well as for co-operation training. The employer and the representative of the personnel group have to agree upon the times for the co-operation training. The employer must compensate for any consequent loss of earnings due to release from work. Any other release from work and related compensation for loss of earnings must be agreed upon case by case between the representatives of the personnel group concerned and the employer. In so far as a representative of a personnel group takes part in co-operation negotiations referred to in this Act outside his working hours or discharges any other duty on which he has reached agreement with the employer, the latter must pay him compensation for the hours used for carrying out the task. The compensation must correspond to the pay for the representative's regular working hours.

According to the Act on Co-operation between Municipal Employers and Employees (449/2007), employees may elect a representative from amongst themselves as prescribed in section 3 of the Act. The provisions on the protection of shop stewards and elected representatives against dismissal in the Act on Municipal Officeholders and the Employment

Contracts Act apply to the protection of the elected representative against dismissal. Under section 20 of the Act, personnel representatives have the right to be released from their regular work duties for a sufficient time for performing their duties under the Act and for training in cooperation matters. The employer and the personnel representative must agree upon the timing of such training. The employer must compensate the representative for any loss of income resulting from the release of the representative from his or her regular work. Any other release from work and other compensation for loss of income must be agreed upon between the representative and the employer case by case. If the personnel representative, outside working hours, participates in cooperation negotiations under this Act or performs other tasks agreed upon with the employer, the employer must compensate him or her for the time used for the task. The compensation must correspond to the pay for the representative's regular working hours.

The Act on Co-operation within Finnish and Community-wide Groups of Undertakings (335/2007) entered force on 1 July 2007. It contains provisions on the protection of employees' representatives against dismissal and on their freedom of activity. The protection of employees' representatives against dismissal under this Act is determined on the same grounds as the protection of shop stewards and elected representatives under the Employment Contracts Act. The protection of employees' representatives elected in other member states of the European Economic Area against dismissal is determined by the domestic law of those states.

Act on Personnel Representation in the Administration of Undertakings

The Act on Personnel Representation in the Administration of Undertakings (725/1990) contains provisions on the protection of personnel representatives, including provisions on the right to release from work and to compensations, and on the protection of such representatives against dismissals. The Act also contains a new provision on the right of members of specific negotiation groups set up in cross-border mergers and divisions of limited liability companies to be released from work, and provisions on the compensation for such members' loss of income and for the costs of the negotiation group, as provided for in section 34 of the Act on Employee Involvement in European Companies (SE) and Cooperative Societies (SCE) (758/2004). Thus, under the Act on Personnel Representation in the Administration of Undertakings, personnel representatives and vice representatives and, due to the legislative reform, the members of specific negotiation groups set up in cross-border mergers and divisions of limited liability companies enjoy a protection against dismissal equal to the protection provided by the Employment Contracts Act to shop stewards and elected representatives.

Question 3)

Case law

In its ruling 2006:15 the Vaasa Court of Appeal took a position on the protection of shop stewards and elected representatives against dismissal. The case concerned the dismissal, on financial and production-related grounds, of an employee who acted as a shop steward and an elected representative. The employer had offered the dismissed shop steward and elected representative work in units located further away and had defined this work with sufficient precision, but the dismissed employee had been entitled to refuse the offer on account of the shop steward status. The Court of Appeal considered that although the employer offered work to

the dismissed employee, it was, because of the employee's status as a shop steward, obliged to offer the person work in another place within the same travel-to-work-area. The Court of Appeal held that the employer had dismissed the employee without lawful grounds and obligated the employer to pay the employee EUR 26,209.25 with interest as compensation for the dismissal.

During the reporting period, 17 rulings of the Labour Court related to the right of personnel representatives to protection against dismissal[4]. Of these rulings, the dismissal was lawful in one case, and in another case a person's earlier position as a shop steward had no impact on the dismissal. In three cases the Labour Court dismissed the action. In one of the rulings the Labour Court confirmed the invalidity of a provision in the collective agreement which restricted the protection of elected representatives against dismissal in violation of the Employment Contracts Act. In 11 rulings the Labour Court held that the employment relationship of an elected representative or an occupational safety and health representative had been terminated on unlawful grounds. As a general rule, the compensation for unlawful dismissal is equal to 3–24 months' pay. In its case law, the Labour Court has obligated employers to pay employees approx. EUR 11.000–31.000 as compensation for unlawful dismissal, in addition to outstanding pay and other compensation. In one case the payable compensation was approx. EUR 6,000.

Answers to the Committee's conclusions

Burden of proof in cases of unlawful dismissal of workers' representative and entitlement to reinstatement and compensation.

In cases of unlawful dismissal the burden of proof rests on the party who claims that the dismissal is unjustified. The dismissed person, whether he or she is a worker or a representative of workers, is not entitled to reinstatement, because the Finnish legislation does not provide reinstatement in the case of illegal dismissal. Chapter 12, section 2 of the Employment Contracts Act (55/2001) provides for compensation, the amount of which varies between 3 and 24 months' pay. Nevertheless, the maximum amount of compensation to be paid to a shop steward elected on the basis of a collective agreement or to an elected representative referred to in Chapter 13, section 3 of the Act is equivalent to the pay due for 30 months.

In addition, an unlawfully dismissed person may be entitled to indemnification under the Non-Discrimination Act, the Act on Equality between Women and Men or the Tort Liability Act. Such dismissal may also fulfil the essential elements of work discrimination, which is punishable under the Criminal Code.

Information on protection of employee representatives against prejudicial acts other than dismissal

Chapter 2, section 2(1) of the Employment Contracts Act prohibits employers from exercising any unjustified discrimination against employees on the basis of e.g. trade union activity. The State Civil Servants' Act (750/1994) and the Act on Civil Servants in Local Government (304/2003) contain corresponding provisions.

[4] Labour Court rulings TT: 2005-60; TT: 2005-104; TT: 2005-118; TT: 2005-125; TT: 2006-14; TT: 2006-43; TT: 2006-55 ; TT: 2006-82; TT: 2006-93; TT: 2006-95; TT: 2006-105; TT: 2007-41; TT: 2007-42; TT: 2007-62; TT: 2008-103; TT: 2008-37; TT: 2008-67.

The rules regarding the protection of health and safety delegates in particular as regards the Act on the Supervision of Occupational Safety and Health and Co-operation on Occupational Safety and Health at Workplaces.

Reference is made to the information given in relation to Article 28 about the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces

ARTICLE 29: RIGHT TO INFORMATION AND CONSULTATION IN COLLECTIVE REDUNDANCY PROCEDURES

Questions 1), 2) and 3)

Chapter 7, section 3 of the Employment Contracts Act lays down the preconditions for mass dismissals (55/2001), and section 4 also obligates employers to offer work and provide training. Chapter 9, section 3 of the Act obligates employers to explain to employees to be given notice the grounds for and alternatives to the dismissal, and to inform them about the employment services available from employment offices. In respect of these provisions of the Employment Contracts Act, reference is made to the earlier periodic reports.

When making mass dismissals based on financial and production-related grounds, employers are subject to the Act on Co-operation within Undertakings (334/2007). The Act applies to undertakings with at least 20 regular employees. Chapter 8 of the Act regulates the cooperation procedure to be followed in reducing the use of personnel. The Act on Co-operation within Undertakings and a booklet explaining it are annexed to this report. Chapter 8 of the Act also contains provisions on so-called change security, i.e. measures to arrange reemployment or training of dismissed employees as soon as possible. Regarding change security, reference is also made to Finland’s second and third periodical reports on the implementation of the Revised European Social Charter.

The right of the government sector and the municipal sector to obtain information and to be heard in connection with mass dismissals is based on the Act on Co-operation in Government Agencies and Institutions (651/1988) and the Act on Co-operation between Municipal Employers and Employees (449/2007). Regarding cooperation in the government sector, reference is made to Finland's earlier periodic reports. After the entry into force of the Act on Co-operation between Municipal Employers and Employees (449/2007), the cooperation between municipal employers and employees is now regulated at the level of a parliamentary act. The regulation under this Act is in line with the provisions of the Act on Co-operation within Undertakings. According to the Act on Co-operation between Municipal Employers and Employees, e.g. part-time work arrangements, lay-offs or dismissals conducted for financial or production-related grounds are matters to be prepared in cooperation.

Answers to the Committee's conclusions

Mitigation of the effects of redundancies and the procedure available to employees in case of breach of provision of the Act on Co-operation within Undertakings

Reference is made to Chapter 8, sections 48 and 49, and Chapter 9, sections 62, 63 and 64 of the Act on Co-operation within Undertakings and the explanation of the attached brochure on the said act. In addition, reference is made to the information given about change security in Finland’s third periodic report on the Revised European Social Charter.

ANNEXES

1) The Annual Holidays Act 162/2005
2) Legislation on limitations of deduction from wages: The Employment Contracts Act (55/2001) Section 17 of Chapter 2; the State Civil Servants Act (750/1994) Section 60 of Chapter 15; and the Enforcement Code (705/2007) Section 48 of Chapter 4.
3) The Act on Co-operation within Undertakings 334/2007
4) The new Act on Co-operation within Undertakings, brochure, 2007
5) Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces 44/2006
6) Occupational Safety and Health in Finland, brochure, 2007