

Article 24 - Right to protection in case of dismissal

The Committee takes note of the information contained in the report submitted by Finland.

Scope

The Committee notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter.

Obligation to provide valid reasons for termination of employment

The Committee notes from the report that since the previous conclusions only small changes have been made in the Employment Contracts Act (55/2011) concerning the protection in case of dismissal. A new provision has been added, regarding the absence for taking care of a family member or someone close to the employee (Section 7a of Chapter 4) which is based on a contract between the employee and the employer and has for consequence that an employee who is pregnant or an family leave during the fixed-term leave would be excluded from special protection of employment relationship.

The Committee recalls that it will examine this issue when the report relating to special protection of employed women and to family responsibilities and employment, respectively Article 8 and Article 27 of the Charter, will be submitted.

The Committee also notes the adoption of a new Seafarers Employment Contracts Act (7536/2011), which considers termination of an employment contract under general provisions as well as in other Chapters of the Act, in line with the provisions of the Employment Contracts Act. For the procedures of terminating an employment contract, some new provisions are included as the employer's duty to explain the ground for termination, the obligation to notify the Employment and Economic Development Office and to provide information on employment plan and the change security supplement. For retirement age, the relationship is terminated – without notice and notice period – at the end of the month when the employee turns 68, unless the employer and the employee agree to continue the employment relationship.

Furthermore, the Committee notes from the report that in Finland the retirement age is flexible and between the ages of 63-68 the employee enjoys regular security of employment. The termination of employment on the ground of age is not allowed and may only occur for proper and weighty reasons related to the employee's imprudent conduct etc. Special provisions relate to the employment protection of elderly employees, such as longer periods of notice.

Prohibited dismissals

The Committee notes that there have been no changes to the situation, which it has previously held to be in conformity with the Charter.

Remedies and sanctions

In its previous conclusion (Conclusion 2012) the Committee noted that the Finnish legislation did not provide for the possibility of reinstatement in case of unlawful dismissal, although Article 24 required that such a possibility must be guaranteed by legislation. Therefore, the Committee considered that the situation was contrary to the Charter. The Committee notes from the Governmental Committee report (GC(2013)25) that the new Employment Contracts Act (in force from 2001) does not include a provision on the alternative compensation the employer had to pay in case of reinstatement of the employment contract. In case of unlawful termination of employment contract, the employee's financial status is secured by a compensation set in the law. In addition, the obligation of re-employment supplements the job security of those employees whose employment contract has been terminated on financial or production-related grounds. According to the representative of Finland, the Government considers that the employment contract is a contractual relationship between employer and employee. Thus, a legal obligation of reinstatement in case of unlawful dismissal would suit poorly into the Finnish legal system as it would create an impossible and impractical situation for both the employee and the employer. For the reinstatement of a service relationship, termination is regulated in the Civil Service Act, with identical grounds that those in the Employment Contracts Act. Civil service being a non contractual relationship, if termination is found groundless, the service relationship continues uninterrupted and the authority that has terminated the relationship may before the end of the notice and upon the civil servant's acceptance, cancel the termination. The Committee finds that this obligation cannot be regarded as a substitute for reinstatement as it has a limited scope of application and does not have as its purpose the reinstatement of workers unlawfully dismissed. Therefore, the Committee reiterates its previous finding of non-conformity.

In reply to the Committee's request of information on cases where the employee successfully sought compensation under the Tort Liability Act in case of unlawful dismissal, the report refers to the judgement of 24 October 2010 of the Helsinki Court of Appeal. (n°1370). In this case of discriminatory unlawful dismissal, the Helsinki Court of Appeal maintained the judgement of the Helsinki District Court, which found the employer guilty of discrimination at work and sentenced, *inter alia*, to compensate the employee on the basis of the Tort Liability Act the employee's loss of earnings (€11,406,27) and mental suffering (€1,000). The District Court stated that it is a well established practice in cases on crimes relating to employment to condemn compensation on the basis of the Tort Liability Act and the Non-Discrimination Act in a separate civil trial.

The Committee notes that the Tort Liability Act does not apply in all situations of unlawful dismissal, and may only be applicable in restricted situations. Therefore the Committee finds that the Tort Liability Act does not provide an adequate alternative legal avenue for the victims of unlawful dismissal not linked to discrimination. The Committee considers that the upper limit to compensation provided for by the Employment Contracts Act may result in situations where compensation awarded is not commensurate with the loss suffered. Therefore the Committee considers that the situation is not in conformity with the Charter.

Conclusion [-]

The Committee concludes that the situation in Finland is not in conformity with Article 24 of the Charter on the ground that:

- with the exception of civil servants, the legislation does not provide the possibility of reinstatement in case of unlawful dismissal;
 - the upper limit on compensation for unlawful dismissal may not be adequate to cover the loss suffered, in certain circumstances.