

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

**DECISION ON ADMISSIBILITY  
AND THE MERITS**

**Adoption: 8 September 2016**

**Notification: 30 September 2016**

**Publication: 31 January 2017**

**Finnish Society of Social Rights v. Finland**

Complaint No. 106/2014

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 287<sup>th</sup> session attended by:

Giuseppe PALMISANO, President  
Monika SCHLACHTER, Vice-President  
Petros STANGOS, Vice-President  
Lauri LEPPIK, General Rapporteur  
Karin LUKAS  
Eliane CHEMLA  
József HAJDU  
Marcin WUJCZYK  
Krassimira SREDKOVA  
Marit FROGNER  
François VANDAMME

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 5 July and 6 and 8 September 2016,

On the basis of the report presented by Marcin WUJCZYK,

Delivers the following decision adopted on this last date:

## **PROCEDURE**

1. The complaint lodged by the Finnish Society of Social Rights was registered on 29 April 2014.
2. The Finnish Society of Social Rights alleges that Finland is in violation of Article 24 of the Revised Charter ("the Charter") on the grounds that there are upper limits to the amount of compensation that may be awarded in cases of unlawful dismissal and there is no possibility for reinstatement.
3. In accordance with Rule 29§2 of the Rules of the Committee ("the Rules"), the Committee asked the Government of Finland ("the Government") to make written submissions on the merits in the event that the complaint is declared admissible, by 14 November 2014, at the same time as its observations on the admissibility of the complaint. The Government sought and was granted an extension of this deadline until 5 January 2015. The Government's submissions were registered on 5 January 2015.
4. The Finnish Society for Social Rights was invited to submit a response to the Government's submissions by 15 April 2015. It sought and was granted an extension of the deadline until 15 May 2015. The response was registered on 15 May 2015.
5. Pursuant to Article 7§2 of the Protocol, the Committee invited the international employers' and workers' organisations mentioned in Article 27§2 of the Charter of 1961 to submit observations before 15 January 2015.
6. Observations from the European Trade Union Confederation ("the ETUC") were registered on 15 January 2015.
7. The International Organisation of Employers ("the IOE") sought and was granted an extension of this deadline until 30 January 2015. Observations from the IOE were registered on 30 January 2015.

## **SUBMISSIONS OF THE PARTIES**

### **A – The complainant organisation**

8. The Finnish Society for Social Rights invites the Committee to find that Finland is in breach of Article 24 of the Charter on the grounds that Finnish legislation makes no provision for reinstatement in the event of unlawful dismissal and that the Employment Contracts Act provides for a ceiling on the amount of compensation that may be awarded in the event of unlawful dismissal.

### **B – The respondent Government**

9. The Government considers that the complaint fulfils the requirements in relation to the representativity of the association as well as the formal requirements laid down by Article 4 of the Additional Protocol (“the Protocol”). However, it has serious doubts whether the Finnish Society of Social Rights has particular competence in relation to the protection in cases of termination of employment as required by Article 2 of the Protocol. It further asks the Committee to declare the complaint unfounded in all respects.

## **THIRD PARTY OBSERVATIONS**

### **A – Observations by the European Trade Union Confederation**

10. The ETUC firstly considers that reinstatement should be the primary remedy in cases of unlawful dismissal and would be the logical consequence (*restitutio ad integrum*), which is not the case in Finnish law.

11. According to the ETUC, the combination of no reinstatement along with the general ceiling on compensation makes the protection for workers against unlawful dismissal weak and not sufficiently dissuasive for employers.

12. The ETUC further maintains under the Employment Contracts Act, compensation for unlawful dismissal cannot be also awarded on the basis of the Tort Liability Act, because the Employment Contracts Act applies as the *lex specialis*.

### **B – Observations by the International Organisation of Employers**

13. The IOE recalls that Finnish labour legislation is adopted only after extensive tripartite consultation.

14. As regards the ceiling on compensation in unfair dismissal cases the IOE states that a dismissed employee may seek redress and further compensation through the Tort Liability Act (No. 412/1974); the Non-Discrimination Act (No. 21/2004), the Act on Equality between Women and Men (No. 609/1996) and the Act on Cooperation within Undertakings (No. 334/2007). Compensation may be awarded under these different pieces of legislation simultaneously; it is ultimately for the Court, to determine the amount of compensation.

15. Moreover, these Acts do not establish an upper limit to the amount of compensation that may be awarded (except for the Act on Cooperation within Undertakings – No. 334/2007). The complainant's information is technically incorrect, there is no ceiling for compensation the dismissal is discriminatory (see the Non-discrimination Act (1325/2014) paragraph 23§ and 24§, and the Act on Equality between Women and Men (609/1986), paragraph 11§).The ceiling to which the Finnish Society for Social Rights refers in the Act on Equality between Women and Men only concerns discrimination when hiring people.

16. The IOE maintains that the ILO has been more flexible on adequate compensation compared with the European Committee of Social Rights. It states that if law and practice allow very high levels of compensation this may pose a significant risk for enterprises.

17. As regards reinstatement, the IOE states that Article 24 makes no mention of reinstatement and that reinstatement is not the best solution in practical terms.

## **RELEVANT DOMESTIC LAW**

18. In their submissions, the parties make reference to the following main domestic legal sources:

19. **Constitution** (1999), in particular Article 18, which reads as follows:

*Article 18 - The right to work and the freedom to engage in commercial activity*

Everyone has the right, as provided by an Act, to earn his or her livelihood by the employment, occupation or commercial activity of his or her choice. The public authorities shall take responsibility for the protection of the labour force.

The public authorities shall promote employment and work towards guaranteeing for everyone the right to work.

Provisions on the right to receive training that promotes employability are laid down by an Act. No one shall be dismissed from employment without a lawful reason.

20. **Employment Contracts Act (55/2001, amendments up to 398/2013 included)**

Chapter 12 Liability for damages

Section 2. Compensation for groundless termination of an employment contract

If the employer has terminated an employment contract contrary to the grounds laid down in this Act, it must be ordered to pay compensation for unjustified termination of the employment contract. If the employee has cancelled the employment contract on the grounds laid down in chapter 8, section 1, arising from the employer's intentional or negligent actions, the employer must be ordered to pay compensation for unjustified termination of the employment contract. The exclusive compensation must be equivalent to the pay due for a minimum of three months or a maximum of 24 months. Nevertheless, the maximum amount due to be paid to shop stewards elected on the basis of a collective agreement or to elected representatives referred to below in chapter 13, section 3, is equivalent to the pay due for 30 months.

Depending on the reason for terminating the employment relationship, the following factors must be taken into account in determining the amount of compensation: estimated time without employment and estimated loss of earnings, the remaining period of a fixed-term employment contract, the duration of the employment relationship, the employee's age and chances of finding employment corresponding to his or her vocation or education and training, the employer's procedure in terminating the contract, any motive for termination originating in the employee, the general circumstances of the employee and the employer, and other comparable matters.

If the employer has terminated the employment contract contrary to the grounds laid down in chapter 7, sections 3 or 7, or cancelled it contrary to the grounds laid down in chapter 1, section 4, or solely contrary to the grounds laid down in chapter 8, section 1, the provision in subsection 1 on minimum compensation shall not apply.

Section 3. Impact of daily unemployment allowance on payment of indemnities and compensation

Where a compensation ordered under section 2 above is compensation for loss of emoluments due to unemployment before a ruling is pronounced or delivered, the following deductions shall be made:

- 1) 75 per cent of the daily earnings-related unemployment allowance as referred to in the Act on Income Security for the Unemployed (602/1984) Paid to the employee for the period in question;
- 2) 80 per cent of the basic unemployment allowance referred to in the Act on Income Security for the Unemployed paid to the employee for the period; and
- 3) the labour market subsidy paid to the employee for the period under the Act on Labour Market Subsidy (1542/1993).

A court may, if warranted by the amount of the compensation, the employee's financial and social circumstances and the insult suffered by him, reduce the amount deductible from the compensation referred to in subsection 1 or waive the deduction fully.

When processing a matter referred to in subsection 1, paragraph 1, above, a court shall provide the Unemployment Insurance Fund and the unemployment fund with an opportunity to be heard. The court must order the employer to pay the sum deducted from the compensation to the Unemployment Insurance Fund, and inform it of the legally valid ruling or decision in the matter. What is herein laid down pertaining to the Unemployment Insurance Fund shall correspondingly apply to the Social Insurance Institution when a matter referred to in subsection 1, paragraph 2 or 3, is processed.

When an agreement is made on the amount of the employer's liability, it must separately mention the total compensation agreed under section 2 and the compensation included therein paid to the employee for loss of emoluments due to unemployment before the agreement is made. The deductions prescribed in subsections 1 and 2 shall be made from the compensation. The employer is responsible for paying the sum deducted from the compensation to the Unemployment Insurance Fund or the Social Insurance Institution and for sending a copy of the agreement to the Unemployment Insurance Fund or the Social Insurance Institution.

What is laid down above on compensation ordered under section 2 also applies to compensation ordered under section 1, subsection 1, for groundless lay-off.

## 21. **Non-Discrimination Act (1325/2014)**

### Chapter 1

#### General provisions

#### Section 1

#### Purpose of the Act

The purpose of this Act is to promote equality and prevent discrimination as well as to enhance the protection provided by law to those who have been discriminated against.

### Chapter 5

#### Legal protection and sanctions

#### Section 23

#### Compensation

(1) A person who has been discriminated against or victimised is entitled to receive compensation from the authority, employer or education provider or supplier of goods or services who has discriminated against or victimised the person contrary to this Act.

(2) Receipt of compensation does not preclude receipt of compensation by virtue of the Tort Liability Act (412/1974) or other legislation.

#### Section 24

#### Amount of compensation

(1) The compensation must be equitably proportionate to the severity of the act. The severity of the act is assessed by taking into account the type, extent and duration of the infringement.

(2) In determining the level of compensation, due consideration shall be given to compensation imposed or ordered to be paid by virtue of other legislation for the same act of infringement against the person.

(3) Compensation may be made more reasonable or not imposed at all if compensation would be unreasonable, taking into account in particular the offender's attempts to preclude or remove the consequences of the actions and the offender's financial position.

**22. Act on Equality between Women and Men (No. 609/1986; amendments up to 488/2011 included)**

Section 1

Objectives

The objectives of this Act are to prevent discrimination based on gender, to promote equality between women and men, and thus to improve the status of women, particularly in working life.

.....

Compensation

(1) Anyone who has violated the discrimination prohibition referred to in section 8 or sections 8a–8e will be liable to pay compensation to the affected person.

(2) The compensation payable shall amount to no less than EUR 3,240. In cases concerning employee recruitment, the compensation payable shall not exceed EUR 16,210 for an employee in regard to whom the employer is able to show that she/he would not have been chosen for the job even if the choice would have been made on non-discriminatory grounds. When the amount of compensation is being determined, the nature and the extent and duration of the discrimination shall be taken into account, as well as any financial penalty imposed or ordered for payment based on an offence against the person arising from the same action by virtue of other legislation.

(3) The compensation may be reduced beyond the minimum amount prescribed above, or the liability to pay compensation may be waived completely, if this is deemed reasonable in view of the offender's financial situation and attempts to prevent or eliminate the effects of the action, and other circumstances of the case.

(4) Payment of compensation does not prevent the injured party from further claiming compensation for financial loss under the Tort Liability Act (412/1974) or any other legislation.

**23. Tort Liability Act (412/1974)**

Chapter 1 — Scope of application

Section 1

This Act applies to liability for damages. However, unless otherwise provided in this or another Act, this Act does not apply to liability for damages under contract or as provided in another Act.

Chapter 2 — Liability of the person causing injury or damage

Section 1

(1) A person who deliberately or negligently causes injury or damage to another shall be liable for damages, unless otherwise follows from the provisions of this Act.

(2) The damages may be adjusted if the liability is deemed unreasonably onerous in view of the financial status of the person causing the injury or damage and the person suffering the same, and the other circumstances. However, if the injury or damage has been caused deliberately, full damages shall be awarded unless it is deemed that there are special reasons for a reduction in the damages.

...

## Chapter 5 — Damages

### Section 1

Damages shall constitute compensation for personal injury and damage to property. 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 shall also constitute compensation for economic loss that is not connected to personal injury or damage to property.

### Section 2

A person who has suffered a bodily injury or other personal injury shall be entitled to damages to cover medical costs and the other costs arising from the injury, as well as loss of income and maintenance, pain and suffering, invalidity and other permanent handicap.

...

### Section 6

The provisions of this Act on personal injury apply also to damages for the anguish arising from an offence against liberty, honour or the domestic peace or from another comparable offence.

## **RELEVANT INTERNATIONAL MATERIALS**

### **I. International Labour Organisation**

24. Convention No. 158, Termination of Employment Convention, includes the following provisions:

“Part II. Standards of General Application

Division A. Justification for Termination

Article 4

The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.”

Division C. Procedure of Appeal Against Termination”

Article 10

If the bodies referred to in Article 8 of this Convention find that termination is unjustified and if they are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate.”



## THE LAW

### ADMISSIBILITY

25. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Finland on 17 July 1998 and entered into force for this State on 1 September 1998, the complaint has been submitted in writing and concerns Article 24 of the Charter, a provision accepted by Finland when it ratified this treaty on 21 June 2002 and to which it is bound since the entry into force of this treaty in its respect on 1 September 2002.

26. Moreover, the grounds for the complaint are indicated.

27. The Committee also observes that the Finnish Society of Social Rights is a national non-governmental organisation, founded on 16 March 1999 and registered the same year at the Register of Associations in Finland. It notes that, in a declaration dated 21 August 1998 and entered into force on 1 September 1998 for an indefinite period, Finland recognised the right of any representative national non-governmental organisation within its jurisdiction which has particular competence in the matters governed by the Charter to lodge complaints against it.

28. As regards the requirement of “representativity” laid down by Article 2§1 of the Protocol, the Committee recalls that it has previously found the Finnish Society of Social Rights to be representative within the meaning of the Protocol (*Finnish Society of Social Rights v. Finland*, Complaint No. 88/2012, decision on admissibility of 14 May 2013, §§6-11).

29. As regards the particular competence of the Finnish Society of Social Rights, the Committee notes from the Association’s rules and from their Web site that the Association’s sphere of activity concerns in a general way the protection of social rights including labour law rights. Consequently, the Committee finds that the Finnish Society of Social Rights has particular competence within the meaning of Article 3 of the Protocol, in respect of the instant complaint. (*Finnish Society of Social Rights v. Finland*, Complaint No. 88/2012, decision on admissibility of 14 May 2013, §12).

30. The complaint submitted on behalf of the Finnish Society of Social Rights is signed by Yrjö Mattila, Chairperson and Helena Harju, Secretary of the Association and member of the Board who, according to Article 10 of the Association’s rules, are together entitled to represent it. The Committee therefore considers that the condition provided for in Rule 23 of its Rules is fulfilled.

31. On these grounds, the Committee declares the complaint admissible.

## MERITS

### ALLEGED VIOLATION OF ARTICLE 24 OF THE CHARTER

32. Article 24 reads as follows

#### **Article 24 - The right to protection in cases of termination of employment**

Part I: "All workers have the right to protection in cases of termination of employment"

Part II: "With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

a the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;

b the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body."

*"Appendix*

1. *It is understood that for the purposes of this article the terms "termination of employment" and "terminated" mean termination of employment at the initiative of the employer.*

2. *It is understood that this article covers all workers but that a Party may exclude from some or all of its protection the following categories of employed persons:*

a *workers engaged under a contract of employment for a specified period of time or a specified task;*

b *workers undergoing a period of probation or a qualifying period of employment, provided that this is determined in advance and is of a reasonable duration;*

c *workers engaged on a casual basis for a short period.*

3. *For the purpose of this article the following, in particular, shall not constitute valid reasons for termination of employment:*

a *trade union membership or participation in union activities outside working hours, or, with the consent of the employer, within working hours;*

b *seeking office as, acting or having acted in the capacity of a workers' representative;*

c *the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;*

d *race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;*

e *maternity or parental leave;*

f *temporary absence from work due to illness or injury.*

4. *It is understood that compensation or other appropriate relief in case of termination of employment without valid reasons shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.”*

## **A – Arguments of the parties**

### **1. The complainant organisation**

33. The Finnish Society of Social Rights alleges that the situation in Finland is in violation of Article 24 of the Charter on two grounds. Firstly on the grounds that legislation, the Employment Contracts Act, provides that the maximum amount of compensation that may be awarded by the Courts for unlawful dismissal may not exceed the equivalent of 24 months salary and secondly that the above mentioned Act does not provide for reinstatement in the event a dismissal has been found to be unlawful.

34. As regards the first allegation, the Finnish Society of Social Rights, points out that the Committee found the situation not to be in conformity in this respect in Conclusions 2008. However, it subsequently revised its assessment on the basis that the Finnish Government had informed it that victims of unlawful dismissal could seek additional redress (compensation) under other pieces of legislation, such as the Tort Liability Act, Non-Discrimination Act, the Act on Equality between Women and Men.

35. According to the Finnish Society of Social Rights, the Tort Liability Act is only applicable if the employer has done real harm or damage to the employee. It is unaware of any case where compensation has been awarded in respect of an illegal dismissal under this Act. In any event, the Finnish Society of Social Rights maintains that it is not possible for compensation to be awarded under both pieces of legislation.

36. Further as regards the Non-Discrimination Act and the Act on Equality between Women and Men, the Finnish Society of Social Rights maintains they have little relevance to cases of illegal dismissals, and cases are very rare. Compensation that may be awarded under these pieces of legislation is also subject to a maximum, under the Non-Discrimination Act it is limited to 15,000€ and in practice the courts rarely award such a sum. According to the Finnish Society of Social Rights compensation is capped at 16,210€ under the Act on Equality between Women and Men. It also alleges that in cases involving unlawful dismissals having a discriminatory element, courts will combine compensation under the different legislation and will in general not award a sum exceeding 24 months salary.

37. The Finnish Society of Social Rights refers to certain judgments of the Finnish Supreme Court as evidence that courts do not always award compensation in discrimination cases (KKO2014:9) It maintains that compensation is most frequently situated between 3-13 months.

38. On a general level it states that persons are rarely awarded compensation which is proportionate to the loss suffered, this results in particular hardship being imposed on elderly persons who have little chance of finding new employment. In fact, the courts rarely award a sum equivalent to 24 months salary. Persons who have been unlawfully dismissed must typically wait some time before being awarded compensation, this compensation is then taxable. If a person who has been unlawfully dismissed cannot find alternative employment, he/she will be dependent on income related unemployment allowance and then on a labour market subsidy allowance which will be undoubtedly below the previous salary. If a person has received an income-related unemployment allowance pending the outcome of the case, any compensation may be reduced.

39. As regards the second allegation, the Finish Society of Social Rights highlights that legislation makes no provision for reinstatement where a dismissal has been found to be unlawful. It emphasises that reinstatement is the most just remedy for those unlawfully dismissed, monetary compensation will rarely put the person in the situation they previously found themselves in.

## **2. The respondent Government**

40. In response to the first allegation, namely that there exists an upper limit to compensation that may be awarded in cases of unlawful dismissal, the Government points out that the Committee did not find that Finland was in violation of Article 24 of the Charter on this ground in its most recent Conclusions (Conclusions 2012). The Committee accepted that compensation may be awarded, in addition to under the Employment Contracts Act, under other pieces of legislation. If an employment contract has been terminated on gender discriminatory grounds compensation may be awarded under Section 11 of the Act on Equality between Women and Men. There is no ceiling on the amount of compensation that may be awarded under this legislation. If there has been a discriminatory element to the unlawful dismissal (other than gender) compensation may be awarded on the basis of the Non-Discrimination Act. Compensation may be awarded under the Act on Equality between Women and Men or the Non-Discrimination Act in addition to the compensation awarded under the Employment Contracts Act.

41. In certain cases, where the unlawful dismissal is found to fulfill the essential elements of a “work discrimination offence” under the Criminal Code, compensation may be awarded under the Tort Liability Act, which provides for no ceiling.

42. As regards the second allegation, that Finnish law does not provide for the possibility of reinstatement for employees who have been found to have been unlawfully dismissed, the Government concedes that this is correct but denies that it amounts to a violation of Article 24 of the Charter.

43. The Government states that reinstatement was provided for under the old Employment Contracts Act, but in practice no orders for reinstatement were made.

44. Finnish legislation seeks to facilitate the re-employment of dismissed employees, especially those dismissed for financial or production related reasons. The Employment Contracts Act stipulates that if an employee is given notice for financial or production related reasons and the employer need employees within nine months of the termination of employment, for same or similar work as the dismissed employee had been performing, the employer must offer this work to the former employee, if he/she is still seeking employment via an employment office. This provision seeks to safeguard employees against unlawful dismissals.

## **B – Assessment of the Committee**

45. The Committee recalls that, under the Charter, employees dismissed without valid reason must be granted adequate compensation or other appropriate relief. Compensation systems are considered appropriate if they include the following provisions:

- reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body;
- possibility of reinstatement and/or
- compensation at a level high enough to dissuade the employer and make good the damage suffered by the employee (Conclusions 2012, Turkey).

46. Any upper limit on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive is, in principle, contrary to the Charter. However, if there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation) (Conclusions 2012, Slovenia).

### **i) Adequate compensation**

47. As regards the allegation that Finland is in breach of Article 24 of the Charter on the grounds that the Employment Contracts Act provides for a limit on the amount of compensation that may be awarded in the event of an unlawful dismissal the Committee recalls that in Conclusions 2008 it found that the situation in Finland was not in conformity with that provision of the Charter on the ground that compensation for unlawful dismissal was subject to an upper limit of no more than 24 months pay. However, in its subsequent conclusions (Conclusions 2012) it noted that in certain cases of unlawful dismissal compensation may also be awarded under the Tort

Liability Act, and requested information on cases where an employee has successfully sought compensation under the Tort Liability Act in a case of unlawful dismissal. Meanwhile, it found the situation to be in conformity with Article 24 of the Charter (Conclusions 2012, Finland). The Finnish Society of Social Rights maintains that the Tort Liability Act is only applicable if real harm or damage has been inflicted on the employee.

48. The Government states that employees may in addition to the Employment Contracts Act seek compensation for unlawful dismissal under the Non-Discrimination Act and the Act on Equality between Women and Men. However, the Committee notes that only persons who were dismissed on discriminatory grounds may seek compensation under these pieces of legislation. In a case of unfair dismissal, not having a discriminatory element, it is not possible to claim compensation under them.

49. The Committee considers that in some cases of unfair dismissal an award of compensation of 24 months as provided for under the Employment Contracts Act may not be sufficient to make good the loss and damage suffered.

50. The Government highlights that employees, who have been unlawfully dismissed, may seek compensation in addition under the Tort Liability Act.

51. The Committee also notes that the Government in its submissions on the merits has provided no examples of cases where compensation has been awarded for unfair dismissal under the Tort Liability Act. In its 11<sup>th</sup> report under the reporting procedure the Government cites a judgment of the Helsinki Court of Appeal upholding an District Court decision awarding compensation under the Tort Liability Act in a case of discriminatory dismissal, where compensation had also been sought on the basis of the Employment Contracts Act and the Non-Discrimination Act. The Committee notes that this case concerned discriminatory dismissal. 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. In particular, it notes that the Tort Liability Act does not apply in respect of contractual liability or liability provided for in another act, unless otherwise specified.

52. The Committee finds that the Tort Liability Act does not provide a fully-fledged alternative legal avenue for the victims of unlawful dismissal not linked to discrimination.

53. 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. In addition, it cannot conclude that adequate alternative other legal avenues are available to provide a remedy in such cases.

54. Therefore the Committee holds that there is a violation of Article 24 of the Charter.

ii) Reinstatement

55. As regards the second allegation; the lack of a possibility for the court to order reinstatement, while Article 24 does not explicitly refer to reinstatement, it refers to compensation or *other appropriate relief*. The Committee considers that *other appropriate relief* should include reinstatement as one of the remedies available to national courts or tribunals (see Conclusions 2003, Bulgaria). The possibility of awarding the remedy recognises the importance of placing the employee back into an employment situation no less favourable than he/she previously enjoyed. Whether reinstatement is appropriate in a particular case is a matter for the domestic courts to decide. The Committee recalls it has consistently held that reinstatement should be available as a remedy under many other provisions of the Charter as interpreted by the Committee, for example under Article 8§2 and 27§3.

56. The Committee recalls that in Conclusions 2012 it found the situation not to be in conformity with Article 24 of the Charter on the grounds that legislation makes no provision for reinstatement in cases of unlawful dismissal. There has been no change to this situation (Conclusions 2012, Finland).

57. As regards the Government's arguments that the obligation following from the legislation to re-employ employees made redundant for financial or production-related reasons should an employer require employees during the following nine months, 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.

58. Therefore, the Committee holds that there is a violation of Article 24 of the Charter.

## CONCLUSION

For these reasons, the Committee:

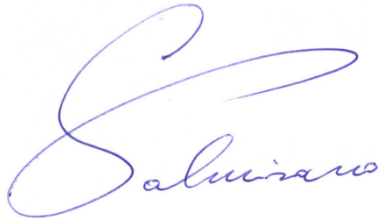
- unanimously declares the complaint admissible;

and concludes:

- by 7 votes to 4, that there is a violation of Article 24 of the Charter, on the issue of compensation;
- unanimously, that there is a violation of Article 24 of the Charter on the issue of reinstatement.



Marcin WUJCZYK  
Rapporteur



Giuseppe PALMISANO  
President



Henrik KRISTENSEN  
Deputy Executive Secretary