

**DECISION ON ADMISSIBILITY**  
**5 December 2006**

**Federation of Finnish Enterprises**  
**v. Finland**

Complaint No. 35/2006

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 219th session attended by:

Mr Jean-Michel BELORGEY, President  
Mrs Polonca KONČAR, First Vice-President  
Mssrs Andrzej SWIATKOWSKI, Second Vice-President  
Stein EVJU, General Rapporteur  
Rolf BIRK  
Matti MIKKOLA  
Nikitas ALIPRANTIS  
Alfredo BRUTO DA COSTA  
Tekin AKILLIOĞLU  
Mrs Csilla KOLLONAY LEHOCZKY  
Mr Lauri LEPPIK  
Ms Ersiliagrazia SPATAFORA  
Mr Colm O' CINNEIDE

Assisted by Mr Régis BRILLAT, Executive Secretary of the European Social Charter,

Having regard to the complaint dated 15 June 2006, registered on 19 June 2006 as number 35/2006 and lodged by the Federation of Finnish Enterprises and signed by Mr Eero LEHTI Chairman and Mr Jussi JARVENTAUS Managing Director of the organisation, requesting the Committee to find that the situation in Finland is not in conformity with Article 5 of the Revised European Social Charter ("the Revised Charter");

Having regard to the documents appended to the complaint;

Having regard to the observations submitted on the 8 September 2006 of the Finnish Government ('the Government')

Having regard to the Revised Charter, and in particular to Article 5 which reads as follows:

**Article 5 – The right to organise**

Part I: "All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests."

Part II: "With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations."

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints ("the Protocol");

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201st session and revised on 12 May 2005 at its 207<sup>th</sup> session ("the Rules");

Having deliberated on 5 December 2006;

Delivers the following decision, adopted on the above date:

1. The Federation of Finnish Enterprises alleges that the situation in Finland is not in conformity with Article 5 of the Revised Charter. It is alleged that the freedom to organise is violated on the grounds that:

Finnish legislation stipulates that national employers' organisations may conclude collective agreements which provide for the opportunity to derogate from certain provisions of the labour legislation through local agreements. This applies to employers belonging to national employer organisations only. Employers not members do not have this possibility.

2. The Government does not contest that the complaint meets the conditions for admissibility laid down in Article 1(c) or in the alternative of Article 2 and of Article 4 of the Protocol. This is without prejudice to its views on the merits.

## **THE LAW**

3. 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 5 of the Revised Charter, a provision accepted by Finland when it ratified this treaty and to which it is bound since the entry into force of this treaty in its respect on 1 September 2002.

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

5. The Committee also observes that, in accordance with Articles 1 (c) of the Protocol, the Federation of Finnish Enterprises is a national organisation of employers' organisations within the jurisdiction of Finland. It is an organisation whose purpose is to defend the interests of Finnish enterprises particularly small and medium sized enterprises. The Federation has approximately 90 000 members, which is more than one third of all companies operating in Finland. Of the members of the Federation, about 43, 000 are employers. The member companies employ about 340 000 persons. On the basis of all the information in the file, the Committee finds that the organisation is a representative organisation in accordance with Article 1 (c) of the Protocol. The Committee does not find it necessary for the purpose of this decision to examine whether the organisation is an organisation within the meaning of Article 2 of the Protocol.

6. The complaint submitted on behalf of the Federation of Finnish Enterprises is signed by Mr Eero LEHTI Chairman and Mr Jussi JARVENTAUS Managing Director of the organisation who are entitled to represent the organisation. The Committee therefore considers that the complaint complies with Rule 23.

7. For these reasons, the Committee, on the basis of the report presented by Mr Andrzej SWIATKOWSKI and without prejudice to its decision on the merits of the complaint,

## **DECLARES THE COMPLAINT ADMISSIBLE**

In application of Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the defending state of the present decision, to transmit it to the parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter, and to make it public.

Invites the Government to make written submissions on the merits of the complaint by 16 February 2007.

Invites the Federation of Finnish Enterprises to submit a response to the Government's submissions by a deadline which it shall determine.

Invites parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter to make comments by 16 February 2007 should they so wish.

In application of Article 7§2 of the Protocol, requests the Executive Secretary to inform the international organisations of employers or workers mentioned in Article 27§2 of the Charter and to invite them to make observations by 16 February 2007.

Andrzej SWIATKOWSKI  
Rapporteur

Jean-Michel BELORGEY  
President

Régis BRILLAT  
Executive Secretary