



# The right to strike in the public services

## Finland



## **The right to strike in the public services: Finland**

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### **Notes**

This factsheet reflects the situation in March 2021. It was elaborated by Evdokia Maria Liakopoulou (independent expert), updated by Diana Balanescu (independent expert) and reviewed by EPSU/ETUI; it was also sent to the Finnish EPSU affiliates for comments.

## 1. Legal basis

### International level

Finland has ratified:

#### UN instruments<sup>1</sup>

**International Covenant on Economic, Social and Cultural Rights**

(ICESCR, Article 8) (ratification on 19 August 1975)

**International Covenant on Civil and Political Rights**

(ICCPR, Article 22) (ratification on 19 August 1975)

#### ILO instruments<sup>2</sup>

**Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise**

(ratification on 20 January 1950);

**Convention No. 98 concerning the Right to Organise and to Bargain Collectively**

(ratification on 22 December 1951);

**Convention No. 151 concerning Labour Relations (Public Service)**

(ratification on 25 February 1980);

**Convention No. 154 concerning the Promotion of Collective Bargaining**

(ratification on 9 February 1983).

### European level

Finland has ratified:

**Article 11 (the right to freedom of assembly and association) of the European Convention on Human Rights**

(ratification on 10 May 1990);

**European Social Charter**

(ratification on 29 April 1991) (in a declaration from the Permanent Representative, dated 29 April 1991, the Government of Finland considered itself bound inter alia by Articles 5 and 6);

**European Social Charter (Revised)**

(ratification on 21 June 2002) (in a declaration contained in the instrument of ratification, the Republic of Finland declared that it considers itself bound inter alia by Articles 5 and 6);

**Additional Protocol to the European Social Charter Providing for a System of Collective Complaints**

(ratification on 17 July 1998) (in a declaration contained in a letter from the President of Finland, dated 21 August 1998, the country recognises 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).<sup>3</sup>

## National level

### The Finnish Constitution

The right to strike is not explicitly mentioned in the constitution, but it derives from the freedom of assembly and the freedom of association.<sup>4</sup> This right in turn entails, according to established practice and the prevailing position in the legal literature, the right to conduct collective bargaining and to embark on collective action.<sup>5</sup>

In particular:

- Section 13(1) of Constitution: ‘Everyone has the right to arrange meetings and demonstrations without a permit, as well as the right to participate in them’;
- Section 13(2) of Constitution: ‘Everyone has the freedom of association. Freedom of association entails the right to form an association without a permit, to be a member or not to be a member of an association and to participate in the activities of an association. The freedom to form trade unions and to organise in order to look after other interests is likewise guaranteed.’

### Applicable laws

- **Collective Agreements Act** (436/1946), which includes provisions regarding the conclusion, applicability and observance of collective agreements, as well as a duty to maintain industrial peace, particularly Section 8 which lays down a peace obligation;
- **Act on Mediation in Labour Disputes** (420/1962), which sets forth provisions on the rights of employees and employers to take industrial action, particularly Sections 7 (354/2009) and 8 which provide for a prior notice of the national conciliator with relation to the extension or commencement of a work stoppage in connection with a labour dispute, and Sections 9 (354/2009) to 15 setting forth provisions for a conciliation procedure;
- **Employment Contracts Act** (55/2001), particularly Chapter 7, Section 2(2), according to which the participation of an employee in industrial action is not considered to be a just and valid ground for dismissal;
- **Specifically for the public sector:** State Civil Servants Act (750/1994) and Act on Collective Agreements for Local Government Officials (669/1970) establishing the legal status of civil servants and workers in municipalities respectively and the forms of collective action allowed; Act on Collective Agreements for State Civil Servants (664/1970), according to which strikes may be called only in the event of disputes regarding issues which may be regulated in a collective agreement.
- The case law is not very extensive.
- **Collective agreements** can establish the terms and conditions of the employment relationship and impose a duty to maintain industrial peace.<sup>6</sup>

## **2. Who has the right to call a strike?**

A strike can be organised by a group of workers or by a trade union. The decision to initiate a strike is, in practice, taken in accordance with the internal rules of the organisations concerned.<sup>7</sup>

As regards the public sector, under the Act on Collective Agreements for State Civil Servants (664/1970)<sup>8</sup> and the State Civil Servants Act (750/1994),<sup>9</sup> only civil servant and employer associations are entitled to call for industrial action. A similar restriction is provided for by the Act on Collective Agreements for Local Government Officials (669/1970).<sup>10</sup> Individual civil servants are not allowed to commence a strike as a group.<sup>11</sup>

### 3. Definition of strike

The right to strike or to take collective action is **not expressly defined in Finnish law**. However, the legal literature defines a strike as industrial action taken by employees involving a cessation of work. According to the legal literature and the relevant case law, industrial action in turn entails action taken collectively with the aim of exerting pressure on the opposing party in matters relating to employment relationships.<sup>12</sup>

The Labour Court determines whether the action falls within the scope of industrial action by identifying the presence of three cumulative elements. First, the industrial action has to be taken collectively; two observations can be inferred from this requirement: there has to be both a collective intention behind the action and an aim to exert collective pressure on the opposing party. Second, the action needs to be organised in such a way as to be taken seriously. This requirement is also met if the threat of industrial action is presumed to be real. Third, the action has to be associated with work-related demands.<sup>13</sup>

In general, the scope of the right to industrial action depends on the conduct of collective bargaining with the aim of concluding a collective agreement and, consequently, on the industrial peace obligation.<sup>14</sup> Therefore, industrial action concerning matters regulated by a collective agreement or relating to rights disputes or disputes concerning the validity or enforcement of a collective agreement is unlawful. For matters outside the scope of collective bargaining, a general peace obligation of sorts has been developed by case law dating back to the 1980s.<sup>15</sup>

- **Solidarity strikes** are permitted, albeit subject to some limitations. First, a solidarity strike may not be called in support of action that violates the peace obligation. In such cases, the solidarity action is regarded as being in breach of the participants' own collective agreement, and is therefore considered to be illegal. In the same vein, the action is deemed unlawful if it affects, directly or indirectly, the terms and conditions of the participants' own collective agreement. Second, a solidarity strike cannot be so extensive as to deprive the peace obligation of its substance. In the same manner, it cannot permanently restrict, even after its cessation, employers' managerial prerogatives.<sup>16</sup> Third, secondary action is legal only if the primary action was legal.<sup>17</sup> However, solidarity action does not violate the peace obligation in the case of a primary action that merely breaches the obligation to give prior notice.<sup>18</sup>
- **Political strikes** are permitted if they pursue political goals and are directed against decisions of political organs. Therefore, stoppages in support of political goals do not breach the peace obligation because the action does not seek to amend the supporters' own collective agreement. According to the case law, a direct connection between the action and the political decision-making and agenda has to be established. However, give the fine line between political agendas and work rearrangements within an undertaking, most political strikes have been declared unlawful by the Labour Court.<sup>19</sup>

- **Other forms of strikes**, such as sit-ins or sit-down strikes during which the workers remain at the workplace but do not work, partial strikes and, on rare occasions, general strikes, rotating strikes, strikes against a specific workplace and the mass resignation of employees as a particular type of work stoppage, are permitted.<sup>20</sup>
- **Other legal forms of collective action** include blockades, go-slow strikes, work-to-rule action and overtime bans, as well as boycotts, which are usually used instead of strike action after the validity of the collective agreement has expired.<sup>21</sup>
- The **spontaneous protest strike** is a typical form of industrial action used while the collective agreement is still in force. It is usually directed against an employer's acts related to dismissals, layoffs and other work rearrangements. This type of action is almost always declared illegal by the Labour Court.<sup>22</sup> From the comments submitted to the ECSR by the Central Organisation of Finnish Trade Unions (SAK), it is evident that the limitations on the right to strike for state civil servants who exercise merely technical functions effectively prevents them from taking protest action against the Government's economic and social policy or against local government budget policy.<sup>23</sup>
- **Warning strikes** are always illegal: on the one hand, if they commence while the collective agreement is still in force, they violate the peace obligation; on the other hand, if they start after the validity period of the collective agreement has expired, they violate the obligation to give notice.<sup>24</sup>
- **Picketing**: it is not uncommon for employees to station pickets in order to prevent strikebreaking. However, they are not permitted to use physical force to prevent workers from entering the premises of the workplace. The performance of work which falls within the scope of a strike while it is in progress is not forbidden.<sup>25</sup>
- **Lockouts** are permitted.

#### 4. Who may participate in a strike?

The prior notice required under Section 7 of the Act on Mediation in Labour Disputes (420/1962) must indicate *inter alia* the nature and scope of the strike action. Workers who are members of other trade unions (i.e. unions not participating in the strike) or non-unionised workers are equally entitled to participate in the work stoppage if their duties fall within its scope.<sup>26</sup> However, such workers cannot be forced to participate in a strike out of respect for the right to remain neutral.<sup>27</sup>

**Public sector:** Public servants have the right to take strike action as laid down in the Act on Collective Agreements for State Civil Servants (664/1970).

- **Definition:** The public sector in Finland consists of the organs and officials of the State (central government) and the municipalities (local government). There are two statuses for the central government sector employees: civil servants and employees with a labour contract (similar to employment contracts in the private sector):<sup>28</sup>

The legal status of a civil servant is defined in the State Civil Servants Act (750/1994) and the related State Civil Servants Decree (971/1994). According to Section 1(1) of the State Civil Servants Act (750/1994), a public service relationship is governed by public law, in which the State is the employer and the civil servant is the performer of the duties in question.

It is also possible to recruit personnel as contract employees. Their legal status is covered by the Employment Contracts Act (55/2001), while the Collective Agreements Act (436/1946) covers collective agreements on terms and conditions of service for personnel on an ordinary employment contract.

- **Restrictions:** Pursuant to a Decree of 28 June 1996, some civil servants in the public sector who are considered as employers for the purpose of representing the State in collective agreements are deprived of the right to strike. This concerns high-ranking civil servants or other servants employed in personnel departments throughout the various ministries and government agencies, for example some civil servants working for the secretariat of the Finnish Parliament. Members of the police and armed forces are also not permitted to strike.<sup>29</sup>
- **Types of action:**
  - It derives from the Act on Collective Agreements for State Civil Servants (664/1970) that **civil servants** in both the state and municipality sectors are under a general peace obligation, regardless of whether a valid collective agreement is in force.<sup>30</sup> In fact, where no collective agreement exists, any industrial action in pursuit of 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. In practice, this limitation seems to entail that state civil servants may take action only with a view to securing a collective agreement.<sup>31</sup>



Nevertheless, as specified by the national reports on the implementation of the European Social Charter, it is possible for civil servants to call a strike that does not aim at the conclusion of a collective agreement if the action:

- a) supports an objective relating to issues which, under the said Act, may be agreed upon by the parties;
- b) relates to the conditions of employment of civil servants and;
- c) relates to issues that have not been agreed upon in a collective agreement which is still valid.<sup>32</sup>

Those contractual issues which can be agreed upon in a collective agreement are not defined in detail in the Act. Article 2 of the Act provides only 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 organisations, structures and scopes, and the number and nature of workers to be employed. In the private sector, non-contractual issues also mainly fall within the employers' sole scope of authority.<sup>33</sup>

- In practice, **sympathy strikes and political strikes** cannot be considered legal under this system.<sup>34</sup>
- Furthermore, Section 8 (1) of the Act on Collective Agreements for Local Government Officials (669/1970) provides that forms of **collective action other than a strike** (or **lockout** in the case of the employer) are prohibited in respect of existing employment relationships. For instance, the Labour Court has ruled that mass resignation by municipal office holders is not permitted as a form of collective action pursuant to Section 8(1) of the Act on Collective Agreements for Local Government Officials (669/1970).<sup>35</sup>
  - However, there is no such restriction in cases where there is no existing employment relationship. For instance, bans or boycott action on the part of a trade union to prohibit its members from applying for a newly established post or from performing duties that are not assigned to an existing post would be permissible at the outset.<sup>36</sup>

## 5. Procedural requirements

### Peace obligation

- When parties are bound by the collective bargaining system, the lawfulness of industrial action is determined by the collective agreement and by the 1946 Collective Agreements Act and its *relative peace obligation*. The peace obligation has both a passive and an active dimension: on the one hand, the parties bound by the collective agreement are required to refrain from any hostile action against it, and, on the other, those parties and their affiliates have to monitor their members in order to ensure that they abstain from such action.<sup>37</sup>
- In a number of cases, mainly from the 1980s, where one or both parties are not bound by the collective bargaining system, the General Courts have developed a system with a general peace obligation by using criteria such as proportionality and good practice in order to determine the legality of the strike. These rulings and their supporting rationales are questioned by legal scholars given that the right to strike serves as an authoritative basis in situations where no peace obligation exists.<sup>38</sup>
  - *Restrictions*: The peace obligation does not apply to collective action taken with regard to matters unrelated to the collective agreement. Furthermore, the peace clause does not apply to employers who, by extension, are covered by the collective agreement without having been a signatory party thereto. Finally, it derives from Article 8 of the Collective Agreements Act (436/1946) that a peace obligation concerns the term of validity of the collective agreement. The obligation ends if the validity period of the collective agreement also ends or has been terminated and the notice period has expired.<sup>39</sup>
  - *Exemptions*: Political and solidarity strikes are considered to be exempt from the peace obligation. For instance, in the case of supportive strike action, it is immaterial whether or not the party taking the action is bound by a valid collective agreement, and the peace obligation does not apply. This is because secondary or political action by workers does not constitute action directed against their own collective agreement or the Collective Agreements Act.<sup>40</sup>
- **Public sector**: Pursuant to the State Civil Servants Act (750/1994), a special permanent peace obligation applies to civil servants in both the state and municipality sectors.<sup>41</sup> The commitment to labour harmony is broader in scope for civil servants than for employees with a labour contract. For civil servants, the commitment to labour harmony begins when the new agreement is concluded at national level, and for employees with a labour contract, it starts only upon conclusion of the agency specific agreement.<sup>42</sup>

**In practice**, the decision to initiate a strike is taken in accordance with the internal rules of the organisations concerned. The rules of some organisations may require that a majority of

the members support the action while, in other cases, the executive body of an organisation may take the decision.<sup>43</sup>

### Advance notice

- As with the **private sector**, the rules on advance notice also apply to both the public sector and the civil service. Only work stoppages (strikes and lockouts) are subject to the rules on advance notice. Anyone intending to commence a strike must give written notice, stating the reasons for the strike, its starting time and the extent of the stoppage, to the other party and to the National Conciliator's Office at least 14 days beforehand.<sup>44</sup>
  - *Exemptions:* Solidarity action and strikes initiated as part of a political demonstration are not subject to these requirements. However, the central organisations have concluded basic agreements (the 1993 Central Agreement (between EK, SAK, STTK and AKAVA), the 1997 Central Agreement (between SAK and EK) and the 2002 Central Agreement (between STTK and EK)) stipulating that, where possible, both solidarity and political strikes are to be preceded by a four-day notice period.<sup>45</sup>
  - *Public sector:* A specific procedure is in place for cases where possible industrial action may pose a threat to society. In such cases, within five days of notice of a work stoppage having been given to the National Conciliator's Office, either party can submit a request to the National Conciliator's Office that the Public Service Disputes Board handle the matter.

### Dispute resolution procedure

- There is a separate dispute resolution procedure for disputes over rights and interests. The Labour Court has sole jurisdiction in disputes relating to the interpretation and breaches of the statutory regulations and the provisions of collective agreements. The National Conciliator's Office is competent to deal with disputes over interests associated with the conclusion of a new collective agreement. Even though the national conciliation process does not cover disputes over rights, it can be used on a voluntary basis in situations of unlawful collective action. Such cases are exceptional, and the process is informal and does not adhere to the regulations laid down in the Act on Mediation in Labour Disputes (420/1962).<sup>46</sup>
- After notice of intended industrial action has been given, the parties are required to partake in a compulsory mediation process led by the National Conciliator or by a part-time conciliator.
- The **conciliator** endeavours to induce the parties to determine the precise matters in dispute and to limit them as far as possible, and seeks to bring about a compromise between them on terms as close as possible to their own proposals and offers, suggesting such concessions and adjustments as appear to him to be appropriate and fair.<sup>47</sup>

- If a conciliator fails to settle a dispute by negotiation or in any other manner, he may present the parties with a draft settlement, prepared in writing, which they are required to accept or reject without delay. If the parties do not accept the draft settlement, the conciliator then considers whether the proceedings should be continued or stopped. If a settlement is accepted by the parties, all industrial action must cease.<sup>48</sup>
- As regards the specific procedure for public sector matters coming before the Public Service Disputes Board, a decision must be given within 14 days of either the original commencement date of the industrial action or the date of referral to the Board. In its decision, the Board may put forward recommendations for a partial or complete cessation of the action and for follow-up measures.<sup>49</sup>

### Cooling-off periods and postponement

- **In essential services:** If the intended work stoppage resulting from the dispute or its extension is likely, on account of its scope or nature, to affect essential functions of society or substantially harm the public interest, and if additional time for mediation is deemed necessary, the Ministry of Economic Affairs and Employment may postpone the work stoppage for up to 14 days.<sup>50</sup> The performance of work which prevents the essential functions of society from being paralysed or seriously damaged is permitted.<sup>51</sup>
- If the matter is referred to the Public Service Disputes Board, the work stoppage is automatically deferred by two weeks from the announced commencement date of the strike action.
- **Civil servants:** In matters concerning the contractual terms of employment of civil servants, the Ministry of Economic Affairs and Employment may defer the work stoppage by an additional seven days.<sup>52</sup>
- Before or during the conciliation procedure, the conciliator may request the parties to consider whether the date for the commencement of any action that is planned in connection with the labour dispute should be postponed until the results of the negotiations are known.<sup>53</sup>

### Preventive work

Civil servants are required to carry out any preventive work that is necessary during the industrial action in order to ensure the protection of both human life and health and property. In theory, it is the employer's prerogative to decide what should be considered as preventive work; however, in practice, it is the civil servants' association together with the employer's representatives who determine its scope by means of a collective agreement.<sup>54</sup>

## 6. Legal consequences of participating in a strike

### Participation in a lawful strike

**Suspension of the employment contract:** This regards, in particular, the main tasks executed by workers in the performance of their duties. The employment relationship continues for the entire duration of the strike.<sup>55</sup>

**Wages and employment benefits:** Although employees participating in a strike are not entitled to wages or employment benefits, trade unions can allocate modest strike benefits for their members for the duration the strike.<sup>56</sup> However, an employee who is prevented from working by industrial action taken by other employees which is unrelated to his/her employment terms or working conditions is entitled to pay for up to seven days.<sup>57</sup>

**Recruitment of strike breakers:** It is not uncommon for an employer to make adjustments by temporarily employing workers from within or outside the company/service to undertake tasks that have been declared as coming under the remit of the strike.

The lawfulness of the use of strike breakers is the subject of much debate among scholars, with workers and trade unions claiming a breach of the right to strike, and employers claiming the protection of their right to property as guaranteed under Section 15 of the Constitution. In any event, an employer cannot permanently replace strikers, and nor can non-unionised workers be forced to carry out tasks declared as coming under the remit of the strike.<sup>58</sup>

**Disciplinary sanctions and dismissal:** It is prohibited to dismiss an employee on the grounds of his/her participation in a strike.<sup>59</sup>

### Participation in an unlawful strike

- **Preliminary injunctions**
  - In the 2012 Finnair case, the Helsinki District Court granted the national airline carrier Finnair an injunction to end industrial action and ordered its technical staff to return work under the threat of a EUR 2.8 million fine. The court case was significant, as there was no existing legislation or established case law on whether a precautionary measure may be used against a trade union in order to stop industrial action. Many influential Finnish jurists and professors of law have condemned the strike injunction as illegal, arguing that the court had no jurisdiction to intervene in the employees' fundamental right to take industrial action.<sup>60</sup>

The Labour Court held that the industrial action was illegal, but it did not rule on the legality of the precautionary measure. The Labour Court found a violation of the commitment to labour market harmony but dismissed the claim for withdrawal of the precautionary measure on grounds of lack of jurisdiction.<sup>61</sup> The case was referred to the Supreme Court.

- There have been recent attempts to secure stricter sanctions based on the possibilities laid down in general regulations on court proceedings and private law. General Courts have established the possibility to apply preliminary injunctions that also impose payment of a penalty in cases where the strike is likely to be illegal. This fact and, consequently, the possibility for General Courts, instead of the Labour Court, to impose sanctions and thus determine the legality of industrial action have garnered a considerable amount of public discussion.<sup>62</sup>
- The Supreme Court ultimately clarified the situation in its ruling in the Finnair case<sup>63</sup> by emphasising that it is the sole competence of the Labour Court to handle issues of possible breaches of collective agreements. The Labour Court can only decide, after the merits of each side has been heard, on how much in compensatory damages is to be paid out following unlawful industrial action. The Supreme Court also ruled that a court cannot impose a conditional fine as a protective measure to stop a strike even when the collective agreement is valid.<sup>64</sup>
- The Finnish Labour Court (Työtuomioistuin) adjudicates on labour issues, among other things on the legality of strikes. It is a special court, which has equal representation from both sides of industry in its processes. Although the court rules on the legality of strikes and issues fines in case of a breach of the peace clause, in recent years Confederation of Finnish Industries (EK), has claimed that 90 per cent of strikes in Finland are illegal. Their reasoning is that most strikes are held in violation of the peace clause and therefore are illegal almost by definition. The decisions of the Labour Court have not upheld EK's claim, however, because not every strike is referred to the Court. This is clearly also a framing issue in the sphere of labour market politics. The Central Organisation of Finnish Trade Unions (SAK), in contrast, argues that most strikes are short walk-outs in reaction to employers' decisions. A legal issue for the future is whether strikes that occur in a local bargaining context also fall under the peace clause provisions of the industry-level agreement. This fundamental issue may have a major impact on local bargaining processes.<sup>65</sup>
- **Civil liability and damages**
  - A breach of the peace obligation may result in the payment of a compensatory fine to the injured party, and this fine may be imposed repeatedly until the illegal strike action has ended. When determining the level of the fine to be imposed, the Labour Court, which has exclusive competence for matters concerning the violation of collective agreements and the Collective Agreements Act (436/1946), must take into account the circumstances surrounding the strike action.<sup>66</sup>
  - Failure to give notice of impending strike action constitutes a criminal offence which can lead to the payment of damages, but only if the plaintiff reports the offence for prosecution. However, in practice, it is extremely rare for employers' associations to file a complaint for failure to give notice given that the court proceedings generally would not begin until directly after the collective

agreement has been reached. Consequently, it is the individual employers who have recently begun to seek compensation for the damages they have sustained. A number of issues and debates arise from this system: first, it is debatable whether individual employers can actually be a plaintiff in such matters. Second, the outcome of such cases could also be crucial for individual employees, as they could be held liable to pay compensation for damages caused to their employers in the case of illegal strike action initiated by them as a group. Third, there is the matter of quantifying the damages suffered.<sup>67</sup>

- **Penal liability**

- A breach of the obligation to give notice constitutes a criminal offence and can trigger criminal liability.
- Violent actions or actions by employees which cause damage to the employer's property or goods, such as sabotage of the workplace, can entail penal liability.<sup>68</sup>

- **Disciplinary sanctions and dismissal:**

- A worker who participates in unlawful strike action is entitled to protection from dismissal or discrimination if the action was called by a trade union. In a 1992 judgment, the Supreme Court held that the termination of a worker's employment contract had not been justified because he had participated in an illegal strike on the instructions of his trade union.<sup>69</sup>
- If an illegal strike is called by a group of workers, there is theoretically a possibility for the employer to dismiss without notice any workers who have organised or participated in the strike. However, the decision on termination of employment must be reasonable, must treat all workers equally and must follow a procedure that meets all the general requirements laid down in the Employment Contracts Act (55/2001), such as by finding a just and valid ground for dismissal, and by issuing a warning in order to give the worker the opportunity to remedy his/her conduct.<sup>70</sup>
- In the case of unfair termination of an employment contract, the employer is liable to pay damages.<sup>71</sup>

## 7. Case law of international/European bodies

### International Labour Organisation

There are no recent decisions of the Committee of Freedom of Association (CFA) or observations/requests of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) relevant for the right to strike.<sup>72</sup>

In previous comments, the CEACR noted the following:

**Restrictions on the right to strike of public servants:** In its Direct Requests regarding the application of Convention No. 87, the Committee requested the Finnish Government to provide any observations regarding the comments made by the Confederation of Finnish Industries (EK), the Central Organisation of Finnish Trade Unions (SAK), the State Employers' Office (VTML) and the Commission for Local Authority Employers (KT) to the effect that:

- the right to take industrial action of state civil servants and municipal and church officials who do not exercise authority in the name of the State is too restricted by collective agreement legislation;
- state civil servants or local government officials not exercising authority in the name of the State do not have the right to organise a protest strike against the Government's economic and social policies owing to restrictions on sympathy action.

The Finnish Government maintains that, since the public-sector restructuring of the 1990s, a public-law employment relationship is mainly reserved for personnel whose tasks include the direct use of public authority. The restrictions on the right to strike of civil servants are justified as being in the general interest, as well as being indispensable to guarantee the continuity of administration activities, to protect the constitutional rights of citizens and to meet their essential needs.

Furthermore, with regard to local government officials, the Government emphasises that civil servants in municipalities are considered to be only those who perform tasks involving the exercise of public authority. As the Government states in its relevant Reports, the statutory restrictions applied to the right to strike of these officials are likely to be overcome in practice, as most municipal employees will ultimately enter into a regular employment relationship that will allow them to engage in sympathy action.

In addition, the Local Government Act, as amended by the Civil Servants Act, requires municipalities and joint municipal boards to terminate posts in which no public authority is exercised and limit the exercise of public authority to holders of municipal office. Consequently, the status of employees who do not exercise public authority will be converted from that of a service provider to an employment relationship, affording them the right to engage in industrial action without restrictions.



The Committee requested to be informed of the developments in the implementation of the Civil Servants Act by local authorities and of any categories of public servants who do not exercise authority in the name of the State.

It recalled that a broad definition of the **concept of public servant** would lead to a very wide restriction or even a prohibition of the right to strike for these workers, and that the prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State.<sup>73</sup>

## **Council of Europe**

### **Collective Complaints under Article 6(4) of the European Social Charter**

To date, no collective complaint in respect of Article 6(4) of the Charter has been submitted to the ECSR.<sup>74</sup>

### **ECSR Conclusions**

**Definition of a strike and permitted objectives:** In its previous Conclusions (2002-2006), the Committee held that the situation in Finland was not in conformity with the Revised Charter on the ground that civil servants cannot call a strike in pursuance of objectives that are not covered by the collective agreement.<sup>75</sup>

In its latest Conclusion (2014), following the responses provided by the Finnish Government, the Committee recalled that, in order to be in conformity with Article 6(4), the right to strike should be guaranteed in the context of any negotiation between employers and employees in order to settle an industrial dispute. Prohibiting strikes that are not aimed at concluding a collective agreement is not in conformity with Article 6(4). The Committee asked what is meant by ‘can be the subject of a collective agreement according to the Act on Collective Agreements for State Civil Servants’. In the meantime, the Committee reserved its position.<sup>76</sup>

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## Notes

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- 15 See section 5 below.
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- 17 ETUI Report 103, op. cit., p. 28.
- 18 Waas, B., op. cit., p. 195.
- 19 *Ibid.*
- 20 ETUI Report 103, op. cit., p. 28; and Waas, B., p. 200.
- 21 *Ibid.*
- 22 Waas B., op. cit., p. 201.
- 23 ECSR, 5th Report-reference period 1997-1998, Conclusions XV-1-Finland (Vol. 1), p. 200; also see section 4 below.
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- 25 *Ibid.*
- 26 *Ibid.*, p. 194.
- 27 ECSR, Conclusions XVI-1 (2003), available at: <http://hudoc.esc.coe.int/eng/?i=XVI-1/def/FIN/6/4/EN>.
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- 29 ETUI Report 108, pp. 8 and 61.
- 30 Waas, B., op. cit., pp. 198 and 199.
- 31 ECSR, 5th Report – reference period 1997-1998, Conclusions XV-1, Vol. 1, Finland, p. 200.
- 32 ECSR, Conclusions 2014, available at: <http://hudoc.esc.coe.int/eng/?i=2014/def/FIN/6/4/EN>; see also 5th National Report on the implementation of the European Social Charter (revised) submitted by the Government of Finland, December 2010 (RAP/RCha/FI/V(2010)), p. 20.
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- 47 Section 11 of the Act on Mediation in Labour Disputes (420/1962).
- 48 Section 13 of the Act on Mediation in Labour Disputes (420/1962).
- 49 Sections 12, 16 and 17 of the Act on Collective Agreements for State Civil Servants (664/1970); and Waas, B., op. cit., p. 199.
- 50 Section 8 of the Act on Mediation in Labour Disputes (420/1962); see also ETUI Report 103, p. 29, and Waas, B., op. cit., p. 199.
- 51 Waas B., p. 200.
- 52 Section 8 of the Act on Mediation in Labour Disputes (420/1962); and Waas, B., op. cit., p. 199.
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- 55 Waas, B., op. cit., p. 201.
- 56 *Ibid.*, p. 204.
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- 67 Waas, B., op. cit., pp. 198 and 203.
- 68 Waas, B., op. cit., p. 201.
- 69 Supreme Court of Finland [*Korkein Oikeus – KKO*], judgment 1992:26.
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- 72 Supervising the application of International Labour Standards in respect of Finland, available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110\\_COUNTRY\\_ID,P11110\\_CONTEXT:102625,SC](https://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID,P11110_CONTEXT:102625,SC) (accessed on 10 March 2021)
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- 76 ECSR, Conclusions 2014, available at: <http://hudoc.esc.coe.int/eng?i=2014/def/FIN/6/4/EN>; note: in the monitoring cycle 2018, Finland submitted a simplified report on the follow-up to collective complaints and thus no conclusion on Article 6(4) was adopted.