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Processed complaints

No. 10/2000 Tehy ry and STTK ry v. Finland

The complaint, lodged on 23 October 2000, relates to Article 2§4 (the right to additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations) of the European Social Charter. It is alleged that the fact that hospital personnel who are subjected to the hazards of radiation during the course of their work are no longer entitled to special leave due to the exposure to radiation, violates this provision of the Charter.

The European Committee of Social Rights declared the complaint admissible on 12 February 2001.

The European Committee of Social Rights concluded that there was a violation of Article 2§4 and transmitted its report containing its decision on the merits of the complaint to the Parties and to the Committee of Ministers on 17 October 2001.

The Committee of Ministers adopted Resolution ResChS(2002)2 on 21 February 2002.

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DECISION ON ADMISSIBILITY

12 February 2001

COMPLAINT No. 10/2000

From STTK ry and Tehy ry
against Finland

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (hereafter referred to as "the Committee"), during its 175th session attended by:

Messrs	Matti MIKKOLA, President
	Stein EVJU, Vice-President
	Alfredo BRUTO DA COSTA
Ms	Micheline JAMOULLE
Messrs	Nikitas ALIPRANTIS
	Tekin AKILLIOĞLU
Mr	Jean-Michel BELORGEY
Ms	Csilla KOLLONAY LEHOCZKY

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

And in the presence of Ms Jacqueline ANCEL LENNERS, observer from the International Labour Organisation

Having regard to the complaint registered as number 10/2000, lodged on 23 October 2000 by STTK ry, the Finnish Confederation of Salaried Employees (*Toimihenkilökeskusjärjestö*), represented by its President, Mr Mikko Mäenpää, and its Unit Director, Mr Matti Leppälä, and by Tehy ry, the Union of Health and Social Care Services in Finland (*Terveyden – ja sosiaalihuoltoalan ammattijärjestö*), represented by its President, Ms Jaana Laitinen-Pesola, and its Head of Bargaining, Ms Marjut Sassi, requesting that the Committee find that Finland fails to apply in a satisfactory manner Article 2 para. 4 of the European Social Charter;

Having regard to the documents appended to the complaint;

Having regard to the observations submitted on 11 December 2000 by the Finnish Government represented by the Director General for Legal Affairs of the Ministry for Foreign Affairs,

Having regard to the European Social Charter and, in particular, to Article 2 para. 4 which reads as follows:

Article 2 – The right to just conditions of work

“With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake:

.....

4 to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed;”

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

Having regard to the Rules of Procedure adopted by the Committee on 9 September 1999 during its 163rd session;

After having deliberated on 12 February 2001;

Delivers the following decision, adopted on the above date:

1. STTK ry is a central trade union organisation established in Finland. Tehy ry is a trade union affiliated to STTK ry representing trained professionals in health care and social services. Both organisations submit to be representative for the purpose of the collective complaints procedure.

2. STTK ry and Tehy ry allege that Finland is in breach of Article 2 para. 4 of the European Social Charter. It is alleged that the fact that hospital personnel who are subject to the hazards of radiation during the course of their work are no longer entitled to additional paid leave violates this provision of the Charter.

3. The organisations submit that upon ratification of the European Social Charter, the Government Bill contained detailed reasons for the acceptance of Article 2 para. 4 while referring to Act No. 175/1967 providing for radiation related paid leave for hospital

personnel. The Act was repealed by Act No. 490/1997 which entered into force on 1 April 1998. Additional paid leave was then agreed upon in collective agreements which expired on 15 January 2000. According to the complainant organisations no regulations on either additional paid leave or any special protection for those who are engaged in radiation related occupations have been included in the municipal and state sector collective agreements since then. This has led to a situation where a significant number of those concerned no longer receive additional paid leave, nor do they benefit from a reduction of their working hours as required by the European Social Charter.

4. The Finnish Government does not contest that the complaint respects the conditions for admissibility laid down in the Additional Protocol and the Rules of Procedure. However the Finnish Government leaves it to the Committee's discretion to determine whether Tehy ry has the competence to lodge a complaint in accordance with Article 1 para. c of the Additional Protocol, as it is only affiliated to STTK ry.

5. The Committee notes that the Protocol providing for a system of collective complaints was ratified by Finland on 17 July 1998 and entered into force in respect of this State on 1 September 1998. In addition, the complaint has been lodged in writing and relates to Article 2 para. 4 of the Charter, a provision accepted by Finland on 29 March 1991 upon its ratification of the European Social Charter.

6. The Committee recalls that, for the purposes of the collective complaints procedure, representativity is an autonomous concept, not necessarily identical to the national notion of representativity (Complaint No. 9/2000, *Confédération française de l'Encadrement CFE-CGC v. France*, decision on admissibility, paragraph 6). It notes that Tehy ry is a Finnish trade union representing the great majority of healthcare professionals (95%) and that it participates in the collective bargaining process in the sector relevant to the present complaint. It also notes that STTK ry is a national organisation of trade unions within the jurisdiction of Finland and that Tehy ry is one of its affiliates. Therefore, the Committee finds that both organisations are representative trade unions in accordance with Article 1 para. c of the Protocol.

7. Moreover, the complaint submitted on behalf of STTK ry and Tehy ry is signed by Mr Mäenpää and Ms Laitinen-Pesola, their respective Presidents, entitled to sign on behalf of the organisations according to the extracts from the Associations Register appended to the complaint. This is not contested by the Government which refers to the Associations Act No. 503/1989. The Committee, therefore, considers that the condition provided for in Article 20 of its Rules of Procedure is fulfilled.

8. For these reasons, the Committee, on the basis of the report presented by Mr BRUTO DA COSTA, and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE.

In application of Article 7 para. 1 of the Protocol, requests the Executive Secretary to inform the Contracting Parties to the Charter and the revised Charter that the present complaint is admissible.

Invites the Finnish Government to submit in writing by 30 March 2001 all further relevant explanations or information.


Invites the Contracting Parties to the Protocol and the States having made a declaration under Article D of the revised Charter to the effect that they accept the procedure provided for in the Protocol, to communicate to it by the same date any observations which they wish to submit.

Invites STTK ry and Tehy ry to submit in writing by a deadline which it shall determine all relevant explanations or information in response to the observations of the Finnish Government.


In application of Article 7 para. 2 of the Protocol, requests the Executive Secretary to inform the international organisations of employers or workers mentioned in Article 27 para. 2 of the Charter and to invite them to submit their observations by 30 March 2001.



Alfredo BRUTO DA COSTA
Rapporteur



Matti MIKKOLA
President



Régis BRILLAT
Executive Secretary



DECISION ON THE MERITS

Adoption: 17 October 2001

Notification: 19 October 2001

Publicity: 20 February 2002

COMPLAINT No. 10/2000

By STTK ry and Tehy ry
against Finland

The European Committee of Social, committee of independent experts established under Article 25 of the European Social Charter (hereafter referred to as “the Committee”), during its 179th session attended by:

Messrs.	Stein EVJU, President Nikitas ALIPRANTIS, Vice- President Matti MIKKOLA, General rapporteur Rolf BIRK Konrad GRILLBERGER Alfredo BRUTO DA COSTA
Ms	Micheline JAMOULLE
Messrs.	Tekin AKILLIOĞLU Jean-Michel BELORGEY
Ms.	Csilla KOLLONAY LEHOCZKY Polonca KONCAR
Mr	Gerard QUINN

Assisted by Mr Régis Brillat, Executive Secretary to the European Social Charter

After having deliberated on 12 September 2001 and 17 October 2001

On the basis of the report presented by Mr Alfredo BRUTO DA COSTA;

Delivers the following decision adopted on this last date:

PROCEDURE

1. On 12 February 2001 the Committee declared the complaint admissible.
2. In accordance with Article 7 paras. 1 and 2 of the Protocol providing for a system of collective complaints and with the Committee's decision of 12 February 2001 on the admissibility of the complaint, the Executive Secretary communicated, on 16 February 2000, the text of its admissibility decision to the Finnish Government, to STTK ry and Tehy ry the complainant organisations, to the Contracting Parties to the Protocol as well as to the European Trade Union Confederation (ETUC), the Union of the Confederations of Industry and Employers of Europe (UNICE), and the International Employers Organisation (IOE), inviting them to submit their observations on the merits of the complaint. The Executive Secretary also communicated the text of the decision to the Contracting Parties to the Charter and revised Charter for their information.
3. The Finnish Government submitted its observations on the merits on 30 March 2001. The complainant organisations submitted their observations on 18 May 2001. The Finnish Government submitted supplementary observations on 21 June 2001. The ETUC submitted its observations on 10 April 2001.
4. In accordance with Article 7 para. 3 of the Protocol, each party received the observations of the other, as well as those of the ETUC.

SUBMISSIONS OF THE PARTICIPANTS IN THE PROCEDURE

a) The complainant organisations, STTK ry and Tehy ry

5. STTK ry and Tehy ry allege that Finland is in breach of Article 2 para. 4 of the European Social Charter on the grounds that hospital personnel who are engaged in occupations where they are exposed to ionising radiation are no longer entitled to additional paid leave. Article 2 para. 4 reads as follows:

“ With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake:

....

4. to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed;“

6. STTK ry and Tehy ry state that radiation related work in the health sector was until 1998 considered as dangerous and unhealthy within the meaning of Article 2 para. 4 of the Charter and therefore additional paid leave was granted. Special paid leave for workers in this sector was provided for in Finland by Act No. 175/1967. Upon ratification of the European Social Charter, the relevant Government Bill contained detailed reasons for the acceptance of Article 2 para. 4 and referred to Act No 175/1967 providing for radiation related paid leave for workers in the health sector.

7. Act No 175/1967 was repealed by Act No 490/1997, which entered into force on 1 April 1998. Additional paid leave was then agreed upon in collective agreements, which expired on 15 January 2000. According to STTK ry and Tehy ry no regulations on additional paid leave for those who are engaged in radiation related occupations have been included in the municipal or state sector collective agreements since then. This has led to a situation where a significant number of those working in this sector no longer receive additional paid leave (or reduced working hours).

8. STTK ry and Tehy ry cite statistics provided by *Sateilyturvakeskus*, the Radiation and Nuclear Safety Authority of Finland, which demonstrate that the total amount of ionising radiation to which healthcare workers are subjected to has doubled in the period from 1990 to 1995 (1 man Sv to 2 man Sv). During the same period, according to this data, the number of employees in this sector working with radiation has fallen by 5%. It is also submitted that the individual radiation dose received by healthcare workers, measured by dosimeter increased from 1.16 Sv in 1991 to 1.74 Sv in 2000 (*Annual report of the Radiation and Nuclear Safety Authority*). Evidence has been also submitted by the complainant organisations to demonstrate that there has been an increase in the number of treatments and examinations performed by healthcare workers in the period 1990-1999.

9. STTK ry and Tehy ry submit that ionising radiation presents a danger to health, therefore those working with ionising radiation are working in dangerous or unhealthy occupations within the meaning of Article 2 para. 4 of the Charter. They contend that the evidence above supports their submission that radiation related work in the healthcare sector has become more dangerous or unhealthy in recent years and therefore the removal of additional paid leave cannot be justified.

b) Observations by the Finnish Government

10. The Finnish Government argues that radiation related leave was abolished in light of the expert evidence of the Radiation and Nuclear Safety Authority of Finland (*Sateilyturvakeskus*), the National Public Health Institute (*Kansanterveyslaitos, folkhalsoinstitutet*), and the Finnish Institute for Occupational Health (*työterveyslaitos, institutet for arbetshygien*) that there were no biological or medical grounds for such leave that would help to prevent any detriment caused by radiation.

11. The primary concern has been to eliminate risks created by working with ionising radiation.

12. Finland has implemented Council Directive 96/29/Euratom, laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation (Amendment of the Radiation Act 1142/1998) which does not require radiation leave and has introduced legislation based on the 1990 Recommendations of the International Commission on Radiological Protection (ICRP).

13. Section 3 of the Finnish Radiation Decree 1143/1998 stipulates the maximum dose of radiation to which workers in radiation related occupations may be exposed. The effective dose must not exceed 100 mSv in a consecutive 5 year period, (the average dose being 20 mSv in a year), subject to a maximum dose of 50 mSv in any single year. The effective dose limit for members of the public is 1 mSv.

14. The Finnish Government submits that in 1999 according to monitoring data registered by the Radiation and Nuclear Safety Authority, no workers in radiation related occupations exceeded the aforementioned limits.

15. The Finnish Government states that according to the dose records provided by the Radiation and Nuclear Safety Authority of Finland, in the 1990s the total dosage per year within the healthcare sector has varied from 1 man Sv to 2.2 man Sv. It states that 90% of the workers have been exposed to a dose below 0.5mSV per year, which is half the dose limit established for members of the public. About 99% of the workers have been exposed to doses below 5 mSv per year, which is a quarter of the annual maximum dose limit permitted for radiation workers.

16. The Finnish Government argues that there is no evidence supporting the complainant organisations' submission that radiation related occupations referred to in the complaint are dangerous or unhealthy, when the dose limits are respected, within the meaning of Article 2 para. 4, hence no additional paid leave is necessary. Therefore there has been no violation of Article 2 para. 4 of the Charter.

c) European Trade Union Confederation (ETUC)

17. In its observations, the ETUC recalls the case law of the European Committee of Social Rights to the effect that where it was not possible to eliminate all risks related to a particular occupation it is necessary to provide for additional holidays or reduced working hours.

18. The ETUC considers that the situation in Finland is in violation of Article 2 para. 4.

ASSESSMENT OF THE COMMITTEE

19. The Committee considers that the issue before it is whether radiation related work in the health sector in Finland can be defined as dangerous or unhealthy work within the meaning of Article 2 para. 4 of the Charter.

20. It recalls that this provision of the Charter leaves the Contracting Party concerned a certain latitude in the choice of occupations to be classed as dangerous or unhealthy. This choice is however still subject to review by the Committee (Conclusions II, p. 9).

21. The Committee reviews information from states under the reporting procedure about activities it clearly considers covered by this provision, including work involving ionising radiation. (For example Conclusions XIV-2, vol. 1, p. 296; vol. 2, p. 581). Therefore it has always considered exposure to ionising radiation to pose a health risk to workers and others (see also the Committee's Conclusions under Article 11 para. 3 and Article 3 para. 2).

22. Within the reporting system the Committee reviews information about workers exposed to ionising radiation in general and has not considered about each and every sector in which workers are exposed to ionising radiation. The Committee points out in this respect that collective complaints procedure permits it to examine in detail the situation in specific sectors.

23. The Committee has repeatedly stated that, while the elimination of all workplace risks is the ultimate objective, until such time as that is achieved, reduced working hours or additional holidays as required by Article 2 para. 4 of the Charter remain an essential element in worker protection, in order to reduce exposure to the risks and provide sufficient recovery time to the workers. (Conclusions XIV-2, vol. 1 Belgium, pp. 117-118; vol. 2 Netherlands, p. 538).

24. In its current recommendations, the International Commission on Radiological Protection, the ICRP, points out that it must be presumed that even small radiation doses may produce some deleterious health effects. Since there are thresholds for "deterministic" (that is, in the terminology of the ICRP, clinically observable) effects, it is possible to avoid them by restricting the doses to which individuals are exposed. On the other hand, stochastic (random) effects (such as the probability of cancer or genetic detriment) cannot be completely avoided because no threshold can be invoked for them. The ICPR emphasises the requirement to keep all exposure as low as reasonably achievable, and in relation to the dose limits stresses that the 20mSv per year limit for workers directly engaged in radiation work should only rarely be reached.

25. Finland has introduced legislation based on the current recommendations of the International Commission on Radiological Protection,¹ which *inter alia*, set limits on the levels of radiation for occupational exposure. Further Finland has implemented Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation and has ratified ILO Convention No 115 Radiation Protection.

26. The Committee notes from all the evidence (and from the 1999 Annual report of the Radiation and Nuclear Safety Authority on Radiation Practices) that in Finland workers in the health sector in radiation related occupations are exposed to doses of radiation well below the maximum limits stipulated in domestic legislation and agreed internationally (90 % of workers to a dose below 0.5mSv). It also notes that in 1999 0.6% of workers in the health sector were exposed to a dose between 10mSv and 20mSv.

27. However in light of the evidence, in particular the current recommendations of the ICRP, the Committee considers that at present it cannot be stated that exposure to radiation even at low levels is completely safe. It finds no reasons to alter its case law, namely that work involving exposure to ionising radiation is covered by Article 2 para. 4. Therefore radiation related work in the health sector in Finland must be considered as being dangerous and unhealthy within the meaning of Article 2 para. 4 of the Charter. This being the case, workers in this sector should be entitled to additional paid holidays or reduced working hours.

CONCLUSION

28. On the above grounds the Committee concludes that the situation in Finland is not in conformity with Article 2 para. 4 of the Charter.



Alfredo BRUTO DA COSTA
Rapporteur



Stein EVJU
President



Régis BRILLAT
Executive Secretary

¹ ICRP publication No. 60 1990.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Resolution ResChS(2002)2
on Collective complaint No. 10/2000
STTK ry and Tehy ry against Finland

*(Adopted by the Committee of Ministers on 21 February 2002
at the 784th meeting of the Ministers' Deputies)*

The Committee of Ministers¹,

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints,

Considering the complaint lodged on 23 October 2000 by STTK ry and Tehy ry against Finland,

Considering the report submitted to it by the European Committee of Social Rights, in which Finland is found not to be in conformity with Article 2, paragraph 4 of the Charter,

1. takes note that the primary concern of the Finnish Government is to eliminate risks created by working with ionising radiation, that in Finland workers in the health sector are exposed to doses of radiation well below the maximum limits stipulated by national legislation and required by international standards and that the Finnish Government undertakes to continue taking measures to eliminate risks, especially in the health sector;
2. takes note of the impending ratification by Finland of the Revised Social Charter, including the revised Article 2, paragraph 4, which puts the emphasis on elimination of risks rather than on additional paid holidays or reduced working hours.

¹ *In conformity with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints, the Deputies in their composition restricted to the Representatives of Contracting Parties to the European Social Charter or the revised European Social Charter participated in the vote, that is Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Turkey and the United Kingdom.*