



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

**DECISION ON ADMISSIBILITY AND
ON IMMEDIATE MEASURES**

22 January 2019

ATTAC ry, Globaali sosiaalityö ry and Maan ystävät ry v. Finland

Complaint No. 163/2018

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 304th session attended by:

Giuseppe PALMISANO, President
Karin LUKAS, Vice-President
Eliane CHEMLA, General Rapporteur
Petros STANGOS
József HAJDU
Krassimira SREDKOVA
Raul CANOSA USERA
François VANDAMME
Barbara KRESAL
Kristine DUPATE
Aoife NOLAN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having regard to the complaint dated 17 April 2018, registered on 18 April 2018 as No. 163/2018, lodged by *ATTAC ry*, *Globaali sosialiittyö ry* and *Maan ystävät ry* against Finland and signed by Omar El-Begawy, Chairperson of the working committee of the board of ATTAC Finland, Minna Kaartinen, Chairperson of Global Social Work Finland and Liisa Uimonen, Chairperson of Friends of the Earth Finland and Jarrah Kollei, Vicechair of Friends of the Earth Finland, requesting that the Committee:

- find that the proceedings by which Finland has negotiated the Comprehensive Economic and Trade Agreement (“CETA”) have endangered the respect for rights enacted by the European Social Charter and the state’s ability to duly fulfil them thus violating or exposing to violations the rights set out in Articles 1, 2, 3§1, 4§§2, 3 and 5, 5, 6, 7§§1 and 3, 11, 12, 13, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30 and 31 as well as Article E of the Revised European Social Charter (“the Charter”);
- grant immediate measures in accordance with Rule 36 of the Rules of the Committee (“the Rules”) requiring Finland to a) suspend the process of CETA approval and b) to assess CETA’s human rights impacts.

Having regard to the documents appended to the complaint;

Having regard to the observations of the Government of Finland (“the Government”) on the admissibility of the complaint and on the request for immediate measures, registered on 21 June 2018;

Having regard to the response from *ATTAC ry*, *Globaali sosialiittyö ry* and *Maan ystävät ry* (“the complainants”) to the Government’s observations, registered on 8 August 2018;

Having regard to the Government's further observations on the admissibility of the complaint and on the request for immediate measures, registered on 16 October 2018;

Having regard to the Charter and, in particular, to Articles 1, 2, 3§1, 4§§2, 3 and 5, 5, 6, 7§§1 and 3, 11, 12, 13, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30 and 31 as well as Article E;

Having regard to the 1995 Additional Protocol to the 1961 Charter providing for a system of collective complaints (“the Protocol”);

Having regard to the Rules adopted by the Committee on 29 March 2004 at its 201st session and last revised on 26 January 2018 at its 297th session;

Having deliberated on 4 December 2018 and 22 January 2019;

Delivers the following decision, adopted on the latter date:

1. The complainants contend that Finland is in violation of Articles 1, 2, 3§1, 4§§2, 3 and 5, 5, 6, 7§§1 and 3, 11, 12, 13, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30 and 31 as well as Article E of the Charter, for the following reasons:

- During the negotiations and EU approval and national CETA ratification processes Finland has not required CETA to be made compatible with the state's human rights obligations.
- Finland has not ensured that, as a condition of the formulation and approval of the provisions of CETA, they should not be allowed to weaken the efficient use and protection of the rights enacted in the European Social Charter.
- Finland has not conducted human rights impact assessments on CETA's impacts as required by its obligations on the state's ability to maintain the conditions for protecting human rights in respect to labour, social, health or other laws.
- Finland has neglected its sovereign competence to participate in formulating the provisions of the CETA 'investment court' as required by its human rights obligations.
- The Government of Finland has given to the parliament and to the public an untrue and inadequate picture of CETA's provisions, of the 'investment court's' jurisdiction and about the ways how these affect and endanger human rights
- Finland has not clarified what judicial consequences for the state's laws, its property and for the use of these follows from the 'investment court's' power to judge the laws or legal use of public property as "breaches" of investors' rights.
- The Government has not demonstrated how it can ensure that CETA's 'investment court' would determine the 'legitimate' objectives of regulation to be what the European Social Charter obliges Finland to ensure them to be.
- Finland has not verified how it can ensure CETA's awards on compensation of 'indirect expropriation' to comply with the way how the European Convention on Human Rights and Finland's constitution oblige property to be protected.
- Finland has not shown how it could, with respect to CETA compensation awards threats and impacts in a sovereign way comply with its obligations to respect and enforce the whole of international legal order, the constitutional purpose of the state's international cooperation and people's right to self-determination of its own means of subsistence.

2. In addition, the complainants request the granting of immediate measures requiring Finland a) to suspend the process of CETA approval as long as its impacts have not been reviewed and assessed, in particular as regards its investment court system and b) to proceed to review and assess CETA's human rights impacts, including its cumulative impacts when combined with legislative changes foreseen, such as new laws on social and health services and new provisions on the EU-Canada strategic partnership.

3. In its observations, the Government contends that the complainants being national non-governmental organisations are not representative in the meaning of Article 2 of the Protocol nor do they have competence in the meaning of Article 3 of said Protocol.

4. Moreover, the Government contends that the complainants have failed to substantiate how the complaint relates to the invoked provisions of the Charter as well as to indicate in what respect Finland has not ensured the satisfactory application of these provisions. It concludes that the complainants have thus failed to meet the criteria laid down by Article 4 of the Protocol.

5. With respect to the request for immediate measures the Government is of the view that the complainants have not established a tangible situation in which any person would face a risk of serious irreparable harm and that it would therefore not be appropriate to grant immediate measures in this case.

THE LAW

As to the admissibility of the complaint

6. The Committee notes 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 Articles 1, 2, 3§1, 4§§2, 3 and 5, 5, 6, 7§§1 and 3, 11, 12, 13, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30 and 31 of the Charter, provisions accepted by Finland when it ratified this treaty on 21 June 2002, as well as Article E, and by which it has been bound since the entry into force of the treaty in its respect on 1 September 2002.

7. The complaint is signed by Omar El-Begawy, Chairperson of the working committee of the board of *ATTAC ry*, Minna Kaartinen, Chairperson of *Gloaali Sosiaalityö ry*, Liisa Uimonen, Chairperson of *Maan ystävät ry* and Jarrah Kollei, Vicechairperson of *Maan ystävät ry*, all mandated to sign in accordance with the organisations' respective rules. Therefore the Committee considers that the complaint satisfies the requirements laid down in Rule 23.

8. The Committee notes that the complainants are national non-governmental organisations, all registered in the Register of Associations in Finland. It recalls in this respect 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.

9. As regards the requirement that national non-governmental organisations must be “representative” laid down by Article 2§1 of the Protocol, the Committee refers, *mutatis mutandis*, to its interpretation of the same word in the context of Article 1 c) of the Protocol. It recalls that, for the purposes of the collective complaints procedure, representativity of trade unions is an autonomous concept, which does not have the same significance as the notion of representativity at national level. Therefore, the Committee considers that the representativity of a national non-governmental organisation is also an autonomous concept (Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on admissibility of 14 May 2014, §6).

10. However, the Committee considers that the concept of representativity of a national non-governmental organisation is different from that of the representativity of trade unions in the sense that quantitative criteria such as membership, organisation and financial capacity are not necessarily relevant to determine the representativity of the former within the context of the collective complaints procedure. In order to assess whether a national non-governmental organisation is representative, the Committee takes into consideration a wide range of criteria such as its social purpose, competence, scope of activities, as well as the actual activities performed (Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, *op.cit.*, §7).

11. In this respect, the Committee notes that *ATTAC ry* aims to promote critical discussion on globalisation, social justice, citizen-oriented democracy, transparency and sustainable development, that *Gloaali Sosiaalityö ry* works to promote global solidarity and social justice organising *inter alia* activities for social workers, and that *Maan ystävät ry* has as its mission the creation of an ecologically sustainable, just and equal world and to this end works on issues related *inter alia* to environmental protection, human rights and social justice.

12. The Committee considers that at a general level all three organisations have missions and aims, and engage in activities, that are in certain respects relevant to values and rights protected by the Charter and its scope of application. Issues such as social justice and equality, protection and creation of a healthy environment, fair labour standards in the context of trade liberalization, are at the heart of the Charter’s system of guarantees and may be relevant to the application of a variety of Charter provisions more specifically. In this respect, the Committee finds that the complainants can be considered as representative organisations within the meaning of Article 2 of the Protocol.

13. With respect to the particular competence of the complainants in the matter of the complaint pursuant to Article 3 of the Protocol, the Committee notes, referring to the above, that their spheres of activity, including their campaign activity, have a

direct bearing on the protection of social rights and more particularly that they have knowledge and expertise with respect to how, for example, the global economy, environmental issues and international trade agreements may affect the implementation of specific social rights. Consequently, the Committee finds that the complainants have particular competence within the meaning of Article 3 of the Protocol, for the purpose of the instant complaint.

14. Turning to the grounds for the complaint, the Committee notes that several are indicated (see §1 above). However, it considers that these grounds – which primarily refer to procedures, proceedings and processes followed by the Finnish Government in the course negotiating an international agreement (namely CETA) and to the jurisdiction of the ‘investment court’ as envisaged in such agreement – do not specify how they relate to the various Charter provisions invoked (namely, Articles 1, 2, 3§1, 4§§2, 3 and 5, 5, 6, 7§§1 and 3, 11, 12, 13, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30 and 31 of the Charter, as well as Article E) and in what respect Finland has not ensured the satisfactory application of these different provisions, as required by Article 4 of the Protocol.

15. In this respect, the Committee recalls that, according to the Protocol, complainant organisations are entitled “to submit complaints alleging unsatisfactory application of the Charter” (Article 1), and the Committee is called upon to assess “whether or not the Contracting Party concerned has ensured the satisfactory application of the provision of the Charter referred to in the complaint” (Article 8§1), and not to assess the compatibility per se with the Charter of any international treaty ratified by the State Party concerned, or which the State Party intends to conclude. Nor is the Committee called upon to assess the procedures and processes followed by States Parties in the course of negotiating international agreements.

16. Of course, the Committee recognises that an international trade agreement such as CETA may potentially have far-reaching consequences for the implementation of the social rights guaranteed by the Charter. However the legal assessment of whether these consequences entail an infringement of obligations flowing from substantive Charter provisions can only be appropriately made by the Committee in the context of the national law and practice that may result from the operation and implementation of an international trade agreement such as CETA. It is not for the Committee to speculate on the conformity of law and practice which is “foreseen” or which may be “expected” under the terms of an agreement not yet entered into force.

17. The Committee therefore holds that the complaint, as submitted, does not meet the requirements of Article 4 of the Protocol.

As to the request for immediate measures

18. As the complaint does not meet the requirements for admissibility, and having regard to Rule 36§1 of the Rules, which provides that immediate measures may be indicated as from the adoption of the decision on admissibility or at any subsequent time during the proceedings, it is not necessary for the Committee to rule on the request for immediate measures.

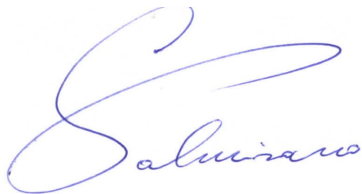
19. Nevertheless, the Committee wishes to point out that the request for immediate measures suspending the CETA ratification process is no longer pertinent since CETA was approved by the Finnish Parliament on 16 May 2018. CETA has been provisionally in force since 21 September 2017 following its approval by EU Member States, expressed in the Council, and by the European Parliament. It will only enter into force fully and definitively, however, when all EU Member States have ratified the agreement.

20. For these reasons, the Committee, on the basis of the report presented by Giuseppe PALMISANO,

WITH 8 VOTES AGAINST 3 DECLARES THE COMPLAINT INADMISSIBLE

Pursuant to Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisations and the Respondent State of the present decision and to publish it on the Council of Europe's Internet site.

DECIDES THAT IT IS NOT NECESSARY TO RULE ON THE REQUEST FOR IMMEDIATE MEASURES



Giuseppe PALMISANO
President and Rapporteur



Henrik KRISTENSEN
Deputy Executive Secretary