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TOPIC 1

TRADE LIBERALIZATION & LABOUR LAW : A FINNISH PERSPECTIVE

FINLAND

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Questions 1–2

The globalization process, technological development and changes in the organization of work have provoked widespread political interest and societal debate in Finland.[1] A number of companies operating in the global market have transferred their production from Finland to low labour-cost countries. This has resulted in collective dismissals in Finland. Although no exact figures are available, this so-called "China phenomenon" has attracted quite a lot of attention. In the public debate, cross-border transfers of production have been linked to a new phase of economic globalization.

At the same time, the threats and possibilities posed by globalization to Finland's competitiveness and the Finnish working life have been discussed. Economists have emphasised that the China phenomenon is part of a new division of labour in the world economy caused by the new freedom of movement of goods and production factors and by the new opportunities enabled by technological advancement.[2] It has been said that the impact of the new phase of globalization on the Finnish labour market is largely comparable to the impact of the earlier integration trend.[3]

[1] On the initiative of the Prime Minister, the Prime Minister's Office began in January 2004 a project entitled "Finland in the Global Economy". The objective was to identify the tools that allow Finnish jobs and production to survive amid the ongoing changes in the global economy. The final report of this project was completed in 2004.
[2] See *Paavo Suni*: Kiina-ilmiö, in Suhdanne 3/2004, p. 124.

As the globalization of law has continued, company and business law has assumed a more visible role. Jurisprudence has broadly discussed the relationship between company and business law, which emphasises economic values, and social legislation, which protects the weaker party. Three general viewpoints have emerged. Firstly, social legislation is argued for by emphasising the values on which it is based such as human rights and the fundamental values of the working life. In the second viewpoint, the value dimension of social legislation is linked with the means of public legislation. The view is based on the idea that if legislated publicly, the restrictions required by social protection will protect all the actors of the economy equally. Thus, also the effects of restrictions on the freedom of action on profitability and competitiveness will even out. The third option is to consider social legislation as an economically rational agreement model**,** which only aims at correcting deviations from the ideal model.[4] This also involves the idea that a welfare state fulfils the idea of the constitutional state.[5]

New values have emerged alongside the values traditionally represented by company and business law.[6] Even there, human and fundamental rights are now being emphasised. Lately, it has been underlined that the welfare state has undergone a transition to a competitive society, and the primary objectives of a competitive society are to improve market operating conditions and to promote investments and innovations.[7] Also social politics are now viewed as a competitive factor that supports growth. The debate on the relationship between company and business law and social legislation can be extended to a debate on the relationship between international company and business law and social legislation concerning global governance.

In a recent study, the impact on employees of cross-border transfers of production has been examined together with the governance of the social dimension of globalization. The study emphasises that employees' participation rights have become an important part of anticipating and managing change. According to this study completed in October 2005, from a systematic viewpoint, global law can be distinguished as its own field of law by the means of international economic law and international company law. The economical aspects of global law have been joined by a social dimension, which is constantly gaining momentum. One of the fundamental objectives of the social dimension in global law is the protection of human rights.[8] Therefore, in terms of globalization, the questions of the economy and income distribution can be regarded primarily as human rights issues.[9]

Enterprises operating in an international and global market are less dependent on their original home countries, and countries and regions in general. The mobility of companies has forced states and territories to compete over companies. The importance of finding the most lucrative environments for business operations is increasingly recognised also when

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[3] See *Osaava, avautuva ja uudistuva Suomi. Suomi maailmantaloudessa -selvityksen loppuraportti. Valtioneuvoston kanslia 2004*. ("Finland's competence, openess and renewability 2004. Final report of the 'Finland in the Global Economy' Project. Prime Minister's Office 2004)

[4] See *Matti Rudanko*, Yritysjuridiikka – kauppaoikeutta vai liiketaloutta? ("Business law – commercial law or business economics?"), in Lakimies 2004, pp. 1225–1243, p. 1243., p. 1235.

[5] See *Juha Häyhä*, Vakuutuksenantajan tiedonantovelvollisuus, oikeusvaltion vai hyvinvointivaltion sopimusoikeutta. ("Is the duty of the insurer to provide information to be considered contract law of constitutional state or welfare state") In Wilhelmsson, Thomas – Kaukonen, Katariina (eds.): Euroopan integraatio ja sosiaalinen sopimusoikeus. Helsinki 1993, s. 163–238, p. 235.

[6] See *Matti Rudanko*, Yritysjuridiikka – kauppaoikeutta vai liiketaloutta? ("Business law – commercial law or business economics?"), in Lakimies 2004, pp. 1225–1243, p. 1243.

[7] See *Elina Palola*, Sosiaalipolitiikka ja laajentuneen unionin uudet puitteet. Työpoliittinen Aikakauskirja 1/2005, pp. 12–22, p. 16.

[8] See *Ulla Liukkunen*, Globalisaatio, EU ja henkilöstön osallistuminen ("Globalization, the EU and Employee Participation") 2005, pp. 57–60.

[9] See *Martti Koskenniemi*, Ihmisoikeudet globalisaation hallinnassa. ("Human rights in the global governance"), p. 15.

developing national or regional legislation for different fields. In Finnish company law, this has influenced the preparation of a new Companies Act. The EU, in turn, has strived to increase companies' freedom of action and competitiveness above all by introducing *Societas Europaea* legislation[10] that enables cross-border transfers of registered offices and an EC Directive on cross-border mergers.[11] At the same time, the protection of the continuity of employees' participation rights has developed into a central principle of EC legislation on cross-border restructuring.[12]

In Finland, the report of the ILO World Commission on the Social Dimension of Globalisation has been repeatedly addressed in the debate on the impact of globalization on working life and in the preparation of a national globalization strategy.[13] Employee organizations have taken part in the debate on globalization and the China phenomenon by demanding more responsible action instead of mass redundancies. The promotion of corporate social responsibility has become an increasingly important factor complementing legislation.

At present, a tripartite working group on globalization appointed by the Finnish Ministry of Labour is investigating cross-border production transfers. The working group will finish its work by the end of November 2005.

Question 3

The Finnish labour market system is based on labour legislation, collective agreements between employer and employee organizations and cooperation at the local level. Collective agreements play a significant role in the determination of the terms and conditions of employment. The labour market organizations have a central role in the well-functioning collective agreement system. The collective agreements and labour legislation have evolved together.

The tripartite cooperation between the Finnish government and the social partners is well established. The reforms of the labour market and labour legislation are prepared in cooperation. The objectives of the reforms are widely committed to, which makes their implementation easier. Generally speaking, the changes brought by globalization, technological progress and changes in the organization of work are reflected in the development of labour legislation and contracting.

Improving employees' security in times of change and cooperation within undertakings

Transfers of production from Finland to abroad and mass redundancies have fuelled a debate on employees' security in times of change and its adequacy. In the centralised incomes policy agreement for 2005–2007 certain improvements were made in employees'

[10] Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) and Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees.

[11] Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies.

[12] See *Ulla Liukkunen*, Globalisaatio, EU ja henkilöstön osallistuminen ("Globalization, the EU and Employee Participation") 2005, p. 347.

[13] See, for example, Strengthening competence and openness – Finland in the Global Economy. Interim report, p. 13.

security in times of change.[14] The amendments of legislation entered into force in July 2005.[15] The purpose of the amendments was to improve the security by actions which enhance employees' opportunities for re-employment. The purpose was to make employers, employees and labour officials co-operate more closely and to create a clear model for co-operation negotiations when dismissals on financial and production-related grounds are carried out at the workplace. The new provisions are meant to facilitate as quickly as possible the re-employment of the people who have lost their jobs.[16]

According to the Act on Co-operation within Undertakings (*Laki yhteistoiminnasta yrityksissä, 725/1978*), employers who are planning to dismiss at least ten employees must prepare an action plan promoting re-employment. Under Section 7d(1), the plan must state the planned timetable of the co-operation negotiations, the procedures to be observed in the negotiations, and the planned operating principles which are to be observed within the period of notice in order to promote job-seeking and training and when using public employment services. At the beginning of the co-operation negotiations, the employer must present the employee representatives a proposal for an action plan for the promotion of re-employment if the employer is planning to dismiss at least ten employees on financial and production-related grounds. When preparing the proposal, the employer must, together with the employment authorities, clarify the public labour services which support employment. Considering the purpose of the co-operation negotiations, it is important that the proposal is presented to the employee representatives at the earliest possible stage. Therefore, the employer's proposal for an action plan does not have to be complete.[17]

If the planned dismissals concern less than ten employees, the employer must present within the co-operation procedure the operating principles according to which employees are supported in seeking other employment or training on their own initiative and in their employment through public labour services.

To improve employees' security in times of change, a provision was added to the Employment Contracts Act (*Työsopimuslaki, 55/2001*) on a dismissed employee's right to employment leave with full pay during the period of notice. A dismissed employee may use such a leave to look for a new job or to participate in employment-supporting measures such as training. The maximum duration of the employment leave varies from five to twenty days, depending on the duration of the dismissed employee's period of notice. The periods of notice are determined on the basis of the duration of employment as referred to in the Employment Contracts Act.

According to the Employment Contracts Act, an employer is obligated to notify the employment office of employees dismissed on financial and production-related grounds. Employees with an employment history of a minimum of three years have the right to an employment programme referred to in the Act on the Public Employment Service (*Julkisesta työvoimapalvelusta annettu laki, 1295/2002*). On the request of a jobseeker with the right to employment leave, the employment office draws up an employment programme together with the jobseeker. The personal employment programme is optional. With the programme, the jobseeker receives increased unemployment security, i.e. an employment programme

[14] From the latter part of the 1960's, the objective in Finland has been to conclude comprehensive incomes policy agreements, which cover, among other things, wage and salary increases. The main parties to the agreements are the central labour market organizations and the Council of State. Long-term incomes policy agreements create stability in household incomes. They also greatly influence collective bargaining. See *Kari-Pekka Tiitinen*, Mediation of the collective interest disputes, Helsinki 1999, p. 5. See in more detail, *Antti Johannes Suviranta*, Labour Law in Finland 2000, pp. 44–48.

[15] For more details, see *HE 48/2005*.

[16] See *HE 48/2005*.

[17] See *HE 48/2005*, pp. 24–25.

increase. It is paid for a maximum period of 185 days.[18] The improvements made to security in times of change do not include severance pay in connection with dismissals.

The Act on Employee Involvement in European Companies (*Laki henkilöstöedustuksesta eurooppayhtiössä (SE), 758/2004*), which entered into force in October 2004, implemented an EC Directive on European Companies. The Act can be considered important for the development of employees' transnational rights of participation above all because the Act protects employees' rights of participation in the most central transnational European community-level company form, the European Company. The Act also reflects some of the special characteristics of Finnish legislation on employee representation in company administration.

A total reform of the Act on Co-operation within Undertakings is currently being prepared. The aim is to make the forms of co-operation better meet the needs of the changed production operations and working life. According to a recent study, co-operation negotiations reduce the need for personnel cuts and provide means to managing changes at the workplace. In the companies under scrutiny, the estimated need of dismissals reduced on average 15 % during co-operation procedures. The actual number of dismissals was on average 25 % lower than the estimate amount before negotiations. According to the study, the employee representatives criticize cooperation procedure for lack of opportunities for employee influence. However, most of employees and employers consider co-operation procedures useful for both parties. Causes of reduction of dismissals from the estimated amount vary. The employer may have included some room for bargaining in the estimate, chances may take place during negotiations or alternative solutions, such as personnel transfers, changes in job descriptions and replacements, can be found in negotiations. The activity of negotiators explains some of the reduction. The most common alternatives to dismissals include unemployment pension and other pension arrangements as well as ending temporary employments.[19]

Total reform of the Employment Contracts Act

In terms of individual labour law, the most central act is the Employment Contract Act, which regulates on the conclusion of employment contracts, the rights and obligations of the parties to an employment contract during employment, and on the conditions of terminating an employment relationship. The Employment Contracts Act was completely reformed in 2001. In addition to the need for an updated version, the reasons for amending the Act included the provisions of the new Constitution and international obligations, particularly the requirements of EC law. One of the illustrative novelties is that an employment contract may be oral, written or electronic.

In each sector, the minimum terms of employment are determined mainly in the collective agreement of the sector. Those employers who are bound by a membership in an employer's association to observe the collective agreement are obligated on the basis of the Collective Agreements Act to observe the regulations of the collective agreement as the minimum of terms of employment.

It is typical of the Finnish labour law model that the minimum applicable terms of employment are largely determined by generally applicable collective agreements. The general

[18] See *HE 48/2005*, s. 34.

[19] The survey questionnaire was sent to 500 companies where co-operation negotiations which had led to personnel cuts had been carried out during the years 2001–2004. 244 companies responded to the survey. See *Martti Kairinen - Heikki Uhmavaara - Hanna Finne*, Yhteistoiminta yrityksissä. Yhteistoiminta erityisesti henkilöstön vähentämistilanteissa. Turun yliopisto 2005. ("Co-operation with enterprises. Co-operation in particular in the situations where personnel is reduced". University of Turku 2005)

applicability is provided by the Employment Contracts Act. Since the previous Employment Contracts Act, entered into force in 1970, the national collective agreements that are considered generally applicable have been applied as the minimum terms of employment also in the employment of the employees of non-organized companies.

The system of the generally binding nature of collective agreements complements the obligation to observe collective agreements based on the Collective Agreements Act (*Työehtosopimuslaki, 436/1946*). According to Section 7 in Chapter of the Act, the employer must observe at least the provisions of a national collective agreement considered representative in the sector in question (*generally applicable collective agreement*) on the terms and working conditions of the employment relationship that concern the work the employee performs or the nearest comparable work. The purpose of the system of general applicability is to provide minimum terms and conditions of employment for employees outside the sphere of normal applicability of collective agreements.

The right of employer and employee organizations to settle the terms and conditions applied to employment relationships in a collective agreement is based on the norm-setting competence of the Collective Agreements Act and, ultimately, on the freedom of association and protection of property and the related freedom of contract referred to in the Constitution of Finland (*Suomen perustuslaki, 731/1999*). The status of a generally applicable collective agreement as the norm-setter of the employees of non-organized employers is based on an arrangement referred to in the Employment Contracts Act. The aim is to ensure that in each sector every employee has the same minimum level of pay benefits, protection against dismissal, and occupational safety and health regardless of whether they are working for an organized or an unorganized employer. The generally applicable collective agreement that determines the minimum terms of employment is thus realising an obligation laid down in the Constitution on protecting labour force by public means. The system of generally applicable collective agreements provides guard against competition over terms of employment and thus places employers in a similar competitive position. According to the Employment Contracts Act, the generally applicable nature of collective agreements is confirmed through a specific confirmation procedure.

The new Employment Contracts Act regulates for the first time in Finland on employees' right to elect a representative when employees are not represented by a shop steward appointed on the basis of a collective agreement. The elected representative is thus secondary to a shop steward referred to in a collective agreement. Under Section 3 of Chapter 13 of the Act, the employee and staff groups, in the employment of whom employers are not obligated to observe a collective agreement by virtue of the Collective Agreements Act, can choose among themselves an elected representative. The representative is in those cases elected to represent an employee category. All the employees of an unorganized employer can elect a representative from among themselves - either together or by employee category.

Equal treatment of employees

The new Constitution of Finland from 2000 has had an influence on the preparation of labour legislation and strengthened the position of certain fundamental rights of working life in Finland. The fundamental rights have become increasingly important in legislative work as well as in the work of the authorities.

The purpose of the Non-Discrimination Act (*Yhdenvertaisuuslaki, 21/2004*), which came into force in 2004, is to improve the equality and equal treatment of employees. The Act is based on EC legislation, as it implemented the EC Directive on the principle of equal treatment irrespective of racial or ethnic origin[20] and the EC Directive on equal treatment in employment

[20] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

and occupation[21]. The Act forbids discrimination on the basis of age, ethnic or national origin, nationality, language, religion, belief, opinion, health, disability, sexual orientation or other personal characteristics. The Non-Discrimination Act is a general act on equality and prohibitions of discrimination which aims at protecting equal treatment of people and preventing unequal treatment in equal and comparable circumstances.

The Employment Contracts Act also forbids discrimination against employees on the basis of age, health, disability, national or ethnic origin, nationality, sexual orientation, language, religion, opinion, belief, family ties, trade union activity, political activity or any other comparable circumstance. Under Section 2 of Chapter 2 of the Act, the definition of discrimination, prohibition on sanctions and burden of proof in cases concerning discrimination are laid down in the Non-Discrimination Act.

Also the Act on Equality between Women and Men (*Laki naisten ja miesten välisestä tasa-arvosta, 609/1986*) has been recently renewed. Among the most significant reforms of the Act is the introduction of minimum contents for the equality plan (Section 6a of the Act). The Act, which was enforced in 2005, obligates employers to prepare a pay survey together with employee representatives as part of the equality plan. It allows better intervention in wage discrimination.

The protection of employee's privacy

Finland has been among the leading countries to utilize new information and communications technology. This has also influenced the development of labour legislation, as Finland has been a forerunner in the protection of employee privacy, introducing elaborate mandatory legislation covering a wide range of working life situations.

With the advancements of the information technology, the importance of protecting personal data has increased also in international norm-setting. The Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data, the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (1980), and EC Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data[22] are examples of attempts to legislate on this subject at a general level. Also the EC Directive concerning the processing of personal data and the protection of privacy in the electronic communications sector includes provisions on the protection of privacy[23]. From the particular viewpoint of the working life, the Council of Europe's Recommendation R(89)2 of 1989 on the protection of personal data used for employment purposes and, most recently, the ILO Guidelines on the Protection of Worker's Personal Data (1996), provide rules on the subject.

The Finnish Act on the Protection of Privacy in Working Life (*Laki yksityisyyden suojasta työelämässä*) came into force October 1, 2001 and was reformed in 2004 (759/2004). It is the first European special act to bring together provisions on the processing of employee data. The Act complements the general Personal Data Act (*Henkilötietolaki, 523/1999*), which must be applied in addition to it. The Act on the Protection of Privacy in Working Life is applied to employees with private or public law employment relationships and to jobseekers. The Act addresses the most important data protection issues by providing procedures that protect employees in the working life.

[21] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

[22] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

[23] Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications).

In October 2004, new provisions on the protection of employees' e-mail, and on camera surveillance and the processing of information on employee drug use were added to the Act. The provisions on e-mail protection aim to ensure that the secrecy of an employee's confidential e-mail messages is not jeopardized but that the employer can get access to all e-mail messages that belong to the employer and are crucial for the continuity of the business operations when the employee is absent or otherwise prevented from doing his/her job. The provision on camera surveillance is based on the principle that particularly in the surveillance of employees, the surveillance must be carried out only to the extent absolutely necessary, and that certain rights need to be protected and the surveillance must be carried out as openly as possible. The provision on drug testing, on the other hand, is based on the principle that the jobseekers or employees themselves provide the employer with a certificate proving that they have taken a drug test. In the job-seeking phase, only an appointed employee can be asked to produce the drug test certificate.

The use of employee evaluations has become an established part of the work of the HR departments of several Finnish companies. According to a study, the Act on the Protection of Privacy in Working Life has changed the practices of consultants carrying out the employee evaluations. The rights of the evaluated have been emphasised more and more and the process of employee evaluation has become more open. For example, after the Act was enforced, a greater percentage of the evaluated has received feedback in writing, whereas before the Act, employers were under no obligation to give written feedback and it was therefore unusual.[24]

The Act on Checking the Criminal Background of Persons Working with Children (*Laki lasten kanssa työskentelevien rikostaustan selvittämisestä, 504/2002*) contains provisions on the procedure for obtaining the criminal record of those appointed to work with minors. The objective is to reduce children's risk of being subjected to sexual abuse or violence or being tempted into using narcotic substances. An employer has the duty of checking the possible crimes of an applicant before his or her appointment to a job. The employer must ask the applicant to produce an extract from the criminal record as referred to in Section 6 (2) of the Criminal Records Act (*Rikosrekisterilaki, 770/1993*). The procedure for checking the criminal background only applies in cases where the work performed involves personal contact with a minor. Private persons can obtain an extract of their data in the criminal record free of charge in order to submit it to the employer. When a position involving work performed in personal contact with a minor is advertised as open for application, the advertisement must state that any person accepted for the position must produce the extract from the criminal record referred to in Section 6 (2) of the Criminal Records Act. According to a survey, the attitudes towards the Act are quite positive among employers. Approximately, one half of the respondents considered that the Act has managed well, or rather well, to prevent the recruiting of improper persons for work with children.[25]

Question 4

The structural changes of the economy and the working life have had a decentralising effect on the collective agreement system. The agreement process has progressed on the path of organised decentralisation in a controlled manner, mostly with good results. This trend has been enabled by a deliberate decision at the central organization and trade union level to

[24] **See *Yksityisyyden suoja työelämässä. Selvitys henkilöarviointimenetelmien käytöstä Suomessa 30.1.2004,* ("Privacy in Working Life. Survey on the personal estimation in Finland 30.1.2004") p. 81.**

[25] **See *Hannu Niskanen – Ahti Laitinen*, Tutkimus rikostaustan selvittämislain soveltamisesta, Turun yliopisto 2004 ("Study on the Application of the Act on Checking the Criminal Background of Persons Working with Children", University of Turku 2004).**

give local social partners more room to agree on certain terms of employment, while keeping within the limits of national collective agreements and maintaining them as the focus.

In Finland, pay negotiations are increasingly often held at several levels. The collective agreement system remains the framework, but part of the pay-raise scale is decided at the company level. Moreover, performance bonus schemes, which are usually not included in the pay raises of collective agreements, align the interests of the employer and the employees. Wages and salaries are commonly decided locally. According to the Working Life Barometer (*Työolobarometri*), variable parts of salary have quickly become very common. Only five years ago in 2000, two thirds of Finnish wage and salary earners were not in the sphere of performance-related pay, quality-related pay or some similar bonus scheme**.** Three years later, these wage and salary earners constituted only 55 % of all earners. In other words, almost half of all wage and salary earners now have the chance to earn some kind of a bonus in addition to their basic pay.[26]

Local negotiations are gathering momentum in the organisation of work and production, production development, profitability improvement and training. The increase in the importance of local agreements during the past few years is also reflected in the centralised incomes policy agreement for 2005–2007. According to the agreement, the internationalisation of the economy and growing competition have put more weight on the position and responsibility of the contracting parties in the evaluation of the changing operating environment. Contracts need to be developed to make it easier to meet the new challenges at the workplaces. Sector-specific provisions guide the operations of companies and workplaces and affect the position of the employees. Local co-operation and negotiations are central tools for managing change.

II BUSINESS LAW AND LABOUR LAW

QUESTION 5

The progress towards an information society and the changes in companies' operating environment have had an impact on the Finnish legislation on employee inventions. The Act on the Right in Employee Inventions (*Laki oikeudesta työntekijän tekemiin keksintöihin, 656/1967*) applies to inventions for which patents are applied. The Act was amended in 2000 to extend the meaning of 'employer' to enterprises belonging to the same consolidated corporation as the employer enterprise. Earlier, the Act had paid no attention to group structure.

The Act on the Right in Employee Inventions was amended because the operating environment of companies had changed significantly since the Act was first enforced in the 1960's and also since its amendment in the 1980's. Companies have shifted from a focus on production towards a focus on marketing and strategy. Internationalisation, changes in corporate structures and growing competition have added pressure on product development and research activities and how they can be used to as great an advantage as possible. Inventions have become part of the product development processes of companies. Technological development has been particularly great in the fields of information processing and biotechnology. Individual companies have become independent groups comprised of subsidiaries and affiliates.[27]

The use of patents as a competitive advantage for the whole group is often a strength for business operations. If the legislation on company inventions is closely bound to the area of

[26] *Työolobarometri 2003, Työministeriö* ("Working Life Barometer 2003", Ministry of Labour).
[27] See *HE 147/2000*.

operation of the company fulfilling the definition an employer, the interpretation of the concept may be too narrow and hinder the realisation of a flexible patent policy. According to the Act on the Right in Employee Inventions, the employer must pay a reasonable remuneration, the amount of which depends on the agreement between the employer and the employee. Depending on the circumstances and the group, the invention may bring the employer benefits that are hard to estimate at the time the remuneration is negotiated.[28]

As mentioned above, the legislation on co-operation within undertakings has been amended to conform to the centralised incomes policy agreement for 2005–2007. It led to the above-described improvements to employees' security in times of change. The improvements can be seen partly to arise from the debate on the development of security in times of change that took place already when the previous centralised incomes policy agreement was being drawn up. Already then was the reform of the Act on Co-operation within Undertakings called for, and for example the development of the co-operation between employers, employees and public employment services discussed.[29]

Transfer of business is a concept of labour law that has gained growing importance. It does not have an equivalent in company law. According to the Employment Contracts Act, "transfer of the employer's business refers to transfer of an enterprise, business, corporate body, foundation or an operative part thereof to another employer, if the business or part thereof to be assigned, disregarding whether it is a central or ancillary activity, remains the same or similar after the assignment." Although the wording of the definition somewhat differs from that of the EC Directive on the transfer of undertakings, the definition is meant to correspond to the one in the Directive.[30] In addition to the Directive, the extensive case law of the European Court of Justice must be observed. However, the Directive's concept of the transfer of an undertaking is considered to correspond quite well to the concept of transfer of business adopted in national Finnish labour law already some time ago.[31]

According to the Employment Contracts Act, the employees of a transferred business are transferred to work for the assignee, and their terms of employment remain the same regardless of the transfer. Employees who do not wish to work for the assignee may terminate their employment contract to end on the date of assignment. The assignee is entitled to dismiss employees only on grounds related to the employee or on financial and production-related grounds. In accordance with the Employment Contracts Act, the assignee is not allowed to terminate an employee's employment contract solely on the basis of the assignment.

III INTERNATIONAL TRADE AND LABOUR LAW

Questions 6–12

Finland has been a member of the European Union since the beginning of 1995. The EU membership integrated Finland in the EU Internal Market and most of Finland's authority in the area of trade policy was transferred to the EC. The membership meant implementing and enforcing the *acquis communautaire*. In addition to EC legislation, the Finnish legislative work has been guided by the case law of the European Court of Justice. Social dialogue plays an important role in EU legislation. The Amsterdam Treaty opened new prospects for social dialogue, since it requires promoting social dialogue and gives additional powers to the

[28] See *HE 147/2000*.
[29] See Työryhmän raportti 13. helmikuuta 2004. (The report of the working group of February 13, 2004).
[30] See *HE 157/2000*, p. 65.
[31] Se e.g. *Kari-Pekka Tiitinen – Tarja Kröger*, Työsopimuslaki ("Employment Contracts Act") 2004, p. 269–270.

social partners. In Finland, labour legislation is developed in close co-operation with the social partners also when implementing EC law.

The movement of labour becomes a question of commercial policy mainly through legislation on trade in services. A significant share of international services involves temporary transfers of labour across country borders. The Posted Workers Act (*Laki lähetetyistä työntekijöistä, 1146/1999*) is based on the implementation of an EC Directive on the posting of workers[32]. This Act consists mostly of provisions referring to the applicable substantive labour legislation of Finland. The Act applies to employees posted from EU Member States and non-Member States. Section 2(2) of the Act lists the provisions concerning terms and conditions of employment that apply to posted employees in so far as they are more favourable than the otherwise applicable law. So the minimum level of the terms of employment is provided by the Finnish legislation. The Finnish legislator has considered certain labour law provisions and acts to be of such a mandatory nature that they apply as such to posted workers. Under Section 2(3) of the Posted Workers Act, the provisions of generally applicable collective agreements on annual holiday, working hours and occupational safety apply to posted workers. By virtue of Section 2(4) of the Act, a posted worker is entitled to minimum wages determined on the basis of a generally applicable collective agreement.[33]

The Posted Workers Act was amended in autumn 2005 in order to intensify the monitoring of the use of posted workers in Finland. The new Aliens Act (*Ulkomaalaislaki, 378/1991*), which entered into force in May 2004, aims at promoting good governance and legal protection in alien affairs as well as controlled migration and international protection. The rights and obligations of foreigners are now better provided by law. The objective is also to provide for a quicker and more flexible work permit procedure.

The free movement of labour is a fundamental right enabling the citizens of one EEA country to work in another EEA country with the same terms and conditions as the country applies to its own citizens. Nevertheless, old Member States (EU15) have been given the right to impose a transition period regarding the new EU Member States. The transition period can last a maximum of seven years starting from the 1st of May 2004 and it limits the movement of labour between new and old Member States. Finland has imposed an initial transition period of two years, limiting the movement of labour from all other new Member States except for Cyprus and Malta. Finland will decide by the end of the second year whether it will extend the transition period.

A well-functioning internal service market is required in order to boost the EU's competitiveness and financial growth. The European Commission's proposal for a Directive on services[34] has been considered essential for making the internal service market more efficient. It has, however, become increasingly obvious that in order to improve the efficiency of the internal market, competitiveness must be combined with social cohesion. According to international studies and comparisons, Finland has been quite successful in combining the aspects of competitiveness and social cohesion. Major challenges are, however, ahead. These include the ageing of labour, the liberalisation of the global market and technical development. These are financial as well as social challenges.[35]

[32] Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

[33] See further *Ulla Liukkunen*, The Role of Mandatory Rules in International Labour Law – A Comparative Study in the Conflict of Laws, 2004, p.

[34] COM(2004) 2 final/2.

[35] See *Osaava, avautuva ja uudistuva Suomi. Suomi maailmantaloudessa -selvityksen loppuraportti. Valtioneuvoston kanslia 2004*. ("Finland's competence, openess and renewability 2004. Final report of the 'Finland in the Global Economy' Project." Prime Minister's Office 2004).

The EU has paid attention to employees' fundamental rights in its bilateral trade and co-operation agreements with third-world countries. The EU has also aimed to promote respect for employees' fundamental human rights through its GSP system. In the new system, the beneficiary countries are granted further tariff reductions when the fundamental rights of employees are respected in their area in addition to the obligations of other international agreements.

One of the objectives mentioned in Finland's Trade Policy Programme (*Suomen kauppapoliittinen ohjelma*) of September 2005 is to promote dialogue on respect for the fundamental labour rights, defined by the ILO, in different forums, to support compliance with the fundamental labour rights by means of introducing incentives rather than imposing sanctions, and to remove fears that labour standards would be used as a means of protectionism. Furthermore, Finland intends to support the co-operation of international organizations in their efforts to promote the implementation of the fundamental labour rights and the development of corporate social responsibility, and to promote observance of the OECD Guidelines for Multinational Companies and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. This involves supporting the co-operation between the WTO and the ILO in accordance with the recommendations of the ILO World Commission, as well as developing the co-operation with the Bretton Woods Institutions.

IV SOFT LAW AND THE EMERGENCE OF NEW ACTORS

Questions 13–14

According to the definition of corporate social responsibility quite commonly applied in Finland, corporate social responsibility refers to economic, environmental and social responsibilities. Labour norms are a central part of corporate social responsibility. Generally, the importance of soft law instruments as guidelines for companies operating in other countries and continents has been increasing. It has been considered an important form of responsible business activity that stakeholders are taken into account.

A great deal of instructions, recommendations and statements have been published on corporate social responsibility. Many organizations and networks are also actively trying to spread good practices of corporate social responsibility. For example, the Finnish Business & Society ry is promoting corporate social responsibility through a network of companies, the public sector, consumers and citizens. The Finnish Ethical Forum, formed by some companies, organisations, unions and officials together with the church, is a forum for discussing questions of business ethics and corporate social responsibility.

In Finland, the Committee on International Investment and Multinational Enterprises (*Kansainvälisen sijoitustoiminnan ja monikansallisten yritysten neuvottelukunta MONIKA*) is the national contact point responsible for promoting the implementation of the OECD Guidelines for Multinational Companies.[36] It aims to promote recognition of the guidelines among enterprises operating on the international and global market, irrespective of country borders. The focus of the Committee's work is being shifted more and more onto promoting corporate responsibility. According to the Government Decree (*valtioneuvoston asetus 335/2001*), The Finnish Ministry of Trade and Industry is the final instance that handles enquiries and the implementation of the application of the OECD Guidelines to individual cases. So far, no requests have been made.

[36] The members of the Committee come from various ministries, business, trade unions and NGOs.

No comprehensive studies of the codes of conduct of multinational enterprises operating in Finland have been carried out so far. According to the report published by the Central Chamber of Commerce (*Keskuskauppakamari*) in 2003, the information available on corporate social responsibility to companies is insufficient. The report was based on a survey, in which the management of small, medium-sized and large companies took part. The study showed that a great deal of companies need more information on corporate social responsibility. Companies wanted above all general information and guidance in matters concerning responsibility. A third of the companies stated that they did not need further information. The study also provided some information on the reporting of corporate social responsibility. Finnish companies under scrutiny published reports on their responsible activity mainly within the companies. One fourth of the companies had reports on their corporate social responsibility practices on their website. 16% of the companies used it in their advertising or marketing. Moreover, 6 % of the companies that took part in the survey stated that they gave out press releases or arranged briefings for their stakeholders on corporate social responsibility.[37]

In a networked economy many small and medium-sized enterprises (SMEs) may act as a subcontractor to a larger company or are part of a larger procurement chain. Large companies demand more detailed information on how products and services have been produced. In Finland, also the attitudes of SMEs towards corporate social responsibility have been studied. A nationwide report on the corporate social responsibility of SMEs in various parts of Finland was carried out in 2004. The target group consisted of entrepreneurs and close collaborators such as local Employment and Economic Development Centres and entrepreneurs' organizations. The study shows that SMEs have difficulties to recognise what corporate social responsibility entails. To the majority of entrepreneurs, the benefits of corporate social responsibility seem distant. The concept and its contents are poorly known. Corporate **s**ocial responsibility is still considered to be something quite distant. Thus, also its benefits are not clearly understood. The study reveals, for example, that it in order to make SMEs accept the values of corporate social responsibility, also the public sector and large companies need to clarify the way they operate to promote corporate social responsibility.[38]

Question 15

The conventions on which the ILO soft law instruments are based have influenced the contents of Finnish labour legislation. This is not the case, however, with the soft law instruments of the UN, the ILO and the OECD, because the Finnish legislation exceeds the level of the employee-protecting norms of these instruments.

[37] See Yritysten yhteiskuntavastuu. Keskuskauppakamari, tammikuu 2003. ("Corporate social responsibility", Central Chamber of Commerce, January 2003).

[38] See *Jami Taipalinen – Tuula Toivio*, Vastuullinen yritystoiminta pk-yritysten voimavarana. KTM-julkaisuja 2004. ("Corporate responsibility as a strength of SMEs". Publications of the Ministry of Trade and Industry 2004)