December 2010

European Social Charter (revised)

European Committee of Social Rights
Conclusions 2010
(SWEDEN)
Articles 2, 4, 5, 6, 21, 22, 26 and 29
of the Revised Charter

This text may be subject to editorial revision.

Introduction

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports; it adopts "conclusions" in respect of collective complaints, it adopts "decisions".

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions[1].**Error! Hyperlink reference not valid.**

The Revised European Social Charter was ratified by Sweden on 29 May 1998. The time limit for submitting the 9th report on the application of this treaty to the Council of Europe was 31 October 2009 and Sweden submitted it on 2 February 2010.

This report concerned the accepted provisions of the following articles belonging to the thematic group "Labour rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- the right to information and consultation in collective redundancy procedures (Article 29).

Sweden has accepted the provisions from this group with the exception of Article 2§§1,2, 4 and 7, Articles 4§§2 and 5 and Article 28.

The reference period was 1 January 2005 to 31 December 2008.

The present chapter on Sweden concerns 15 situations and contains:

- 12 conclusions of conformity: Articles 2§3, 2§5, 2§6, 4§1, 6§1, 6§2, 6§3, 6§4, 21, 22, 26§1 and 26§2;
- 1 conclusion of non-conformity: Article 4§4 ;

In respect of the other 2 situations concerning Articles 5 and 29, the Committee needs further information in order to assess the situation. The Government is therefore invited to provide this information in the next report on the articles in question.

The next Swedish report deals with the accepted provisions of the following articles belonging to the fourth thematic group "Children, families and migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunity and treatment (Article 27),
- the right to housing (Article 31).

The deadline for the report was 31 October 2010.

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[1] *The conclusions as well as state reports can be consulted on the Council of Europe's Internet site (www.coe.int/socialcharter).*

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

The Committee takes note of the information contained in the report submitted by Sweden.

Under the Annual Leave Act (1977:480), employees are entitled to 25 days of annual paid leave. Unless there is an agreement to the contrary, employees must take at least four weeks in a block during the period June to August. Days' leave in excess of twenty days may be deferred to the following year. Employees who are absent during their holiday entitlement period on account of illness or parental leave may defer their holidays, with the employer's agreement.

On 1 November 2008, the government presented a report entitled "*Enklare semesterregler*". The report proposed amendments to the annual leave legislation. The Committee asks for information in the next report on the changes to this legislation.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 2§3 of the Revised Charter.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

The Committee takes note of the information contained in the report submitted by Sweden.

It notes that there have been no changes to the situation which it has previously found to be in conformity with the Revised Charter.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 2§5 of the Revised Charter.

Article 2 - Right to just conditions of work

Paragraph 6 - Information on the employment contract

The Committee takes note of the information contained in the report submitted by Sweden.

According to the report, on 1 July 2006 several amendments were made to the Employment Protection Act, and in particular section 6a on employment contracts, to comply with Council Directive 91/533/EEC on an employer’s obligation to inform employees of the conditions applicable to the contract or employment relationship. The changes make it obligatory to specify in employment contracts employees' duties and their professional or official titles.

As employees who are members of their employer’s family and those who work in their employer’s home are excluded from the field of application of the Employment Protection

Act (LAS), the Committee asks how employers inform these employees of the conditions applicable to the employment contract or relationship.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 2§6 of the Revised Charter.

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

The Committee takes note of the information contained in the report submitted by Sweden.

In its previous conclusion (Conclusions XVIII-2) the Committee held that the situation in Sweden was not in conformity with Article 4§1 of the Revised Charter as it had not been established that the right to a remuneration that ensures a decent standard of living was guaranteed for a single worker earning minimum wage.

It notes from the report that according to wage statistics from Statistics Sweden for 2008, the average wage amounted to 27,100 Swedisk kroner (SEK; €2,822) gross and SEK 20,600 (€2,145) net per month. As regards the minimum wage, the wage earners in the 10th percentile earned SEK 18,600 (€1,937) per month (€1,510 net) on average, which means that 10% of all employees have wages equal to or below this amount. The Committee considers in this connection that as this wage is the average of the lowest decile, some workers may receive wages below this amount.

The Committee notes however, that according to the statistics of the national mediation office in 2008 the lowest average monthly wage of 13,100 SEK (€1,364) net could be found in restaurants. This wage represents 64% of the net average wage. The Committee considers that the situation in Sweden is in conformity with Article 4§1.

The Committee further notes that there is an entitlement to financial support in Sweden for those with temporary financial problems. Such support may take the form of assistance towards housing costs etc.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 4§1 of the Revised Charter.

Article 4 - Right to a fair remuneration

Paragraph 3 - Non-discrimination between and women men with respect to remuneration

In the General Introduction to Conclusions 2002 on the Revised Charter, the Committee indicated that national situations in respect of Article 4§3 (right to equal pay) would be examined under Article 20 of the Revised Charter. Consequently, States which had accepted both provisions, were no longer required to submit a report on the application of Article 4§3.

Following the decision taken by the Committee of Ministers in 2006 regarding a new system of presentation of reports and the setting up of four thematic groups, as well as taking into account the importance of matters related to equality between women and men with respect to remuneration, the Committee decided to change the above mentioned rule. This change will lead to the examination of the right to equal pay, both under Article 4§3 and Article 20, thus every two years (under the thematic group 1 "Employment, training and equal opportunities", as well as thematic group 3 "Labour rights"). Henceforth, the Committee invites Sweden to include all information on equal

pay every time it reports on Thematic Group 1 and every time it reports on Thematic Group 3.

Article 4 - Right to a fair remuneration

Paragraph 4 - Reasonable notice of termination of employment

The Committee takes note of the information in Sweden's report.

It refers to the last monitoring cycle (Conclusions 2007) and the request for additional information about the notice periods laid down by the collective agreement in the metal working industry and their conformity with Article 4§4 of the Revised Charter. The report states that the collective agreement in the metal working industry for the period 1 April 2001 to 31 March 2010 contains an appendix entitled "Agreement under the Employment Protection Act". This agreement concerns compliance with the notice periods for termination of employment as stipulated in the Employment Protection Act.

Concerning the impugned clause of the painting industry collective agreement, no change aimed at improving the situation regarding notice periods has been reported.

Conclusion

The Committee therefore concludes that the situation in Sweden is not in conformity with Article 4§4 of the Revised Charter on the ground that certain workers under 30 with five or more years' service are granted only one month's notice of termination of employment.

Article 5 - Right to organise

The Committee takes note of the information contained in the report submitted by Sweden.

The Committee already examined the situation with respect to the right to organise (forming trade unions and employer associations, freedom to join or not join a trade union, trade union activities, representativeness and personal scope) in its previous conclusions. It will therefore only consider in this conclusion recent developments and additional information.

In its last Conclusion (Conclusions 2006), the Committee noted that closed shop clauses included in collective agreements of the building sector had been removed but found the situation not to be in conformity with Article 5 by reason of the existence of such clauses in the electricity and painting sectors. This situation had already led the Committee to find a breach of Article 5 in its decision on the merits of 22 May 2003 in Collective Complaint No. 12/2002 Confederation of Swedish Enterprises v. Sweden.

The report indicates the phasing out of provisions contained in collective agreements of the electricity and painting sectors which provide that employers undertake to encourage membership respectively of the Swedish Electricians' Union and the Swedish Painters' Union. These provisions are henceforth progressively replaced by the following: "The parties agree on the value of employees being unionised". The Committee notes this development and asks that the next report specify whether all closed shop clauses have been removed in the sectors concerned.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

The Committee takes note fom the information contained in the report submitted by Sweden and all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6§1 of the Revised Charter. It asks that the next report provide a full and up-to-date description of the situation.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 6§1 of the Revised Charter.

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

The Committee takes note of the information contained in the report submitted by Sweden and all the information at its disposal that there have been no changes to the situation which it has previously considered to be in conformity with Article 6§2 of the Revised Charter. It asks that the next report provide a full and up-to-date description of the situation.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 6§2 of the Revised Charter.

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

The Committee notes that according to the report there have been no changes to the machinery for mediation, conciliation and voluntary arbitration in Sweden during the reference period. The Committee therefore concludes that the situation remains in conformity with Article 6§3 of the Revised Charter.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 6§3 of the Revised Charter.

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

The Committee takes note of the information contained in the report submitted by Sweden

Meaning of collective action - Permitted objectives of collective action - Persons entitled to call collective action - Restrictions on collective action - Consequences of collective action

The Committee has previously assessed the situation on all these issues and found it to be in conformity with the Revised Charter (Conclusions 2002,2004). However the Committee asks the next report to provide updated information.

Procedural requirements pertaining to collective action

Failure by the employee's or employer's side to give requisite notice of collective action may lead to a fine (*varselavgift*) of between 30 000 and 100 000 Swedish Kronor (SEK) (3 301-10 831 €) and collective action in violation of a postponement order may entail liability ranging from at least 300,000 SEK (33 008 €) up to a maximum of 1 million SEK (108 310 €) (see Conclusions 2002, pp. 236-237 and Conclusions 2004, pp. 565-566). The fines imposed are decided by a district court (*tingsrätt*) at the request of the National Mediation Office (Section 62a of the Act on Co-determination).

The Committee previously noted from the report that an evaluation of the activities of the National Mediation Office for the period between 2000 and 2004 was to be carried out in order to assess, *inter alia*, the National Mediation Office's power to levy the above-mentioned notice charge. The outcome of the investigation was expected for Spring 2006 and the Committee wished to be informed of any development in this respect. It wished the next report in particular to specify whether following the aforementioned evaluation, fines may still be imposed, under which circumstances, with respect to which employees' and employers' organisations, and the amount of such fines. In the meantime it deferred its conclusion. The current report states that the report has not led to changes in the powers of the Mediation Office.

The Committee recalls that it ws previously concerned that the level of the fines that may be imposed was too high and therfore might be considered as a restriction on the right to strike. However the Committee has rexamined the situation and it considers that given the relative wealth and resources of the organisations concerned the level of fines cannot be considered as too high. Further it notes that a fine has only ever been imposed on one occasion.

Conclusion

The Committee concludes that Sweden is in conformity with Article 6§4 of the Revised Charter.

Article 21 - Right of workers to be informed and consulted

The Committee takes note of the information contained in the report submitted by Sweden.

Legal framework

The Committee refers to its previous conclusions for a description of the law on the right to information and consultation in Sweden.

The Committee also notes that Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Co-operative Society with regard to the involvement of employees[1] was transposed into Swedish law by a new Employee Involvement (European Co-operative Societies) Act, which came into force on 18 August 2003. It asks for more information on the implications of this legislation for the information and consultation of employees within enterprises.

In answer to the Committee, the report says that under amendments to the co-determination in the workplace legislation that came into force on 1 February 2005, employers who are not bound by any collective agreements shall keep employee organisations with members who are employees of such an employer continuously informed of changes in their enterprise as regards production, finances and personnel policy. The scope of this obligation to provide information is the same as that applicable to employee organisations bound to an employer by a collective agreement. The information must be provided on a regular basis and be sufficiently precise to enable employees to assess the future consequences. Both employers and employee organisations have a duty to establish whether or not employees are union members.

The report also states that the Employee Involvement (European Companies) Act, which entered into force on 10 October 2004 and which transposes Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, includes provisions on employees' rights to information, consultation and participation in these European companies. To implement these rights, employees must constitute a delegation to negotiate an agreement with the companies forming the future European company on the form the employee involvement should take. The delegation is appointed by the local trade union bound by collective agreement to the European company or, in the absence of such an organisation, by the employees of the undertakings involved in the constitution of the European company.

Article 21 of the Revised Charter entitles employees and/or their representatives, be they trade unions, staff committees, works councils or health and safety committees, to be informed of any matter that could affect their working environment, unless the disclosure of such information could be prejudicial to the undertaking. They must also be consulted in good time on proposed decisions that could substantially affect their interests, particularly ones that might have a significant impact on the employment situation in their undertaking.

As the Committee has noted previously (Conclusions 2007), the minimum framework which it has adopted for Article 21 of the Revised Charter is Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002, the scope of which is restricted, according to the choice made by member states, to undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state. Furthermore, when assessing compliance with Article 21 of the Revised Charter, the Committee considers that all categories of employee (in other words all employees

with an employment contract with an undertaking, whatever their status, length of service or workplace) must be taken into account when calculating the number of employees covered by the right to information and consultation (Judgment of the European Court of Justice of 18 January 2007 (*Confédération générale du travail (CGT)* and Others, Case C-385/05)).

Consequently, the Committee asks whether this is the scope of Sweden's legislation, particularly as regards the calculation of these minimum thresholds.

According to the report, 91% of employees in Sweden were covered by collective agreements in 2008, and 71% were members of trade unions. However, it is not possible to establish the exact proportion of unionised employees employed at workplaces not subject to a collective agreement.

In Conclusions XIII-5, the Committee noted that an employer breaching the provisions of the 1976 Co-determination Act or of a collective agreement was liable to pay damages under Section 54 of the Act, which could be awarded by a court of law. Damages of this kind included compensation for both financial detriment and the violation which a breach of the Act or the collective agreement implied (non-financial damages). Under section 63 of the Act, the Industrial Litigation Act of 1973 applied to disputes of this kind. The Committee asks whether the amendments to the co-determination in the workplace legislation that came into force on 1 February 2005 have altered the situation.

The Committee also asks for detailed information about the monitoring system regarding the respect for the right of employee representatives to information and consultation in undertakings.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Sweden is in conformity with Article 21 of the revised Charter.

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[1] *Official Journal No. L 207/25 of 22/07/2003*

Article 22 - Right of workers to take part in the determination and improvement of working conditions and working environment

The Committee takes note of the information contained in the report submitted by Sweden.

The Committee examined the legal framework, the personal scope and material scope, as well as the enforcement of the legislation relevant for Article 22 in its previous conclusions (Conclusions XIII-3, XIII-5, XIV-2, 2003 and 2007) and concluded that the situation was in conformity. The report shows that situation remains unchanged during the reference period. The Committee asks that the next report provide an updated description of the situation in Sweden regarding the different aspects of Article 22.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 22 of the Revised Charter.

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

The Committee takes note of the information contained in the report submitted by Sweden.

The Committee takes note of the amendments introduced in the Equal Opportunities Act (SFS 1991:433) and the Prohibition of Discrimination Act (SFS 1993:307). It notes that these amendments have made a clearer separation between discrimination (on the ground of sex) and sexual harassment. The Committee also takes note of the activity of the Equal Opportunities Ombudsman.

In its last conclusion the Committee asked about the liability of employer in cases of sexual harrasment by persons or in premises under the employer's responsibility. The report explains that the existing legal framework, such as Discrimination Act, Regulations on Systematic Work Environment management, Regualtions on Solitary Work, Regulations concerning violence and menaces in the Work Environment and Criminal Code ensure the employer's liability towards persons employed or not employed by them who have suffered sexual harassment from employees under their responsibility or, on premises under their responsibility, including persons not employed by them, such as "outsourced workers", visitors, clients, etc.

In its last conclusion the Committee asked for information on the burden of proof in cases of alleged sexual harassment. The Committee notes from the explanation in the report that the burden of proof is shared between the plaintiff and the defendant.

In its last conclusion, the Committee asked whether the damages paid were deterrent to the employer. The report provides the applicable amounts of compensation which vary from 16 to 32 months pay accordong to the length of employment (from less than 5 years to at least 10 years). The report also specifies that it is possible to reinstate in their former positions, persons who have been unfairly dismissed in the case when the court orders the invalidity of the notice of termination of work relations, upon the condition that the employer has to accept to reinstate the employee in their former position.

The report informs about the entry in force of the Discrimination Act in January 2009 and the legislative and institutional changes that this act has brought. The Committee notes the changes brought by the Discrimination Act. It also notes that its entry in force falls outside the reporting period and asks that next report contains an update on the situation and the impact the new regulation has brought forth.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 26§1 of the Revised Charter.

Article 26 - Right to dignity in the workplace

Paragraph 2 - Moral harassment

The Committee takes note of the information contained in the report submitted by Sweden.

The Committee takes note of the amendments introduced in the Equal Opportunities Act (SFS 1991:433) and the Prohibition of Discrimination Act (SFS 1993:307) and the

activity of the Equal Opportunities Ombudsman and the Ombudsman against Ethnic Discrimination.

The Committee takes note of the information provided in relation to the questions it posed in its last conclusion.

In its last conclusion the Committee asked about the liability of employer in cases of moral harrasment by persons or in premises under the employer's responsibility. The report explains that the existing legal framework, such as Discrimination Act, Regulations on Systematic Work Environment management, Regualtions on Solitary Work, Regulations concerning violence and menaces in the Work Environment and Criminal Code ensure the employer's liability towards persons employed or not employed by them who have suffered moral harassment from employees under their responsibility or, on premises under their responsibility, including persons not employed by them, such as "outsourced workers", visitors, clients, etc.

In its last conclusion, the Committee asked for information on preventive actions. The report states that the repealed discrimination acts and the current Discrimination Act contain general provisions concerning active measures to prevent discrimination and to promote equal rights and opportunities. The Committee asks that next report contains a short description of the active measures taken by the government alone or in cooperation with employers and workers' organisations to promote awareness, information and prevention of moral harassment in the workplace.

In its last conclusion, the Committee asked how far the social partners are consulted on measures to promote knowledge and awareness of, and prevent, psychological harassment in the workplace. The Committee takes note of the activity of the Swedish Work Environment Authority, Equality Ombudsman and the Anti-discrimination Offices which have involved the participation of the social partners.

The report informs about the entry in force of the Discrimination Act in January 2009 and the legislative and institutional changes that this act has brought. The Committee notes the changes brought by the Discrimination Act. It also notes that its entry in force falls outside the reporting period and asks that next report contains an update on the situation and the impact the new regulation has brought forth.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 26§2 of the Revised Charter.

Article 29 - Right to information and consultation in procedures of collective redundancy

The Committee takes note of the information contained in the report submitted by Sweden.

The report makes reference to the previous reports submitted by Sweden.

In its last conclusion, the Committee found the situation to be not in conformity on the ground that no provision is made for some possibility of recourse to administrative or judicial proceedings before redundancies are made to ensure that they are not put into effect before the consultation requirement is met.

The report explains that the obligation of the employer to initiate consultations with the workers' representative in good time before decisions on collective redundancies is regulated by a well-established practice and legal framework. It gives examples of court decisions ordering payment of compensatory damages against employers failing to fulfil such obligation. However it does not explain the means of recourse in collective redundancies procedures.

The Committee recalls that consultation rights must be accompanied by guarantees that they can be excercised in practice. Where employers fail to fulfil their obligations, there must be at least some possibility of recourse to administrative or judicial proceedings before the redundancies are made to ensure that they are not put into effect before the consultation requirement is met.

The Committee asks that the next report provides a detailed description of the collective redundancy procedures and the means of redress in case of failure of the employer to fulfil the obligation to prior information and consultation.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.