

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Resolution ResChS(2003)1 **Collective complaint No. 12/2002** **Confederation of Swedish Enterprise against Sweden**

*(Adopted by the Committee of Ministers on 24 September 2003
at the 853rd meeting of the Ministers' Deputies)*

The Committee of Ministers¹

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

Taking into consideration the complaint lodged on 4 April 2002 by the Confederation of Swedish Enterprise against Sweden;

Having regard to the report transmitted by the European Committee of Social Rights, in which the situation in Sweden as regards pre-entry closed shop clauses is found not to be in conformity with Article 5 of the Revised Charter for the following reasons:

“The clauses at issue set out in the collective agreements in question which reserve in practice employment for members of a certain union are clearly contrary to the freedom guaranteed by Article 5. They restrict workers’ free choice as to whether or not to join one or other of the existing trade unions or to set up separate organisations of this type. Accordingly, the Committee considers that an obligation of this nature strikes at the very substance of the freedom enshrined in Article 5 and therefore constitutes an interference with that freedom.”

Takes note of the statement made by the respondent Government indicating that the Swedish government undertakes to bring the situation into conformity with the Revised Social Charter and that a negotiation process aimed at abolishing closed shop clauses in the Swedish labour market has been embarked upon;

Looks forward to Sweden reporting that the problem has been solved at the time of the submission of the next report concerning the relevant provision of the European Social Charter.

¹ In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Turkey and the United Kingdom.

Appendix to Resolution ResChS(2003)1

Information provided by the Permanent Representative of Sweden during the consideration by the Committee of Ministers of the report transmitted by the European Committee of Social Rights concerning collective complaint No. 12/2002

The bottom line of this issue is that Sweden has made a commitment to abide by all the instruments that it has signed and ratified. This goes for the Social Charter. This goes for the Convention on Human Rights as well. There is, then, no question about the willingness to comply with it. Then, of course, there are different ways of attaining that goal; one is legislation, another one, which is the very strong - should we call it - constitutional tradition in Sweden on the labour market, is the system of collective agreement, i.e. negotiations. This means that for many, many years during the 20th century the parties on the labour market have regulated these things. On the other hand, if there are problems, the judicial system can be brought in and, in that case, the judicial system has to, of course, function according to the legislation, which in turn is dependent on, for instance, the Council of Europe conventions.

Now, what has happened in this case: We are talking about the negative right of association, which, to be very clear about it, contains a problem of so-called "closed shops". There are enterprises that are actually hiring people only if they are members of a labour union. This has been regulated in local agreements between the local trade union and the local employer. This is where things have to be changed. There is a process going on now in changing the collective agreements that have been bargained between the parties and this is directed from the top of the labour union movement and the employer's federation. As an illustration that the process is going on, I can site the figures: In March 2003, there were 4,900 "closed shop" agreements within the realm of the construction worker's union, but in August 2003 there were only 4,388, i.e. more than 500 have been negotiated away, so the process is there, the goal is absolutely clear. This is going to be abolished and we have high hopes that this will be done in the very near future."