
14/01/2014 RAP/RCha/SWE/13(2014)Add

# EUROPEAN SOCIAL CHARTER

Comments by International Organisation of Employers, IOE
on the 13th national report by Sweden
on the implementation of the revised European Social Charter

submitted by

## THE GOVERNMENT OF SWEDEN

(Article 6§4 for the period
01/01/2009 – 31/12/2012)

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Report registered by the Secretariat on 14 January 2014

## CYCLE 2014

International Organisation of Employers
Organisation Internationale des Employeurs
Organización Internacional de Empleadores

Geneva, 23 December 2013

European Committee of Social Rights
Council of Europe
1, quai Jacoutot
F – 67075 Strasbourg Cedex

**INTERNATIONAL ORGANISATION OF EMPLOYERS SUBMISSION ON LABOR RIGHTS GROUP III OF THE EUROPEAN SOCIAL CHARTER**

**Article 6.4 of the Charter - Sweden**

Dear Members of the European Committee of Social Rights,

The IOE would take the opportunity of your analysis of national reports on Labour Rights – Group III of the European Social Charter, to draw your attention on the specific situation of Sweden with regards to the application of the European Social Charter and the implementation of the *acquis communautaire*.

In particular, the IOE would like to provide you some details on the application of Article 6.4 of the European Social Charter, according to the comments received by one of the IOE members: the Confederation of Swedish Enterprises (CSE).

The IOE fully supports and endorses the position of the CSE.

## 1. Confederation of Swedish Enterprises comments on the application of Article 6.4 of the Charter in Sweden

The decision of the Committee of Social Rights (CoSR) regarding the collective complaint number 85/2012 is obviously of great concern to the CSE, for its impact over the labour and economic environment in Sweden.

In the decision the CoSR states that: "*The facilitation of free cross-border movement of services and the promotion of the freedom of an employer or undertaking to provide services in the territory of other states – which constitute important and valuable economic freedoms within the framework of EU law – cannot be treated from the point of view of the system of values, principles and fundamental rights embodied in the Charter, as having a greater a priori value than core labour rights, including the right to make use of collective action to demand further and better protection of economic and social rights and interests of workers*" (para. 122).

The CSE would like to reiterate that the freedom to provide services is of great value for both workers and employers within the EU. The free movement of services throughout the EU is one of the founding pillars of EU law, and means that people and companies have the right to offer and provide services by working temporarily in another EEA countries. The provisions of the EU legislation on free movement of services require that barriers to provide services between the included states must be kept to a minimum.

The **freedom to provide services creates growth within Europe**, and its great positive effects in areas such as exports and consumption lead to **increased employment and welfare in European countries**. Conversely, restrictions on the ability to provide services would have a negative impact within these areas. The EU's rules on the free movement of services also give people the opportunity of employment and work in other countries. The aim of the Posting of Workers Directive is to enable this to happen without barriers while, at the same time, ensuring that employees who work temporarily in other EEA countries are protected.

In the CSE opinion, **the applicable EU legislation does not set the freedom to provide services above the core labour rights**, but establishes a necessary balance between the use of collective actions and the legitimate rights of those that exercise the fundamental right to provide services within the EEA. For instance, in the Laval ruling the European Court of Justice (ECJ) stated that the right to take collective action is a fundamental part of EU law. The ECJ also refers to the principles established in the European Social Charter. However, the ECJ also found that the exercise of such rights must be reconciled with the requirements relating to rights protected under the EU Treaty and in accordance with the principle of proportionality.

The need for proportionality is further demonstrated by the facts of the Laval case: the Swedish unions had no members working for Laval and the collective actions were taken in the form of **sympathy actions** by members of the Swedish unions. The purpose of the collective actions was to force Laval to apply a Swedish collective agreement instead of the Latvian collective agreement which Laval already applied. **The Latvian collective agreement applied already fulfilled the requirements of the Posting of Workers Directive.** The sympathy actions from the Swedish unions effectively stopped the supplies to the construction site. Laval could not complete the construction and was forced to leave Sweden. Laval subsequently went bankrupt and **the Latvian workers lost their jobs**.

It would not have been legal for the Swedish unions to treat a company with a Swedish collective agreement in the same way since the Swedish Co-determination Act does not allow a union to take collective actions aimed to push a Swedish collective agreement aside. The ECJ therefore found that the Swedish legislation was discriminatory in the different treatment between Swedish and foreign companies and also violated the provisions in the Posting of Workers Directive.

As it is clearly stated by the IOE and BE in their joint submission to the collective complaint No. 85/2012, the changes in the Swedish legislation after the Laval ruling were obviously necessary to fulfill the requirements of EU law. **The decision of the CoSR on complaint No. 85/2012 is not compatible with the EU legislation on free movement of services as interpreted by the ECJ and it is neither conceivable nor possible to change the Swedish legislation in a way that is not compatible with EU law.**

The decision of the CoSR rather implies that the interest of workers to take collective actions will, according to the CoSR, supersede any economic deliberations aimed at creating growth and welfare in international and national legislation.

It is the opinion of the CSE that a legislation based on such a decision of the CoSR would not lead to a better protection of economic and social rights. It would rather lead to a more closed Europe where it is more difficult for people and employers to work in other European countries. This would have a negative effect on employment and welfare in the European countries.

In addition, to date there is no evidence in Sweden that the current legislation has made Swedish trade unions any less inclined to request that foreign companies sign collective agreements. On the contrary, **it is common that Swedish trade unions request to foreign companies to sign collective agreements and foreign companies usually agree**. We do not have any knowledge of any disputes having arisen in relation to the signing of collective agreements with foreign companies in the recent past, and nor are we aware of any case in which a foreign employer has attempted to protect itself against industrial action by citing the regulations in the Posting of Workers Act.

This is confirmed by the Swedish National Mediation Office's statistics on the number of disputes relating to the signing of collective agreements between trade unions and employers. The table below is an extract from the Mediation Office's annual report "Wage negotiation and salary formation 2012". The figures show the number of disputes between a Swedish trade union and employer relating to the signing of collective agreements. From the statistics, it is clear that there has not been a single collective agreement dispute involving foreign companies in the years 2009 – 2012.

Table. Collective agreement disputes 2002-2012

| | **2002** | **2003** | **2004** | **2005** | **2006** | **2007** | **2008** | **2009** | **2010** | **2011** | **2012** |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Disputes | 80 | 53 | 69 | 55 | 102 | 44 | 13 | 18 | 17 | 12 | 16 |
| of which ship related | 12 | 6 | 4 | 12 | 7 | 5 | 1 | 4 | 2 | 1 | 3 |
| of which foreign companies | 5 | 5 | 12 | 11 | 4 | 1 | 1 | 0 | 0 | 0 | 0 |

## 2. Concluding remarks

On this basis, the IOE trusts the CoSR that all the information detailed above will be duly taken into account when examining the application of Article 6.4 of the European Social Charter in Sweden.

Yours faithfully,

**BRENT WILTON**

*Secretary General*