



27/06/2014

RAP/RCha/SWE/13(2014)Add

## **EUROPEAN SOCIAL CHARTER**

Addendum to the  
13<sup>th</sup> National Report on the implementation  
of the European Social Charter  
submitted by

## **THE GOVERNMENT OF SWEDEN**

(Article 4§3 and 29  
for the period  
01/01/2009 – 31/12/2012)

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**CYCLE 2014**





2014-06-25

Ministry of Employment  
Government Offices of Sweden

**Question addressed to Sweden - Article 4§3 (Right to information and consultation in procedures of collective redundancy)**

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*The European Committee of Social Rights has addressed one additional question to Sweden concerning article 4§3 of the revised European Social Charter.*

**In equal pay litigation cases, is it possible to make comparisons of pay and jobs outside the company directly concerned?**

The Discrimination Act (2008:567) does not prevent that a comparison is made with other companies in equal pay litigation cases along the lines of the situations presented by the Committee in its Statement of interpretation concerning Article 20 (Conclusions XX-1 (2012)).

Discrimination means (according to the Discrimination Act chapter 1 section 4) that someone is disadvantaged by being treated less favorably than someone else is treated, has been treated or would have been treated in a comparable situation. A comparison should be made to a person in a comparable situation, in a situation where it is reasonable and natural to compare them. An assessment of what is a comparable situation should be made in each individual case.

According to the Discrimination Act chapter 3 section 2, employers and employees are in particular to endeavor to equalize and prevent differences in pay and other terms of employment between women and men who perform work which is to be regarded as equal or of equal value. They are also to promote equal pay growth opportunities for women and men. Work is to be regarded as of equal value to other work if, on an overall assessment of the requirements and nature of the work, it can be deemed to be equal in value to the other work. The assessment of the requirements of the work is to take into account criteria such as knowledge and skills, responsibility and effort. In assessing the nature of the work, particular account is to be taken of working conditions.

**Question addressed to Sweden - Article 29 (Right to information and consultation in procedures of collective redundancy)**

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*The European Committee of Social Rights has addressed one additional question to Sweden concerning article 29 of the revised European Social Charter.*

**What preventive measures exist to ensure that redundancies do not take effect before the obligation of the employer to inform and consult the workers' representatives has not been fulfilled?**

Sweden has previously explained that an employer must on its own initiative enter into negotiations with the employees' organization with which he is bound to negotiate under a collective bargaining agreement, before any decision regarding changes of the business which can lead to collective redundancies is taken, section 11 Employment (Co-determination in the Workplace) Act (1976:580). The employer cannot, as a main rule, take and implement a decision before he has fulfilled the duty to negotiate. Only where there is extraordinary cause, the employer may take and implement a decision before he has fulfilled his duty to negotiate. According to article 13 in the same Act an employer who is not bound by a collective agreement is obliged to negotiate with all affected employees' organizations under Section 11 in all matters relating to termination of employment as a consequence of insufficient work, i.e. collective redundancies.

The Committee has asked what preventive measures exist to ensure that redundancies do not take effect before the obligation of the employer to inform and consult the workers' representatives has been fulfilled. If an employer does not fulfil his or her duty to negotiate he or she shall pay compensation for any loss that is incurred to the employee organization concerned. In assessing whether, and to what extent, an organization has suffered loss, consideration shall also be given to the organization's interest in compliance with statutory provisions or provisions in the collective bargaining agreement and to factors other than those of purely economic significance. A trade union can take action for damages in the Labour Court. The purpose of the possibility to claim damages is to prevent the employer from not following the rules on for example information and consultation. Therefore, the damages imposed by the court can be relatively high if the employer has not negotiated according to the law, especially if the negligence to negotiate has taken place in a case of redundancies where this has led to unemployment for the employees. The court will take account of the circumstances in each case when deciding the amount of damages.