EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

REPORT
ON THE MEETING WITH THE SWEDISH GOVERNMENT WITHIN THE FRAMEWORK OF ARTICLE 22 PROCEDURE

(Stockholm, 26 - 27 November 2003)

Situation of Sweden as of 1 November 2003

Ratifications

Sweden ratified the Revised European Social Charter on 29/05/1998 and has accepted 83 of the Revised Charter's 98 paragraphs.

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	2.6	2.7	3.1
3.2	3.3	3.4	4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3
6.4	7.1	7.2	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1
8.2	8.3	8.4	8.5	9	10.1	10.2	10.3	10.4	10.5	11.1	11.2
11.3	12.1	12.2	12.3	12.4	13.1	13.2	13.3	13.4	14.1	14.2	15.1
15.2	15.3	16	17.1	17.2	18.1	18.2	18.3	18.4	19.1	19.2	19.3
19.4	19.5	19.6	19.7	19.8	19.9	19.10	19.11	19.12	20	21	22
23	24	25	26.1	26.2	27.1	27.2	27.3	28	29	30	31.1
31.2	31.3							= Accepted provisions			

Sweden has agreed to be bound by the "collective complaints" procedure.

Reports

Between 1964 and 2000, Sweden submitted 20 reports on the application of the Charter. Between 2001 and 2003, it submitted 3 reports on the Revised Charter.

Deadline for the submission of the 4th report on part of the non-hard core provisions of the Revised Charter: before 31/03/2004. Report received: 24/03/2004.

Deadline for the submission of the 5th report on hard core provisions of the Revised Charter: before 30/06/2005.

PROCEDURE PROVIDED BY ARTICLE 22 OF THE CHARTER

With Sweden being the first member state to ratify the Revised European Social Charter in May 1998, the Stockholm meeting was the first under the new procedure adopted by the Ministers' Deputies in December 2002 concerning Article 22 of the Charter: examination of the non-accepted provisions.

The Deputies had decided that "states having ratified the Revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and had "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned".

Following this decision, five years after ratification of the Revised Social Charter (and every five years thereafter), the European Committee of Social Rights would review non-accepted provisions with the countries concerned, with a view to securing a higher level of acceptance. Experience had shown that governments tended to overlook that selective acceptance of Charter provisions was meant to be a temporary phenomenon. The aim of the new procedure was therefore to require them to review the situation after five years and encourage them to accept more provisions.

In the Swedish case, the European Committee of Social Rights had agreed with the Swedish authorities that it would meet representatives of the Government in Stockholm on 26 and 27 November 2003.

The delegation comprised the following members of the European Committee of Social Rights: Mr Jean-Michel Belorgey, President of the Committee, Mr Nikitas Aliprantis, Vice-President of the Committee, Mrs Polonca Koncar, Vice-President of the Committee, Mr Stein Evju, General Rapporteur of the Committee, Mr Matti Mikkola, Mr Konrad Grillberger, Mr Rolf Birk and Mr Andrzej Swiatkowski. In addition, the Secretariat was represented by Mrs Leyla Kayacik, Deputy Executive Secretary of the European Social Charter, Mr Henrik Kristensen, administrator and Ms Gail Mitchell, administrative assistant.

On behalf of the Swedish Government the meeting had been organised by the Ministry of Industry, Employment and Communications (Näringsdepartementet). The Ministry was represented by Mr Stefan Hult, Head of the Labour Law Division, Mrs Catharina Lilja-Hansson, Mr Örjan Härneskog, Mrs Anna-Lena Hultgard-Sancini and Mrs Emma Boman Lindberg. In addition, the Ministry of Social Affairs was represented by Mr Göran Wickström.

OUTCOMES OF THE MEETING

The meeting was opened by the Mr Stefan Hult, Head of the Labour Law Division of the Ministry of Industry, Employment and Communications. He welcomed the Committee's initiative to visit Sweden for direct consultations with the Government concerning the possibility of accepting additional provisions of the Charter. He emphasised Sweden's commitment to the Charter and recalled that prior to becoming the first State to ratify the Revised Charter in 1998 a thorough analysis of all the provisions had been carried out . In his view the provisions that had not been accepted on that ground fell into three categories:

1) provisions relating to issues which were to a large extent regulated by the social partners, for instance Article 4§2 on overtime;
2) provisions which seemed to require a state of law which was objectively different from the one prevailing in Sweden, for instance Article 8§2;
3) provisions which seemed to run counter to future socio-economic developments, for instance Article 2§4.

In the course of the meeting the members of the Committee presented the case law regarding the provisions concerned, while the Swedish representatives explained the Swedish situation in law and in practice. In summarising the discussions, the President of the Committee, Mr Belorgey, noted that although further analysis was obviously needed, it would appear that Sweden could accept the following provisions:

Article 2§1 – The right to reasonable working time
Article 2§7 – The right to special guarantees in case of night work Article 3§4 – The right to occupational health services
Article 4§5 – The right to guarantees in case of deduction from wages Article 7§5 – The right of young people to fair pay
Article 8§4 – The right of employed women to regulation of night work

Without prejudicing a wish on the part of the Government to accept other provisions, it would seem that for the moment obstacles to acceptance remained as regards the following provisions:

Article 2§2 – The right to paid public holidays
Article 2§4 –The right to elimination of risks for workers in dangerous or unhealthy occupations
Article 4§2 – The right to increased pay for overtime Article 7§5 (Right of young people to fair pay)
Article 7§6 – The right to paid time off for vocational training Article 8§2 – The right not to be dismissed during maternity leave
Article 8§5 – The right of pregnant women not to be employed in dangerous, unhealthy or arduous work
Article 12§4 –The right of migrants to equal treatment in respect of social security Article 24 – The right not to be dismissed without valid reasons
Article 28 – The right of workers' representatives to special guarantees

Mr Hult closed the meeting by thanking the Committee for its valuable advice. He was not in a position to make firm commitments at this stage as to acceptance of additional provisions, but he confirmed that the Government would carefully consider the information provided.

A brief survey of the ECSR case-law and the situation in Sweden provision by provision as discussed at the meeting is appended (Appendix I). A background paper summarising the Swedish Government's explanatory remarks (as far as the non-accepted provisions are concerned) to the draft decision by the Swedish Parliament on ratification of the Revised Charter is contained in Appendix II.

APPENDIX I

SURVEY PROVISION BY PROVISION

The appendix has been drafted on the basis of the European Committee of Social Rights Case-Law Digest (document prepared by the Secretariat) and does not necessarily reflect all the aspects of the case law discussed by the ECSR members in their presentations during the meeting.

- **Article 2§1 (Right to reasonable working hours)**

Article 2
All workers have the right to just conditions of work

1. With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;

ECSR Case-law presented by Mr K. GRILLBERGER

It guarantees workers the right to reasonable limits on daily and weekly working time, including overtime. This right must be guaranteed through legislation, regulations, collective agreements or any other binding means. An appropriate authority must supervise these measures, to ensure that the limits are respected in practice.

Working overtime must not be simply left to the discretion of the employer or the worker. The reasons for overtime work and its duration must be subject to regulation.

The Charter does not expressly define reasonable working hours. The Committee therefore assesses the situations on a case by case basis: very long working hours (more than 16 hours on any one day or 60 hours in one week) are unreasonable, and therefore contrary to the Charter.

Many states have adopted regulations providing for flexible working time, allowing for average working time to be calculated over a reference period of several months. These measures are not, in themselves, contrary to the Charter. Arrangements of this nature are considered in conformity with the Charter if:

a. The maximum daily and weekly hours referred to above are not exceeded in any case.

b. Flexible working time schemes have a basis in law. If they are laid down in collective agreements, the Committee ascertains at what level those agreements have been signed. Additional safeguards are required when flexible working hours are provided for in collective agreements concluded within a firm.

c. The reference periods used in calculating average working hours must not exceed four to six months. They may reach a maximum of up to one year in exceptional circumstances.

d. Workers must be informed clearly and in good time of any changes in their working hours in order to respect their private and family life,.

e. Appropriate protection must be provided for part-time workers, and temporaries "on call" or working discontinuous hours.

f. The assessment of compliance takes into consideration the activities of the Labour Inspectorate in monitoring compliance with regulations and agreements on working hours.

Article I applies to this provision: this means that the situation is considered to be in conformity when the right enshrined in Article 2§1 is enjoyed by at least 80% of workers.
However:

1. any law failing to satisfy the above criteria, and potentially applying to all workers, is – even if it affects less than 20% in practice – in breach of paragraph 1.

2. The application of Article I cannot give rise to a situation in which a large number of persons forming a specific category are deliberately excluded from the scope of a legal provision.

Article 2§1 also provides for the progressive reduction of weekly working hours, to the extent permitted by productivity increases and other relevant factors. These "other factors" may be the nature of the work and the safety and health risks to which workers are exposed. Under Article 2§1, this obligation is closely related to the reasonable nature or otherwise of working time. The widespread introduction of a working week of less than 40 hours has thus greatly reduced the need to shorten the working week.

- **Article 2§2 (Right to paid public holidays)**

Article 2
All workers have the right to just conditions of work

> 2. With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to provide for public holidays with pay.

ECSR Case-law presented by Mr K. GRILLBERGER

Article 2§2 guarantees the right to public holidays with pay, in addition to weekly rest periods and annual leave. These public holidays may be specified in law or in collective agreements.

The Charter does not stipulate how many public holidays should exist. No state has ever been found in violation of this provision because of too few public holidays. Currently, the number of public holidays ranges from six to seventeen days per year.

Working on public holidays is permitted in special cases; the conditions governing weekly rest periods (see below) apply, and the persons concerned must receive a compensatory rest period of at least equal duration.

Article I applies to this provision: this means that the situation is considered to be in conformity when the right enshrined in Article 2§2 is enjoyed by at least 80% of workers. However:

1. any law failing to satisfy the above criteria, and potentially applying to all workers, is – even if it affects less than 20% in practice – in breach of paragraph 1.

2. The application of Article I cannot give rise to a situation in which a large number of persons forming a specific category are deliberately excluded from the scope of a legal provision.

• **Article 2§4 (Right to elimination of risks for workers in dangerous or unhealthy occupations)**

Article 2
All workers have the right to just conditions of work

> 4. With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations.[1]

ECSR Case-law presented by Mr K. GRILLBERGER

Article 2§4 requires States to eliminate risks in inherently dangerous or unhealthy occupations and it is therefore closely linked to Article 3 of the Revised Charter. Where it has not yet been possible to eliminate or reduce sufficiently risks, the workers concerned should be guaranteed a right to additional paid holidays or reduced working hours. States are required to identify the dangerous or unhealthy occupations in question; this is subject to review by the Committee.

Sectors such as mining, quarrying, steel–making and ship–building have always been regarded as dangerous or unhealthy and remain so. This provision also applies to occupations involving for example, ionising radiation, extreme temperatures, noise, working on computer screens, etc. Scientific progress has revealed certain illness or risk factors, such as stress, which were previously disregarded.

[1] Article 2§4 of the 1961 Charter reads as follows : With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake: to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed.

The Committee has pointed out that while Article 2§4 requires provision for reduced working hours or additional paid holidays in dangerous and unhealthy occupations where it has not yet been possible to eliminate or reduce risks sufficiently, it considers, in view of the overriding health and safety aims of this provision, that other means of reducing the length of exposure to risks may also be in conformity with the Charter in such cases.

Article I applies to this provision: this means that the situation is considered to be in conformity when the right enshrined in Article 2§4 is enjoyed by at least 80% of workers. However:

1. any law failing to satisfy the above criteria, and potentially applying to all workers, is – even if it affects less than 20% in practice – in breach of paragraph 1.

2. The application of Article I cannot give rise to a situation in which a large number of persons forming a specific category are deliberately excluded from the scope of a legal provision.

- **Article 2§7 (Right to special guarantees in case of night work)**

Article 2
All workers have the right to just conditions of work

> 7. With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to ensure that workers performing night work benefit from measures which take account of the special nature of the work[1].

ECSR Case-law presented by Mr K. GRILLBERGER

Article 2§7 guarantees persons performing night work compensatory measures. These measures must include, as a minimum, the following:

– periodical medical examinations, including a check prior to employment on night work;
– the provision of possibilities for transfer to daytime work;
– continuous consultation with workers' representatives on the introduction of night work, on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work.

Article I applies to this provision: this means that the situation is considered to be in conformity when the right enshrined in Article 2§7 is enjoyed by at least 80% of workers. However:

1. any law failing to satisfy the above criteria, and potentially applying to all workers, is – even if it affects less than 20% in practice – in breach of paragraph 1.

[1] This is a new provision which did not exist in the 1961 Charter.

2. The application of Article I cannot give rise to a situation in which a large number of persons forming a specific category are deliberately excluded from the scope of a legal provision.

National law or practice must define “night” within the context of this provision.

- **Article 3§4 (Right to occupational health services)**

Article 3
All workers have the right to safe and healthy working conditions

> 4. With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers’ and workers’ organisations to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions[1]
>
> *Appendix : It is understood that for the purposes of this provision the functions, organisation and conditions of operation of these services shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.*

ECSR Case-law presented by Mr N. ALIPRANTIS

According to Article 3§4, workers in all branches of the economy and every undertaking must have access to occupational health services. These services may be run jointly by several undertakings. If occupational health services are not established by every undertaking the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose.

- **Article 4§2 (Right to increased pay for overtime)**

Article 4
All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families

> 2. With a view to ensuring the effective exercise of the right to a fair remu- neration, the Parties undertake to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;

ECSR Case-law presented by Mr S. EVJU

Article 4§2 is intrinsically connected with Article 2§1, which concerns daily and weekly working time. Workers required to do overtime must be paid above the normal hourly rate.

[1] This is a new provision which does not exist in the 1961 Charter.

Leave may be granted to compensate for overtime, but must be longer than the overtime worked. In other words, it is not enough to give the person concerned leave equal to the number of extra hours worked.

This provision applies to all workers, except “in particular cases”. The Committee has indicated that these exceptions, which may apply to certain categories of civil servant and managerial staff, must be limited.

The general tendency in Europe is to calculate working hours by taking a weekly average over a period of several months. During this period, the number of hours actually worked in any week may vary between a maximum and a minimum figure, without there being any question of overtime, and thus a higher rate of remuneration. Arrangements of this kind do not, in themselves, violate Article 4§2, provided that the conditions laid down in Article 2§1 are respected.

- **Article 4§5 (Right to guarantees in case of deduction from wages)**

Article 4
All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families

> 5. With a view to ensuring the effective exercise of the right to a fair remu- neration, the Parties undertake to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.
>
> *Appendix: It is understood that a Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer from deductions from wages either by law or through collective agreements or arbitration awards, the exceptions being those persons not so covered.*

ECSR Case-law presented by Mr S. EVJU

Article 4§5 guarantees all workers the right that their wage is subject to deductions only in circumstances that are well–defined in a legal instrument, (law, regulation, collective agreement or arbitration award) and subject to reasonable limits.

The remaining wage should not deprive workers and their dependents of their very means of subsistence. That is why the Committee considers that where a worker is left with a portion of wage which is lower than the statutory minimum subsistence level the situation of the state concerned is not in conformity with this provision.

All forms of deduction are concerned, including trade union dues, fines, maintenance payments, repayment or wage advances etc. The procedures relating to wage deduction are also considered, such as consultation of worker representatives, the right of the worker to be heard and any appeal to an independent authority.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

- **Article 7§5 (Right of young people to fair pay)**

Article 7
Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.

> 5. With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;

ECSR Case-law presented by Mr A. SWIATKOWSKI

In application of Article 7§5, domestic law must provide for the right of young workers to a fair wage and of apprentices appropriate allowances. This right may result from statutory law, collective agreements or other means.

"Fair" or "appropriate" character is assessed by comparing young workers' remuneration with the starting wage or minimum wage paid to adults (age eighteen or over). In accordance with the methodology adopted under Article 4§1, wages taken into consideration are those after deduction of tax and social security contributions.

The young worker's wage may be less than the adult starting wage, but the difference must be reasonable and the gap must close quickly. For fifteen/sixteen year-olds, a wage 30% lower than the adult starting wage is acceptable. For sixteen/eighteen year-olds, the difference may not exceed 20%.

The adult reference wage must in any case be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker's wage which respects these percentage differentials is not considered fair.

Apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period: from at least one-third of the adult starting wage or minimum wage at the start of the apprenticeship, and at least two-thirds at the end.

- **Article 7§6 (Right to paid time off for vocational training)**

Article 7
Children and young persons have the right to a special protection against the

physical and moral hazards to which they are exposed.

> 6. With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;

ECSR Case-law presented by Mr A. SWIATKOWSKI

In application of Article 7§6, time spent on vocational training by young people during normal working hours must be treated as part of the working day. Such training must, in principle, be done with the employer's consent and be related to the young person's work.

Training time must thus be remunerated like normal working time, and there must be no obligation to make it up, which would effectively increase the total number of hours worked.

This right also applies to training accomplished with the consent of the employer - but not necessarily financed by the latter - and in relation with the work carried out by young people.

- **Article 8§2 (Right not to be dismissed during maternity leave)**

Article 8
Employed women, in case of maternity, have the right to a special protection in their work

> 2. With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;
>
> *Appendix: This provision shall not be interpreted as laying down an absolute prohibition. Exceptions could be made, for instance, in the following cases :*
> *a. if an employed woman has been guilty of misconduct which justifies breaking off the employment relationship;*
> *b. if the undertaking concerned ceases to operate;*
> *c. if the period prescribed in the employment contract has expired.*

ECSR Case-law presented by Mrs P. KONČAR

Article 8§2 applies equally to women on fixed-term and open–ended contracts.

In cases of dismissal contravening this provision of the Charter, reinstatement of the women should be the rule. Exceptionally, if this is impossible (e.g. where the enterprise closes down) or the woman concerned does not wish it, adequate compensation must be available. National rules must not prevent courts (or other competent authority) from awarding a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal.

- **Article 8§4 (Right of employed women to regulation of night work)**

Article 8
Employed women, in case of maternity, have the right to a special protection in their work

> 4. With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;

ECSR Case-law presented by Mrs P. KONČAR

Article 8§4 applies only to industrial work in the strict sense. In industry, there are also non–industrial jobs to which it does not apply:

- women in managerial posts or technical posts carrying responsibilities;
- women working in health and welfare services, who are not usually required to do manual work.

Article 8§4 does not require states to prohibit night work for pregnant women, women who have recently given birth and women nursing their infants but to regulate it. The regulations must:

- allow only limited exceptions to the rules on night work, which must be authorised only when special production needs make them necessary, having due regard to working conditions and the organisation of work in the firm concerned;

- lay down conditions for night work by women, e.g. prior authorisation by the Labour Inspectorate (when applicable), prescribed working hours, breaks, rest days following periods of night work, the right to be transferred to daytime working in case of health problems linked to night work etc.

• **Article 8§5 (Right of pregnant women not to be employed in dangerous, unhealthy or arduous work)**

Article 8
Employed women, in case of maternity, have the right to a special protection in their work

> 5. With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining, and all other work which is un- suitable by reason of its dangerous, unhealthy, or arduous nature and to take appropriate measures to protect the employment rights of these women.

ECSR Case-law presented by Mrs P. KONČAR

Article 8§5 applies to all women in paid employment, including civil servants. Only self-employed women are excluded.

This provision prohibits the employment of the women concerned on underground work in mines. This applies to extraction work proper, but not to women who:

- occupy managerial posts and do no manual work,
- work in health and welfare services,
- spend brief training periods in underground sections of mines. This prohibition must be

provided for in law.

Certain activities, such as those involving exposure to lead, benzene, ionising radiation, high temperatures, vibration or viral agents, must be prohibited.

• **Article 12§4 (Right of migrants to equal treatment in respect of social security)**

Article 12
All workers and their dependants have the right to social security.

> 4. With a view to ensuring the effective exercise of the right to social security, the Parties undertake to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:
>
> a equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;

Appendix : The words "and subject to the conditions laid down in such agreements" in the introduction to this paragraph are taken to imply inter alia that with regard to benefits which are available independently of any insurance contribution, a Party may require the completion of a prescribed period of residence before granting such benefits to nationals of other Parties.

ECSR Case-law presented by Mr M. MIKKOLA

In order to ensure the right to social security of persons moving between States the following principles must be guaranteed:

Right to equal treatment (Article 12§4a)

States are required to eliminate from their social security legislation all discrimination against foreigners, nationals of other Parties.

National legislation cannot reserve a social benefit to nationals only, or impose extra or more restrictive conditions on foreigners only, apart from the completion of a period of residence for non–contributory benefits. The Committee ascertains whether the length of residence required is in proportion to the objective pursued.

National legislation may not stipulate eligibility criteria for social security benefits which, although they apply without reference to nationality, are harder for foreigners to comply with and therefore affect them to a greater degree.

Right to maintenance of acquired rights (Article12§4a)

The Committee's supervision consists mainly of verifying that invalidity benefit, old age benefit, survivor's benefit and occupational accident or disease benefit acquired under the legislation of one state according to the eligibility criteria laid down under national legislation are maintained whatever the movements of the beneficiary.

b the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.

Right to retention of accruing rights (Article 12§4b)

There should be no disadvantage for a person who changes their country of employment where they have not completed the period of employment or insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits. Implementing this principle entails, where necessary, the aggregation of employment or insurance periods completed abroad and, in the case of long-term benefits, a pro–rata approach to the conferral of entitlement, the calculation and payment of benefit.

Means of implementation

The guarantee of equal treatment within the meaning of Article 12§4 requires states to remove any form of discrimination from their social security legislation.

As regards the other principles of co-ordination, states may choose between the following means: multilateral convention, bilateral agreement or any other means such as unilateral, legislative or administrative measures.

Where is there is little migratory flow between two states, the adoption of unilateral measures in the form of administrative arrangements or solving each existing and future individual case may be considered sufficient.

Where a large number of nationals are concerned, the implementation of these principles is mostly done through the ratification of an international multilateral or bilateral instrument which sets down the technical and practical aspects. States that have ratified the European Convention on Social Security are presumed to have made sufficient efforts to guarantee the retention of accruing rights.

- **Article 24 (Right not to be dismissed without valid reasons)**

Article 24
All workers have the right to protection in cases of termination of employment.

1. With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

a the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operation requirements of the undertaking, establishment or service;

b the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end, the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body.

Appendix 1.It is understood that for the purposes of this article the terms "termination of employment" and "terminated" mean termination of employment at the initiative of the employer.
2. It is understood that this article covers all workers but that a Party may exclude from some or all of its protection the following categories of employed persons:
a workers engaged under a contract of employment for a specified period of time or a specified task;

b workers undergoing a period of probation or a qualifying period of employment, provided that this determined in advance and id of a reasonable duration;
c workers engaged on a casual basis for a short period.
3. For the purpose of this article the following, in particular, shall not constitute valid reasons for termination of employment:
a trade union membership or participation in union activities outside working hours, or, with the consent of the employer, within working hours;
b seeking office as, acting or having acted in the capacity of a workers' representatives;
c the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;
d race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
e maternity or parental leave;
f temporary absence from work due to illness or injury.
4. It is understood that compensation or other appropriate relief in case of termination of employment without valid reasons shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

ECSR Case-law presented by Mr N. ALIPRANTIS

All employees – subject to the categories of employees which may be excluded according to the Appendix to Article 24 – are entitled to protection in case of termination of employment. To this end domestic law must provide for the following:

Obligation for the employer to provide a valid reason for termination of employment.

That is, the termination must be linked to the employee's capacity or conduct or based on the operational requirements of the undertaking, establishment or service.

A prison sentence may be considered as a valid ground for termination only if the sentence concerns facts related to the employment or to any professional fault of the worker.

The notion of economic ground must be interpreted in a strict way being limited to situations where difficulties are experienced by the undertaking and excluding consideration of other company strategies.

The employer shall notify the employee in writing of the termination of employment.

Prohibition of termination of employment for certain reasons

These grounds are listed in the Appendix to Article 24. Some of them are also stipulated under other provisions of the Revised Charter: Articles 1§2, 4§3 and 20: discrimination; Article 5: trade union activity;Article 6§4: participation in a strike;

Article 8§2: maternity; Article 15: disability; Article 27: family responsibilities; Article 28: worker representation.

Supervision of the prohibition of termination of employment for certain reasons is therefore limited under Article 24 to the reasons listed in the Appendix to Article 24 which are not stipulated elsewhere in the Charter, namely:

i. filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities.

National legislation should provide for explicit safeguards against retaliatory dismissal. In the absence of any explicit statutory ban, states must be able to show how national legislation conforms to the Charter.

ii. "temporary absence from work due to illness or injury".

Obligation to provide compensation for termination of employment without valid reason

To that purpose, any employee who considers that his or her employment has been terminated without a valid reason must be entitled to appeal to an impartial body. This body must be empowered to examine the facts underlying economic measures.

Any employee whose employment is terminated without a valid reason has a right to adequate compensation or other appropriate relief. When a dismissal is ruled to be null and void and reinstatement of the employee is ordered, or the employment relationship is held to have been uninterrupted, such decisions must as a minimum be accompanied by an entitlement to receive the wage that would have been payable between the date of the dismissal and that of the court decision or effective reinstatement.

- **Article 28 (Right of workers' representatives to special guarantees)**

Article 28
Workers' representatives in the undertaking have the right to protection against acts prejudicial to them and should be afforded appropriate facilities to carry out their functions

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that, in the undertaking

a) they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;

b) they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken

of the industrial relation system of the country and the needs, size and capabilities of the undertaking concerned.

Appendix: For the purpose of the application of this article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice"

ECSR Case-law presented by Mrs P. KONČAR

This provision guarantees the right of workers' representatives to protection in the undertaking and to certain facilities. It complements Article 5, which recognises, *inter alia,* a similar right in respect of trade union representatives.

Representation may be exercised through workers' commissioners, workers' council or workers' representatives on the enterprise's supervisory board.

Protection should cover the prohibition of dismissal on the ground of being a workers' representative and the protection against detriment in employment other than dismissal.

The facilities may include for example paid time off to represent the workers, financial contribution to the workers' council, the use of premises and materials for the operation of the workers' council.

APPENDIX II

NON-ACCEPTED PROVISIONS: Background paper on the situation in Sweden

Document prepared by the Secretariat on the basis of the Swedish Government's explanatory remarks to the draft parliamentary decision on ratification of the Revised Charter (Regeringens proposition 1997/98:82)

A. Introduction

Sweden ratified the Revised Charter on 29/05/1998. Sweden has accepted 83 of the Revised Charter's 98 paragraphs.

It may be recalled that Sweden had initially accepted 59 of the 72 provisions of the 1961 Charter (ratification on 17/12/1962), but following a review in 1979, three additional provisions were accepted (Articles 4§4, 7§1 and 19§7) by notification to the Secretary General of the Council of Europe.

In the explanatory remarks to the draft parliamentary decision on ratification of the Revised Charter (Regeringens proposition 1997/98:82) information is provided on the Swedish Government's reasons for proposing not to accept certain provisions of the Revised Charter. Below follows a summary of this information for each of the provisions concerned. It should be noted that the explanatory remarks are based consultations with various institutions and organisations, notably the social partners. Frequently, direct reference is therefore made to the views of the consulted parties.

The summary is held in the present tense, but it reflects the situation and the views existing at the time of ratification (1998) and does not take into account any changes, which have occurred since then. One of the objectives of the mission to Stockholm is precisely to discuss any such changes. Moreover, even in the absence of any changes, acceptance of at least some of the provisions examined below might still be a possibility.

Finally, the Committee's attention is drawn to the first (1981) and third (1989) reports on certain provisions of the Charter which have not been accepted, where Swedish reports on Article 2§1, 7§5, 7§6 and Article 8§2 were examined. Article 8§4 was to have been examined in the second (1982) report on certain provisions of the Charter which have not been accepted, but Sweden did not submit its report.

B. Non-accepted provisions Article 2§1

Working time regulations are to a large extent the responsibility of the social partners and not of the state, and the Government therefore advises against ratification. The new rules that have been introduced in the Working Time Act (1982:673) in pursuance of Council Directive 93/104/EEC do not lead the Government to take any other view of the situation.

Article 2§2

Pay in respect of public holidays is a matter regulated by the social partners, see also above.

Article 2§4

Both in connection with the ratification in 1962 and during the 1979 review there appeared to be on the part of the Government a lack of certainty as to the precise requirement embodied in this provision. At the same time there seemed to be a perception that the provision was at variance with contemporary and future developments in the labour market with its emphasis on risk "compensation" instead of risk elimination. Although Article 2§4 in its new wording puts more emphasis on risk elimination, additional paid holidays and reduced working time for certain groups of workers still remain in the text and the Government therefore proposes not to accept the provision, "at least for the time being".

It is mentioned that rules on additional paid holidays and reduced working time are to some extent contained in collective agreements, but not always due to the nature of the work and not necessarily covering all the occupations aimed at by the Charter. It is underlined in this respect that the social partners have not been opposed to the Government's proposal.

Article 2§7

The Swedish Working Time Act prohibits night work in principle (by defining night time as a rest period), while permitting certain night work by way of exception. However, the principle of the act may be derogated from by collective agreement insofar as permissible within the framework of Council Directive 93/104/EEC. Pursuant to the Working Environment Act (1977:1160) employers who employ workers on night work have an obligation to ensure satisfactory health and safety conditions, and recently statutory orders on medical examinations for night workers have been issued by the Labour Protection Authority.

Thus, while certain basic statutory protection of night workers does exist, the measures foreseen by Article 2§7 are to a large extent regulated by agreement between the social partners. The Government accordingly proposes not to accept this provision "for the time being".

Article 3§4

Swedish legislation contains certain rules on health services at the enterprise level (*företagshälsovård*), including rules relating to tax benefits for employers who set up such services. Section 3 para. 2 of the Working Environment Act presupposes that occupational health services in general is a matter for cooperation between the social partners and a statutory obligation for employers to provide these services only exists where the nature of the work makes it absolutely necessary. Collective agreements on occupational health services exist in both the state and municipal sector, in the steel and metal industry, in commerce and in the construction industry. However, at the time of the ratification of the Revised Charter there was no general agreement between the central employers and workers organisations. According to a recent survey about 73% of all employees indicate that they have access to occupational health services.

Sweden ratified ILO Convention No. 161 (Occupational Health Services) in 1986, however the ILO Committee of Experts have questioned whether the coverage of the services in Sweden complies with the requirements of the Convention.

According to the explanatory remarks, an investigation into the obligations of the employers in this field and on the tasks of the occupational health services has been initiated and in the Government's opinion the decision on acceptance should be postponed until the results of the investigation can be assessed.

Article 4§2

The Government proposes not to accept Article 4§2 because remuneration is a matter for agreement between the social partners. Reference is made to a consultative opinion by the National Working Life Institute according to which this provision can be accepted because collective agreements practically without exception provide for increased pay for overtime. For the few workers not covered by collective agreement the right to increased overtime pay follows from the case law of the Labour Court.

However, the Government considers that where a matter is more or less exclusively regulated by the social partners it should be left up to these same social partners whether to accept the provision. During the review in 1979 the social partners advised against acceptance of Article 4§2 and in the present round of consultations none of the social partners have indicated that it should now be accepted within the framework of the Revised Charter.

Article 4§5

The considerations here are largely the same as for Article 4§2. Although certain statutory rules on protection against deductions from wages do exist (Act No. 1970:215), they may be derogated from by collective agreement.[1] During the consultations (some of) the social partners made the general observation that

[1] However, also here the National Working Life Institute is of the opinion that the collective agreement-based rules satisfy the requirements of the Charter.

acceptance of undertakings in matters which are regulated by collective agreement would entail that the State takes over the responsibility for how these matters should be regulated in the future and this would constitute a breach of the principle of non- intervention by the state in the collective autonomy of the social partners.

Article 7§5

Reference is made to the general reasoning given under Article 4§2 and 4§5.[1]

Article 7§6

Reference is made to the general reasoning given under Article 4§2 and 4§5.

Article 8§2

The Government considers that the requirement in Article 8§2 is not adequately matched by the rules in the Employment Protection Act (1982:80) or by the dismissal protection which follows from the Equal Opportunities Act (1991:443) and the Parental Leave Act (1995:584). The Government reads the Committee's case law to imply that dismissal is prohibited almost on any ground during the period concerned, that is, it would preclude dismissals on grounds of lack of work (*arbetsbrist*) and on grounds of personal misconduct (*misskötsamhet*).

The National Working Life Institute in its opinion proposes to review the domestic legislation so as to extend the scope of dismissal protection during pregnancy to meet the requirements of the Revised Charter. However, the Government maintains that the decision on acceptance or non-acceptance should be made in the light of the existing state of the law.

Article 8§4

Sweden implements Council Directive 92/85/EEC, but has not ratified ILO Convention No. 171 (Night Work). Although there are regulations issued by the Labour Protection Directorate in pursuance of Article 7 of the Council Directive providing that pregnant women and women having recently given birth may under certain circumstances not be employed on night work (AFS 1994:32), the point of departure in Swedish law is that night work does not in general pose a particular risk to pregnant or breastfeeding women. The Government also underlines that rules on night work is to a large extent a matter for regulation between the social partners and that acceptance of Article 8§4 might require legislative measures. Finally, basing itself on a statement by the Equal Opportunities Ombudsman (*JämO*) according to which special regulation of working conditions for women should be avoided as far

[1] There may be an inconsistency here in the fact that Sweden has accepted Article 4§1 on the right to a fair wage (for adults). The Government indicates that the requirement in Article 4§1 is so fundamental that even considerations of the collective autonomy of the social partners have to give way. It is not immediately clear why this argument could not be applied to Article 7§5 as well, and the more so when taking into account that the Committee's method of assessment is basically the same as for Article 4§1 (except where apprentices are concerned). It is recalled that the Committee in its Third Report on certain provisions of the Charter which have not been accepted (1989) concluded that the situation in Sweden was "not incompatible with its case law".

as possible, the Government concludes that also considerations of equal treatment militates against acceptance of Article 8§4.

The National Working Life Institute questions the Government's reasoning. The Institute does not agree that special protection in a situation which is specific to women in any way conflicts with equal treatment concerns.

Article 8§5

The relevant domestic legislation in this field is to be found in the Parental Leave Act (1995:584) and in regulations issued by the Labour Protection Directorate. While Article 8§5 contains an absolute prohibition of employing pregnant women in underground work, the Swedish rules merely prohibit such employment where particular risks are involved, with the assessment being made on a case-by-case basis. The Government does not see a total prohibition as desirable or appropriate and also here it invokes considerations of equal treatment of women and men. For the above reasons alone the Government is not prepared to accept Article 8§5, but it is also noted that the phrase "to take measures to protect the employment rights of these women" is open-ended and therefore problematic.

Article 12§4

During the 1979 review it was concluded that the Swedish situation largely complied with this provision, except in respect of health insurance benefits where the adequate level of protection was only guaranteed to Nordic nationals (the Nordic Convention). Since 1979, the situation has changed, primarily due to Sweden's membership of the EU, but it is pointed out that the Charter comprises more countries than just the EU/EEA member states/parties. The National Insurance Authority supports non-acceptance of Article 12§4. The Law Faculty at Lund University, which was also consulted, observes that Sweden is bound by Community Regulation 1408/71 and it considers that any extension of the scope of social security coordination should take place at Community level.

Article 24

Sweden has ratified ILO Convention No. 158 (Termination of Employment). In the Government's view the requirement for "valid reasons" should be satisfied by Section 7 of the Employment Protection Act (1980:82), but the exceptions in terms of the persons protected provided by Section 1 of the Act may be wider in scope than prescribed by the Revised Charter. Although workers who fall outside the scope of of the Employment Protection Act are not entirely deprived of dismissal protection,[1] the Government considers it doubtful whether it is sufficient to satisfy Article 24. It is noted in this respect that the exceptions permitted by the ILO Convention are more
far-reaching than those foreseen in the Revised Charter.

The Law Faculty at Lund University questions in general whether the procedure before the Labour Court fulfils the Charter's requirement for a fair and impartial

[1] According to the case law of the Labour Court a dismissal which offends against "law and morals" (*lag och goda seder*) is unlawful.

process and this may in its view be an additional obstacle to acceptance of Article 24. The Civil Servants Trade Union Federation (TCO), on the contrary, favours acceptance and invites the Government to take the necessary legislative measures to this end.

Article 28

The Government observes that this provision concerns the protection of workers' representatives who are not covered by Article 5 and that the provision is inspired by ILO Convention No. 135 (Workers' Representatives), which Sweden has ratified. It is observed that the status of workers' representatives in Sweden is held by trade union representatives and the Government and the social partners are in agreement that employees should be represented by the trade unions and not by representatives elected outside the unions.[1] In practice there is no organised representation of employees outside the framework of the trade unions.

The Law Faculty at Lund University notes that there is simply no field of application for Article 28 in Sweden.

[1] The reason why Sweden has accepted the ILO Convention is that it covers both types of workers' representatives.