

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**



**REPORT  
ON THE MEETING WITH THE SWEDISH GOVERNMENT  
WITHIN THE FRAMEWORK OF THE PROCEDURE  
ON NON-ACCEPTED PROVISIONS (ARTICLE 22 OF THE 1961  
CHARTER)**

(Strasbourg, 21 October 2008)

**Document prepared by the Secretariat**

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<b>Situation of Sweden as of 1 October 2008</b>
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*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 2008 it submitted 7 reports on the Revised Charter. The 8<sup>th</sup> report will concern the provisions accepted by Sweden, related to the theme Health, social security and social protection (Articles 3, 11, 12, 13, 14 23 and 30 of the Revised Charter).

The 8th report was due to be submitted before 31/10/2008.

*Non-accepted provisions*

The 15 provisions not accepted by Sweden are the following:

- Article 2§1 – The right to reasonable working time
- 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 2§7 – The right to special guarantees in case of night work
- Article 3§4 – The right to occupational health services
- Article 4§2 – The right to increased pay for overtime
- 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 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§4 – The right of employed women to regulation of night work
- 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

## SUMMARY MEETING REPORT

The meeting with the Swedish authorities took place within the framework of the procedure adopted by the Ministers' Deputies in December 2002 concerning the provisions not accepted by the States Parties (Article 22 of the 1961 Charter). It is recalled that the Deputies 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 they further "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.

The meeting was the second such meeting<sup>1</sup> regarding Sweden and took place in Strasbourg on 21 October 2008. The European Committee of Social Rights had initially proposed to organise the meeting in Sweden in the spring of 2008, but upon the request of the Swedish authorities the meeting was moved to Strasbourg and was held during the Committee's 232<sup>nd</sup> session. In addition to the detailed discussion of the situation regarding the non-accepted provisions between a delegation of the Committee and the Government representatives there was also a general exchange of views between the plenary Committee and the Government representatives (see programme below).

The Permanent Representative of Sweden to the Council of Europe and Chair of the Ministers' Deputies, Ambassador SJÖGREN, made an introductory statement, where he underlined Sweden's strong commitment to the Charter as one of the Council of Europe's core human rights instruments. He also gave a detailed presentation of the programme of the Swedish Presidency of the Committee of Ministers.

Ms RENMAN and Mr HULT of the Ministry of Employment provided a general overview of the Swedish position with respect to the non-accepted provisions emphasising the special nature of the Swedish labour market "model" whereby the matters covered by many of the non-accepted provisions of the Charter are regulated by agreements between the two sides of industry (and not through legislation). Mr HULT stated that the authorities in preparation for the present meeting again had made a careful study of the situation regarding the non-accepted provisions and regrettably they had not so far been able to identify any provisions that could be accepted by Sweden in the immediate future. He stressed, however, that the Swedish delegation looked forward to hearing the Committee's explanations

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<sup>1</sup> The first meeting took place in Stockholm on 26-27 November 2003.

of the relevant case law and did not rule out that the Swedish position could be changed.

The President of the Committee, Ms KONCAR, recalled that following the meeting in Stockholm five years ago the Committee had provisionally concluded that there seemed to be no major obstacles to the acceptance of several additional provisions, including Article 2§1, Article 2§7, Article 3§4, Article 4§5, Article 7§5 and Article 8§4. As there would appear to have been no radical changes to the legal situation in the areas concerned Ms KONCAR, suggested that focus be kept on these provisions to see where problems remained from a Swedish point of view.

The Swedish delegation then proceeded to present its detailed position on each of the 15 non-accepted provision. A summary of the Swedish statements appears at Appendix IV.

Summarising the the discussion of the different provisions, Ms KONCAR said that the Committee had taken note of the Swedish position, but reiterated the Committee's view that the above-mentioned provisions could be accepted by Sweden. In particular she felt that the discussion had shown clearly that there was no contradiction whatsoever between the Committee's case law on Article 2§7, Article 3§4 and Article 8§4 on the one hand and the situation in law and in practice in Sweden on the other hand. She therefore invited the Swedish Government to consider acceptance of these provisions and inform the Committee of its decision as soon as possible.

## **APPENDIX I**

### **Composition of the delegation and Government representatives**

The delegation of the European Committee of Social Rights (ECSR) comprised the following persons:

Ms Polonca KONCAR, President of the ECSR  
Mr Jean-Michel BELORGEY, General Rapporteur of the ECSR  
Mr Stein EVJU, member of the ECSR  
Ms Birgitta NYSTRÖM, member of the ECSR

The delegation was assisted by:

Mr Régis BRILLAT, Executive Secretary of the ECSR  
Mr Henrik KRISTENSEN, Deputy Executive Secretary of the ECSR

The following representatives of the Swedish authorities participated in the meeting:

#### **Ministry of Foreign Affairs:**

Mr Per SJÖGREN, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of Sweden to the Council of Europe  
Ms Jenny EGGERMARK, Deputy to the Permanent Representative

#### **Ministry of Employment:**

Ms Karin RENMAN, Director General for Legal and Administrative Affairs, Ministry of Employment  
Mr Stefan HULT, Director, Division of Labour Law and Work Environment, Ministry of Employment  
Ms Helle ELLEHÖJ, Deputy Director, Division of Labour Law and Work Environment, Ministry of Employment  
Ms Maria EK OLDSJÖ, Legal Adviser, Legal Secretariat, Ministry of Employment

**APPENDIX II****PROGRAMME****Tuesday 21 October 2008**9h30-10h45      Room 5 / Agora Building

*Meeting with the European Committee of Social Rights (in plenary)*

Welcome by **Mrs Polonca Končar**, President of the European Committee of Social Rights.

Address by the **Mr Per Sjögren**, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of Sweden to the Council of Europe

Introductory statement by the Head of the Swedish delegation (tbc)

Exchange of views between the Committee and the Swedish delegation on matters of mutual interest, in particular the provisions of the Revised Charter not accepted by Sweden.

10h45-11h00      Coffee break11h00 – 12h45      Room 5 / Agora Building

*Meeting with a delegation of the European Committee of Social Rights:*

Examination of the non-accepted provisions:

Article 2§1 – The right to reasonable working time

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 2§7 – The right to special guarantees in case of night work

Article 3§4 – The right to occupational health services

Article 4§2 – The right to increased pay for overtime

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 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§4 – The right of employed women to regulation of night work

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

13h00 – 14h30      Restaurant bleu / Palais de l'Europe


*Lunch offered by the President*

15h00-16h30      Room 5 / Agora Building

Continuation and conclusion of the examination of the non-accepted provisions



**APPENDIX III****CEAD Synopsis**

<b>Title</b>	<b>Meeting on non-accepted provisions</b>
<b>Description</b>	
<b>Status</b>	Completed
<b>Date</b>	21/10/2008
<b>Countries</b>	CoE Members: <a href="#">Sweden</a> Bilateral
<b>CoE Programmes (PoA and VC)</b>	
	
<b>Programme of Activities</b>	
Chapter	I – Social Cohesion
LoA	<input type="checkbox"/> IV.1 – <a href="#">Ensuring social cohesion</a>
Programme	<input type="checkbox"/> IV.1.1 <b><a href="#">European Social Charter</a></b>
Project	<a href="#">2008/DGHL/1421 Implementation of ECSR decisions and conclusions and improvement of communication on the ESC</a>
Expected Result	<a href="#">2 The number of ratifications of the RESC/ESC instruments and the number of provisions accepted are increased.</a>
<b>Nature of Intervention</b>	<a href="#">Dissemination and Support</a>
<b>Activity Type</b>	<a href="#">Evaluation / Assessment</a>
<b>Working Method</b>	<a href="#">Audiovisual</a>
<b>Location</b>	Strasbourg, Council of Europe
<b>Directorate (Service)</b>	<a href="#">Human Rights and Legal Affairs (Monitoring - European Social Charter)</a>
<b>CoE Contact</b>	KRISTENSEN, Henrik <a href="#">email</a>
<b>Partners</b>	
<b>Web Pages</b>	<b>1</b> <a href="http://www.coe.int/socialcharter">http://www.coe.int/socialcharter</a>
Documents & links	
<b>Last Modified</b>	24/10/2008 <a href="#">LAVOUE, Caroline</a>
<b>CEAD OWNER</b>	<a href="#">LAVOUE, Caroline</a>
<b>Origin/DG Remarks</b>	
<b>Secretariat</b>	
<b>Estimated Cost</b>	<b>Real Cost</b>
<b>Purchase Order(s)</b>	

Activity Synopsis (ID# 21373) ([Hide Synopsis](#))

- Objective(s)** To examine the provisions not accepted by Sweden within the framework of the procedure adopted by the Ministers' Deputies (Article 22 procedure).
- Output/Results** The meeting was the second such meeting regarding Sweden and took place in Strasbourg on 21 October 2008. The European Committee of Social Rights had initially proposed to organise the meeting in Sweden in the spring of 2008, but upon the request of the Swedish authorities the meeting was moved to Strasbourg and was held during the Committee's 232nd session. In addition to the detailed discussion of the situation regarding the non-accepted provisions between a delegation of the Committee and the Government representatives there was also a general exchange of views between the plenary Committee and the Government representatives.

The Committee concluded that there were no major obstacles to Sweden

accepting several additional provisions, in particular Article 2§7, Article 3§4 and Article 8§4.

**Conclusions/Follow Up** A report of the meeting will be drawn up with a view to being transmitted to the Swedish authorities in early 2009. It will then be for the Swedish authorities to decide on whether to accept additional provisions.

**Participants** The delegation of the European Committee of Social Rights (ECSR) comprised the following persons:

Ms Polonca KONCAR, President of the ECSR  
 Mr Jean-Michel BELORGEY, General Rapporteur of the ECSR  
 Mr Stein EVJU member of the ECSR  
 Ms Birgitta NYSTRÖM, member of the ECSR

The following representatives of Swedish authorities participated in the meeting:

Ministry of Foreign Affairs:

Mr Per SJÖGREN, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of Sweden to the Council of Europe  
 Ms Jenny EGERMARK, Deputy to the Permanent Representative

Ministry of Employment:

Ms Karin RENMAN, Director General for Legal and Administrative Affairs, Ministry of Employment  
 Mr Stefan HULT, Director, Division of Labour Law and Work Environment, Ministry of Employment  
 Ms Helle ELLEHÖJ, Deputy Director, Division of Labour Law and Work Environment, Ministry of Employment  
 Ms Maria EK OLDSJÖ, Legal Adviser, Legal Secretariat, Ministry of Employment

**Consultants/Experts**

**CoE Secretariat** Mr Régis BRILLAT, Executive Secretary of the ECSR  
 Mr Henrik KRISTENSEN, Deputy Executive Secretary of the ECSR

**Total No. Participants** 12

Last Modified 04/02/2009 [KRISTENSEN, Henrik](#)

## Appendix IV

### Report by the Swedish Government on the non-accepted provisions

#### **Article 2§1 – With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to provide for**

- 1) reasonable daily and weekly working hours,
- 2) the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit

#### **Swedish position**

The reasons not to undertake the provision remain.

#### **General reasons not to accept the provision**

Provisions on daily and weekly working hours are included in Swedish working time legislation. Swedish legislation in the field is to a large extent non-compulsory in that regard that it can be deviated from by collective agreements.

The detailed arrangements for these and other aspects of working time is by tradition primarily settled by collective agreements on the Swedish labour market and is a responsibility of the social partners. Further more, the issue of reducing working time is primarily a matter for the social partners to agree upon in collective agreements.

The Swedish state cannot take responsibility for the substance of the collective agreements, nor be held responsible for the fulfilment of an agreement. However strong the Swedish commitment to the Social Charter, government ratification of the provision would imply government responsibility for the fulfilment of the undertaking.

#### **Swedish legislation and collective agreements**

##### *Part 1*

According to the Swedish Working Hours Act, regular working hours may not exceed 40 hours per week (5 §). Overtime hours may be worked at a rate of not more than 48 hours over a period of four weeks or 50 hours over a calendar month, subject to a maximum of 200 hours per calendar year (8 §).

This means that the *actual working hours* may occasionally be longer than the *regular working hours*. However, the actual working hours are limited by the regulations on the disposition of working hours.

According to *European Council directives*, new legislation was passed in 2005. Since then, every employee should have at least eleven continuous hours of free time for every period of twenty-four hours (13 §). Employees are also entitled to at least thirty-six consecutive hours of free time within every period of seven days. The total weekly working hours may not exceed 48 hours during a calculation period of at most four months (14 §).

Since 2005, three special laws have been passed in the field: The Working Hours for Certain Road Transport Work Act, Working Time, etc. of Mobile Workers in Civil Aviation Act and the Hours of Rest and Driving in International Railway Traffic Act.

**Conclusion**

However, neither the adaption of European general directives nor the passing of the special acts affects the Swedish standpoint.

Deviations from the provisions may be made through collective bargaining agreements. Under certain circumstances, the Swedish Work Environment Authority may also permit exemptions from the requirements. However, on a general basis exemptions must not exceed what is stated in the European Working Time Directives.

*Part 2*

In accordance with general Swedish custom, working hours is one of the issues regulated through collective agreements concluded by the social partners. Governmental ratification of the provision would imply governmental responsibility for the fulfilment of the undertaking.

**Article 2§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**

**Swedish position**

The reasons not to undertake the provision remain.

**Reasons not to accept the provision**

According to, the commissions case-law, the Article contains two parts;

- 1) a requirement for a certain number of public holidays on a yearly basis, and
- 2) a requirement for compensation in money *and* that the workers that are forced to work shall be compensated with the corresponding time off.

Regarding the *number of public holidays* on a yearly basis, Sweden has legislated concerning which days of the year that are recognised as public holidays, lagen (1989:253) om allmänna helgdagar. That does not give the right too time off from work, wich is regulated in collective agreements.

*Regarding pay and compensation with time off* the detailed arrangements for these and other aspects of working time is by tradition primarily settled by collective agreements on the Swedish labour market and is a responsibility of the social partners.

The Swedish state cannot take responsibility for the substance of the collective agreements, nor be held responsible for the fulfilment of an agreement. However strong the Swedish commitment to the Social Charter, Government ratification of the provision would imply Government responsibility for the fulfilment of the undertaking.

**Article 2§4 – With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to**

- 1) eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to
- 2) provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations

**Swedish standpoint**

The reasons not to undertake the provision remain.

**Reasons not to accept the provision**

Compliance with the first part of the article seems to be met through work environment legislation.

Although article 2§4 in its new wording puts more emphasis on *risk elimination* instead of *risk compensation*, a demand for additional paid holidays and reduced working time for certain groups of workers still remain in the provision. Rules on additional paid holidays and reduced working hours 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.

**Swedish legislation and collective agreements**

The Swedish Work Environment Act does state that “The employer shall take all the precautions necessary to prevent the employee from being exposed to health hazards or accident risks. One basic principle in this connection shall be for everything capable of leading to ill-health or accidents to be altered or replaced in such a way that the risk of ill-health or accidents is eliminated.”

**Article 2§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.**

#### **Swedish standpoint**

The reason not to undertake the provision remains.

#### **Reasons not to accept the provision**

The issue is by tradition mainly settled by collective agreements on the Swedish labour market and is a responsibility of the social partners.

#### **Swedish legislation and collective agreements**

There is a general prohibition against night work in the Swedish Working Time Act (13 §), but the act does permit certain night work as an exception. Deviations from the law can also be made through collective agreements. In accordance with what is stated in the Work Environment Act, employers are also obliged to ensure employees satisfactory health and safety conditions. Statutory orders on medical examinations of night workers have also been issued by the Work Environment Authority.

In pursuance of *European Council directives*, new regulations regarding night work hours were passed in 2005. Working time for night workers may not exceed an average working time of eight hours under each period of 24 hours, during a calculation period of at most four months (13 a §). Night workers whose work involve special risks or great physical or mental effort cannot work for more than eight hours during each period of 24 hours.

In addition to this basic statutory protection of night workers, the measures foreseen by Article 2§7 are to a large extent regulated by collective agreement, and the issues are primarily considered to be a liability of the social partners.

**Article 3§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' organizations, to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.**

**Swedish standpoint**

The reasons not to undertake the provision remain.

**Reasons not to accept the provision**

The Article imply a right for all workers to health services, or if so is not the case, a strategy for reaching that goal.

The Swedish Work Environment Act states that the employer shall be responsible for the availability of the occupational health services which the working conditions require. This definition is in accordance with the Social charter, regarded to health service as mainly preventive and advisory function. However, it is still doubtful whether Sweden fulfil the requirements.

The measures taken by the government are not primarily focusing on preventive actions. The access to occupational health services has remained relative unchanged, with an estimated 75 percent of all employees having access to occupational health services. The charters demand for occupational health services for all can not be considered to be met.

There are no plans for further legislation stating mandatory occupational health services or guaranteeing access to occupational health services to all by other means.



**Article 4§2 – With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases.**

**Swedish standpoint**

The reasons not to undertake the provision remain.

**Reasons not to accept the provision**

Sweden is in compliance with the requirements, but the issue is by tradition regulated by collective agreements between the social partners.

The Swedish collective agreements are, practically without exception, stating the right to an increased rate of remuneration for overtime work. The requirement of article 4§2 is thus met, but the issue of remuneration is not regulated by Swedish law but by agreement between the social partners in the labour market.

As this is not an issue managed by the Government, the Government cannot take responsibility for the content of the collective agreements, nor be held responsible for the fulfilment of an agreement. Government ratification of the provision would imply government responsibility for the fulfilment of the undertaking.

**Article 4§5 – With a view to ensuring the effective exercise of the right to a fair remuneration, 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.**

**Swedish standpoint**

The reasons not to undertake the provision remain. The issue is by tradition mainly regulated by collective agreements between the social partners.

**Reasons not to accept the provision**

The Article imply that reduction from wage is permitted if the reduction is based on law or collective agreements.

The issue is in Sweden by tradition mainly regulated by collective agreements between the social partners.

There is a possibility to set off wage given in law, Law on employers right to set of (lag /1970:215/ om arbetsgivares kvittningsrätt), however, deviations from the law may be made through collective agreements.

As this is not an issue managed by the Government, the Government cannot take responsibility for the content of the collective agreements, nor be held responsible for the fulfilment of an agreement. Government ratification of the provision would imply government responsibility for the fulfilment of the undertaking.

**Article 7§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.**

**Swedish position**

The reasons not to ratify the provision remain.

**Reasons not to accept the provision**

The issue of remuneration is not regulated by Swedish law but by agreement between the social partners in the labour market.

As this is not an issue managed by the government, the government cannot take responsibility for the content of the collective agreements, nor be held responsible for the fulfilment of an agreement. Government ratification of the provision would imply government responsibility for the fulfilment of the undertaking.

We have also noticed that the case law of the Committee on this provision is rather detailed as regards for example when a salary is to be deemed appropriate, different percentages of minimum wages or equivalent are mentioned. In Sweden also the level of wages is a matter for the social partners.

**Article 7§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.**

**Swedish position**

The reason not to accept the provision remains.

**Reasons not to accept the provision**

Sweden is probably in compliance with the requirements, but the issue is by tradition regulated by collective agreements between the social partners.

As this is not an issue managed by the government, the government cannot take responsibility for the content of the collective agreements, nor be held responsible for the fulfilment of an agreement. Government ratification of the provision would imply government responsibility for the fulfilment of the undertaking.

**Article 8§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.**

### **Swedish position**

Sweden is still unable to ratify the paragraph.

The reasons are the same as before:

The paragraph can not be ratified due to the content of the Swedish legislation and the Government has no intention at present to change the legislation in this respect.

### **Reasons not to accept the provision**

Sweden has a very good over all protection for pregnant women and for persons on parental leave – both women and men.

We also, on the whole, agree with what seem to be the main thought behind the paragraph - *that the fact in itself* that someone is pregnant or on parental leave, should not be reason enough to dismiss a person.

Such a protection is also given through the Swedish legislation, which even has been further strengthened in some respects during the last past years.

However, the protection according to article 8.2, read together with the appendix, goes further than a prohibition against dismissal due to pregnancy and parental leave.

As Sweden interprets the provision, it is prohibited for an employer to execute dismissals during the defined period, even if a dismissal is due to other reasons,

for example lack of work – which is not due to that the whole undertaking concerned ceases to operate,

or due to personal reasons, for example misconduct – which is not so serious that it constitutes a reason for immediate dismissal.

This leads to the conclusion that the protection against dismissal which exists in the present Equal opportunities Act (1991:433) or the Law on Discrimination, which soon will be substituting it, or in the Parental Leave Act, are not sufficient to fulfil the requirements in the legislation.

An almost absolute prohibition of dismissals in the cases mentioned in the paragraph would in our view not constitute a balanced adjustment between the interests of protection for the employees and the interests of the employers of a functioning business, and would risk to be contra-productive.

**Article 8§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.**

### **Swedish position**

The reasons not to undertake the provision remain.

### **Reasons not to accept the provision**

There are mainly three reasons not to ratify the provision.

Firstly, The content of the provision is unclear and it is thus uncertain if Sweden fulfils the requirements of the Charter. The Swedish rules are building on the conception that night work normally does not imply a risk at pregnancy or nursing.

Secondly, in addition to the basic statutory protection of night workers, the measures foreseen by article 8§4 are also regulated by collective agreement, and the issues are mainly considered to be a responsibility of the social partners.

Thirdly, Sweden also want to avoid special regulation for women.

### **Present Swedish legislation and collective agreements**

There is a *general prohibition* against night work in the Swedish Working Time Act (§13), but the act does permit certain night work as an exception. *Deviations* can also be made through collective agreements.

In accordance with what is stated in the Work Environment Act, employers are also obliged to ensure employees satisfactory *health and safety* conditions.

Statutory orders on medical examinations of night workers have also been issued by the Work Environment Authority.

The Work Environment Authority's Statute book "Pregnant and nursing workers (AFS 2007:05)" contains a provision that ensures that a worker is not obliged to perform night work during her pregnancy and when recently given birth, subject to submission of a *medical certificate* stating that this is necessary for the safety or health for the worker concerned (9§). The statutes are in accordance with Council directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

A woman who has been prohibited to perform night-work due to the statutes is according to The parental Leave Act in some cases entitled to be *transferred* to other work while retaining her employment benefits. (18 and 20 §§).

In addition to this basic statutory protection of night workers, the measures foreseen by article 8§4 are also regulated by collective agreement. The issues are mainly considered to be a responsibility of the social partners.

**Article 8§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 unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women.**

#### **Swedish position**

The reasons not to ratify the provision remain.

#### **Reasons not to accept the provision**

The main reason not to accept the provision is that the construction of the Swedish legislation does not seem to fulfil the requirements of the Charter.

While the Charter and the case law of the committee demands an extensive *ban* on employment of pregnant women in underground mining and other unhealthy and/or dangerous work, Swedish statutes claim for the employer to *investigate the possible risks* to the health and safety of employed pregnant and/or nursing women on a *case-by-case basis*.

There is no general ban on employing pregnant or nursing women in certain areas, but a demand to take appropriate measures to prevent accidents and ill-health.

In addition, there is a general Swedish aim to, as far as possible, avoid special regulation for women workers.

#### **Swedish legislation and collective agreements**

Since the last time Sweden reviewed the article, new conclusions have been presented by the Committee. Swedish statutes have also partially changed. However, the essence of the legislation remains the same.

**Article 12§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;
- b. the granting, maintenance and resumption(återfående) of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties

### **Swedish position**

The reasons not to undertake the provisions remain. It is still doubtful if Sweden fulfils the requirement of the provision.

Sweden has not concluded that many social security agreements.

Sweden does not have any national legislation on coordination of social security applying to all the member states of the European Council. Sweden however is a part of the system of coordination of the social security on an EU level and supports the work examining whether this coordination can be extended to non EU countries.

However, the Swedish legislation on social security is mostly neutral concerning nationality, this as it is based on *work or residence* in the country.

Several of the income-related benefits are exportable according to national law. One example is the income pension.

Residence is required concerning the resident-based benefits, i.e. child benefit<sup>1</sup> and guarantee pension<sup>2</sup>. These benefits are financed *through taxes and not contributions*<sup>3</sup>.

For most of the Swedish benefits, there is no long waiting period to generate a right to a benefit, for example the income pension.

As these examples show there is a *minor need of coordination* to apply the national legislation in respect of persons working in different countries.

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<sup>1</sup> Barnbidrag.

<sup>2</sup> Garantipension.

<sup>3</sup> Socialavgifter.



Within the frame of the European Council, social security experts have discussed an initiative to create a multilateral coordination instrument based on the rules of the European Union. Sweden supports the work examining that proposal.

**Article 24 - 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 operational 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.

**Swedish position**

The former reasons not to ratify the article still remain.

The paragraph can not be ratified due to the content of the Swedish legislation.

The legislation does not fulfil the demand under a) on protection for all employees.

We do not foresee any changes in this respect.

In §1 of the Employment Protection Act, which amongst other things regulates questions related to dismissals, some categories of employees are excepted from the application of the legislation.

They are the following:

1. Employees whose duties and conditions of employment are such that they may be deemed to occupy a managerial or comparable position;
2. Employees who are members of the employer's family;
3. Employees employed for work in the employer's household;
4. Employees who are employed for work with special employment support or in sheltered employment or in development employment.

These employees are not either deemed to be covered by the possible exemptions from the article given in the appendix.

In addition, we also find that the Case Law of the Committee as it is presented in the Digest of the case law, in many cases is not in line with the Swedish legislation or practice.

In other cases it is at least doubtful if they are compatible.

**Specifically regarding the relation to ILO convention 158**

Sweden has as the Committé point out ratified the ILO convention 158. However, this convention contains larger possibilities for exemptions, than the Charter. We therefore do not find there is a contradiction between these decisions.

In the appendix to the Charter regarding Art 24 in p 2 it is stipulated that some categories of workers may be exempted from the protection of the article, namely

- a) workers engaged under a contract of employment for a specific period of time or a specific task
- b) workers undergoing a period of probation or a qualifying period of employment provided that this is determined in advance and is of a reasonable duration
- c) workers engaged on a casual basis for a short period.

The ILO Convention 158 regulates the possibilities to exemptions in Art 2. Besides the exemptions in §2, which resemble the ones in the Charter, there are also other, additional possibilities of exemptions. Namely for "categories of employed persons whose terms and conditions of employment are governed by special arrangement which as a whole provide protection that is at least equivalent to the protection afforded under the Convention" and "other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them."

**Article 28 - 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 relations system of the country and the needs, size and capabilities of the undertaking concerned.

**Swedish position**

The reasons not to ratify the article remain.

**Reasons not to accept the provision**

Article 28 protects such workers representatives who are not also trade union representatives. The latter category is protected by Article 5, which Sweden has accepted.

The status of workers representatives in Sweden is by tradition held by trade union representatives. In practice there is no organised representation of employees outside the framework of the trade unions.

Workers representatives who are not also trade union representatives are very uncommon in Sweden, and only exist under some specific laws due to EU-legislation. Under these laws, such workers representatives are protected as regards their ability to carry out their function and their employment circumstances and terms and conditions of employment.

We do not presently consider that there is any need for a general protection of such workers representatives, outside the scope of those specific laws.