March 2018

European Social Charter

European Committee of Social Rights

Conclusions 2018

SWEDEN

This text may be subject to editorial revision.

The following chapter concerns Sweden which ratified the Charter on 29 May 1998. The deadline for submitting the 17th report was 31 October 2017 and Sweden submitted it on 24 October 2017.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of the thematic group "Labour Rights" :

- right to just conditions of work (Article 2),
- right to a fair remuneration (Article 4),
- right to organise (Article 5),
- right to bargain collectively (Article 6),
- right to information and consultation (Article 21),
- right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- right to dignity at work (Article 26),
- right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- right to information and consultation in collective redundancy procedures (Article 29).

Sweden has accepted all provisions from the above-mentioned group except Articles 2§1, 2§2, 2§4, 2§7, 4§2 and 28.

The reference period was 1 January 2013 to 31 December 2016.

The conclusions relating to Sweden concern 16 situations and are as follows:

– 13 conclusions of conformity: Articles 2§3, 2§5, 2§6, 4§1, 4§4, 5, 6§1, 6§2, 6§3, 6§4, 21, 22 and 26§1;

– 0 conclusions of non-conformity.

In respect of the 3 other situations related to Articles 4§3, 26§2 and 29, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Sweden under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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The next report to be submitted by Sweden will be a simplified report dealing with the follow up given to decisions on the merits of collective complaints in which the Committee found a violation.

The deadline for submitting that report was 31 October 2018.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

The Committee takes note of the information contained in the report submitted by Sweden.

It takes note, in particular, of the amendments made to Law No.1977/480 on Annual Leave for part-time workers.

It also notes that there has been no change in the situation that it previously found to be in conformity with the Charter (Conclusions 2014), and it therefore reiterates its finding of conformity in this respect.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 2§3 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

The Committee takes note of the information contained in the report submitted by Sweden.

It takes note, in particular, of the amendments made to Law No.1982/673 on Working Hours which provide for, among others, the possibility of imposing administrative fines in the event of an established breach of the law. It asks for the next report to provide more information on these fines, and specifically on the conditions under which they are applied, and on the body responsible for issuing and enforcing them.

It further notes that there have been no changes in the situation which it previously found to be in conformity with the Charter (Conclusions 2014), and it therefore reiterates its conclusion of conformity in this respect.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 2§5 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 6 - Information on the employment contract

The Committee takes note of the information contained in the report submitted by Sweden.

It refers to its previous conclusions (Conclusions 2014) for more information on the details which the employer must communicate in writing to workers.

Given that nothing has changed during the reference period, the Committee considers Sweden to be in conformity with the Charter in this respect.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 2§6 of the Charter.

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

The Committee takes note of the information contained in the report submitted by Sweden and in the reply of 13th April 2018 to its request for additional information.

The Committee notes that in the absence of legislation on a statutory minimum wage, minimum wages are established by sector according to age, length of service or experience by means of collective agreements.

The report indicates an average gross wage which was SEK 32 000 per month in 2015 (about €3,421.18 per month or €41,054.15 per annum (twelve months)). The additional information points out that the average net monthly wage which depends on income tax, which is determined by the municipality of which the worker is a resident was estimated at SEK 24,500 in 2016, (about €2,587 per month or €31,044 per annum (twelve months)). Since, according to the report, wages are generally lowest in the trade sector, the minimum monthly wage for an employee aged 18 set out in the collective agreement that applied for this sector was SEK 15,500 net (about €1,637 per month or €19,644 per annum (twelve months)).

According to EUROSTAT database, the average gross annual income for single workers without children (100% of the average worker) was €44,495.64 gross and €33,422.46 net in 2015.

The Committee notes that the lowest wage paid in the trade sector in 2016 amounted to about 63.26% of the average net wage, a remuneration higher than 60% of the average considered decent by the Committee within the meaning of Article 4§1 of the Charter.

The report provides no information to the Committee's previous request on remuneration in sectors or professions not covered by collective agreements, as well as in the national, regional and municipal civil service (civil servants and contractual staff), so that it reiterates its request.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Sweden is in conformity with Article 4§1 of the Charter.

Article 4 - Right to a fair remuneration

Paragraph 3 - Non-discrimination between women and men with respect to remuneration

The Committee takes note of the information contained in the report submitted by Sweden.

Conclusion

Pending receipt of its decision concerning UWE v. Sweden, complaint No. 138/2016, the Committee defers its conclusion.

Article 4 - Right to a fair remuneration

Paragraph 4 - Reasonable notice of termination of employment

The Committee takes note of the information contained in the report submitted by Sweden.

Reasonable notice period for all workers

In reply to the Committee's question (Conclusions 2014), the report states that the periods of notice of termination set out in the Employment Protection Act (No. 80/1982) (EPA), Sections 11 and 12, have not been amended during the reference period. It also states that there are no collective agreements that are incompatible with the EPA in terms of periods of notice of termination. According to the previous report, Section 11 of the EPA set the periods of notices as follows:

• One month minimum after one year of service and more;

• Two months, if the aggregate length of employment with the employer is at least two years but less than four years.

• Three months, if the aggregate length of employment with the employer is at least four years but less than six years.

• Four months, if the aggregate length of employment with the employer is at least six years but less than eight years.

• Five months, if the aggregate length of employment with the employer is at least eight years but less than ten years.

• Six months, if the aggregate length of employment with the employer is at least ten years.

The Committee asks information on notice period and/or severance pay applicable to employees with less than one year of service. Meanwhile, it considers that the situation is in conformity with Article 4§4 of the Charter.

In reply to the Committee's question on notice periods applicable during the probationary period (Conclusions 2014), the probationary period may not be longer than six months. The report does not provide specific information on notice period in case of termination of the employment during the probationary period. The Committee, therefore, reiterates its previous question.

In reply to the Committee's question on notice periods applicable to fixed-term and part-time contracts, the report states that there are no specific provisions applying to part-time contracts, with the result that the rules governing full-time contracts also apply to part-time contracts. The report provides certain information as regards to seasonal employees. However it does not indicate notice periods applicable in case of termination of employment during the seasonal employment, neither does it indicate notice periods applicable to early termination of fixed-term contracts. The Committee, therefore, reiterates its previous question.

The Committee notes from the report that a collective agreement may allow for derogations from the provisions of Sections 5 and 6 of the EPA and asks in this regard for further information in the next report. It asks in particular what are the permissible derogations that can be set by collective agreement.

As regards periods of notice applicable to civil servants and public officials, the report states that the rules set out in the Public Employment Act (No. 260/1994), are the same as those enshrined in the EPA.

As regards domestic staff, the report states that the Domestic Work Act (No. 1970/943) provides for a period of notice of termination of employment of at least one month. The period of notice must be two or three months in case the employee has been employed for at least five or ten years at the time of dismissal. Furthermore, the report states that

employees who are members of the family of the employer are exempted from the scope of the EPA.

In its previous conclusion (Conclusions 2014), the Committee requested information on notice periods and/or severance pay applicable in cases of termination of employment on grounds other than dismissal (bankruptcy; invalidity; death of the employer who is a natural person; winding up of undertaking).

In reply, the report provides information, among others, on unemployment benefits and remuneration covered by insurances through collective agreements in some cases. However, it does not provide the requested information on notice periods and/or severance pay, if any, applicable in bankruptcy, invalidity, death of the employer and winding up of the undertaking. The Committee, therefore, reiterates its previous question and reserves its conclusion on this point.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Sweden is in conformity with Article 4§4 of the Charter.

Article 5 - Right to organise

The Committee takes note of the information contained in the report submitted by Sweden.

The report indicates that there have been no changes to the situation previously found to be in conformity with the Charter.

The Committee refers to its general question concerning the right of members of the defence forces to organise.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 5 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

The Committee takes note of the information contained in the report submitted by Sweden.

The report indicates that no substantial changes were made to the situation with respect to joint consultation, which the Committee has previously found to be in conformity with Article 6§1 of the Charter.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 6§1 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

The Committee takes note of the information contained in the report submitted by Sweden.

The Committee notes that no substantial change occurred during the reference period, except for the negotiation procedures of posted workers.

The Committee recalls that it found Sweden in violation of Article 6§2 of the Charter Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden in Complaint No. No. 85/2012 ,decision on the merits of 3 July 2013, on the ground that the statutory framework on posted workers does not promote the development of suitable machinery for voluntary negotiations between employers and workers' organisations with a view to the regulation of terms and conditions of employment by means of collective agreements. The Committee continues to monitor/assess the situation through the follow up to collective complaints procedure.

In all other respects the situation has been found previously to be in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 6§2 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

The Committee takes note of the information contained in the report submitted by Sweden.

The Committee has previously found to be in conformity with Article 6§3 of the Charter but requested that the next report provide full and up-to-date information on the situation. The report provides this information. There has been no change to the situation.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 6§3 of the Charter.

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

The Committee takes note of the information contained in the report submitted by Sweden.

The Committee notes that no substantial change occurred during the reference period, except for the collective action of posted workers.

The Committee recalls that it found Sweden in violation of Article 6§4 of the Charter Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden in Complaint No. No. 85/2012, decision on the merits of 3 July 2013, on the ground that the statutory framework on posted workers constitutes a restriction on the free enjoyment of the right of trade unions to engage in collective action. The Committee continues to monitor/assess the situation through the follow up to collective complaints procedure.

The situation previously was considered to be in conformity with the Charter in all other respects.

The Committee notes that there are no restrictions on the right of police officers to strike.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 6§4 of the Charter.

Article 21 - Right of workers to be informed and consulted

The Committee takes note of the information contained in the report submitted by Sweden.

It notes that there have been no significant changes to the situation previously found to be in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 21 of the Charter.

Article 22 - Right of workers to take part in the determination and improvement of working conditions and working environment

The Committee takes note of the information contained in the report submitted by Sweden.

It notes that there have been no significant changes to the situation previously found to be in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 22 of the Charter.

Article 26 - Right to dignity in the workplace

Paragraph 1 - Sexual harassment

The Committee takes note of the information contained in the report submitted by Sweden.

Prevention

The Committee previously noted that the Work Environment Act requires employers to inform their staff about sexual harassment (Conclusions 2007). Furthermore, the Equality Ombudsman is the Governement agency in charge of promoting equal rights and opportunities and combating discrimination, including (sexual/moral) harassment (Conclusions 2003, 2007, 2010, 2014). It conducts systematic reviews of the action taken by employers against sexual harassment, in order to ensure that the requirements of the Discrimination Act are respected (Conclusions 2014). According to the report, during the reference period the Equality Ombudsman conducted some 30 training courses, involving managers, human resources officers and union representatives, for the purpose of disseminating knowledge on how employees shall be protected against sexual harassment. In addition, the Equality Ombudsman produced informational material regarding the obligation of employers to take active measures against discrimination and in 2014 contributed to the development of an e-learning course on discrimination and active measures which can be taken against it for students and staff within universities and community colleges.

The Committee asks whether and to what extent the social partners are consulted in the promotion of awareness, information and prevention of sexual harassment in the workplace.

Liability of employers and remedies

The Committee notes from the report that the Discrimination Act was amended as of 1st January 2017, out of the reference period. It asks the next report to provide all relevant information on the impact of the changes introduced on the issues covered by Article 26§1 of the Charter.

The Committee refers to its previous conclusions as regards the definition of sexual harassment. It notes that according to Chapter 2, Section 3 of the Discrimination Act, "If an employer becomes aware that an employee considers that he or she has been subjected in connection with work to harassment or sexual harassment by someone performing work or carrying out a traineeship at the employer's establishment, the employer is obliged to investigate the circumstances surrounding the alleged harassment and where appropriate take the measures that can reasonably be demanded to prevent harassment in the future. This obligation also applies with respect to a person carrying out a traineeship or performing work as temporary or borrowed labour". The report indicates that the employers' liability is also engaged in respect of reprisals.

The report does not provide, however, the information requested (Conclusions 2014) as regards the employers' liability in respect of harassment suffered by an employee from fellow workers or third parties and whether and to what extent the Employment Protection Act or other legislation deal with this situation. Accordingly, the Committee reiterates its request for information about the employer's liability in case sexual harassment suffered or perpetrated by a third person, not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc. The Committee points out that in the absence of information in the next report there will be nothing to establish that the situation is in practice in conformity with the Charter in this respect.

The Committee previously noted that victims of sexual harassment may sue the employer either directly before district and city courts or, through the office of the Equality Ombudsman or the trade unions, before the Labour Court (Conclusions 2014). It takes note of the information provided in the report concerning the complaints concerning sexual harassment

at work that have been submitted to the Equality Ombudsman during the reference period (117 complaints in 2013-2016, 3 of which have led to a judgment and 2 to a settlement).

Burden of proof

The Committee notes that there has been no change to the situation which it previously found to be in conformity with the Charter (Conclusions 2014).

Damages

The Committee previously (Conclusions 2014) noted that victims of sexual harassment may be granted reparatory damages covering their financial losses and the moral and/or physical harm suffered. The amount of compensation is not determined in advance, but depends on the circumstances of the case. According to Chapter 5, Section 1 of the Discrimination Act, when deciding the amount of the compensation, attention shall be given to the "purpose of discouraging such infringements of the Act". According to the report, the amounts granted during the reference period in the context of judgements and settlements before the Equality Ombudsman ranged from 50 000 SEK to 125 000 SEK (€5 234 – 13 086 at the rate of 31/12/2016).

The Committee previously (Conclusions 2014) asked whether persons unfairly dismissed or whose dismissal was provoked by sexual harassment could be reinstated in their former positions. In this respect, the report indicates that unfair dismissals are regulated by the Employment Protection Act, in terms of which, when a notice of termination lacks objective grounds, upon an application of the employee, the notice can be declared invalid. The Committee asks whether persons who have pressured to resign in the context of sexual harassment can also apply for reinstatement.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Sweden is in conformity with Article 26§1 of the Charter.

Article 26 - Right to dignity in the workplace

Paragraph 2 - Moral harassment

The Committee takes note of the information contained in the report submitted by Sweden.

Prevention

The Committee previously noted (Conclusions 2014) that the Equality Ombudsman is in charge of promoting equal rights and opportunities and combating discrimination, including (sexual/moral) harassment. In addition to the regular training and information activities referred to in the previous conclusions, the report indicates that in 2016 the Government started implementing a new strategy called "A Work Environment Strategy for Modern Working Life", based on a number of prioritised areas, including a sustainable working life and psychologically healthy work environment. The development of this plan was carried out in consultation with social partners.

Liability of employers and remedies

The Committee refers to its previous conclusions as regards the relevant legal framework and the definition of harassment, under the Discrimination Act, as "conduct that violates a person's dignity and that is associated with one of the grounds of discrimination covered by the Discrimination Act", namely sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age". The Committee recalls that, for a situation to be in conformity with Article 26§2 of the Charter, irrespective of admitted or perceived grounds, harassment creating a hostile working environment characterized by the adoption towards one or more persons of persistent behaviours which may undermine their dignity or harm their career shall be prohibited and repressed in the same way as acts of discrimination, and this independently from the fact that not all harassment behaviours are acts of discrimination, except when this is presumed by law. It asks whether protection against harassment in relation to the workplace is ensured even when the harassment is not associated with one of the grounds of discrimination covered by the law.

In response to the Committee's request for information on the new legislative framework in respect of moral harassment, the report indicates that the Work Environment Authority issued new provisions (which entered into force in May 2016) on organisational and social work environment, which deal with, inter alia, victimization. Furthermore, the Discrimination Act was amended as of 1st January 2017, out of the reference period. The Committee asks the next report to provide all relevant information on the impact of the changes introduced as regards the issues covered by Article 26§2 of the Charter.

The Committee notes that according to Chapter 2, Section 3 of the Discrimination Act, "If an employer becomes aware that an employee considers that he or she has been subjected in connection with work to harassment or sexual harassment by someone performing work or carrying out a traineeship at the employer's establishment, the employer is obliged to investigate the circumstances surrounding the alleged harassment and where appropriate take the measures that can reasonably be demanded to prevent harassment in the future. This obligation also applies with respect to a person carrying out a traineeship or performing work as temporary or borrowed labour". The report indicates that the employers' liability is also engaged in respect of reprisals.

The report does not provide, however, the information requested (Conclusions 2014) as regards the employers' liability in respect of harassment suffered by an employee from fellow workers or third parties and whether and to what extent the Employment Protection Act or other legislation deal with this situation. Accordingly, the Committee reiterates its request for information about the employer's liability in case of moral (psychological) harassment suffered or perpetrated by a third person, not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc. The Committee points out that in

the absence of information in the next report there will be nothing to establish that the situation is in practice in conformity with the Charter in this respect.

The Committee previously noted that victims of discrimination, including that amounting to moral harassment, may seise the Equality Ombudsman, who could bring cases before the courts. It takes note of the information provided in the report, in response to its request for information, concerning the complaints of discrimination that have been submitted to the Equality Ombudsman during the reference period and notes that the Equality Ombudsman has filed petitions in two cases regarding harassment.

Burden of proof

The Committee notes that there has been no change to the situation which it previously found to be in conformity with the Charter (Conclusions 2014).

Damages

The Committee refers to the information on compensation for material and moral damages which has been provided in respect of sexual harassment, and asks the next report to indicate whether the same provisions apply to victims of moral (psychological) harassment. It furthermore asks the next report to specify, in respect of the complaints submitted to the Equality Ombudsman, whether these complaints relate to harassment in the workplace and what has been their outcome, including the range of compensation awarded to the victims.

The Committee furthermore asks whether the victims of moral (psychological) harassment have a right to be reinstated in their post when they have been unfairly dismissed or pressured to resign for reasons linked to harassment.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 29 - Right to information and consultation in procedures of collective redundancy

The Committee takes note of the information contained in the report submitted by Sweden.

Definition and scope

There has been no change to the situation previously found to be in conformity with the Charter in this respect.

Prior information and consultation

There has been no change to the situation previously found to be in conformity with the Charter in this respect.

Preventive measures and sanctions

The Committee previously concluded that the situation in Sweden was not in conformity with Article 29 of the Charter on the ground that there is no provision that would prevent redundancies from being put into effect before the obligation to inform and consult has been fulfilled. The Government had indicated that an employer cannot, as a main rule, take and implement a decision regarding collective redundancies before he/she has fulfilled the duty to negotiate. The Committee asks in this respect whether collective redundancies can take effect and if they are valid if an employer has not fulfilled the duty to consult and negotiate. It also asks whether in practice there have been complaints before the courts from trade unions (or employers) alleging insufficient consultation and negotiation.

Conclusion

Pending receipt of the information requested the Committee defers its conclusion.