

European Committee on Social Rights – 3/7/2013 – Swedish Trade Union Confederation v. Sweden Right to Collective Bargaining Balanced against the Right to Provide Services [Art. 6 European Social Charter]

Decision-making body: European Committee of Social Rights

Case details: Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, 3 July 2013. Complaint No. 85/2012

Applicable legal provisions: Articles 4 and 6 of the European Social Charter regarding the State's duty to promote collective agreements and recognise the right to collective action; and Article 19 regarding the State's obligation to secure for foreign workers treatment no less favourable than that of nationals with respect to remuneration, employment conditions and the enjoyment of the benefits of collective bargaining.

Primary legal issues: Right to collective bargaining; right to collective action; balancing the right to provide services.

Related cases: *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avdelning 1, Byggettan and Svenska Elektrikerförbundet* (C-341/05) 18 December 2007; *International Transport Workers' Federation and Finnish Seamen's Union v Viking Line ABP and OÜ Viking Line Eesti* (C-438/05), 11 December 2007.

Summary

The complainant – trade unions in Sweden – alleged that the legislative changes made in 2010, following the *Laval* (C-341/05) and *Viking* (C-438/05) judgments of the European Court of Justice violate Articles 4, 6 and 19 of the Revised European Social Charter. Prior to these changes, Swedish legislation never regulated the terms and conditions of pay and employment on which trade union organizations could make collective agreements. The new legislation came into force in Sweden on 15 April 2010. It required that a foreign service provider posting workers to Sweden must register at the Swedish Work

Environment Authority and appoint a contact person in Sweden. The Act also included a provision on Swedish trade unions' rights to take collective action in order to bring about collective agreements for posted temporary agency workers.

The Committee found that this new statutory framework 'imposes substantial limitations on the ability of Swedish trade unions to make use of collective action in establishing binding collective agreements on other matters and/or to reach agreements at a higher level'. A legislative framework which prevents the exercise of the right to collective action infringes the fundamental right of workers and trade unions to engage in collective action for the protection of economic and social interests of the workers. Trade unions must be allowed to strive for the improvement of existing living and working conditions of workers, and its scope should not be limited by legislation as to the attainment of minimum conditions.

Decision

[...]

109. From a general point of view, the Committee considers that the exercise of the right to bargain collectively and the right to collective action, guaranteed by Article 6§§2 and 4 of the Charter, represents an essential basis for the fulfilment of other fundamental rights guaranteed by the Charter, including for example those relating to just conditions of work (Article 2), safe and healthy working conditions (Article 3), fair remuneration (Article 4), information and consultation (Article 21), participation in the determination and improvement of the working conditions and working environment (Article 22), protection in cases of termination of employment (Article 24), protection of the workers' claims in the event of the insolvency of their employer (Article 25), dignity at work (Article 26) workers' representatives protection in the undertaking and facilities to be accorded to them (Article 28), information and consultation in collective redundancy procedures (Article 29).

110. In addition, the Committee notes that the right to collective bargaining and action receives constitutional recognition at national level in the vast majority of the Council of Europe's member States, as well as in a significant number of binding legal instruments at the United Nations and EU level. In this respect, reference is made *inter alia* to Article 8 of the International Covenant on Economic, Social and Cultural Rights (see paragraph 37 above), the relevant provisions of the ILO conventions Nos. 87, 98 and 154 (see paragraph 38 above) as well as the EU Charter of Fundamental Rights, Directive