



November 2008

## **European Social Charter (revised)**

European Committee of Social Rights

Conclusions 2008 (SWEDEN)

Articles 1, 9, 10, 15, 18, 20 and 25  
of the Revised Charter



## Introduction

The function of the European Committee of Social Rights is to assess the conformity of national law and practice with the European Social Charter and the Revised Charter. In respect of national reports, it adopts “conclusions” and in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as statements of interpretation formulated by the Committee figure in the General Introduction to the Conclusions<sup>1</sup>.

*The Revised European Social Charter was ratified by Sweden on 29 May 1998. The time limit for submitting the 7<sup>th</sup> report on the application of the Revised Charter to the Council of Europe was 31 October 2007 and Sweden submitted it on 30 May 2008 and supplementary information was submitted on 16 October 2008.*

This report was the first under the new system for the submission of reports adopted by the Committee of Ministers.<sup>2</sup> It concerned the accepted provisions of the following articles belonging to the first thematic group “Employment, training and equal opportunities”:

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right of workers to the protection of claims in the event of insolvency of the employer (Article 25).

Sweden has accepted all these articles with the exception of Article 24.

The applicable reference periods were :

- 1 January 2003 – 31 December 2006 for Article 18;
- 1 January 2005 – 31 December 2006 for Articles 1, 9, 10, 15, 20 and 25.

The present chapter on Sweden concerns 19 situations and contains:

- 16 conclusions of conformity: Articles 1§1, 1§2, 1§3, 1§4, 9, 10§1, 10§2, 10§3, 10§4, 15§1, 15§2, 15§3, 18§1, 18§2, 18§4 and 25;
- 3 conclusions of non-conformity: Articles 10§5, 18§3 and 20.

The next Swedish report deals with the accepted provisions of the following articles belonging to the second thematic group “Health, social security and social protection”:

- the right to safe and healthy working conditions (Article 3),

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<sup>1</sup> The conclusions as well as state reports can be consulted on the Council of Europe’s Internet site ([www.coe.int/socialcharter](http://www.coe.int/socialcharter)).

<sup>2</sup> Decision adopted at the 963rd meeting of the Ministers’ Deputies on 3 May 2006.

- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 23),
- the right to protection against poverty and social exclusion (Article 30).

The deadline for the report was 31 October 2008.

## **Article 1 — Right to work**

### *Paragraph 1 – Policy of full employment*

The Committee takes note of the information provided in Sweden's report.

#### *Employment situation*

The Committee notes that, according to Eurostat, growth in Sweden was stable during the reference period (at 4.2% in 2006).

The employment rate resumed its upward trend during the reference period, rising from 72.1% in 2004 to 73.1% in 2006, as did the female employment rate, which increased from 70.5% in 2004 to 70.7% in 2006. These rates are higher than the EU 15 average (respectively 66.2% and 58.7%).

Unemployment rose from 6.3% in 2004 to 7.1% in 2006. Female unemployment also increased from 6.1% to 7.2% over the same period, along with unemployment among young persons (15-24), which rose from 16.3% to 21.5% in 2006. Whereas the general and female unemployment rates were below the EU 15 average (7.7% and 8.5% respectively in 2006), the Committee notes that unemployment among young persons was higher than the EU 15 average (15.7% in 2006).

It also notes that the number of the long-term unemployed as a proportion of all unemployed decreased from 19.3% in 2004 to 15.2% in 2006, which is much less than the EU 15 average which was 42.1% in 2006.

The Committee requests up-to-date information on the employment situation of persons with disabilities and immigrants.

#### *Employment policy*

The Committee notes that the main aims of the Government's employment policy are as follows:

- to encourage unemployed people to get back to work;
- to offer companies tax incentives to take on more employees;
- to promote entrepreneurship, particularly for women.

The report describes various tax measures designed to stimulate the labour market, making it easier for unemployed people to find new jobs (including, in particular, reductions in employers' social contributions) and fostering entrepreneurship.

Priority was again given to the most vulnerable categories of potential employees (the long-term unemployed, persons with disabilities, women and young people) through various measures, such as tax concessions for companies taking on long-term unemployed people and a new programme, launched in 2006, whose aim is to promote the retraining and recruitment of persons with disabilities.

The Committee notes the launch of "first employment" programmes for young graduates. Given the high level of youth unemployment, it asks what other measures are taken against this.

The Committee asks how many people take part in active measures. It also asks again what the activation rate of unemployed people is.

The Committee notes that total spending on active and passive employment policy measures decreased during the reference period from 2.5% of GDP in 2004 to 2.3% in 2006, whereas the EU 15 average was 2% of GDP in 2006. The proportion of spending on active measures increased slightly, from 1% of GDP in 2004 to 1.1% in 2006.

## Conclusion

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

### *Paragraph 2 – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

The Committee takes note of the information provided in Sweden's report.

#### 1. Prohibition of discrimination in employment

The Committee considers that under Article 1§2 legislation should prohibit discrimination in employment in particular on grounds of sex, race, ethnic origin, religion, disability, age, sexual orientation and political opinion.

As with other States Parties that have accepted Article 15§2 of the Revised Charter, the Committee will examine Sweden's legislation banning discrimination based on disability under this provision. Similarly, for states such as Sweden that have accepted Article 20, the right to equal treatment and opportunities without discrimination based on sex is considered under this provision.

As there has been no change in the anti-discrimination legislation, the Committee refers to its previous conclusion (Conclusions 2006) for a description thereof and its findings on the subject.

As to discrimination on the basis of age, the Committee notes that the parliamentary committee on discrimination presented its final report in February 2006. It contains a proposal for age to be considered a specific ground for discrimination in the workplace. A change to the relevant legislation is planned. The Committee asks to be informed of any action taken on this proposal.

The Committee recalls that under Article 1§2 of the Revised Charter, remedies available to victims of discrimination must be adequate, proportionate and dissuasive. Therefore the imposition of pre defined upper limits to compensation that may be awarded are not in conformity with Article 1§2 as in certain cases these may preclude damages from being awarded which are commensurate with the actual loss suffered and not sufficiently dissuasive. In Swedish law, victims of discrimination or reprisals are entitled to compensation. Compensation is made of two combined components – compensation for material losses and reparation for non-pecuniary damage. Neither is subject to an upper limit although compensation for material losses is currently limited to a certain number of months of salary of the person concerned. The report states that the Government is planning to do away with this limit as well. The Committee asks to be kept informed of any changes in the legislation in this field.

#### 2. Prohibition of forced labour

The Committee notes that in January 2007, outside the reference period, a new penalty for young offenders called "youth service" came into force. It consists of unpaid work lasting between 20 and 150 hours, to which the young person must agree and which must be appropriate, particularly in view of the offender's personality. The Committee asks for the next report to contain more details on youth service, focusing in particular on the type of work carried out, for whom it is done and how frequently this penalty is proposed to young offenders.

### *Prison work*

Under the Correctional Treatment in Institutions Act (*Lag om kriminalvård i anstalt*) prisoners are duty bound to work in prison (and to follow appropriate studies or specific

courses to treat problems such as drug or alcohol abuse or violence). The Act distinguishes between two types of prison work: work in prison and work for prisoners on parole or pre-release programmes. Prisoners are not obliged to work but if they refuse, they reduce their chances of early release.

Work may be in the industry or service sectors and include, for example, kitchen assistance and building maintenance.

Prisoners working outside prison are covered by the same collective agreements, legislation and other rules as the ordinary staff of the company for which they are working.

Working hours must fall between 7.30 a.m. and 7 p.m. on Monday to Friday (not including public holidays) and total no less than thirty and no more than forty hours per week.

All prisoners who work are paid at a rate that depends on the work done, based on the recommendations of the Swedish Prison and Probation Service. Prisoners who agree to take part in educational activities are also remunerated, as are prisoners to whom it has proved impossible to offer work or prisoners incapable of working or engaging in an activity.

The Committee considers that this system is in conformity with Article 1§2 of the Revised Charter.

### 3. Other aspects

#### *Privacy at work*

It is acknowledged in the report that the existing rules in this area are incomplete. In the event of a dispute, the Labour Court assesses the respective interests of the employer and of the employee.

A committee has been appointed by the Government to propose legislation to protect privacy in the workplace in both the public and private sectors. It is due to complete its work on 1 October 2008. The Committee asks for the next report to describe the outcome, in the light of the observations in the General Introduction to Conclusions 2006 (§§ 13-21).

#### *Restrictions linked to the fight against terrorism*

According to the report, the anti-terrorism legislation does not bar individuals from filling certain posts.

#### *Conclusion*

The Committee concludes that the situation in Sweden is in conformity with Article 1§2 of the Revised Charter.

#### *Paragraph 3 – Free placement services*

The Committee takes note of the information provided in Sweden's report.

It notes that County Labour Boards were abolished during the reference period. A plan to reform the management of the public employment service is currently being considered. One of its aims would be to reorganise the involvement of employers' and workers' representatives. The Committee asks to be kept informed of progress on this reform.

It notes that the placement rate of the public employment service was 41% in 2006. The Committee asks for up-to-date information in the next report on the total number of vacancies notified. It also asks what is the average period of time required to fill vacancies.

According to the report there were a total of 325 local branches of the public employment service during the reference period. The Committee asks for the next report to give up-to-date information on the staffing of the public employment service.

According to the report, private employment agencies have a relatively low market share which barely exceeds 2%. Co-operation between these agencies and the public employment service is not governed by legislation; it is somewhat informal and organised for the most part at local level only.

#### *Conclusion*

The Committee concludes that the situation in Sweden is in conformity with Article 1§3 of the Revised Charter.

#### *Paragraph 4 – Vocational guidance, training and rehabilitation*

The Committee takes note of the information provided in Sweden's report.

As Sweden has accepted Article 9, 10§3 and 15§1 of the Revised Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to guidance and vocational training for persons with disabilities are dealt with under these provisions.

The Committee concluded that the situation with regard to vocational guidance, continuing vocational training and retraining of workers, and to guidance and vocational training for persons with disabilities (Articles 9, 10§3 and 15§1) is in conformity with the Charter.

#### *Conclusion*

The Committee concludes that the situation in Sweden is in conformity with Article 1§4 of the Revised Charter.



## **Article 9 – Right to vocational guidance**

The Committee takes note of the information provided in the Swedish report.

As Sweden has accepted Article 15 of the Revised Charter, measures relating to vocational guidance for persons with disabilities are dealt with under that provision.

### *Vocational guidance within the education system*

#### a. Functions, organisation and operation

The Committee refers to its previous conclusions (Conclusions XIV-2 and 2003) for a general description of guidance services within the education system.

#### b. Expenditure, staffing and number of beneficiaries

In 2005-2006, there were 984 guidance counsellors working for the compulsory school system, meaning that there was one counsellor for every 500 pupils. In secondary schools, there were a total of 1,012 counsellors, or one counsellor for every 400 pupils.

According to the report, it is difficult to calculate the amount of spending on and the number of beneficiaries of guidance, and the Government does not have access to statistics on the subject. The Committee emphasises how important it is for it to have relevant information to assess the situation and asks all next reports to contain up-to-date information on spending on vocational guidance in the education system and the total number of beneficiaries.

### *Vocational guidance in the labour market*

#### a. Functions, organisation and operation

The Committee refers to its previous conclusions (*ibid.*) for a general description of the vocational guidance system in the labour market.

#### b. Expenditure, staffing and number of beneficiaries

In 2006, a total of 84,547 people took part in counselling and placement activities. According to the report, this was a decrease compared to the previous year. The Committee asks what measures are planned to increase the number of beneficiaries of these guidance services. It also asks how much is spent on vocational guidance in the labour market and how many staff are employed for this purpose. It asks for this information to appear systematically in each report.

### *Dissemination of information*

The Committee notes that there has been no change in the situation which it previously considered (Conclusions 2007) to be in conformity.

### *Equal treatment of nationals of the other States Parties*

The Committee notes that there has been no change in the situation which it previously considered (Conclusions 2003) to be in conformity.

### *Conclusion*

The Committee concludes that the situation in Sweden is in conformity with Article 9 of the Revised Charter.

## **Article 10 – Right to Vocational Training**

### *Paragraph 1 – Technical and vocational training and the granting of facilities for access to higher technical and university education*

The Committee takes note of the information provided in Sweden's report.

#### *Secondary and higher education.*

In its previous conclusion (Conclusions XVIII-2) the Committee asked what were the pathways between secondary vocational training and university and non-university higher education. In reply the Committee notes from the report that the Swedish education system is designed with a view to promoting lifelong learning. All national and specially designed upper secondary programmes lead to general eligibility to higher education.

#### *Measures to facilitate access to education and their effectiveness*

The Committee notes that in 2006 SEK 2,778 million (€ 296 million) was spent on employment training. 59% of all participants found employment after the training.

#### *Conclusion*

The Committee concludes that the situation in Sweden is in conformity with Article 10§1 of the Revised Charter.

### *Paragraph 2 – Apprenticeship*

The Committee takes note of the information provided in Sweden's report.

The Committee notes that the Upper Secondary Schools Commission has been appointed to review the whole system of upper secondary schooling including apprenticeship training. The Committee wishes to be informed about the results of this exercise.

In reply to its questions asked in the previous conclusion (Conclusions XVIII-2) the Committee notes from the report that the length of apprenticeships is three years, of which a minimum of 30 weeks must be carried out in a work place. In general, about one third of the working time is allocated to general core subjects and the rest to vocationally-oriented subjects and subjects of the apprentice's choice. Apprentices receive a study grant.

#### *Conclusion*

The Committee concludes that the situation in Sweden is in conformity with Article 10§2 of the Revised Charter.

### *Paragraph 3 – Vocational training and retraining of adult workers*

The Committee takes note of the information provided in Sweden's report.

#### *Employed persons*

In its previous conclusion (Conclusions 2007) the Committee asked what was the length of individual training leave to which the employees were entitled. In this connection it notes from the report that Section 1 of the Employees' Right to Educational Leave Act provides that an employee in public or private service wishing to undergo education is entitled to necessary leave of absence from his employment. The Act does not indicate any limits to the possible duration of such a period.

#### *Unemployed persons*

The Committee notes that there have been no changes to the situation which it had previously found to be in conformity with the Revised Charter. It notes from Eurostat that

the unemployment rate in Sweden amounted to 7.4% in 2005 and 7.1% in 2006, the EU 15 average being 7.7% in 2006.

#### *Conclusion*

The Committee concludes that the situation in Sweden is in conformity with Article 10§3 of the Revised Charter.

#### *Paragraph 4 – Long-term unemployed persons*

The Committee takes note of the information provided in Sweden's report.

The Committee notes from Eurostat that the long-term unemployment rate amounted to 17.6% in 2005 and 15.2% in 2006 while the EU 15 average was significantly higher (42.1% in 2006). The Committee takes note of the new initiatives of the Government, such as New Start Jobs and Development Guarantee designed to encourage employers to hire the long-term unemployed. The Committee wishes to be informed about the implementation of these measures.

#### *Conclusion*

The Committee concludes that the situation in Sweden is in conformity with Article 10§4 of the Revised Charter.

#### *Paragraph 5 – Facilities*

The Committee takes note of the information provided in Sweden's report.

#### *Fees and financial assistance (Article 10§5 a and b).*

The Committee notes from the report that as from 1 July 2006 the entitlement of foreign nationals to study support ceased to be geared to a certain residential standing in Sweden. A foreign national can obtain Swedish study support if he/she has a permanent residence permit in Sweden and has settled primarily for a purpose other than training. The Committee holds that the requirement of 'permanent residence' for foreign nationals to qualify them for student support is not in conformity with Article 10§5 of the Revised Charter.

#### *Training during working hours and efficiency of training (Article 10§5 c and d)*

In reply to its previous question whether the time spent on supplementary training at the request of an employer is counted as ordinary working hours the Committee notes that all permissible leave taken by employee counts as working time in Swedish law. As regards the evaluation of vocation training programmes for young workers, according to the report Swedish schools are evaluated by the National Agency for Education. Foreseeable changes to upper secondary schooling in Sweden include closer co-operation between education and social partners.

#### *Conclusion*

The Committee concludes that the situation in Sweden is not in conformity with Article 10§5 of the Revised Charter as foreign students are subject to a permanent residence requirement for entitlement to financial assistance for training.

## **Article 15 – Right of persons with disabilities to independence, social integration and participation in the life of the community**

### *Paragraph 1 – Education and training for persons with disabilities*

The Committee takes note of the information provided in Sweden's report.

The Committee notes that according to a report of the Ministry of Health and Social Affairs, the number of children and young persons (aged 0-19) with functional impairment is about 108,000. The report indicates that the estimate was made by studying the number of children and young persons receiving various types of supportive measure and financial compensation referring to a functional impairment, as well as children and young persons with self-perceived functional impairment.

### *Anti-discrimination legislation*

The Children and School Students (Prohibition of Discrimination and Other Degrading Treatment) Act (2006:67; hereafter "the Education Anti-Discrimination Act") entered into force in April 2006. It, *inter alia*, prohibits discrimination of children and pupils on the basis of disability in the field of education. The prohibition of discrimination applies to pre-school, compulsory and high school, as well as to specially adapted schools, special needs schools and Sami schools, adult education and Swedish language education for migrants. The Office of the Disability Ombudsman monitors compliance with the Education Anti-Discrimination Act.

In its previous conclusion (Conclusions 2007), the Committee had asked whether a compelling justification for special or segregated educational systems is required by law and whether an effective remedy exists for those who consider themselves to have been unlawfully excluded or segregated or otherwise denied an effective right to education.

In reply to the Committee, the current report clarifies that parents or custodians of pupils with functional impairments or learning difficulties can choose between placing their child in a compulsory school for persons with learning disabilities or in a regular compulsory school. It is the duty of the municipality to offer special support to pupils in need of it in regular compulsory schools. If an investigation shows a pupil to be in need of special support, an action programme has to be drawn up to identify how the needs should be met. Questions concerning inadequate adjustment of tuition and lack of support for pupils with functional impairment in a particular school can be referred to the National Agency for Education (NAE), which is responsible for surveillance of education under the Education Act (1985:1100). As mentioned above, questions relating particularly to discrimination based on disability in the field of education may be brought to the attention of the Office of the Disability Ombudsman.

As regards the Committee's request for information on case law and complaints lodged with the appropriate institutions, the report indicates that only a small number of appeals is made concerning pupils' opportunities for participating in regular education as a school or municipality has very few legal possibilities of placing a pupil outside the regular school system against the wishes of the pupil's parents. Moreover, for compulsory school for pupils with learning disabilities there is legislation entitling the pupil's custodian to decline a place offered in a special school (the Experimental Activity (Increased Parental Influence on the Schooling of Children with Learning Disabilities) Act, 1995:1249). Decisions concerning admission to special school can be appealed to the Board of Appeals for Education. However, the Special Schools Authority endeavours to ensure that admission to special school is based on a consensus between school, pupil and parents, and in practice a child is never admitted to special school against its custodians' wishes. Since its formation at the beginning of the 1990s, the Appeals Board for Education has never had

cases where custodians have opposed admission to special school. Also the decision to place a pupil in a special teaching group within regular education can be appealed. About 10 cases annually are referred to the Appeals Board of the NAE concerning placement in a special teaching group.

As regards discrimination on the basis of disability at school in particular, the report indicates that since the entry into force of the Education Anti-Discrimination Act (from April 2006 until August 2007), a total of 89 complaints were filed with the Disability Ombudsman, who has not yet referred any case to conciliation or litigation. In this regard, the report highlights that the Education Anti-Discrimination Act does not cover issues concerning inadequate adjustment of tuition or support for pupils with functional impairment. Such issues must be handled by the NAE. However, the majority of cases reported to the Ombudsman so far have included elements concerning lack of adjustment and support. Of the 89 complaints received, 60 have been struck off and transferred to the NAE for this reason. The Committee asks the next report to inform it about the outcome of all these complaints (those transferred to the NAE and those pending before the Disability Ombudsman).

As regards the NAE, it also notes that, in 2006, it received 1,007 complaints concerning deficiencies in schools, preschool activity and caring services for school children. In 24% of the cases, the Agency levelled criticism against the mandator of the school concerned. The report highlights that the NAE is not formally empowered to revise decisions made by a municipality or school. The Committee asks what happens in practice when the NAE confirms the existence of deficiencies in schools which affect the education of persons with disabilities.

The Committee notes that the Government has appointed a Commission to develop the inspection activities of the NAE (dir. 2007:80). The Committee asks the next report to inform it about the results of this initiative.

### *Education*

While noting that mainstreaming is ensured in compulsory schooling, in its previous conclusions (Conclusions 2003 and 2007), the Committee had asked for more information on its modalities. In this regard, the Committee notes from the report that:

- Pupils with functional impairment attending regular compulsory or upper secondary school have the same syllabi as other pupils. However, the Education Act entitles all pupils to the support they need in order to achieve the targets of the school system. This applies both to pupils with difficulties stemming from functional impairment and pupils who have difficulty in achieving the targets for other reasons. Moreover, if a compulsory school pupil cannot obtain instruction reasonably adapted to his/her situation and aptitudes, the governing body may resolve on a modified study programme of the pupil. It is the responsibility of the governing body to ensure that the pupil with a modified study programme receives an education equivalent, as far as possible, to other education provided at the same school. Pupils who are found not to measure up to the objectives of the syllabi even with such support and adaptations can be offered a place in a compulsory school for pupils with learning disabilities or in a special school.
- Individual development plans are crafted for all students (with and without disabilities, in compulsory schools, compulsory schools for pupils with learning disabilities and special schools). If a pupil is in need of special supportive measures under the Compulsory School Ordinance (1994:1194), the head teacher of the school concerned must also ensure that an action programme is drawn up, indicating what

the needs are, how they are to be provided for and how the measures taken are to be followed up and evaluated.

- Municipalities have to offer special support to pupils in regular education who need it. Such support must firstly be provided within the class or group to which the pupil belongs, but can be provided in a special teaching group where there are particular reasons for so doing. In cases of this kind, the pupil and the pupil's custodian must be consulted. In upper secondary school, special needs teaching can be arranged within the class for students in need of special support, and special classes may be formed for students who, on account of hearing or vision impairment, mobility impairment or other pronounced study impediments, are unable to follow the ordinary instruction. One form of supportive input in compulsory and upper secondary school may be for the student to have the services of a student assistant. Such an assistant is hired by the educational mandator. He/she is not directly linked to the student.
- Testing modalities are adjusted to take account of disability. Teachers decide how this affects the assessment. Information concerning the test procedure has no bearing on the mark which the pupil is awarded subsequently. The fact that testing modalities are adapted may be known within individual schools. No data on the matter is collected at the national level.
- Teachers in compulsory and upper secondary school are allowed to disregard individual targets which the pupil should have achieved, if there are particular reasons for doing so. "Particular reasons" are personal circumstances of a more than temporary nature which directly impede the pupil from achieving a certain target, e.g. physical functional impairment.
- General teacher training incorporates special needs education as an integral component. In addition, the Government has decided to introduce (in the autumn term 2008) a special needs teacher education which will provide in-depth knowledge of linguistic development and of effective methods of stimulating pupils' reading, writing and arithmetical ability at an early age. This teacher education programme will be of three terms duration and will be open to applicants with teaching certification. The Committee asks the next report to provide information on the impact of the new programme.
- The Committee also notes that the NAE has been instructed by the Government to carry out an inventory of physical access in compulsory and upper secondary schools. A report on the remit is due by the end of 2008. The Committee asks the next report to contain information in this regard.

As to the Committee's question concerning the relative progression rates for children and pupils with disabilities having attended regular compulsory education and upper secondary schools, the report reiterates that most pupils with functional impairment are taught in regular types of school, but Sweden does not maintain statistics concerning students with functional impairment receiving regular instruction in compulsory or upper secondary school. In this regard, the Committee recalls that that when it is generally acknowledged that a particular group is or could be discriminated against, the state authorities have a responsibility for collecting data on the extent of the problem (ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §27). The gathering and analysis of such data (with due safeguards for privacy and against other abuses) is indispensable to the formulation of rational policy (ERRC v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23).

With respect to special education, in reply to the Committee, the report clarifies that:

- Special schools for pupils with learning disabilities can have municipal, county council or independent mandators. The State indicates goals and rules for education and carries out surveillance and follow-up. Special schools, which are for deaf or hearing-

impaired pupils at compulsory school level, come under State mandatorship. There are six of them, and they are administered by a national authority accountable to the Ministry of Education, namely SPM, which is primarily responsible for this education.

- The Government adopts syllabi for compulsory school, Sami school and special school. The NAE decides syllabi for upper secondary school, compulsory school for pupils with learning disabilities and upper secondary school for students with learning disabilities. Individual development plans and other plans for the individual students are drawn up by the mandator concerned.
- Special compulsory schools follow the same curriculum as regular schools and most of the syllabi for special schools are the same as for regular schools. Only those for pupils attending these schools who have hearing impairment and learning disabilities are different (they are as those for pupils with learning disabilities as explained below). However, the timeframe for achieving the goals set in the syllabi of special schools is a year longer than that in regular schools.
- Obligatory school for pupils with learning disabilities (corresponding to regular compulsory school) comprises compulsory school and training school. The syllabi in compulsory school for pupils with learning disabilities differ from those of regular education. The syllabi express goals indicating the level of achievement which the pupils must have attained, according to their capabilities, when they leave school.
- Training school is for pupils who, on account of their learning disabilities, are not judged capable of achieving the goals of compulsory school for pupils with learning disabilities. Training school has syllabi for five major subject fields: aesthetic activity, communication, motor skills, daily activities and reality perception. Mother tongue instruction in training school comes within the communication subject field.
- Marks for special school pupils not taking the syllabi of compulsory school for pupils with learning disabilities have the same value as the marks obtained by pupils in regular compulsory school. Pupils attending compulsory school for pupils with learning disabilities shall, on completion of their schooling, be given a certificate of the education they have undergone. If the custodian so requests, a general educational assessment can be added to the certificate. If a pupil attending compulsory school for pupils with learning disabilities or the pupil's custodian so requests, marks are to be awarded. In cases where a leaving certificate is awarded, the pupil's achievement must be assessed in relation to the goals indicated by the syllabus for each subject. Marks are awarded on a two-point scale, instead of the three-point scale for regular compulsory schooling, and cannot be invoked in applications for admission to regular upper secondary school. No marks are awarded in training school, but referencing and evaluation must nevertheless proceed continuously, the point of reference being the goals defined in the individual study plan drawn up in consultation with the student's custodian.

The Committee asks what are the remedies available for pupils who attended compulsory school for pupils with learning disabilities and whom are denied the possibility to apply for higher education within the regular education system.

- The proportion of students leaving special school with at least pass marks in all three core subjects, and thus eligible to apply for regular upper secondary school, has been running at about 40% in recent years, but in 2006 it fell to 27%. 90% of the students leaving special school in 2006 went on to the National Upper Secondary School for the Deaf or the National Upper Secondary School for the Hard of Hearing. The Committee reiterates that it also wants to know what proportion of students enter the open labour market after compulsory school.
- Surveillance of the quality of special education is primarily conducted through the educational inspection activities of the NAE, in the same way as for regular education.

The Committee notes that according to a report of the NAE (Skolverket 2006:288), approximately 14,000 pupils attended compulsory school for persons with learning disabilities in 2006/07, which corresponds to about 1.4% of all compulsory school pupils. In 2007 there were about 8,200 students attending upper secondary school for persons with learning disabilities. According to the NAE, most pupils who are deaf or hard of hearing attend ordinary compulsory school. Very few attend special school (548 in 2007).

The Committee notes that the Government has taken several measures to strengthen teachers' competence, including special funding for in-service training in special needs education. In addition, the Government has also appointed a special investigator to review the teacher competence provisions of the Education Act, the aim being to strengthen the quality of schools and preschool education and to improve pupils' goal achievement (dir. 2006:140). The special investigator's proposals and deliberations are to be presented in 2008. The Committee wishes to be informed about the outcome of this initiative.

### *Vocational training*

The Committee notes from the report that no changes have occurred since its previous conclusion (Conclusions 2007) and therefore refers to it for a description of training facilities and vocational rehabilitation services for persons with disabilities in Sweden.

In its previous conclusion, the Committee had noted that non discrimination with respect to the mainstreaming of persons with disabilities in higher education is guaranteed through the Post-Secondary Students (Equal Treatment) Act (2001:1286). It asked for information on any relevant case law of the Disability Ombudsman with respect to higher education. The report indicates that no discrimination cases have been filed with the Disability Ombudsman concerning higher education.

### *Conclusion*

The Committee concludes that the situation in Sweden is in conformity with Article 15§1 of the Revised Charter.

#### *Paragraph 2 – Employment of persons with disabilities*

The Committee takes note of the information provided in Sweden's report as well as in the additional information submitted on 16 October 2008.

According to a special survey supplementing Sweden's regular Labour Force Survey, during the reference period, 15.7% of the population had a functional impairment (about 918,600 persons). Of these, 9.5% (about 556,000 persons) judged their work capacity to be reduced.

In the fourth quarter of 2006, the employment intensity among persons with functional impairment and reduced work capacity was 51.7% and unemployment among persons with functional impairment and reduced work capacity was 8.7% (4.2 percentage units higher than for the total workforce between the ages of 16 and 64). Figures show that unemployment among persons with functional impairment increased more since 2002, in percentage terms, than for the population as a whole. However, the report also highlights that the proportion of persons with functional impairment entailing reduced work capacity enrolled with the Public Employment Service has risen from 14% in the first quarter of 1996 to nearly 22% in the first quarter of 2007.

### *Anti-discrimination legislation*

While recalling that it has considered the situation in Sweden to be in conformity with the requirements of Article 15§2 of the Revised Charter, the Committee refers to its previous conclusions (Conclusions 2003 and 2007), for a description of the relevant legislation



regulating non-discrimination of persons with disabilities in employment, i.e. the Act Prohibiting Discrimination at Work of Persons with Functional Impairment (1999:132) and the Prohibition of Discrimination Act (2003:307).

The Committee further notes that the Work Environment Act (1977:1160) lays down that “The employer shall make allowance for the employee’s special aptitudes for the work by modifying working conditions or taking other appropriate measures. In the planning and arrangement of work, due regard shall be paid to the fact that individual persons have differing aptitudes for the tasks involved.” More detailed Provisions on adjustment for disability and on rehabilitation are contained in Provisions AFS 1994:1 of the Work Environment Authority. Questions concerning adjustment for disability are also addressed in the Provisions of the Work Environment Authority on Work with Display Screen equipment (AFS 1998:5). Official responsibility for matters of adjustment and rehabilitation is vested in several agencies, the Work Environment Authority among them.

In this regard, the Committee reiterates its previous questions concerning the implementation of the reasonable accommodation obligation as they were not addressed in the current report, i.e. :

- a. How is the reasonable accommodation obligation implemented in practice?
- b. Has the reasonable accommodation obligation given rise to cases before courts?
- c. Has the reasonable accommodation obligation prompted an increase in employment of persons with disabilities in the open labour market?

As to case law concerning discrimination in general against persons with disabilities in the field of employment, the Committee has taken note of the two cases decided by the Labour Court and the four extra-judicial settlements concluded by the Disability Ombudsman during the reference period. The Committee asks the Government to continue providing such relevant information.

#### *Measures to promote employment*

The Committee refers to its previous conclusions (Conclusions 2003 and 2007) for a description of the measures to promote employment, namely subsidised employment, special hiring support (SIUS), the “Special Start-Up programme for jobseekers with disabilities wishing to start their own business and sheltered employment (with public employers – OSA- and through the *Samhall* group).

The Committee notes from the report that during 2006, an average of 59,958 persons with functional impairments monthly had wage subsidised employment and 5,124 had OSA employment. The report also highlights that the sexes were unevenly balanced in these programmes as men were overrepresented in relation to their share of the unemployed population with functional impairment, accounting for 62% of newly hired wage-subsidised employees and 74% of newly hired OSA employees. In this regard, the Committee asks whether any measures are envisaged to promote further employment of women with disabilities.

The Committee also notes that in 2006, 2,600 persons left wage-subsidised employment for non-subsidised employment. This was 4.4% of the average number of participants. The commonest hiring was continued hiring by the same employer or indefinite term hiring. From OSA, 2.1% of the average number of participants changed to non-subsidised employment.

As to the new model for integrating people with disabilities into the labour market, which was launched in 2006, the report indicates that an average of about 65,000 persons took part in special initiatives for persons with functional impairment entailing reduced work

capacity but does not provide any other information concerning the impact of such special initiatives on the labour market. The Committee therefore asks the next report to do so.

In reply to the Committee, the report confirms that trade unions are active in sheltered employment facilities.

### *Conclusion*

The Committee concludes that the situation in Sweden is in conformity with Article 15§2 of the Revised Charter.

#### *Paragraph 3 – Integration and participation of persons with disabilities in the life of the community*

The Committee takes note of the information provided in Sweden's report.

#### *Anti-discrimination legislation and integrated approach*

In its previous conclusion (Conclusions 2007), the Committee noted that the legislation described (the Disability Ombudsman Act (1994:749), the Act Prohibiting Discrimination at Work of Persons with Functional Impairment (1999:132), the Post-Secondary Students (Equal Treatment) Act (2001:1286), and the Discrimination (Prohibition) Act (2003:307)) prohibited discrimination on the ground of disability. It found that this non-discrimination legislation covered both the public and private spheres in fields such as housing, transport, telecommunications and cultural and leisure activities, and offered effective remedies for those who had been treated unlawfully.

Responsibility for supervising the implementation of this legislation rests with the Disability Ombudsman. The Committee asked for information on the case-law relating to issues dealt with under Article 15§3. The report mentions a case brought before the courts during the reference period by a disabled man who was refused entry to a restaurant. He was awarded 15,000 Swedish kroner (SEK) (about € 1,500) in damages but an appeal was filed against this ruling and is still pending. The report also refers to five cases decided through an out-of-court settlement brokered by the Ombudsman, with compensation varying between SEK 10,000 (about € 1,000) and SEK 15,000 (about € 1,500).

#### *Consultation*

The Committee notes that there has been no change in the situation which it previously considered (Conclusions 2007) to be in conformity.

#### *Forms of financial aid to increase the autonomy of persons with disabilities*

The Committee asks for the next report to provide details on all benefits and other forms of financial assistance available to persons with disabilities.

#### *Measures to overcome obstacles*

##### *Technical aids*

The Committee refers to its statement of interpretation on Article 15§3 in the General Introduction to these conclusions and notes that there has been no change in the situation which it previously considered (Conclusions 2007) to be in conformity.

##### *Communication*

In 2007, the Government appointed a committee to prepare new legislation on languages, one of whose tasks was to draw up special provisions on sign language. The Committee asks for the next report to state what the legal status of sign language is.

### Mobility and transport

In 2006, the Government tabled a bill for the national road and rail authorities to devise a joint national action programme for the long-term development of public transport. The programme included measures to improve disabled access to transport.

The report describes all the measures taken during the reference period under a programme to promote disabled access to road, rail, sea and air transport (a special road and rail programme, improved access to transport and the construction of special platforms, reserved spaces and equipment).

### Housing

Amendments were made to the 1987 Planning and Building Act to encourage the elimination of all obstacles that could be easily removed to improve access to public areas and buildings. Under the national action plan on policy for the disabled (1999/2000:79), all such obstacles should be removed by the end of 2010.

### Culture and leisure

In its 2006 report, the National Heritage Board found that considerable progress had been made in improving access for the disabled to regional museums.

### *Conclusion*

The Committee concludes that the situation in Sweden is in conformity with Article 15§3 of the Revised Charter.

## **Article 18 — Right to engage in a gainful occupation in the territory of other parties**

### *Paragraph 1 — Applying regulations in a spirit of liberality*

The Committee takes note of the information provided in Sweden's report.

The Committee notes more specifically that a bill is being prepared to reform immigration rules and the formalities connected with foreigners' engaging in a gainful occupation in Sweden. The main intention of this bill is to allow students and asylum seekers, under certain conditions, to apply for a work permit and to make it easier to obtain a permanent residence permit. The Committee asks to be informed of the progress of this bill.

According to the report, 6,755 applications for work permits from nationals of States Parties not covered by Community law were made in 2003, and 5,207 of these were granted. In 2005, 816 applications of this sort were made and 709 were granted, while in 2006, 1,226 were made and 1,079 were granted. The Committee notes that there was a significant decrease in the number of work permit applications filed and, consequently, of the number of those granted between 2003 and 2005.

It notes however that the number of permits granted increased during the reference period.

### *Conclusion*

The Committee concludes that the situation in Sweden is in conformity with Article 18§1 of the Revised Charter.

### *Paragraph 2 – Simplifying formalities and reducing dues and taxes*

The Committee takes note of the information provided in Sweden's report.

#### *Administrative formalities*

According to the report, under a new law adopted in 2005, foreign students are now entitled to work in Sweden without obtaining a work permit for as long as their residence permit is valid.

Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents<sup>1</sup> has moreover been transposed into domestic law to enable nationals of third countries to move around freely within the European Union. Under certain conditions, the latter may be granted special, long-term-resident status provided that they have a permanent residence permit and have been living in Sweden for at least five years.

In reply to the Committee, the report states that both initial work permit applications and applications for renewal may now be made on line, through the Migration Board website.

The report also confirms that it may be possible, in certain cases, to award permits for a longer period than at present, particularly under international exchange programmes (where the normal limit is 48 months), depending on the duration of the work on offer or on approval by the County Labour Board.

The Committee asks for up-to-date information on waiting times for work permits.

As to residence permits, the Committee refers to its conclusion under Article 18§1 of the Revised Charter concerning the current bill to reform immigration rules.

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<sup>1</sup> Official Journal No. L 16 of 23/01/2004, pp; 44-53.

### *Chancery dues and other charges*

The Committee previously noted (Conclusions 2005) that charges had been introduced for both residence and work permit applications. It asked what the justification was for charging a fee at the application stage and whether it could be waived or reduced in certain circumstances, and reserved its position on this point.

In reply, the report states that charges were introduced to cover administrative costs. In some cases, such charges may be waived or reduced, particularly where there are several applications from the same family.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Sweden is in conformity with Article 18§2 of the Revised Charter.

### *Paragraph 3 – Liberalising regulations*

The Committee takes note of the information provided in Sweden's report.

### *Access to the national labour market*

The Committee previously concluded (Conclusions 2005) that the situation in Sweden was not in conformity with Article 18§3 because the conditions for granting temporary and permanent work permits were too restrictive since temporary permits were granted for a specific job with a specific employer, in cases of shortages in the workforce, and permanent permits were granted only to workers with exceptional qualifications.

According to the report, a draft bill is being prepared to reform immigration rules and the formalities connected with engaging in a gainful occupation in Sweden. The main intention of this bill is to allow students and asylum seekers to be entitled under certain conditions to apply for a work permit and to make it easier to obtain a permanent residence permit.

The Committee notes that the draft bill makes no change to the rule that temporary work permits may be issued only for a specific job, with a specific employer, in cases of shortages in the workforce. The Committee asks again to be informed of developments. As things stand and given that there has been no change in the relevant legislation or practice, it concludes that the situation is not in conformity with Article 18§3 of the Revised Charter.

### *Exercise of the right to employment*

The Committee notes that there has been no change in the situation, which it previously (Conclusions 2005) found to be in conformity.

### *Consequences of loss of job*

The Committee previously concluded (Conclusions 2005) that the situation was not in conformity with Article 18§3 of the Revised Charter because the residence permits of foreign workers who had lost their job could not be extended to give them enough time to look for a new job.

According to the report, one of the provisions of the new law would entitle nationals of third-party countries who have lost their job to the extension of their residence permit to enable them to look for a new one. If no new work permit is granted within three months of the loss of job, the person concerned may apply for a further extension of his or her residence permit. The Committee asks to be informed of developments. Until a change in the legislation is made, it concludes that the situation in Sweden is still not in conformity with Article 18§3 of the Revised Charter.

*Conclusion*

The Committee concludes that the situation in Sweden is not in conformity with Article 18§3 of the Revised Charter on the grounds that:

- the rules governing access to the labour market for nationals of States Parties are too restrictive;
- the residence permits of foreign workers who have lost their job cannot be extended to give them enough time to look for a new one.

*Paragraph 4 – Rights of nationals to leave the country*

The Committee takes note of the information provided in Sweden's report and notes that there has been no change in the situation which it previously (Conclusions 2005) found to be in conformity with the Revised Charter.

*Conclusion*

The Committee concludes that the situation in Sweden is in conformity with Article 18§4 of the Revised Charter.

## **Article 20 – Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex**

The Committee takes note of the information provided in Sweden's report.

### *Equal Rights*

The Equal Opportunities Act 1991:433 was amended during the reference period so as also to include persons applying for or completing work experience. Thus the rules concerning prohibition of discrimination, harassment, invalidity of agreements and damages are also applicable to persons in such a situation. A person who, without being an employee, does work in a workplace in an outsourced capacity shall also be deemed an employee.

The scope for derogation of the ban on discrimination has also been reduced. The previous exception "for non-profit or other special interest" has been repealed. The new exception applies in connection with decisions concerning hiring, promotion and training for promotion and is worded in such a way that "a certain gender shall be necessary by reason of the nature of the work or the context in which it is done". The exception is very narrow and the employer must have strong reasons for invoking it.

In addition, it is also prohibited to order an employee to exercise discrimination.

In addition to the Equal Opportunities Act, the Discrimination (Prohibition) Act (2003:307) concerning gender discrimination was adopted. As from 2005 this Act includes a ban on gender discrimination. For the purposes of the Act, discrimination comprises direct and indirect discrimination, harassment and instructions to discriminate. Under this Act, discrimination on grounds of sex is prohibited in connection with

- labour market policy activities,
- the start-up or conduct of business activity,
- professional practice,
- membership of and/or participation in an employees' organisation, an employers' organisation or professional organisation or benefits conferred by such an organisation,
- the professional supply of goods, services and housing.

Section 7 of the Discrimination (Prohibition) Act (DFL) prohibits gender discrimination with regard to professional practice, e.g. authorisation, registration or suchlike which is needed or can be of importance for the practice of a particular profession.

The Committee will examine the amendments to the Parental Leave Act prohibiting discrimination during its next examination of Article 27.

The Committee recalls that in its previous conclusion (Conclusion 2006) it found the situation not to be in conformity with the Revised Charter because it found that the employment insurance legislation indirectly discriminated against women working part-time. Social security legislation requires a minimum working-time of three hours per day or 17 hours per week to be entitled to unemployment insurance. Part-time contracts the length of which is below such minimum mostly concern women.

According to the report the number of working hours that has to be completed in order to qualify for unemployment insurance has a historical link to collective agreements between the social partners, e.g. on pensions and sickness benefit additional to those received from the official system. The reason and the cause behind these conditions is the thought that in order to qualify for benefit the applicant must have had a certain connection to the labour market. In 2006, 23% of the labour force worked part time but only 5 per cent of

them worked less than 20 hours per week. Women work more part time than men. In 2006, 36% of the female labour force worked part time but only 6% worked less than 20 hours per week. The report argues that this means that most of them are covered by the unemployment insurance in one way or another and that the numbers of workers not covered by the unemployment insurance system is very limited. Those who are not entitled to unemployment benefit have the right to social benefits if they cannot support themselves.

The Committee finds that the situation did not change during the reference period. The situation is therefore not in conformity with the Revised Charter.

#### *Position of women in employment and training*

Wage disparities have largely remained the same since the early 1990s. According to wage statistics, women's pay is on average 84% of men's pay (when comparing full time wages). If women's and men's differing distribution according to age, level of education, working hours, sector and occupational group is taken in to account the difference becomes smaller: in 2006 the average female wages were 93% of men's wages after standard weighting, which is a small improvement compared to previous years.

According to the Equal Opportunities Act (1991:433) each employer must carry out a survey and analysis of wage disparities between women and men and this includes an obligation to assess whether any existing wage disparities are directly or indirectly related to gender. The action plan for equal pay that the employer must produce each year is to include information on what wage adjustments and other measures need to be undertaken to achieve equal pay for equal work and for work of equal value.

The gender pay gap is an issue for trade unions and employers when setting wage rates. The Mediation Institute has directions highlighting the importance of constructing central agreements in such a way that they facilitate the work of the local parties to achieve gender equal pay.

As regards the possibility of wages comparisons across firms the report states that Swedish case law shows no example of an applicant having succeeded with such a comparison.

The Equal Opportunities Ombudsman is currently examining the wage mapping of the biggest employers (in the private sector), who between them have a million employees. The Committee asks to be informed of the results of the study.

The report indicates that one of the most significant factors having an impact upon the pay gap is the segregation of the labour market, primarily at the horizontal level, almost 40 per cent of women work in health, education and public administration, compared to 20 per cent of men.

#### *Measures to promote equal opportunities*

The report mentions refers to the "gender desegregation" project being carried out by the Swedish Public Employment Service, the Committee wishes to receive information on the result of this project.

#### *Conclusion*

The Committee concludes that the situation in Sweden is not in conformity with Article 20 of the Revised Charter on the ground that the employment insurance legislation indirectly discriminates against women working part-time.



In accordance with Article 21-1§3 of the Committee's Rules of Procedure, a dissenting opinion of Mrs C. Kollonay Lehoczky, member of the Committee, is appended to this conclusion.

## **Article 25 – Right of workers to the protection of their claims in the event of the insolvency of their employer**

The Committee takes note of the information provided in Sweden's report.

In reply to the Committee, the report states that since 2004 claims have been limited to a maximum, index-linked sum, estimated at 161,200 Swedish kroner (SEK, which is about € 17,000) in 2006. The duration of the wage guarantee has also been extended, from six to eight months.

The Committee again asks the next report to provide information (or eventually an estimate) on the average time that elapses between the filing of a claim and the payment of any sums owed as well as on the percentage of claims satisfied through the wage guarantee or privilege systems.

In reply to the Committee, the report states that the reason why wage claims are usually below the maximum amount and often relate to far shorter periods than six months is that there are now many more incentives for workers to take immediate action to protect their claims as soon as their employers encounter financial difficulties and that trade unions are more actively involved in these matters.

### *Conclusion*

The Committee concludes that the situation in Sweden is in conformity with Article 25 of the Revised Charter.

## **Dissenting opinion of Mrs C. Kollonay Lehoczky**

### *Conclusion relating to Article 20*

I cannot agree with the stance of the majority of the Committee where it finds that the situation in Sweden is not in conformity with Article 20 of the Revised Charter due to the indirect discrimination in its employment insurance legislation as much as it requires a minimum working-time of three hours per day or 17 hours per week to be entitled to unemployment insurance.

The exclusion is relevant to persons who undertake so negligible number of weekly working hours that, without any data on the composition of such persons there is no ground to suppose that they include disproportionately more women, furthermore the exclusion might be based on objective reasonable grounds. (They might be students or persons with similarly lacking intention to seriously engage in employment, creating a group of insignificant number of persons in a balanced gender-mix).

Article 20 provides that the state undertakes „to take appropriate measures to ensure or promote the application of the right of right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex. It encompasses both obligations of conduct and of results; obligations of conduct in so far as a state must demonstrate that it is taking all possible steps to promote full equality and of results in so far as it must demonstrate that measurable progress is being made in achieving the aim. Therefore In the light of the significant steps and achievements made by Sweden in promoting the effective exercise of the right to equal treatment and equal opportunities of women the vague likelihood of such an indirect discrimination cannot be the basis for a conclusion of non-conformity.