The right to strike in the public services

Sweden

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Contents

This factsheet reflects the situation in May 2021. It was elaborated by Andrea Iossa (independent expert), updated by Diana Balanescu (independent expert) and reviewed by EPSU/ETUI; comments received from the Swedish (EPSU) affiliates Vision and TCO were integrated.

1. Legal basis

International level

Sweden has ratified:

UN instruments[1]

International Covenant on Civil and Political Rights (ICCPR, Article 22) **International Covenant on Economic, Social and Cultural Rights** (ICESCR, Article 8)

ILO instruments[2]

Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise ratified on 25 November 1949 **Convention No. 98 concerning the Right to Organise and Bargain Collectively** ratified on 18 July 1950 **Convention No. 151 concerning Labour Relations (Public Service)** ratified on 11 June 1979 **Convention No. 154 concerning the Promotion of Collective Bargaining** ratified on 11 August 1982

European level

Sweden has ratified:

The (Revised) European Social Charter on 29 May 1998[3] including Article 6(4) – the right to collective action (ratified on 29 May 1998) **The Additional Protocol to the European Social Charter Providing for a System of Collective Complaints**[4] (ratified on 29 May 1998); **The European Convention on Human Rights on 4 February 1952**[5] (including Article 11 on the right to freedom of assembly and association), and it has incorporated it into national law (SFS 1994:1219); Chapter 2 Section 19 of the Instrument of Government (SFS 1974:152, one of the four Fundamental Laws forming the 'Swedish Constitution'[6]) states that no statutory act or other provision of law can be in breach of the obligations undertaken by Sweden under the ECHR.

National level

Chapter 2 Section 14 of the Instrument of Government guarantees the right to strike and to undertake collective action on the labour market (*stridsåtgärder*), unless otherwise provided by law or collective agreement.

Applicable law(s)

- The part of the Co-determination Act (*Lag om medbestämmande i arbetslivet,* SFS 1976:580, Sections 41 to 44) entitled 'Peace obligation' (*Fredsplikt*) lays down general rules on the exercise of the right to strike and take collective action; the subsequent parts of the Co-determination Act lay down rules on giving notice (Section 45), mediation (Sections 46 to 53), and damages and sanctions in the event of unlawful strike action (Sections 54 to 62);

- Public employees are considered to be contractual employees, i.e. they fall within the scope of the general rules on strike and collective action laid down in the Co-determination Act. However, the Public Employment Act (*Lag om offentlig anställning*, SFS 1994:260) contains provisions that limit and restrict the exercise of the right to strike in the public sector (Sections 23 to 26), including an obligation for the parties to enter into negotiations in the event of a strike (Section 27) and the award of damages (Sections 28 to 29).

- The **case law of the Labour Court** has a relevant role in assessing the lawfulness of strike or collective action, particularly in relation to peace obligations deriving from an existing collective agreement still in force. The Labour Court also decides the amount of compensation to be paid in the event of unlawful strike or collective action.

- As a general rule, **peace obligations** automatically apply between two parties bound by a collective agreement. The application of contractual limits to the right to strike and take collective action is common practice in Sweden. It has traditionally been the exclusive prerogative of the labour market parties to impose restrictions and procedural requirements on the right to strike through intersectoral and sectoral collective agreements (see the 1938 Basic Agreement and, more recently, the 2016 Industry Agreement).

- In the **public sector**, a basic collective agreement lays down rules on mediation, cooling-off periods and notification, as well excluding certain categories of high-ranking civil servants from the right to strike (i.e. employees of the Government Offices, judges of the Supreme Court, senior officers of the armed forces, etc.).

  As there is no statutory definition of '**essential services'**, restrictions on the right to strike and rules on minimum services in the event of a strike are set by sectoral collective agreements.

2. Who has the right to call a strike?

Chapter 2 Section 14 of the Instrument of Government explicitly provides that trade unions, employers' associations or individual employers (i.e. to parties who can sign a collective agreement) have the right to call for a strike or collective action.

Any strike action called by non-unionised workers is likely to be considered a wildcat strike.[7] This reflects the significant role of the labour market parties in the Swedish system.

However, the requirements for forming a trade union are minimal. Therefore, individual workers who are not already members of a trade union could, in principle, unite and form a trade union in order to be entitled to call a strike.

3. Definition of strike

No formal definition of strike or collective action is provided in Swedish law. However, the aforementioned provision of the Instrument of Government does refer to 'industrial action', which implies a dispute over a labour/employment-related matter.

Moreover, Section 41 of the Co-determination Act refers to strikes and lockouts as stoppages of work (*arbetsinställelse*) undertaken by employees/trade unions and employers/employers' associations.

The provision also covers '**blockades**, **boycotts** and other comparable form of industrial action'. '**Overtime bans**', and '**go-slow**' and '**work-to-rule**' action represent other types of collective action undertaken by workers and trade unions.

As **a general rule**, the Labour Court has held that collective action must be undertaken with the intention of exerting pressure on the other party to a work- or labour-related dispute. This definition has, however, been interpreted broadly so as to include political strikes in the case of protests over labour, employment and welfare policies.

In the **public sector**, the Public Employment Act limits the permissible forms of industrial action to **strikes**, **lockouts**, **overtime bans** and **hiring blockades**. **Political strikes** are also restricted in the public sector. Any collective action must be grounded on work-related matters and cannot be undertaken to influence political decisions.[8]

Blockades and boycotts are widely used by trade unions in **sympathy strikes** (*sympatiåtgärd*) or secondary action. Pursuant to the Co-determination Act, any sympathy strike undertaken in support of lawful primary collective action is also considered lawful.

According to the preparatory works of the Co-determination Act, general statements, propaganda, wishes, requests to negotiate and other comparable initiatives are not considered to fall within the notion 'action'.[9]

4. Who may participate in a strike?

All workers, regardless of whether they are members of the trade union that called for strike action, may participate in a strike.

Public sector

- Section 23 of the Public Employment Act sets limitations on the exercise of the right to strike and take collective action for those public employees whose work comprises the exercise of public power or is 'unavoidably necessary' in order to ensure the exercise of public power.

- Other categories of civil servants are excluded from the right to strike. These categories are defined in the Basic Agreement for the public sector and **include high-ranking officials** in the Government Offices, in the **judiciary**, in **penitentiary structures** and **other administrative agencies**.

- According to Section 25 of the Public Employment Act, participation of a public employee in a strike is dependent on the decision of the trade union.

- Public employees as referred to in Section 23 of the Public Employment Act may undertake collective action only in the form of a **strike**, **lockout**, **overtime ban** or **hiring blockade**.

- There is no statutory provision stipulating which services or sectors are to be considered as **essential**. However, in the Basic Agreement for the Public Sector, the social partners agreed that, in certain sectors, strikes and collective action are to be undertaken with extreme caution.
  These sectors are broadly identified as those relating to the **security of the State**, the maintenance of **law and order**, **healthcare** and the **care of persons in need**, and **individual financial security**.
  The social partners also agreed to avoid any collective action that might cause a serious disturbance to the economy and hamper the effective functioning of public supply chains. In addition, the parties agreed to avoid any collective action that would be offensive for humanitarian reasons, such as in the case of schools for disabled persons. Furthermore, the 1938 Basic Agreement for the private sector states that the parties must enter into negotiations and attempt to prevent any conflictual situations or disputes arising in sectors that concern vital societal functions.

- **'Minimum services'** in the event of a strike in those sectors are established by the social partners through collective agreements.

  In general, the 'essential services' in the strict sense of the term have been defined by the ILO as those services 'the interruption of which would endanger the life, personal safety or health of the whole or part of the population'.[10]

5. Procedural requirements

- There is **no general principle** involving the use of collective action as a last resort. However, Section 10 of the Co-determination Act lays down a general obligation to negotiate, as do many collective agreements. Therefore, parties usually engage in negotiations before resorting to collective action.

- The party that intends to undertake collective action is obliged to forward a written notice to the other party and to the National Mediation Office at least seven working days in advance. However, the **notification obligation** may be waived if there is a valid impediment (such as where the collective action would be deprived of its effect). In addition, collective action to demand the payment of outstanding wages does not require a notice period.[11]

- If the National Mediation Office considers that there is a risk that a labour dispute may result in collective action, it may appoint, with or without the consent of the parties, one or more mediators to mediate in the dispute.[12] The role of the mediator is primarily to help resolve the dispute through voluntary negotiations between the parties.[13] He/she can make proposals and issue fines in the case of non-compliance. The mediator can also ask the parties to submit the dispute for arbitration, and the Meditation Office can assist the parties in the appointment of arbitrators.[14] It has been reported that since the National Mediation Office was established in 2000, the number of strikes in a year has never been over 20.[15]

- In several sectors, including public services, the parties will have signed **collaboration agreements**, which lay down rules for mediation and conciliation. If such an agreement exists between the two parties to a dispute, the National Mediation Office cannot appoint a mediator without the consent of the parties.

- There is no requirement for a trade union to hold a ballot of its members in order to approve a strike before taking any strike action; however, the by-laws of major employee organisations require that their executive board approve any collective action.

- At the request of the mediator, the National Mediation Office can postpone collective action for a consecutive period of 14 days from the day on which the action was due to begin. The decision cannot be appealed against by the parties.[16]

- The **peace obligation** is imposed by law in accordance with Section 41 of the Co-determination Act, which states that collective action may not be undertaken by parties bound by a collective agreement. Even though the parties are reciprocally bound by a collective agreement, the peace obligation only regards issues that are regulated by the collective agreement. The parties can still take industrial actions regarding issues that are not regulated in collective agreement. (Co-determination Act 41§ second section). The peace obligation does not apply to parties that are not mutually bound by a collective agreement: this means that an employer who has

concluded a collective agreement with one trade union can still be the target of collective action by another trade union.

The peace obligation is considered to have legal effect as part of a collective agreement. It enters into force upon conclusion of a collective agreement and ends with the expiry of the agreement. It cannot be set aside by collective agreements. The peace obligation does not apply in the case of lawful sympathy action, where a request for a co-determination agreement has been made but not implemented, or in the case of a political strike under very limited circumstances. In addition, a trade union may call industrial action for the purpose of exacting unpaid wages during the time that the collective agreement is in force (Section 41 paragraph 2 of the Co-determination Act).[17]

A trade union must refrain from initiating, supporting or participating in collection action that violates peace obligations, and is obliged to ensure that its members refrain from doing the same.[18]

6. Legal consequences of participating in a strike

Participation in a lawful strike

- Participation in a lawful strike or collective action merely suspends the employment contract and relieves the workers concerned of their contractual obligations deriving therefrom. It cannot be considered a ground for terminating the employment contract.

- Workers who take part in a lawful strike or collective action lose their entitlement to any salary for the duration of the work stoppage.

- Loss of wages can be compensated for through strike funds, which are generally managed by sectoral federations and financed through membership fees. Where required, special levies can be applied in support of collective action.

- The trade union, rather than the employer, is responsible for paying the employees during a strike or lockout, but this is normally less than the employee's salary.[19]

- Employers have the right to declare a lockout in Sweden. There is no legal obstacle for employers to temporarily replace workers on strike. However, this is rather unusual due to the strong response it usually provokes among trade unions (expanding strike actions, sympathy measures etc).

Participation in an unlawful strike

- Individual liability does not apply to workers who participate in an unlawful strike if the action has been called by a trade union.[20] Individual liability is possible only in the case of a wildcat strike. Until 1992, the maximum fine that could be imposed on individual workers participating in unlawful collective action amounted to SEK 200 (about EUR 20). This threshold has since been abolished, and the amount of the fine is now decided by the Labour Court, but it is imposed only rarely and always taking into account specific circumstances, such as the strike's objective, its duration and whether the worker refused to comply with a court order suspending the action. An individual's position as a union official is seen as an aggravating factor because of the responsibility that unions have in preventing and stopping unlawful action.

- The labour market parties have an obligation to attempt to prevent unlawful collective action from being organised or undertaken by their members.[21] If unlawful collective action is initiated, the parties have an obligation to meet and discuss in order to negotiate the cessation of such action (known as the 'duty to confer').[22] Trade unions have liability with regard to calling or participating in unlawful collective action because of a breach of the peace obligation that such action entails. The amount of damages to be awarded is decided by the Labour Court.

- An employer has the possibility of filing a petition to ask the Labour Court to issue an interim injunction suspending or terminating a strike or collective action until such time as the Court has rendered its final decision.

- Dismissal as a consequence of participating in a strike or collective action would constitute a violation of the Employment Protection Act because of lack of just cause or objective grounds. Only participation in a wildcat strike can be – exceptionally – acknowledged by the Labour Court as constituting a ground for summary dismissal.

7. Case law of international/European bodies

Background information

The *Laval* case attracted international attention due to the complaints filed by Swedish trade unions with the ILO CEACR and the ECSR against the legislative intervention that restricted the right to undertake collective action to extend working and employment conditions to workers posted in Sweden by companies established abroad.

The case originated from collective action undertaken by the Swedish union in the construction sector, *Svenska Byggnadsarbetareförbundet*, against a company established in Latvia in order to demand that the company sign an 'accession agreement' reproducing the conditions of the Swedish collective agreement.

The dispute was brought before the Court of Justice of the EU, which ruled that collective action against a foreign company posting workers to the territory of a Member State other than the one of establishment may constitute an obstacle to the freedom to provide services.[23] With regard to Sweden, the decision of the CJEU determined the unlawfulness of the action, and the Labour Court ordered the trade union to pay damages on the basis of provisions of the Co-determination Act on unlawful collective action.

To comply with the CJEU's ruling, in 2010, the Co-determination Act and the Posting of Workers Act were amended[24] so as to restrict the possibility for trade unions to undertake collective action against companies established abroad posting workers to Sweden (the '*Lex Laval*' amendment).[25]

In particular, *Lex Laval*:

(a) placed limitations on the range of matters to be negotiated with foreign companies posting workers to Sweden (limited to those listed in the Posting of Workers Directive);
(b) limited the possibility of undertaking collective action in order to demand more favourable conditions of employment than the minimum levels set in national collective agreements and;
(c) precluded the possibility of undertaking collective action if the posting company already complies with those minimum conditions, albeit by applying a collective agreement signed in the country of establishment and incorporating its provisions into the employment contracts of the individual posted workers (known as the 'evidence rule' or *bevisreglen)*.

In June 2017, the social-democratic government repealed *Lex Laval* by restoring the possibility of undertaking collective action against posting companies in order to seek a collective agreement with a view to regulating the employment conditions of the posted workers and by eliminating the 'evidence rule'. However, the conditions demanded by national unions for posted workers may not be more favourable than the minimum conditions set by national collective agreements at sectoral level.[26]

During spring 2020, in order to implement the EU's revised Posting of Workers Directive[27], the Government adopted a bill with a number of proposals that were to result in more equal treatment of domestic workers and posted workers in the Swedish labour market and enhanced protection for posted workers. In the bill, the Government proposed to expand on the conditions for posted workers in collective agreements. For example, the remuneration that may be demanded will no longer be limited to the minimum wage.[28]

The above mentioned bill resulted in new legislation amending the Posting of Workers Act, requiring that posted workers, including temporary agency workers, receive the same remuneration as a local worker performing the same role. The new rules also included stricter employer obligations. The new legislation came into effect on 30 July 2020.

According to the new legislation, salary levels throughout a posting should no longer be limited to the minimum wage levels. Instead, a posted worker shall be entitled to the same salary levels as a Swedish worker performing the same work. Additionally, the new legislation clarifies how to determine whether a posted worker is paid properly throughout the posting. For example, any reimbursements paid to the posted worker relating solely to expenses arising from the posting in itself should not be considered salary under the Act but rather a one-off cost. This refers for example to costs associated with relocating from the home to host country.

According to the new legislation, **the right to take industrial action** is expanded to cover claims for reimbursement of expenses for travel, food and conditions for accommodation in Sweden as to mirror levels offered to Swedish workers under any relevant central CBA (collective bargaining agreement). This right is granted to posted temporary agency workers as well.[29]

International Labour Organisation

Decisions of the Committee on Freedom of Association (CFA)

There have been no recent decisions of the CFA concerning the exercise of the right to take collective action.[30]

Observations of the Committee of Experts on the Application of Conventions and Recommendations (CEACR)

In its **Observation (CEACR) - adopted 2018, published 108th ILC session (2019)**[31], the CEACR 'noted with interest' the Government's indication that the amendments to the Posting of Workers Act, which were presented to the Parliament in February 2017 and entered into force on 1 June 2017, create a more effective and efficient system for the protection of the rights of posted workers.

The CEACR further 'noted with interest' that, in addition to amendments pertaining to the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), under the Act, as amended:

(i) industrial action against an employer can be taken with the aim of bringing about a regulation by collective agreement (the employment conditions that trade unions can demand are still limited to the minimum conditions set out in the European Union Posting of Workers Directive);
(ii) posted workers who are not members of the trade union that concluded the collective agreement have the right to invoke certain conditions in the collective agreement, ultimately in a Swedish court; and
(iii) there are provisions on increased transparency and predictability when workers are posted, so that it is easier for foreign employers to find out in advance what conditions apply in the Swedish labour market.

The Committee welcomed the legislative developments which have taken place since it had last examined the situation in 2015 and requested the Government to provide information in future reports on the application in practice of the amended Posting of Workers Act since it entered into force in June 2017.

The CEACR also took note of the Government's indication that, given that the long-term labour market conflict in the container port of Gothenburg had shown that the Swedish labour market model does not work satisfactorily, on 22 June 2017, it decided to appoint an inquiry to review the exercise of the right to take industrial action and in particular to decide whether it is possible and appropriate to:

(i) limit the right to take industrial actions for purposes other than to regulate conditions in collective agreements (except for sympathy action and industrial action to recover unpaid wages);
(ii) change the provisions on peace obligations in situations where an employer who is bound by a collective agreement with an employee organization is facing an industrial action by another employee organization; and
(iii) establish a board which, when necessary, can take decisions on coordinating collective agreements and on peace obligations resulting from a collective agreement.

The Government also indicated that, in addition, a bill drafted by the social partners addressing the issues in relation to the right to strike, is now being considered by the Ministry of Employment. The Committee requested the Government to provide further details on the proposals made by the inquiry as well as on the developments concerning the adoption of the bill drafted by the social partners currently under consideration by the Ministry of Employment.

(Revised) European Social Charter:

Collective Complaints under Article 6(4) of the ESC

Decision on the merits of the European Committee of Social Rights (ECSR)

Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012

In June 2012, the Swedish trade unions LO and TCO submitted a collective complaint against *Lex Laval* for violation of Articles 6(2) and 6(4) ESC (No. 85/2012). The 2013 ECSR Decision (published in 2014) on the complaint concludes that *Lex Laval* constitutes a disproportionate restriction on:

(a) the right to engage in collective bargaining, since it imposes substantial limitations on the use of collective action in establishing binding collective agreements with posting companies and;
(b) the right to undertake collective action, since it limits the autonomy of trade unions in protecting the interests and employment conditions of workers by restricting the aims of collective action to a closed list of objectives and limiting its use to demand minimum conditions.[32]

Follow-up to decision on the merits of collective complaint No. 85/2012

In its subsequent assessments of the follow-up (2016 and 2017), the ESCR reiterated its conclusions about the non-conformity of Swedish legislation with Articles 6(2) and 6(4).[33]

In its 3rd assessment of the follow-up (Findings 2019),[34] the ECSR took note from another source (*Utstationeringsdirektivet och det svenska genomförandet*, SOU 2019:25) that certain changes to the system for enforcing collective agreements in respect of the posting of workers were introduced on 1 June 2017 (inter alia on the basis of a previous inquiry report, *Översyn av lex Laval,* SOU 2015:83).

Following these changes, Section 5a of the Foreign Posting of Employees Act no longer prohibits collective action where the employer can prove (*bevisregeln*) that the posted workers already enjoy working terms and conditions which are similar to those demanded by way of the collective action. However, the nature and level of the terms and conditions in respect of which collective action can be taken are still subject to the limits laid down by the initial lex Laval (and which the Committee in its decision found were contrary to the Charter). Furthermore, collective action can only be taken in respect of employers established in the EEA or in Switzerland. In addition, the 2017 amendments now provide (Section 5c of the Foreign Posting of Employees Act) that where a collective agreement is concluded between a Swedish trade union and a posting employer, the posted worker has a right to invoke the terms of the agreement even if that worker is not a member of the Swedish trade union party to the agreement. This is however limited to such terms as are stipulated by Section 5a of the Act.

On the basis of the information at its disposal, the Committee does not consider that the 2017 amendments are sufficient to bring the situation into conformity with the Charter. It reiterates that the statutory framework, notably Section 5a of the Foreign Posting of Employees Act, by circumscribing ex ante the terms and conditions that the unions may bargain for, imposes substantial limitations on the ability of Swedish trade unions to conduct free collective bargaining and to take collective action in the context of such bargaining and that this is not in conformity with the Charter (see in particular §112 and §123 of the decision on the merits).

Since the previous report by Sweden summarised above, Directive 2018/957 of the European Parliament and of the Council amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services was adopted. The Committee notes that against this background the Government tasked a commission of inquiry with submitting proposals as to how the Amending Directive should be implemented in Swedish law. Under the commission's terms of reference, one of its objectives was to achieve equal treatment, as far as possible, between posted (non-resident) workers and resident workers while respecting the free movement of services.

The Committee notes that the commission of inquiry published its report (SOU 2019:25) in May 2019 containing a series of proposals concerning the scope for collective bargaining and collective action by trade unions in respect of posted workers. The commission proposes that the proposed legislative amendments shall enter into force by 30 July 2020.

The Committee further notes that the proposals put forward by the commission would appear to increase the scope for collective bargaining and collective action to enforce demands for remuneration (as opposed to a "minimum rate of pay") and certain allowances/reimbursements, and in particular to increase the scope for enforcing collective agreements on terms and conditions in respect of long-term postings. Other proposals include equal treatment of posted temporary agency workers, the right of trade unions to certain documents and the employer's obligation to provide information in a certain case. However, the Committee can only make a definitive assessment of these various proposals if and when they have been enacted in law and implemented in practice. It therefore asks that the next report on the follow-up contain detailed information in this respect.

Meanwhile, the Committee finds that during the period under consideration the situation has not been brought into conformity with the Charter.

With regard to the assessment of the follow-up on Article 6§4, the ECSR refers to its remarks above on the follow-up in respect of the violation of Article 6§2 and finds that during the period under consideration the situation has not been brought into conformity with the Charter on the ground that Sections 5a and 5b of the Foreign Posting of Employees Act, as well as Section 41c of the Co-determination Act, do not adequately recognise the fundamental right to collective action.

ECSR Conclusions

In its **2014 Conclusions**, the ECSR found that the situation in Sweden was not in conformity with Article 6(2) ESC owing to the statutory framework on posted workers, which did not promote the development of voluntary machinery for collective bargaining between national trade unions and companies established abroad. Because foreign posting companies are not obliged to have a representative in Sweden, Swedish unions are forced to negotiate with the responsible employers abroad.[35]

The ECSR also found that the situation in Sweden was not in conformity with Article 6(4). This observation was made in relation to the collective complaint (No. 85/2012) filed by the LO and the TCO against *Lex Laval* (see above). The ECSR noted that there had been no substantial changes to the situation and concluded that the statutory framework on posted

workers constitutes a restriction on the free enjoyment of the right of trade unions to take collective action.[36]

In October 2017, the Swedish Government submitted its National Report on the implementation of the European Social Charter in view of the forthcoming Conclusions (2018) of the ECSR. With regard to Articles 6(2) and 6(4) ESC, the Government explains that, in June 2017, a new Act entered into force which restores the possibility for trade unions to request posting companies to sign a collective agreement, ultimately by means of collective action.[37]

In its **Conclusions 2018**[38], the ECSR noted that no substantial change occurred during the reference period, except for the collective action of posted workers. The situation previously was considered to be in conformity with the Charter in all other respects.

The Committee recalled 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 (see above *Findings 2019*).

The Committee noted that there are no restrictions on the right of police officers to strike.
The ECSR therefore concluded that the situation in Sweden was in conformity with Article 6§4 of the Charter.[39]

8. Bibliography

- Adlercreutz, A. and Nyström, B. (2017), *Sweden,* International Encyclopaedia for Labour Law and Industrial Relations, Netherlands: Kluwer Law International BV.
- Bruun, N. and Johansson, C. (2014), 'Sanctions for unlawful collective action in the Nordic countries and Germany', *The International Journal of Comparative Labour Law and Industrial Relations*, Vol. 30(3), pp. 253-272.
- Clauwaert, S. (2016), 'The right to collective action (including strike) from the perspective of the European Social Charter of the Council of Europe', *Transfer*, Vol. 22(3), pp. 405-411.
- Clauwaert, S. and Warneck, W. (2008), *Better defending and promoting trade union rights in the public sector. Part I: Summary of available tools and action points*, Report 105, Brussels: ETUI.
- Hansson, M. (2016), 'Industrial action and the proportionality principle in Swedish law' in Carlsson, L., Edström, Ö. and Nyström, B. (eds), *Globalisation, fragmentation, labour and employment law. A Swedish perspective*, Uppsala: Iustus, pp. 53-72.
- Iossa, A. (2017), *Collective Autonomy in the European Union – Theoretical, Comparative and Cross-border Perspectives on the Legal Regulation of Collective Bargaining*, Doctoral Dissertation – Media-Tryck, Lund University.
- Malmberg, J. and Johansson, C. (2014), 'The Right to Strike: Sweden' in Waas, B. (ed.), The Right to Strike: A Comparative View, Netherlands: Wolters Kluwer International, pp. 525-536.
- Rönnmar, M. (2010), 'Laval returns to Sweden: The final judgment of the Swedish Labour Court and Swedish legislative reforms', Industrial Law Journal, Vol. 39, No. 3, pp. 280-287.
- Warneck, W. (2007), Strike rules in the EU27 and beyond: A comparative overview, Report 103, Brussels: ETUI-REHS.
- Warneck, W. and Clauwaert, S. (eds) (2009), *Better defending and promoting trade union rights in the public sector. Part II: Country reports*, Report 108, Brussels: ETUI.
- Dorssemont, F. 'Article 6. The Right to Bargain Collectively. A Matrix for Industrial Relations' in Bruun, N., Lörcher, K., Schömann, I and Clauwaert, S (2017), The European Social Charter and the Employment Relation, pp. 249-288, Hart Publishing.
- Schlachter, M. 'Regulating Strikes in Essential Services from an International Law Perspective' in Mironi, M. and Schlachter, M (eds) 2019, Regulating Strikes in Essential Services: A Comparative 'Law in Action' Perspective, Netherlands: Wolters Kluwer International, pp. 29-50.
- Nyström, B. 'Chapter 14 Sweden' in Mironi, M. and Schlachter, M (eds) 2019, Regulating Strikes in Essential Services: A Comparative 'Law in Action' Perspective, Netherlands: Wolters Kluwer International, pp. 409-439.
- European Social Charter, Country Profile: Sweden (https://www.coe.int/en/web/european-social-charter/sweden).
- 17th National Report on the implementation of the European Social Charter submitted by the Government of Sweden, pp. 14-15 (https://rm.coe.int/17th-report-from-the-government-of-sweden/168077e399).
- Eurofound, 'Living and working in Sweden', 16 March 2021 (https://www.eurofound.europa.eu/country/sweden).
- Eurofound, Anna-Karin Gustafsson and Amanda Kinnunen, 'Sweden: Working life in the COVID-19 pandemic 2020', 23 March 2021 (https://www.eurofound.europa.eu/sites/default/files/wpef21033.pdf).
- Venice Commission, Observatory on emergency situations, Sweden (https://www.venice.coe.int/files/EmergencyPowersObservatory/SWE-E.htm).
- European Parliamentary Research Service, States of emergency in response to the coronavirus crisis: Situation in certain Member States III, Sweden (https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651972/EPRS_BRI(2020)651972_EN.pdf).
- ETUC, COVID-19 Watch, Human Rights and COVID-19, 10 June 2020 (https://www.etuc.org/en/publication/covid-19-watch-etuc-briefing-notes).
- ETUC, COVID-19 Watch, Trade Union Rights and COVID-19, 10 June 2020 (https://www.etuc.org/en/publication/covid-19-watch-etuc-briefing-notes).

Notes

1 For an overview of UN instruments ratified by Sweden, see https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=_en
2 For an overview of ILO Conventions ratified by Sweden, see https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102854 .
3 Status of ratifications of the Revised European Social Charter: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163/signatures?p_auth=jPYjkVEL (accessed on 16 May 2021); see also ESC, Country profile: Sweden (https://www.coe.int/en/web/european-social-charter/sweden).
4 Status of ratifications of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints: http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/158/signatures?p_auth=F3KSQtYr (accessed on 16 May 2021); Sweden has not yet made a declaration enabling national NGOs to submit complaints.
5 Status of ECHR ratifications: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=jPYjkVEL (accessed on 16 May 2021).
6 The *grundlagar* (literally, fundamental laws) make up the Constitution of Sweden and consist of four acts: the 1974 Instrument of Government (*Regeringsformen*), which sets the general principles and the fundamental rights of the citizens; the 1810 Act of Succession (*Successionordningen*); the 1949 Act on Freedom of the Press (*Tryckfrihetsförordningen*); and the 1991 Fundamental Law on Freedom of Expression (*Yttrandefrihetsgrundlagen*).
7 In practice, these kinds of actions are in fact always deemed as wildcat strikes. Whether or not the employer chooses to take legal action against them may however be a subject to variation.
8 Section 23, SFS 1994:260.
9 Nyström, B., 'Chapter 14 Sweden' in Mironi, M. and Schlachter, M (eds) 2019, Regulating Strikes in Essential Services: A Comparative 'Law in Action' Perspective, Netherlands: Wolters Kluwer International, p. 426.
10 Compilation of decisions of the Committee on Freedom of Association (ILO CFA), 6th edition, 2018, Chapter 10, paras. 836 - 841 – ILO CFA has defined and listed as "*essential services in the strict sense of the term*" where the right to strike may be subject to restrictions or even prohibitions, the following: the hospital sector, electricity services, water supply services, the telephone service, the police and armed forces, the fire-fighting services, public or private prison services, the provision of food to pupils of school age and the cleaning of schools, air traffic control. The ILO CFA has stressed that compensatory guarantees should be provided to workers in the event of prohibition of strikes in essential services, see paras. 853 - 863; See also Schlachter, M. 'Regulating Strikes in Essential Services from an International Law Perspective' in Mironi, M. and Schlachter, M (eds) 2019, Regulating Strikes in Essential Services: A Comparative 'Law in Action' Perspective, Netherlands: Wolters Kluwer International, pp. 29-50.
11 Section 45, SFS 1976:580.
12 Section 47b, SFS 1976:580.
13 Section 48, SFS 1976:580.
14 Section 51, SFS 1976:580.
15 Eurofound, 'Living and working in Sweden', Industrial action and disputes, 16 March 2021 (https://www.eurofound.europa.eu/country/sweden).
16 Section 49, SFS 1976:580.
17 Nyström, B., 2019, pp. 422-423
18 Sections 42 and 43, SFS 1976:580.
19 Eurofound, 'Living and working in Sweden', Industrial action and disputes, 16 March 2021 (https://www.eurofound.europa.eu/country/sweden).
20 Section 59, SFS 1976:580.
21 Section 42, SFS 1976:580.
22 Section 43, SFS 1976:580.
23 C-341/05, *Laval un Partneri Ltd* v *Svenska Byggnadsarbetareförbundet*, *Svenska Byggnadsarbetareförbundets avdelning 1, Byggettan and Svenska Elektrikerförbundet*, EU:C:2007:809.
24 *Lag om ändring i lagen om utstationering av arbetstagare*, SFS 1999:678.
25 For more details, see, *inter alia*, Rönnmar, M. (2010), '*Laval* returns to Sweden: The final judgment of the Swedish Labour Court and Swedish legislative reforms', *Industrial Law Journal*, Vol. 39, No. 3, pp. 280-287.
26 For more details, see Iossa, A. (2017), *Collective Autonomy in the European Union – Theoretical, Comparative and Cross-border Perspectives on the Legal Regulation of Collective Bargaining*, Doctoral Dissertation – Media-Tryck, Lund University, p. 229.
27 Directive (EU) 2018/957 of the European Parliament and of the Council amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services
28 See the Government of Sweden official website: https://www.government.se/articles/2020/03/government-proposes-legislative-amendments-to-increase-equal-treatment-of-posted-workers/ and https://www.government.se/articles/2020/04/government-bill-proposes-more-equal-treatment-of-posted-workers/
29 'New Swedish legislation requires equal treatment and protection of posted workers in Sweden' at: https://taxnews.ey.com/news/2020-1911-new-swedish-legislation-requires-equal-treatment-and-protection-of-posted-workers-in-sweden .
30 As of 15 May 2021; for an overview of previous cases dealt by ILO CFA see: https://www.ilo.org/dyn/normlex/en/f?p=1000:20060::FIND:NO:::

31 Observation (CEACR) - adopted 2018, published 108th ILC session (2019), Convention 87, full text available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3961042,102854,Sweden,2018 .
32 Full text of the Decision is available at: http://hudoc.esc.coe.int/eng?i=cc-85-2012-dadmissandmerits-en.
33 Full text of the 1st assessment is available at: http://hudoc.esc.coe.int/eng?i=cc-85-2012-Assessment-en and of the 2nd assessment at: http://hudoc.esc.coe.int/eng?i=cc-85-2012-Assessment2-en.
34 See ECSR, Findings 2019 (3d assessment of follow-up) published on 31 January 2020 at: http://hudoc.esc.coe.int/eng/?i=CCASST/085/2012/EN .
35 ECSR, Conclusions 2014 on Article 6(2), available at: http://hudoc.esc.coe.int/eng?i=2014/def/SWE/6/2/EN.
36 ECSR, Conclusions 2014 on Article 6(4), available at: http://hudoc.esc.coe.int/eng?i=2014/def/SWE/6/4/EN.
37 See the 17th National Report on the implementation of the European Social Charter submitted by the Government of Sweden, pp. 14-15, full text of the Report is available at: https://rm.coe.int/17th-report-from-the-government-of-sweden/168077e399.
38 ECSR, Conclusions 2018 on Article 6(4), available at: http://hudoc.esc.coe.int/eng?i=2018/def/SWE/6/4/EN
39 ECSR, Conclusions 2018 on Article 6(4)