

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**



14 November 2017

Case Document No. 2

University Women of Europe (UWE) v. Sweden
Complaint No. 138/2016

SUBMISSIONS BY THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 27 October 2017

Observations of the Government of Sweden on the merits to complaint no. 138/2016, University Women of Europe v. Sweden

1. Introduction

1. These observations on the merits of the complaint, introduced by the organisation University Women of Europe (below, UWE), are submitted on behalf of the Swedish Government (below, the Government).

2. Domestic law and practice

The Swedish Model incl. the Swedish labour market

2. The Swedish labour market model entails that the labour market parties have the primary responsibility for wage formation and other terms of employment. It is possible to deviate from Swedish labour law legislation by the use of collective agreements, thus leaving an extensive degree of freedom for the social partners to adjust the rules through collective agreements according to the needs in different sectors. However, there is no mechanism in Sweden to declare the agreements' general applicability through law.

3. The central labour legislation in Sweden consists of the following legal acts; the Employment Protection Act (1982:80), the Co-determination in the Workplace Act (1976:580), the Public employment Act (1994:260), the Work Environment Act (1977:1160), the Working Hours Act (1982:673), the Annual Leave Act (1977:480), the Parental Leave Act (1995:584) and several other acts on different kinds of rights to leave. In addition, Sweden also has the important Discrimination Act (2008:567) which is not possible to deviate from through collective agreements. And, given the well-established and by all relevant stakeholder involved, respected system, the Government has not seen the need for legislation related to wage formation.

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4. The Swedish model is based on trust between the social partners. This trust and interdependency is based on close collaboration between employees and employers. The employee organisations, both at local and central level, monitor that the conditions in the collective agreements are upheld; there are no state mechanisms or legal rules that regulate the supervision of collective agreements. If the employer does not honour the specific agreement, the employee organisation may take action and take the matter to court, seeking compensation for both the union and for the individual. Disputes are resolved in the first instance through negotiation, including discrimination disputes.

5. Also, a tradition of a high level of union membership characterises the Swedish model. Approximately 69 percent of the employees are members of a union organisation. According to Swedish legal principles a collective agreement must be applied to all employees at a work place, organised as well as non-organised workers, when the employer has signed an agreement. Around 90 percent of the employees on the Swedish labour market are covered by collective agreements.

6. This structure of the labour market also means that wage formation is not regulated by law, but handled by the social partners without any interference from the state. However, the special Government Agency, the National Mediation Office, is responsible for not only mediating in labour disputes but also for promoting an efficient wage formation process and has the responsibility for the official Swedish wage statistics.

7. The National Mediation Office, which was established in 2000, also has the important task of analysing the wage trend from a gender equality perspective and has done so annually since the first annual report was published for 2001.

8. The wage difference between women and men has decreased in both the short and long term: between 2015 and 2016 the decrease has been 0.5 percentage points, while between 2005 and 2016 it has decreased by 4.3 percentage points. See further information below, 3. On the Merits.

The Principle of Equal Treatment

9. The Discrimination Act (2008:567) (below, the Act) regulates the prohibition on discrimination on all grounds, i.e. including on the ground of

sex. Discrimination includes direct discrimination, indirect discrimination, inadequate accessibility, harassment, sexual harassment and instructions to discriminate. The Act covers discrimination in e.g. working life.

10. The Act also includes the obligation for employers to work on active measures. Active measures are such as prevention and promotion measures aimed at preventing discrimination and serving in other ways to promote equal rights and opportunities regardless of e.g. sex.

11. The Act discloses a framework for the work on active measures. The measures are to be decided by the employer in cooperation with the employees. The framework states that the work should include the following.

- Investigating the existence of any risks of discrimination or reprisals or any other obstacles to individuals' equal rights and opportunities in the establishment in question,
- analysing the causes of any risks and obstacles discovered,
- taking the prevention and promotion measures that can reasonably be demanded, and
- monitoring and evaluating measures mentioned above.

12. Moreover, work on active measures is to be conducted continuously. Measures are to be scheduled and implemented as soon as possible.

13. Also, employers' work on active measures is to encompass for example provisions and practices regarding pay and other terms of employment.

14. In order to discover, remedy and prevent unfair gender differences in pay and other terms of employment, the employer is to annually survey and analyse provisions and practices regarding pay and other terms of employment that are used by the employer, and pay differences between women and men performing work that is to be regarded as equal or of equal value.

15. The employer is also to assess whether existing pay differences are directly or indirectly associated with gender. The analysis is to refer in particular to differences between

- women and men performing work that is to be regarded as equal,
- groups of employees performing work that is or is generally considered to be dominated by women and groups of employees performing work that is to be regarded as of equal value to such work but is not or is not generally considered to be dominated by women,
- groups of employees performing work that is or is generally considered to be dominated by women and groups of employees performing work that is not or is generally not considered to be dominated by women but that gives higher pay despite the requirements of the work being regarded as less.

16. Work is to be regarded as of equal value to other work if it can be deemed so based on an overall assessment of the requirements and nature of the work. The assessment of the requirements of the work is to take into account criteria such as knowledge and skills, responsibility and effort. In assessing the nature of the work, particular account is to be taken of working conditions. Employers who employed more than 10 workers as of the beginning of the calendar year are to document in writing in the course of the year their work on pay surveys.

17. The Discrimination Ombudsman (below, the Ombudsman) is to supervise compliance with the Act. The Ombudsman may bring a court action on behalf of an individual provided that he or she has consented to this. The Ombudsman also has the task to inform, educate, discuss, and have other contacts with authorities, companies, individuals and organizations; to follow international developments and have contacts with international organizations; to follow research and development work; to propose constitutional amendments or other anti-discrimination measures; and, to take other appropriate measures.

18. Anti-discrimination offices, which are part of the civil society, receive grants in order to prevent and combat discrimination on the ground of e.g. sex at local level. One of the requirements for the grant is that the office should give support to individuals and that they should be non-profit organisations.

19. In January 2014 the Government appointed an inquiry to propose how work to address discrimination can be organised and made more effective (terms of reference 2014:10). The purpose of the inquiry was to present proposals that ensure that people who are exposed to discrimination are in a good position to claim their rights. The aim of the inquiry proposal has been to create a system in which stakeholders at different levels take active measures to combat discrimination. A system in which different stakeholders can complement and support each other in their action to combat discrimination and in providing support and assistance to victims of discrimination.

20. The inquiry proposes e.g. that the Anti-discrimination offices shall continue to receive state grants and that the main objective should be to offer support to individuals. Furthermore the County administrative boards should be responsible to combat discrimination through various promotion actions that would include knowledge transfer, support, and education and training for strategic stakeholder in the country. The inquiry also proposes the establishment of an anti-discrimination board to provide a simple, inexpensive and quick procedure for the examination of discrimination disputes. The consultation of the inquiry's proposals with relevant stakeholders was just recently ended and will now be considered within the Government offices.

The Swedish Government's gender equality policy

21. The overarching goal of the gender equality policy is that women and men are to have the same power to influence and shape the society and their own lives. Starting from this objective, the Government is working towards six sub-goals:

- Gender equal division of power and influence. Women and men are to have the same rights and opportunities to be active citizens and to shape the conditions for decision-making.

- Economic gender equality. Women and men must have the same opportunities and conditions as regards paid work which give economic independence throughout life.

- Gender equal education. Women and men, girls and boys must have the same opportunities and conditions with regard to education, study options and personal development.
- Equal distribution of unpaid housework and provision of care. Women and men must have the same responsibility for housework and have the opportunity to give and receive care on equal terms.
- Gender equal health. Women and men, girls and boys must have the same conditions for a good health and be offered care on equal term.
- Men's violence against women must stop. Women and men, girls and boys, must have the same right and access to physical integrity.

Indicators and statistics related to gender equality

22. In order to monitor, assess and follow-up progress in relation to the main gender equality objective and the six sub-goals, the Government has developed a series of indicators. For the sub-goal economic gender equality, the indicator Women's pay in percent out of men's pay, before and after standard weighting, has been developed in order to evaluate progress pertaining to equal pay. This indicator, as well as other indicators, is monitored, assessed and followed-up annually in the Budget Bill. In addition, all indicators in the area of economic gender equality are monitored, assessed and followed-up in an appendix to the Budget Bill, Appendix 3, Economic Gender Equality.

23. When it comes to regulations on official statistics, the regulation (2001:100) on official statistics, stipulates that official statistics based on individuals is to be gender disaggregated if there are no special reasons against this. In line with this regulation, all statistics concerning individuals which are presented in government bills and communications, including the Budget Bill, are to be presented, commented and analysed in a gender perspective.

Jamstaldhetsmyndigheten - JaMy - A new government agency on gender equality

24. In January 2018, a gender equality agency - JaMy - will be established to achieve a strategic, cohesive and sustainable governance, and effective implementation of the gender equality policy. The agency will be responsible

for follow-up, analysis, coordination, knowledge and support based on the gender equality policy goals. Within the framework of the agency, the Government also intends to make permanent and coordinate several on-going national assignments in the gender equality policy area, such as the assignment on supporting central government agencies' work on gender mainstreaming of core activities. By making them the responsibility of the gender equality agency the work can be conducted on a long term and permanent basis.

25. There are also other, permanent, national gender equality assignments currently conducted by other agencies that will be transferred and coordinated within the framework of the new agency: parts of the National Centre for Knowledge on Men's Violence Against Women and parts of the Swedish Secretariat for Gender Research, as well as the assignment to distribute government grants to gender equality projects and women's organisations. The intention is to make the work less fragmented, and improve coordination, efficiency and the impact of the Government's gender equality policy.

Gender equality objectives

26. Gender equality policy is wide-ranging and relevant to many policy areas and agencies. Effective governance tailored to relevant agencies is essential in order to achieve the gender equality goals. During this electoral period, the Government will therefore analyse which government agencies' instructions need to be amended with respect to gender mainstreaming. Sex disaggregated statistics, surveys and gender analyses are a basic prerequisite for making gender inequality in society visible and conducting an effective process of change. Access to such statistics needs to improve. The Government has therefore introduced a requirement that all agencies that present individual-based statistics in their annual reports should present this data disaggregated by sex.

27. Moreover, as part of the Government's systematic work to improve and promote gender equality it is worth mentioning that the Swedish Tax Agency has been assigned the task of mapping relevant gender-disaggregated statistics for various taxes 2006-2015. Based on this mapping the Agency will present an in-depth analysis of tax systems that are considered particularly relevant in a gender equality perspective. The Agency has suggested four areas for further scrutiny: 1) State income tax (An analysis of the ways in

which changes in the breakdown of state income tax affect women's and men's taxes), 2) Investment Savings Account (An analysis of the ways in which the introduction of a flat-rate saving tax on investment savings accounts affect women's and men's taxes), 3) Limited Liability Companies (an analysis of the ways in which the fact that more men than women are partners of limited liability companies affect women's and men's taxes), and 4) Tax reduction for the so called "ROT" and "RUT" (an analysis of the ways in which the allocation of tax deductions for repairs, conversion and extension (ROT) and for cleaning, maintenance and laundry (RUT) is distributed). The analysis will be submitted to the Government in April 2018.

3. On the merits

General remark

28. With respect to the complaintive and with regard to the complaint where reference is being made to international obligations other than the Charter, the Government will focus its comments on the scope of the Charter as it is interpreted by the European Committee of Social Rights (below the ECSR).

On the allegation of not putting Charter rights into practice and made effective

29. The complaintive reiterates the ECSR's position on the effectiveness of the Charter rights, namely:

"However, the Committee notes that the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical, form (International Commission of Jurists v. Portugal, Complaint No. 111998, decision on the merits of 9 September 1999, §32). This means that, for the situation to be in conformity with the treaty, states party must:

- a. adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;*
- b. maintain meaningful statistics on needs, resources and results;*
- c. undertake regular reviews of the impact of the strategies adopted;*
- d. establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;*
- e. pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable"* (Collective Complaint No. 33/2006, decision on the merits of 5 December 2007).

30. With regard to the abovementioned, in particular paragraphs 2-27, and below, paragraphs 31-48 relevant laws and practices show that Sweden

respect and ensure effectively and efficiently the rights within the scope of the Charter's article 4§3, article 20, together or alone with article E and in accordance with the ECSR's position on the effectiveness of the Charter rights as it is mentioned in paragraph 29, in particular as it is outlined in a.-e.

31. Also, bearing in mind the ECSR's latest conclusions on the relevant articles regarding Sweden, for example Conclusions 2012 and 2014 whereby Sweden is found to be in conformity with the articles at the same time as the ECSR asks Sweden to give more information on certain issues, the Government continues and needs to continue to work on fighting any type of discrimination, in particular discrimination based on the ground of sex, and on increasing and promoting equal opportunities and equal treatment between women and men, including equal pay for work of equal value.

32. More specifically, from the 1st of January 2017 the rules on active measures (see above), in the Discrimination Act entered into force. The changes mean that an action plan for equal pay should be carried out annually instead of every third year. The obligation for documentation changed to include employers that have at least 10 employees, compared to 25 which was the level set out before the changes. Identifying and correcting pay differentials associated with gender is an important part of a successful gender equality work. In this work, action plans for equal pay are therefore a meaningful tool in order to keep attention to the impact. Through continuous documentation, the supervisory authority will be able to follow the work on active measures.

33. Also, the Ombudsman supervises that the Discrimination Act is complied with. To further develop this work, the Government has proposed in the Budget Bill for 2018 that the Ombudsman will receive an additional 10 million SEK (approximately 1 million EUR) per year. This will strengthen the Ombudsman's work to supervise the compliance in general but especially with the Act in the area of active measures.

34. The Ombudsman has for example in the year of 2016 conducted a supervision of 190 authorities on their work on active measures with the focus on their action plan for equal pay. Furthermore the Ombudsman has published a report with an analysis on how employers work to counteract ineffective pay differentials between women and men. The Ombudsman's

work to promote equal rights and opportunities is important in order to identify problems and to combat them.

35. Besides the work of the Ombudsman, and as mentioned above, the Anti-discrimination offices, which assist persons at a local level on issues of discrimination, play an important role. Therefore, the Government has proposed to raise the grant to the Anti-discrimination offices from 14 million SEK (approximately 1.4 million EUR) per year to 29 million SEK (approximately 2.9 million EUR).

36. As a result of the continuous work, the wage difference between men and women has decreased every year since 2007 in all sectors, and stood at 12.0 percent in 2016. Between 2015 and 2016, the unweighted wage difference between women and men decreased by 0.5 percentage points. This is concluded from the Swedish National Mediation Office's intel on the wage structure and its analysis of the wage structure statistics.

37. Differences in wages can be due to a number of different factors. If, with the aid of standard weighting, consideration is given to the explanatory factors that are available in the statistics, there is still an unexplained difference between the genders of 4.5 percent for the entire labour market in 2016. The smallest unexplained wage difference, 0.3 percent, is in the municipalities. Blue-collar employees in the private sector have an unexplained wage difference of 3.5 percent. At state level, the unexplained wage difference is 4.0 percent. The largest unexplained wage difference, 7.2 percent, is found among private sector white-collar employees. There are various factors that affect this difference, and it is clear that the most significant factor affecting wage differences is that men and women work in different sectors and professions to a large extent. Nevertheless, by active measures together with a strong commitment from the Government and all stakeholders, the gap is reduced continuously.

38. Important to note is that "unexplained difference" means that the difference is unexplained from a statistical perspective. In this context an unfounded wage difference is defined as a difference in outcome that is due solely to gender. Understandably, it is difficult to determine whether differences in outcomes between men and women are due to relevant differences in characteristics – that cannot be observed in the statistics but are apparent when the wage is set – or to discrimination.

39. Moreover, in this context, it is relevant to also mention for example the labour market participation for women and men in Sweden and explain some factors behind it to better reflect the reality in Sweden.

40. In 2016, 84 percent of all women in Sweden aged 20-64 years participated in the workforce and 89 percent of all men. A number of reforms were crucial for attaining such a high rate of participation, including individual taxation, a gender neutral paid system for parental leave i.e. parental leave designed for both parents, and an extensive public child and elderly care.

41. Women aged 20-64 year work part-time to a higher extent than men (28 percent of working women and 11 percent of working men in 2016), and use the main share of the parental leave (73 percent of the total number of days with compensation). Important to know is that the single most important reason for women working part-time is that they cannot find full-time employment.

42. Furthermore, from an international perspective, Sweden has a comparatively high level of union membership among employees. In order to maintain the high level of organisation, the Government recently declared that it will submit a proposal for making the union membership fee tax partly deductible. The organisations usually help their members to bring legal action and also bear the legal costs for the individual employee. Employee organisations work to monitor workers' rights such as employment protection and other issues. The Employment Protection Act prevents notice of termination without objective grounds.

43. In addition, social partners actively pursue issues on gender equality and on equal treatment. The social partners actively work to eliminate wage differences between women and men. Collective agreements often contain special writings on how that work should be carried out and also on measures how to help women enter into predominantly male occupations. Moreover, the social partners have also on several occasions in recent years reached collective agreements on specific wage increases for predominantly female occupational sectors.

44. Looking at women in leadership positions in Sweden, in May 2017, the boards of companies, wholly or partially owned by the state, consisted of 49 percent women and 51 percent men. The distribution of women and men

among chairs of these boards was 45 percent women and 55 percent men. In January 2017, the distribution of CEOs was 36 percent women and men 64 percent.

45. In 2015, the boards of public authorities consisted of 51 percent women and 49 percent men. The distribution of women and men among chairs was 49 percent women and 51 percent men. The Government's target of an equal distribution of women and men in the boards of public authorities has therefore been reached.

46. The distribution of women and men in leadership positions is more equal in the public sector, particularly within the state, compared to the private sector. In 2016, the state sector comprised 48 percent women and 52 percent men in leadership positions, compared to 32 percent women and 68 percent men in the private sector.

47. In 2017, the proportion of women and men on company boards (private) was 32.2 percent women and 67.8 percent men. The proportion of chairs among women was 6.2 percent compared to 93.8 percent chairs among men. Among corporate CEOs, 4.9 percent was women, compared to 95.1 percent men. 44. According to the revision of the Discrimination Act pertaining to active measures (see above), which entered into force 1 January 2017, employers are to promote an equal distribution of women and men in leadership positions. The proportion of women and men in leadership positions is monitored, evaluated and followed-up annually in the Budget Bill.

48. Finally, a number of measures have been taken by the Government to ensure that women and men should have the same work opportunities and working conditions which offer economic independency. A labour market where women and men can participate on the same terms is beneficial for society as a whole and contributes to a stronger economy. The Government has also on several occasions, underlined the importance of that the labour market need to be less gender segregated and that full time work should be the norm for both women and men. In this regard, it is important to mention that the social partners and authorities play an important role in promoting non-gender-based professional choices. As stated in the Budget Bill for 2018, the wage differences between women and men should further

decrease and irrelevant wage differences should not occur. The Government intends to present an action plan for equal pay.

49. To conclude, the described relevant laws, labour market model and practices together with the commitment to decrease wage differences between women and men show that Sweden respect and ensure effectively and efficiently the rights within the scope of the Charter's article 4§3, article 20, together or alone with article E.

4. Conclusion

50. With regard to all of the above, Sweden does not violate any of the invoked articles of the Charter.

51. As regard the claim for compensation due to costs incurred, there is no legal basis for such compensation in the Charter itself or in the Collective Complaints procedure set out in the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints adopted in 1995, and therefore that claim should be denied.

Yours sincerely,



Susanne Sodersten

Director-General for Administrative Affairs

