Sweden
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1. General regulations of labor law

1.1 Implementation of international legislation into domestic law

Sweden has adopted the required EU labour and employment legislation on the whole consistent with Sweden's interpretation of these requirements. For example, Sweden adopted an Act on European Works Council in 1996 even though this institution is not used in the domestic Swedish labour law model.[1]
As Swedish collective agreements do not have *erga omnes* effect, implementation of EU requirements has been mostly through legislation.
As regards international public law generally, Sweden has adopted the dualistic, rather than monistic, principle, entailing that international conventions must be enacted as Swedish law in order to be given effect as national law. When Sweden has ratified an international convention involving labour law norms without enacting the convention as national law, the ratification is considered to create a presumption that current national law is in conformance with the convention's norms. However, individuals cannot assert the rights, only states, under any international instrument not yet enacted as Swedish law.
Sweden has signed the United Nations Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights (1966). On the Council of Europe level, Sweden signed the European Convention (1950), adopted it as law in 1995 effective 1998. Sweden has also signed the Council of Europe Social Charter (1961) and the revised Social Charter (1996).
As regards the 185 conventions adopted by the ILO, Sweden is presently bound through ratification to apply seventy-six, including the eight conventions concerning fundamental principles at work, the most relevant here with respect to strike being 1948 Convention concerning Freedom of Association and Protection of the Right to Organise (No. 87) (signed 1948) and 1949 Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (No. 98) (signed 1949).
In the majority of cases, when the Swedish legislator investigated the ratification of an international instrument, the legislator found that Swedish law was already in compliance with the international instrument and thus Swedish law did not need to be amended. Certain of the protections in the ILO convention, for example, equal pay between men and women (signed 1951) and unlawful employment discrimination on the basis of ethnicity (signed 1958), have eventually however been transformed (both in 1991) to Swedish law as required by dualism.

1.2 Formation of union representation in order to subscribe collective agreements

The rules as to bargaining with respect to collective agreements are treated as a matter internal for the labour market parties. In other words, each organization determines those individuals who will be conducting negotiations. There

are no external statutory rules as to bargaining. The social partners enter into collective agreements on three levels, local, central and national.

1.3 Trade union representation and activity in the workplace

Freedom of association and the right to take industrial action are constitutionally protected in Sweden for the social partners. There are no statutory requirements with respect to creating a labour organization or as to representing employees.

The internal affairs of labour market organisations in general are not regulated by law. Section 11 of Chapter Two of the 2008 Discrimination Act expressly prohibits unlawful discrimination on the basis of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age within employee and employer organisations with respect to membership, benefits as well as participation in activities. Otherwise, each labour market organisation regulates matters internally through its own organisational by laws.

1.4 Discipline/Regulation of the collective agreement

There are few statutory requirements with respect to collective agreements with the social partners having fairly extensive freedom with respect to the content in the collective agreements. The statutory provisions concerning collective agreements and their legal effects are found mainly in Sections 23-31 and 41-44 of the Co-determination Act. In accordance with Section 23 of the Codetermination Act, a collective agreement is to be a written agreement that concerns employment terms and conditions or the relationship in general between employees and the employer. The primary issues taken up in collective agreements are wages and employment terms and conditions. In addition to the collective agreements, individual employment contracts can be entered into between employers and individual employees. The main requirement as to an individual employment contract is that it may not be in conflict with the prevalent collective agreement. Collective agreements are legally binding on both parties to the agreement, as well as on the members of the organisations that have reached such agreements. There is however no *erga omnes* effect given to collective agreements.

Employers are also given the option to instead simply sign an already existing collective agreement, a tie-in or accessory agreement (*hängavtal*), usually containing a minimum of terms and conditions mirroring those found in the collective agreement for the sector.

1.5 Reflection on the Viking and Laval judgments

One area in which a gap between the Swedish and EU interpretations of the requirements under EU law arose was with respect to the posting of workers in the Laval case. Since the judgment by the Court of Justice (2007), and subsequently that of the Swedish Labour Court (2009), the Codetermination Act has been amended with the objective of limiting the rights of unions to industrial action against foreign service providers with respect to only core issues, for example

issues concerning wages, working time, discrimination and the work environment. The Act on the Posting of Workers (1999: 678) was consequently amended as a product of the Laval case. Two paragraphs were added, the first, Section 5a, stating that an industrial action against an employer for the objective of entering into a collective agreement concerning the employment terms and conditions for posted workers can be taken only if the terms and conditions demanded:
– Are comparable to those contained in a central collective agreement applied through Sweden to comparable workers in that sector;
– Only concern minimum wages or other minimum conditions as set out in Section 5 of the same act; and
– Are more favourable to the employee that that set out in Section 5.
Any terms and conditions that are to be demanded by a labour union in such a situation are to be submitted to the Swedish Work Environment Authority (www. av. se) under Section 9a, which is the authority charged with providing information to foreign service providers.

1.6 Means of protection in case of violation of the collective agreement
In the event one of the parties to a collective agreement is in breach, the party wronged is to take the dispute to the Swedish Labour Court, pleading for damages as taken up in Section 7 below. No equitable remedies can be awarded by the Swedish Labour Court.

1.7 Consultation of workers for signing the collective agreement or for the strike call
Referendums are not necessary with respect to signing a collective agreement or with respect to declaring a strike. They can be used a guidance for those responsible for taking the decisions, or as a way of creating consensus as to the decision, but generally are not binding.

2. Regulation of the right to strike

2.1 The right to strike as a fundamental right
The right to take industrial action is protected in the constitutional act, The Instrument of Government (1974: 152), article 2: 17, which states that a «trade union or an employer or employers' association shall be entitled to take industrial action unless otherwise provided in an act of law or under an agreement». Consequently, the right to take industrial action is limited to the social partners (not the individual employee) and can also be limited by legislation or collective agreement.

2.2 Sources
No legal distinction is made with respect to a strike and other types of industrial actions. The protections afforded strikes are the same as those for industrial action, with the statutory regulations concerning industrial actions (Sw. *stridsåtgärder*) as a group. The right to take industrial action is protected in the Instrument of Government as stated above, and the regulations concerning

certain issues as to the taking of industrial actions are those found in the Codetermination
Act, attached as an appendix.

2.3 Persons authorized to proclaim a strike (legal ownership)
The right to take industrial action in Sweden is protected under the Constitution for the social partners. Consequently, this right is enjoyed by associations of employees, individual employers and associations of employers unless otherwise prescribed by law or by an agreement. Individual employees cannot take lawful industrial action unless it can be deemed for a collective purpose, for example, establishing a trade union.

2.4 Procedures and proclamations
A party planning industrial action must give notice of such action at least seven working days in advance to both the opposing party and the National Mediation Office.

2.5 Limitations on the right to strike
The basic limitation as to the right to take industrial action is that such cannot be taken to change the terms of a prevailing collective agreement.

2.6 The exercise of the right to strike in different sectors and categories of workers
For the parties in the public sector, the Public Employment Act contains certain rules restricting industrial action in connection with the exercise of authority by public officials. In the case of work relating to the exercise of such authority, industrial action is only allowed in the form of lockouts, strikes, blockades on overtime and blockades on recruitment. Nor may sympathy actions be taken by public workers in support of parties in the private labour market. Thus the law distinguishes between the exercise of public authority and other labour market activities. In the case of public activities other than the exercise of authority, the Co-Determination Act rules on industrial action apply.

3. Trade union and strike

3.1 Reasons for the strike
The rules concerning industrial action and peace clauses are mainly to be found in the Co-Determination Act. Peace clauses, as set out in the Co-Determination Act, restrict the right to take industrial action. Under these rules, it is prohibited in certain cases to initiate or take part in work stoppages (strikes or lockouts), blockades, boycotts or other action of a comparable nature. The ban applies to both employers and employees bound by collective agreements. Strikes, lockouts or other forms of industrial action may not be taken in order to bring about changes in the collective agreement. The obligation to maintain industrial peace covers not only that which is explicitly regulated in

the collective agreement, but also the collective agreement's implicit supplementary rules concerning the employer's right to manage the business. Further, the Co-Determination Act prohibits industrial action aimed at concluding a collective agreement with companies that have no employees or where the entrepreneur or members of his family are employees and the sole proprietors. The law also bans certain types of industrial action. An employer may not as part of an industrial action withhold pay or other remuneration that is due. Collection blockades, i.e. blockades aimed at forcing the payment of due or overdue pay or other remuneration for work completed, are allowed even if the parties are bound by a collective agreement. This however is contingent upon the decision to institute a blockade having been taken in due order by the union organisation.
The Co-Determination Act does not include any clause requiring the industrial action to be aimed at the opposing party. Industrial action against third parties is permitted even when the third party has nothing whatsoever to do with the dispute or has in no way expressed loyalty for the opposing party. In addition, the Co-Determination Act has no rules pertaining to industrial action affecting key functions in society. The issue of conflicts that put the community at risk has been solved through collective agreements, which prescribe certain procedures for dealing with such conflicts. There is also no general restriction in Swedish law, for example, such as the equivalent proportionality requirement in German law («Verhältnismässigkeit»), concerning the extent and form of conflict measures. Neither are such general restrictions inferred from the case law. The labour market parties, however, can be subject to certain restrictions as regards the right to industrial action by means of certain provisions in collective.

3.1.1 Political strike

There are certain restrictions with respect to public employees taking industrial action to influence domestic political decisions. As to private sector parties, the Co-determination Act does not explicitly prohibit genuine political actions. Actions of these kinds, however, may be carried out in ways that prevent an employer from exercising its right to manage the business – a right derived from the collective agreement – for shorter or longer periods of time.

3.1.2 Solidarity strike

Unless otherwise agreed, a party to a collective agreement is entitled, however, to take secondary actions without any restriction whatsoever in order to assist another party in an on-going lawful labour conflict. This liberal right to take secondary action means that both employer and employee organisations can transform local disputes into national trials of strength. It should be particularly emphasised that the right to take secondary action is rather extensive and is a central tenet of Swedish labour market regulation. Even organisations bound by collective agreements have the right to take secondary action in support of another party engaged in lawful industrial action, in which case the obligation to

maintain industrial peace, which normally follows from collective agreements, does not apply. The fact that such a possibility exists naturally supports the centralisation of collective bargaining and collective agreement regulation.

3.2 Methods of the strike

Strike is not defined by statute, but instead included in the umbrella term of industrial action. Industrial action is also not defined by statute as the intent was to not create a system of rules which the parties may try to circumvent by following the letter of the law but not the spirit. The lawfulness of the industrial action is based on its having the three prongs discussed above, objective concerning the employment relationship on an organizational level, an act or omission affecting the other party, as well as a collective aspect to the act.
Actions that are defined by the penal code to be crimes, such a destruction of property, are still criminally punishable. However, that the action is a criminal act does not automatically render the act an unlawful industrial action. The party committing the criminal act, however, may also be subject to paying pure economic losses in addition to any other damages (compensatory or nominal) as stated in the Tort Damages Act.

3.2.1 Anomalous forms of striking

As stated, neither strike nor industrial action is defined by statute. Included under the legislation as examples of industrial action are work stoppages (lockout or strike), blockade, boycott, or other therewith comparable industrial action.

3.2.2 Forms of collective action different from the strike

As industrial action is not defined by statute, any act failing within the parameters as seen above can be interpreted as an industrial action. In one case, the Labour Court found that an advertisement by two employees stating that they were seeking work was an industrial action, see AD 1976 No. 130.

3.2.3 Virtual strike

Virtual strikes are not part of the national legal scheme.

3.3 Unlawful strikes

As stated, unlawful strikes under the statute are basically those strikes entailing industrial action in order to change the terms of a prevailing collective agreement. Unlawful strikes can also be these taken by individuals without the authorization of the organization have competence in the issue.

3.4 Sanctions in the collective conflict

The sanction for unlawful industrial actions by trade unions with respect to the employer is civil damages. As stated, criminal acts are prosecuted by the state, but not necessarily unlawful industrial actions.

A failure to give notice or industrial action in violation of a decision by the National Mediation Office can result in an administrative fine from SEK 30,000 to 100,000 as set out in section 62a of the Co-determination Act. In addition, if the National Mediation Office has requested that a noticed industrial action be postponed, any party taking an industrial action in violation of the request can be ordered under that same section to pay a higher penalty fine of at least SEK 300 000 and at most SEK 1 million to the State.

4. Adhesion to the strike

4.1 Modalities of adhesion

The majority of union bylaws state that the board of directors for that union organization is the only body competent to make a decision as to whether to go on strike. Individuals, whether members or non-members, do not vote on the decision in the majority of cases. Once the decision has been made by the organization to take industrial action, the opposing party as well as the National Mediation Office have to be given notice of the intent to take industrial action.
An unorganized worker in the private sector can participate in a lawful industrial action that has been approved by the appropriate employee organization.
Notice has to be given of participation of unorganized workers in the public section as to a lawful industrial action according to Section 25 of the Act on Public Employment.

4.2 Effects of the lawful strikes on the employment relationship

In the event of a lawful strike, the current individual employment agreement between the employer and the employee is deemed to be suspended during the industrial dispute. Consequently an employee has not violated the employment agreement for failing to give notice of termination of the employment agreement prior to the taking of an industrial action. In the event an employee takes an unlawful industrial action not sanctioned by the union, the employee can be subjected to damage liability and/or termination of employment.
Certain industrial actions as taken by employers are prohibited during an industrial dispute by Swedish law. These include evicting employees from employer provided housing and the withholding of wages due.
In the event the employer provides housing to the employee, the Act (1936: 320) on Protection from Eviction during Industrial Disputes protects the employee from eviction as industrial action by the employer in its Section 1. If the employer has presented a petition for eviction to a court, the Swedish Enforcement Agency or arbitration panel, for the eviction of an employee from an apartment that has been provided due to the employee's employment, and gives the information that the employee is participating in a strike at the employer's company or that he is the subject of a lock-out by the employer, the petition cannot be granted, even if the employee is obligated to leave the premises, during the development of the conflict, until three months have passed from when

the employee, based on the conflict, terminated employment.

4.3 Consequences of the unlawful strike
In the event of an unlawful industrial action as called by the social partners, the side in error is to pay the other side damages. Individual employees can be held liable for unlawful industrial actions only up to a limited amount, today app. Euro 200. An employer can also in certain circumstances terminate the employment of an individual employee involved in an unlawful strike. According to the legislative preparatory works, such can be the case when an individual has agitated or played an important role in a particularly grave, unlawful strike.

4.4 Wildcat strikes and strikes called by occasionally organized workers
Spontaneous strikes are by definition deemed unlawful in the Swedish system as they are not sanctioned by the social partners.

5. Employers during the strike

5.1 Anti-union conduct
Both social partners are free to take industrial action as protected by the constitutional act, the Instrument of Government. The Swedish Constitution provides protection for the freedom of association from state action in article 1(5) of the Second Chapter of the Instrument of Government.[2] In addition, article 11 of the European Convention, enacted as law in Sweden through the Swedish Human Rights Act in 1994, provides for the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of an individual's interests.[3]
Sections 7 of the Co-Determination Act defines the «right of association» as «the right of employers and employees to belong to an employer organisation or employee organisation, to exercise the rights of membership and act for such an organisation or for that such is established». Under Section 8, the «right of association shall be left inviolate».4 An infringement of the right of association is to be deemed to occur where any party on the side of the employer or employee takes such action that is detrimental to a party on the other side as a consequence of that party's exercise of the right of association, or where any party on one side takes an action directed at the other party for the purpose of inducing that party to not exercise the right of association. Such infringement is also to be deemed to have occurred notwithstanding that the action was taken for the purpose of fulling an obligation towards a third party. An employer organisation or employee organisation needs not tolerate any infringement of the right of association that constitutes an infringement of its activities. Where there is both a local and a central organisation, these provisions shall apply to the central organisation. Where infringement of the right of association occurs through the termination of an agreement or some other legal act, or by reason of a provision

contained in a collective agreement or other contract, such legal act or provision is to be void.
Section 9 places the duty on the social partiers to stem unlawful actions: «Employer organisations and employee organisations shall be obliged to seek to prevent their members from taking any action that would infringe the right of association. Where a member has taken such action, the organisation shall be obliged to attempt to persuade him to cease such action».
Consequently employers cannot limit the rights of employees with respect to freedom of association and *vice versa*. However, an employer can use freedom of expression in order to express certain opinions that may be seen to be in conflict with freedom of association, an issue presented in AD 1982 No. 33, where the Court found the employer's statements that were derogative of the head of the local union to be within freedom of speech.

5.2 Lock-out
Lock-outs are not typically used by employers in Sweden, despite the absence of any statutory prohibition, due to events in 1931 in the town of Ådalen in which five persons were killed by military forces. In the industrial sector, the employer often shuts down operations entirely while a conflict is in progress. In the event the employer provides housing to the employee, the Act (1936: 320) on Protection from Eviction during Industrial Disputes protects the employee from eviction as industrial action by the employer in its Section 1.

5.3 Consequence of the strike on no-striking workers
Wages that are due for payment are to be paid by employers and the employer may not withhold due wages as an industrial action according to Section 41b of the Co-determination Act.

6. External elements linked to the effectiveness of the strike

6.1 External elements impeding the strike
The right to take industrial action is viewed as a cornerstone of the Swedish legal system so that there are few if any parameters making the exercise of the right more difficult.

6.2 External elements supporting the strike
The historical background as to the development of the Swedish labour law model must be seen as strengthening the ability of the social partners to exercise the option of industrial action. Two of the main umbrella organizations are over 100 years old. One example of the financial strength this historical development and high degrees of organization have created can be seen with LO. According to its operational report, LO had 1.2 billion Swedish crowns (approximately € 120 million) as equity in 2009. It should be kept in mind that LO is the umbrella organization, with the national unions as members, not employees.

6.3 Forms of international support for union activity

The Laval case very clearly demonstrated the international and European ties that the Swedish labour unions have. Other cases as referenced above also demonstrate this network.

7. Alternative means of dispute resolution

The Swedish labour law model has been based on consensus as reached by the social partners through collective agreements. The issue arises, however, as to what happens in the event agreement cannot be reach. There are three procedural avenues open to the parties by statute depending on the conflict, arbitration, mediation or litigation. Even though it is possible to refer the majority of labour disputes to arbitration, the use of arbitration procedures is relatively rare on the Swedish labour market between the social partners. However, arbitration is used fairly extensively with respect to the organizations and their members.

The Swedish National Mediation Office is empowered under the Codetermination Act to resolve industrial disputes through mediation, and in the failure to reach a resolution, or with respect to other types of issues, the jurisdiction of the labour court can be invoked.

The other avenue available to the social partners for the resolution of certain types of disputes is litigation before the Swedish courts. The delineation between cases that are to be brought to the Labour Court and those to the district courts can be found in Chapter 2 of the 1974 Act. Generally, when the social partners are parties to the dispute concerning a collective agreement, the Labour Court has jurisdiction as first and final instance. Other kinds of labour disputes, for example, demands from non-organised employees or from organised members who commence proceedings without the support of their union, are to be first adjudicated by the local district court. A party can appeal the decision of the district court concerning a labour or employment law issue to the Labour Court for final judgment. The Swedish Supreme Court can hear petitions for a judgment de novo from a labour court judgment, but to date has not yet granted any such motions.

The panel of judges hearing a case in the Labour Court normally consists of three legally-trained judges and four representatives from the labour market organisations, two each from the employers' and employee's sides. The labour market representatives are appointed on the recommendation of the most representative organisations. An organisation is entitled to bring a case to the Labour Court on behalf of a member without that member's explicit authorisation.

In certain cases, such a discrimination cases, the ombudsmen are also empowered to bring cases on behalf of individuals, but only with their consent and after the union has declined to litigate the case.

Notes

[1] SFS 1996: 359.

[2] SFS 1974 (152).

[3] English translations of the Swedish constitutional acts are available at the website of the Swedish Parliament at www.riksdagen.se.

[4] The statutory language of the act here is the same as in the December Compromise of 1906 originally protecting the right of association in the private sector.