THE ART OF LEGAL MISINFORMATION
How the essential contradictions of Swedish Labour Law to the Community Law of the European Union are covered up

by Reinhard Helmers

When Sweden was going to join the EU, the Swedish Labour Law had to be adjusted to the rules laid down in the Treaty of Rome and several judgements of the European Court of Justice concerning labour relations. Contrary to the Labour Law of continental Europe, Swedish Labour Law is not based on the rights of the individual employee, the working "citoyen," but presumes the minor subjects without judicial capacity. Legal party is almost entirely the narrow leadership of each union.

Collective contracts or decisions to go on strike are never legitimated by democratic decisions or polls of the members. Only approximately five percent of the members participate in the elections of their leadership, these often already being the previous leaders and their close, favoured friends. Criticism by individual members is effectively suppressed at such meetings and the union press is controlled by the leadership. On the labour market, the unions possess a monopoly, e.g. by controlling the unemployment funds. Sweden has no unemployment insurance run by the State.

In cases where individual employees are in conflict with their employers, the support by the union is dependant on the arbitrariness of its leaders. They have signed the contracts, the individual member is by procedural law discriminated against. The Labour Court is composed of union leaders and representatives of the employers association – a typical corporative construction. While the union leadership can approach the Labour Court directly, the unsupported member must first pass the District Court and is charged high legal costs. Such members – like unorganised employees – are from the beginning stigmatised without a reasonable chance of winning in court.

One of the monopolist unions, the syndicate of academicians, SACO, denies its members even the protection against notorious violations of Human Rights by the State. Members of foreign origin cannot expect support from a xenophobic leadership. Employees who are not members of the union are not even entitled to claim the fulfilment of a contract.

Such conditions on the labour market and in the unions favour the discrimination of minorities, such as persons with foreign origin, women, dissidents and political nonconformists. In reality, a system of "closed shops" with integrated discrimination rules the Swedish labour market.

According to the judgement on 25 April 1996 of the European Court of Human Rights (Gustafsson/Sweden), the Swedish Government admitted their severe violation of Community Law, namely that employees not being union members are discriminated in Sweden. The Minister, Björn Rosengren, a former white-collar union leader – admitted publicly on 25 February 1999 that persons merely with foreign names are systematically discriminated against on the labour market.

The systematic "salary discrimination" against employees with foreign origin was investigated and proved by sociologist of Stockholm University (see Carl le Grand & Ryszard Szulkin: "Invandrarnas löner i Sverige," Arbetsmarknad & Arbetsliv, Nr. 2/1999, p. 89-110). The Swedish news agency TT reports 14/3 2000 from a conference in Stockholm that the average salary difference for immigrants is about 30 percent.

The Swedish press (DN 11.8.97) mentioned an OECD-report, according to which the employees in Swedish Public Service enjoy the lowest employment security of all 15 OECD-States. Eightyfive percent of all Swedish public servants as opposed to 24 percent of their Italian colleagues consider

their employment as insecure. This result reflects the ruling arbitrariness in labour relations and the paltriness of the unions as counterpart to the State as employer.

When negotiating with the EU, the Swedish Government, however, pretended that those legal conditions against discrimination, which are stated by Community Law and the legal provisions of the other Members States, were already granted by the unions and did not need to be legislated in Sweden. However, this is obviously not the case.

Simultaneously with the negotiations, the Government introduced into their Public Service the salary discrimination as a Labour Law principle which they call fine-spoken an "individual salary system."

Public Service covers about 40 percent of all employees. The salary discrimination permits the superiors to fix salaries of their employees on an arbitrary basis. The reasons – often libellous – are kept secret in order to prevent the employee from contesting the discrimination. Its arbitrariness makes discrimination versatile and covers not only females and citizens of other EU-States.

This discrimination system is perfect: by keeping their reasons for discrimination secret, the Government and their authorities consider themselves safe from any intervention from the European Commission.

The principle of both ILO and the EU, "Equal pay for equal work," is no longer applied in Sweden's Public Service. Because the union leadership had agreed upon it without asking their members, no defence against secret libel and the consequent salary discrimination is possible. Non-union members are, anyhow, denied working contracts and negotiations on their salary. Such a dictatorial lowering of salaries is a disciplinary punishment without the employee being heard. It is a means to enforce conformity and surpress criticism.

Obviously for the purpose of creating acceptance for this "Swedish Model," some publications were issued. Three of the authors (Niklas Bruun, Anders Kjellberg and Kerstin Ahlberg) are affiliated with the Government agency, National Institute of Working Life (NIW).

One of them, Boel Flodgren, is the Government appointed President of Lund University with dictatorial competence. She was the pioneer in applying the salary discrimination, with secret reasons against critical academic teachers as a punishment, when her book was published: Niklas Bruun, Boel Flodgren and Håkan Hydén: "THE NORDIC LABOUR RELATIONS MODEL," Aldershot Dartmouth, 1992.

Anders Kjellberg: in "CHANGING INDUSTRIAL RELATIONS IN EUROPE," 2nd edition 1998, by Anthony Ferner and Richard Hyman. Blackwell Publishers Ltd, Oxford. ISBN 0-631-20551-9.

In a further publication, the members of this Government agency advocate that these collective labour contracts of the monopolistic unions with their salary discrimination against both members and unorganised employees be declared generally binding EU Labour Law without the discriminated persons having any judicial remedy to defend themselves. (Kerstin Ahlberg and Niklas Bruun: "KOLLEKTIVAVTAL I EU," Stockholm 1996.)

The salary discrimination, as the most characteristic achievement of the new "Swedish Model" in labour relations, is not mentioned in one single word in these publications, which are circulated among European experts in Labour Law. This is no accident since the authors are familiar with the new model. Further precautions were taken to have the new "Swedish Model" of labour law accepted by the EU. The former Swedish minister, Allan LARSSON, is responsible for the introduction of salary discrimination as a labour law principle.

The Government managed to get him into the EU-Commission. Directly under Commissioner Padraig FLYNN, he is the influential expert in forming the EU's policy on Labour Law. He has already both concealed and quashed – without investigation – complaints against this violation of Community Law, by his Government's and by his own invention. Mr. Larsson has been mentioned as the successor to Padraig Flynn.

Salary discrimination obviously violates the principles of equal pay and treatment for equal work. (Art. 100 & 119 Treaty of Rome). Discrimination is forbidden. In order to give effect to these provisions, the Council of Ministers had issued a repeated number of Directives. However, even the way in which discrimination is conducted, its secret reasons and the denial of remedies against it are in conflict with these binding Directives. (75/117/EEC, article 10, 10 February 1975; 76/207/EEC, 79/7/EEC, 86/378/EEC, 86/613/EEC and 92/85/EEC). These bind any Government to provide the discriminated employees with effective judicial remedies. The judgement of the European Court of Justice (case 248/83, Johnston/Chief Constable, 15 MAY 1986, § 18) explains this principle with reference to the European Convention on Human Rights as the binding base of Community Law.

By obstructing the implementation of these Directives into national law, the Swedish Government allowed themselves to introduce this salary discrimination into their entire Public Service. Victims remain mostly women and employees of foreign origin (EU-citizens). It is of course the legal duty of the Commission, in accordance with Articles 155 and 169 EX OFFICIO to control the implementation of the Directives into national law. In his key position, Mr Allan LARSSON, the former responsible minister, protected his Government from this compulsory implementation from the very beginning.

Thus, the Swedish Government can ignore the Directives of the Council of Ministers for the protection of employees against arbitrary discrimination in labour relations. The EC-Commission, “Guardian of Community Law,” connives at this violation of Community Law. The Commission itself therefore violates Articles 155 and 169 of the EEC-Treaty, according to which it has to control the implementation of the Directives into Swedish Labour Law. The Commission acts as an accomplice.

As a consequence, none of the many victims of discrimination has a chance of judicially defending themselves against discrimination. This unlawful discrimination is completely safeguarded by a “denial of justice” and a “denial of access to court.” Although prohibited, this discrimination cannot be contested judicially.

Salary discrimination has caused discontent and envy instead of co-operation among the employees throughout the entire Public Service. Lacking co-operation has made the Swedish police ineffective in fighting crime. The educational crisis at universities and schools is further accentuated.

The obstruction of the equal pay principle, and the applicable parts of the Community Law of the EU, is by the Government and its authorities considered as of such importance that they even jeopardise the medical care of the citizens. In public hospitals, they pay newly employed nurses up to 2 000 SEK (155 £) a month more than skilled nurses who had been employed for years.

Here is a recent, significant example. The Emergency Neurosurgery Department of the University Hospital of Lund is of vital importance for accident patients of Southern Sweden. Even there, in February 1999, State authorities insisted on salary discrimination against those nurses who claimed “equal pay for equal work.” With regard to the working climate and the care of the patients, even their head-physician had claimed the abolition of discrimination. However, the leadership of the nurses’ union had – against the will of their members – agreed the discrimination. Therefore, the nurses had no access to the Labour Court and could only protest by resigning from their employment, which 25 of the 45 employed did. Two weeks later, a further 15 of 60 nurses at the intensive care section of the same University Hospital followed because the politicians refused their claims for “equal pay for equal work.”

The nurses’ protests are spreading to other hospitals in the country. Fifty nurses in Skellefteå, in Northern Sweden, resigned recently. In the meantime this conflict has become typical for all Swedish hospitals from Luleå in the North to Ystad in the South. Patients are suffering from lengthening queues for operations. Instead of abolishing the salary discrimination, the politicians engaged private nurse-agencies with up to three times the costs of a nurse’s salary. This was made public in a documentary by Swedish TV on 27 September 1999: “Revolt of the nurses. The nurses’ fight for higher salaries – without support from their union.”

While fairy-tales about Sweden's Labour Law are circulated among the experts in Europe, the "grey eminence" of the EU-Commission undermines the EU's own provisions on Labour Law by its work to have the new "Swedish Model" accepted for the entire EU.

The EU-Commission knows that the xenophobic leadership of the unions, together with the Government, cause the discrimination against women and citizens of other EU-States. The EU-Commission knows that the Swedish Government intentionally obstruct the implementation of the Directives against discrimination into Swedish Labour Law (e.g. 75/117/EEC, Art. 10, 10. February 1975; 76/207/EEC, 79/7/EEC, 86/378/EEC, 86/613/EEC and 92/85/EEC).

By approving the illegal discrimination, the EC-Commission tries to adopt this new "Swedish Model" for the entire European Union. If the Swedish Government are permitted to break Community Law other Governments will follow.

Dated 13-04-2000, File No. 467/2000/ME, the European Ombudsman, as the elected representative of the EU-Parliament, declared that he has no competence to reprimand the Commission for its violation of Articles 155 and 168 because this is "no maladministration but a political decision." The Council of Ministers seems so far to connive at the obstruction of its own, binding Directives against discrimination.

This is a danger to all those European Labour Unions, who defend civil rights and the principle of "equal pay for equal work."

The EU-bureaucracy in Brussels must be controlled. The Commission itself punished its official, van Buitenen, with salary discrimination because he had disclosed the corruption of the Commission to the elected Parliament!

CONTEMPORARY REVIEW (London), May 2000, p. 240-243