

The Hague

Privatization of the Swedish Public Labour & Employment Law

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Present Situation

Constitutional provisions:

- ch. 11 sec. 7 (regular judges' employment protection),
- ch. 12 sec. 5 (appointment of state officials) and
- ch. 12 sec. 7 (basis provisions for state officials should be issued by statute)

Legislation:

- 1994 Public Employment Act, as amended
- 1994 Tenured Employment Act
- 1994 Employment Ordinance, as amended
- 1976 Regulation on Collective Agreements
- 1984 Regulation on Time-Off from Work
- 1987 Regulation on Employee Representatives in State Authorities

Once upon a time - it was the past...

- It all started in 1936 – Act on Right To Negotiate and Right of Association for all employees
- 1937 Ordinance on the Right To Negotiate for State Officials (a halfway house)
- 1940 Act on Municipal Officials
- Ministry of Civil Affairs 1950
- Three Government Commission Reports, 1951, 1960 and 1963 led up to a breakthrough in 1965

Two issues at stake

- Higher officials irremovability (turned out to be no problem)
- Official responsibility as a crime/penal law, i.e. breach of duty/malpractice (solved in 1975 after a major reform)

Stepping stones

- Act on State Officials 1965
- Act on Municipal Officials 1965

Implications

- Right to sign a legally binding collective agreement
- Right to take industrial action (strike, lockout); restrictions with respect to secondary action/sympathetic action and political strikes
- How to avoid industrial action detrimental to society?
- Basic Agreement was concluded to avoid such action
- However, still restrictions with regard to certain non-negotiable matters (such as the right to lead and allot work, right to manage the business, allocation of working time). Restrictions were partly taken away 1971 and 1974.
- Right for a State Official To Terminate Her/his employment, not so before.
- 1965, a special State Authority was set up to deal with issues related to collective agreements and other matters

Conclusion:

The 1965 reform laid the basis for a privately set up regime with respect to the terms and conditions of work for State Officials.

Next step 1974

- Adjustments were made in the Act of State Officials with respect to the seniority rules and the right to re-employment provisions in the Employment Protection Act, 1974

Reasons:

- Special status of the public sector, citizens' interests.
- The seniority unit with respect to dismissals for redundancy was not defined as the workplace (as in EPA 1974), but was related to employees at the specific state authority having in the main comparable working tasks.

Other exceptions

- It was held important that the public agency could fulfil its proper tasks with respect to justice and administration.
- A dismissal due to redundancy and in violation of the seniority rules could be nullified, which was a deviation from the main rule in the Employment Protection Act, 1974.
- It took some time.....but in 1984 another collective agreement with respect to redundancies and the re-employment right was concluded covering the matters governed by the Act on State Officials.

Next step 1976

- A major reform of the collective labour law took place. The question was: could it be applied to the public sector?
- In the main, the answer was yes.
- The final non-negotiable matters in the Act of State Officials were abolished.
- One example, among others: the duty/working tasks of a civil servant. The assumption here was:

- Collective agreements should be entered into. This did not occur. In court practice the general rules with respect to the duty to perform work applied, as applied to the private sector.
- The major issues being discussed in 1976 were, however, of a constitutional dimension:
 - How to protect the “political democracy?”
 - The Instrument of Government provides in chapter 1 art 1: “All public power in Sweden proceeds from the people.”
 - Matters affecting the aim, direction, scope and quality of the public sector activities should not be governed by collective agreement.
 - Exercise of public authority was not negotiable.

End result

A Special Basic Agreement in between the public employers and the public employee trade unions was entered into in March 1976, subject to the approval of the Government. Peaceful negotiations should be carried out. Industrial action should be avoided. A special board composed of 13 members was appointed wherein the politicians have the majority, in order to be the watchdogs of the supremacy of the concept of “political democracy”, anchored in the Swedish Constitution.

The final step (so far) was taken in 1994.

- A major overhaul of the 1976 Public Employment Act was done.
- The motto was. “Simpler rules for civil servants”, which implied “efficiency and the upholding of the rule of law”.
- Many special provisions in the former Public Employment Act were abolished. EPA 1974 provisions were to be applied instead.
- Rules on periodic health examinations were introduced. Labour Court judgment 1984 no 64 and The Instrument of Government, chapter 2 art 6 (“Everyone shall be protected in their relations to the public institutions against any physical violation”) were decisive.
- A special Tenured Employment Act was set up, applying mostly to regular judges, and including some very special provisions applying to that category of civil servants.
- A few major amendments in the 1994 Act were made in 2000 when the Swedish Church was separated from the State, and the provisions on so-called “incidental employments” (i.e. side-line occupations applying to civil servants) were made more transparent.

All in all

The 1994 Act applies to all state employees, some of the provisions apply also to local government employees.

Summary

- There are still many so-called public law provisions in the civil servants sector of the labour market, though the bulk of the rules are the same as for those in the private sector.
- It took some time to get there...

THANK YOU!