

THE XVTH SYMPOSIUM, APRIL 22-24 1996

Questionnaire concerning the recognition of professional education and training

The questions put in the questionnaire are dealt with in the order they appear in the questionnaire, using the same numbers and letters.

1 .a. According to the Swedish Constitution ("The Instrument of Government") only the Parliament has competence to make laws concerning certain important matters such as the personal status of individuals, the personal and economic relations between individuals themselves and the relations between individuals and the society if the provisions concern obligations for the individuals or interferes in their personal or economic situation. The Government has competence to issue regulations on other matters as well as on the application of laws decided by the Parliament. Finally state authorities to some extent have competence to issue provisions. This division of legislative competence applies also to the transformation of Community Directives into national law. To the extent that the Directives, specifically mentioned in the questionnaire and concerning the recognition of professional education and training, have necessitated legislative measures, these have been taken by the Parliament through changes of existing laws or to a small extent by the Government.

No conflicts of competence are known to the Court.

1.b. The Supreme Administrative Court takes no active part in the process of transforming Community Directives into national law. There exists however a special permanent body consisting of a number of Justices of the Supreme

Administrative Court and the Supreme Court, the so called Law Council, the task of which it is to make a legal examination of the Government's bills before they are submitted to the Parliament. A large number of laws, transforming Community Directives into national law have been examined by the Law Council.

1 .c. Community Directives concerning areas where there already exists national legislation are regularly complied with by adjusting existing laws, using rather wording in line with the existing regulations than the wording in the Directive. Also in cases where a Directive necessitates completely new laws or extensive changes of existing laws regularly the new provisions are structured and phrased by the Swedish legislator and not only introduced verbally into the national legislation. However certain provisions especially important to bring about a uniform application, e.g definitions, are often used in their Community wording translated into Swedish.

2. The Supreme Administrative Court has not so far had any case where it has been necessary to consider the effects of a Community Directive on the interpretation of national law. As far as is known to the Court other courts have had to consider the effects of Council Directive 80/987/EC (relating to the protection of employees in the event of of the insolvency of their employer). The Swedish legislation on this subject excludes, contrary to the Directive, *inter alia* close relatives to the employer from the right of payment from the State when the employer has become insolvent. The courts have found - in accordance with e.g. the decision of the European Court in the Francovich case (C-6 & 9/90 Francovich and Bonifaci v Italy) - that the provisions of the Directive are not directly effective and that therefore the right of payment is to be considered solely according to national law.

Lacking actual experience the questions in this section have to be answered from a principal and theoretical point of view.

One of the characteristics of the Swedish law-making process is the - often very

extensive - preparatory work that precedes the final decision. That kind of preparatory work is considered to be of high value for the Swedish courts when interpreting and applying written law, which in the Swedish tradition of judicial process has a greater impact than case law.

The legal history of laws includes Community Directives transformed or to be transformed into national law. As they form part of the legal history of a law their provisions will be taken into account when interpreting the law. However their importance will very likely vary depending on e.g. whether the Directive has been transformed into national law or not and, if not, whether the time limit for transposition has expired or not.

2. a. It is likely that provisions of a Community Directive, not yet transformed into national law, will influence the interpretation of national law provided that the wording of national law does not directly contradict the provisions of the Directive, that no explicit opposite intentions have been expressed in the preparatory work on the law and that there exists no conflicting established case law.

2. b. As mentioned before a Directive transformed into national law forms part of the legal history of the law and will be of major interest when interpreting the law. In case there is a conflict between the provisions of a national law and provisions of a Directive the Courts can be expected to compare national law with the Directive, provided that the Directive has direct effect, and with the national law transforming the Directive into national law, if it has not direct effect.

2.c. Community law has been made valid in Sweden through a law passed by the Parliament. The law says that treaties and Community legislation adopted before Sweden's accession to the European Union shall apply in Sweden with the effect that follows from the treaties and the legislation. Thus is achieved that the principles of direct applicability and direct effect of Community

legislation will be observed in Sweden as well as the principle of Community legislation taking precedence of national law. Community Directives will therefore have direct effect in Sweden to the extent that they have direct effect according to Community legislation.

Provisions of national legislation will be set aside if in conflict with the provisions of a Directive having direct effect and will be interpreted in such a way as to achieve conformity with other provisions of a Directive, provided that such an interpretation is not excluded for reasons stated under 2.a.

According to national law the State and the municipalities are liable to pay compensation for damage caused by fault or neglect when exercising public authority in an activity for which the State or a municipality is responsible. There are no other provisions on this subject. At present it is not clear if this provision creates a liability for the State or any other authority to pay compensation for not transforming a Directive into national law.

Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data

For the time being no detailed answers can be given to the questions concerning the transformation of Directive 95/46/EC into national law. A parliamentary committee has been appointed to deliver - not later than March 31, 1997 - a proposal for a new law on the protection of the right for natural persons to privacy with regard to the processing of personal data. The new law shall replace the existing law on the subject (The Data Protection Act 1973:289). The new law shall afford a satisfactory protection of the integrity of individuals while not obstructing the use of new techniques in the community development or the processing of personal data for research or statistical purposes. The committee shall also analyse how a modernized legislation can be brought into conformity with the provisions of the Directive. A major difference between the 1973 Act and the Directive is that the former covers only automatic data

processing while the latter covers also manual data processing, which has to be taken into account when writing the new law.