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A reasonable redeployment

A comparative study about redeployment for redundancy in Sweden and Germany

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Abstract

This essay explores the obligation to redeploy as a result of redundancy, conducting a comparative analysis of the redeployment processes in Sweden and Germany. The purpose of the essay is to examine what constitutes a reasonable redeployment in each country and identify differences and similarities in their respective legislation. This is achieved by using the legal dogmatic method, as the study investigates a legal research question through interpretation of legal cases. Applying the legal dogmatic method, the study interprets legal cases to investigate the issue, revealing that both Swedish and German legislation share similarities in safeguarding employees during redundancy, adhering to the ultima ratio principle; viewing dismissal as a last resort. Redundancy is an acceptable reason for dismissal in both countries. While redundancy is generally unquestioned in Swedish courts, Germany imposes specific requirements for claiming redundancy. In Germany the employer's obligation to investigate possibilities of redeployment includes more positions than in Sweden. Furthermore, the need for the work council's consent in Germany contrasts with the employer's sole decision-making authority in Sweden. The requirements of the redeployment in terms of qualifications, status, and location are quite similar in the two countries, however in Germany there is more legislation that the employer needs to abide by in the situation of a redundancy and when offering a redeployment. The conclusions drawn from this essay is that although Swedish and German legislation have many similarities in terms of redeployment due to redundancy, the obligation to redeploy is more extensive in Germany.

Keywords: Redeployment, Omplacering, Versetzung, Redundancy, Arbetsbrist, Arbeitskäftemangel, Lagen om anställningsskydd, Kündigungsschutzgesetz, Qualification, Status, Location

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Acronyms

AD - Arbetsdomstolen

BAG - Bundesarbeitsgericht

BetrVG - Betriebsverfassungsgesetz

GewO - Gewerbeordnung

KSchG - Kündigungsschutzgesetz

LAS - Lagen om anställningsskydd

1 Introduction

1.1 Background and subject

As of November of 2023, there have been 68 003 people in Sweden who have been notified of dismissal, which most often is because of redundancy.[1] This is the second highest number of notified employees in over a decade, only being surpassed by the pandemic affected year of 2020.[2] Compared to last year's total of 28 230 by November, there has been a significant increase.[3]

In Sweden, it is the employer who determines whether there is a situation of redundancy. The employer decides if dismissals for redundancy are needed and the courts generally do not question how this decision was made.[4] Similarly in Germany, the decision of organisational changes, such as the launch of new technologies and streamlining processes, which can lead to dismissals for redundancy, is a part of the employer's prerogative.[5]

Based on the information above, dismissals for redundancy may not always be based on actual redundancy, but a redundancy situation may arise because of market changes and as technological advances replace work tasks, thus replacing employees and making them redundant. Dismissals for redundancy are a current subject to explore, and thus also the consequences of a dismissal and what obligations an employer may have. Sweden and Germany are countries in which there are several laws and measures in place in order to protect employees in the case of redundancy. One of these measures is redeployment, and the investigation of the possibilities of a redeployment is an obligation of the employer in both countries. Because of the rising number of notified personnel in Sweden, and the consequences this may bring, it is of interest to investigate how redeployment due to redundancy is handled in another country.

[1] Arbetsförmedlingen, *Statistik om varsel*, https://arbetsformedlingen.se/statistik/statistik-om-varsel (retrieved 18.12.2023).
[2] Arbetsförmedlingen, *Näringsgren (riket) månad*, https://arbetsformedlingen.se/statistik/sok-statistik/tidigare-statistik (retrieved 18.12.2023).
[3] Arbetsförmedlingen, *Statistik om varsel*, https://arbetsformedlingen.se/statistik/statistik-om-varsel (retrieved 18.12.2023).
[4] Glavå, Mats, Hansson, Mikael, *Arbetsrätt*, 4th edition, Studentlitteratur AB, Lund, 2021, p. 386.
[5] Weiss, Manfred, Schmidt, Marlene, Hlava, Daniel, *IELL Germany,* Wolters Kluwer, The Netherlands, 2023, p. 137.

1.2 Purpose and research question

This essay is a comparison of how the employer's obligation of redeployment in the case of redundancy is enacted in Sweden's and Germany's legislation. The purpose is to investigate what is considered a reasonable redeployment in the event of a redundancy. In addition to this, the similarities and differences existing between the two countries's legislation will be explored. This in order to create a broader understanding of the process and provide a clear comparison. In order to achieve the purpose of the essay, the following question will be investigated and answered:

What is considered a reasonable redeployment in the event of a redundancy, in Sweden and Germany, and what are the possible similarities and differences between the perceptions and enforcements of each country's legislation?

1.3 Delimitation

In the writing of this essay delimitations have been made in order to make a more focused study. In both Sweden and Germany, laws can be altered through collective agreements made by the union, or the work council. It is stated in § 2c LAS that exemptions from § 7, section 2, are allowed through collective agreements. As Sweden has several different unions at different levels, and the work councils in Germany are connected to the company, there are several different changes that can be made in the application of the law. The different applications of the law made by the different unions and work councils will therefore not be discussed, as this would take up a lot of space in the essay, and overcomplicate the study, which goes against the broader, more applicable analysis it strives for. For the same reason social selection, such as in the form of a priority list in the case of redeployment as described in § 22 of LAS, will not be discussed in detail, as the focus rather will be on what happens once it has been established that a redeployment might take place. Additionally, the main focus will be on dismissals for redundancy, although other reasons for dismissal are mentioned for context.

1.4 Method

This study is based on the legal dogmatic method which is based on interpreting *de lege lata* (the applicable law).[6] This method aims to interpret current law through an inner perspective.[7] According to Skarp and Papadopoulou a jurisprudential work must be based on the legal dogmatic method, in which the material, namely legal sources of the applicable law, is interpreted.[8]

When applying the legal dogmatic method, a concrete problem - the research question - is stated first, which for this essay is the following: "What is considered a reasonable redeployment in the event of a redundancy, in Sweden and Germany, and what are the possible similarities and differences between the perceptions and enforcements of each country's legislation?". The formulation and choice of research question is important as it is significant for the quality of the analysis.[9] The practical part aims to strive for a solution, meaning that the practical parts need to collect information that will help answer the question at issue. This is why the comparative method described below is complementary, as the information collected through the legal dogmatic method will work as a foundation for the comparative analysis.[10] The legal dogmatic method puts legal argumentation at the centre. This is applicable to this study as the analysis of the different legal systems, which is the argumentation, is central. The *de lege lata* argumentation aims to describe the legal situation as such, which is essential in this study as laws, preparatory work and practice are interpreted both from Germany and Sweden in order to be able to analyse the legal situation in the comparative part.[11] Michael Bogdan describes how comparative method, which is further described below, is useful when interpreting *de lege lata* as it may be easier to interpret one's own legal order by comparing it with a foreign one.[12]

The comparative method is used in this study to compare the two countries Sweden and Germany. It interacts with the legal dogmatic method as the comparative method can function as an interpretation method of the information collected.[13] By studying another country's legal

[6] Korling, Fredric, Zamboni, Mauro, *Juridisk metodlära*, 1st edition, Studentlitteratur AB, Lund, 2014, p. 36
[7] Ibid, p. 42.
[8] Skarp, Björn, Papadopoulou, Frantzeska, *Juridikens nycklar - introduktion till rättsliga sammanhang, metoder och verktyg*, 1st edition, Wolters Kluwer Sverige AB, Stockholm, 2017, p. 134.
[9] Skarp et al. (2017), p. 134.
[10] Korling et al. (2014), p. 25.
[11] Ibid, p. 36.
[12] Bogdan, Michael, *Komparativ rättskunskap,* 2nd edition, Norstedts Juridik AB, Solna, 2003, p. 31.
[13] Hettne, Jörgen, Otken Eriksson, Ida, *EU-rättslig metod - teori och genomslag i Svensk rättstillämpning,* 2nd edition, Norstedts Juridik AB, Stockholm, 2011, p. 162.

system, a perspective on one's own is created which can lead to better understanding, which in turn can lead to alteration.[14] Bogdan exemplifies the Swedish courts and describes that it is not uncommon for them to use the comparative method to understand the content of Swedish law by seeking guidance in interpretation of foreign law.[15]

The comparative method involves comparing legal systems. This makes it possible, as Korling and Zamboni write, to compare cryptotypes, linguistic borrowings. They also mention that the goal of the method is to study law from a social science and humanistic perspective, this by studying differences and similarities between different countries or cultures' ways of regulating society itself.[16] The comparative method also aims to approximate the regulations of different legal systems, this is particularly rewarding in processes within the framework of the EU. The comparative method makes it easier to communicate with other lawyers between different legal systems.[17] This study uses the comparative method as it generates clarity in the differences and similarities between the German and Swedish legislation.

1.5 Material

The material used in this study is carefully selected. The authoritative sources used are laws as they are primary sources and not influenced by any perception, making them objective. In addition to this, the preliminary work for the Swedish employment protection law, which is the propositions to the law, is studied to understand and interpret the law better. The laws studied are primarily Lag (1982:80) om anställningsskydd in Sweden and the Kündigungsschutzgesetz in Germany. Both laws have regulations aimed at protecting the employee, which includes the obligation of redeployment. Literature from professors are also used as they generate a broader perspective on the law, and help with interpretation and analysis of the legislation of each country. In order to understand the laws in practice, legal cases are also studied. Both legal cases from the Swedish labour court and legal cases from the German labour court are used as sources. The court cases are selected because they are mentioned in important literature such as legal commentaries and doctrine and support the laws in stating how they are applied in actual cases.

[14] Ibid, p. 28.
[15] Bogdan (2003), p. 32.
[16] Korling et al. (2014), p. 142.
[17] Ibid, p. 143.

Preparatory work in Swedish law such as government bills are used as a reliable source and have detailed justification regarding the law in question explaining how the legislative proposal developed.[18] Doctrines also used. These are jurisprudential works written by experts in the field and are highly credible, as even courts rely on them if they are in need of suggestions.[19] In this essay, doctrines in the form of law commentaries are used to gain an additional perspective on the researched material. Legal cases from both the Swedish labour court Arbetsdomstolen (AD) and the German labour court Bundesarbeitsgericht (BAG) are central in this study. AD is a Swedish special court that resolves labour law disputes.[20] BAG is the supreme court for labour jurisdiction in Germany and also resolves labour disputes.[21]

1.6 Challenges when studying foreign law

When studying another country's law in a foreign language, issues with perceiving and interpretation can occur. In order to understand the foreign law correctly, one must depart from thoughts around their own legal system, in order to eliminate presuppositions and assumptions that can affect how one interprets the foreign country's law.[22] When investigating a legal issue, primary sources are essential, such as laws and precedents. However, these can be difficult to interpret, partly due to the lack of language knowledge in the foreign language, but also its legal concepts. Secondary sources such as articles or textbooks are therefore a helpful addition. Books about German law written in English are therefore used in this study in order to establish a broader understanding and interpretation of the law.[23] English written materials are used with caution as the language can be misleading, as it is difficult to translate law from the original language into English, which means that the translation may be incomplete.[24]

When interpreting another legal system, the hierarchy of the legal sources must be taken into account. Bogdan describes how it is a common mistake when interpreting foreign law to apply the rules and hierarchy of the legal framework of the country one is already familiar

[18] Samuelsson, Joel, Melander, Jan, *Tolkning och tillämpning,* 2nd edition, Iustus Förlag, Uppsala, 2016, p. 44.
[19] Ibid, p. 48.
[20] Regeringen, https://www.regeringen.se/myndigheter-med-flera/arbetsdomstolen/ (retrieved 12.12.2023).
[21] Das Bundersarbeitsgericht, https://www.bundesarbeitsgericht.de/en/ (retrieved 12.12.2023).
[22] Bogdan (2003), p. 40.
[23] Ibid, p. 42.
[24] Nyström, Birgitta, *EU och arbetsrätten*, 6th edition, Norstedts Juridik, Stockholm, 2021, p. 51.

with. It is therefore of importance in the formatting of this essay to depart from Sweden's legal framework and hierarchies when interpreting the laws of Germany. However, Bogdan also states that one should not overstate the differences in hierarchy to the extent that the legal sources that are not the highest ranked are completely excluded, as this would give an unjust depiction of the legal system.[25]

[25] Bogdan (2003), p. 44-45.

2 Redeployment for redundancy in Sweden

2.1 The legal framework

An authoritative source used is the Lag (1982:80) om anställningsskydd (LAS). It is a primary source and in order to interpret the source correctly, secondary sources are of importance too.[26] The law about employment protection exists to protect employees in situations concerning the conclusion of employment. According to § 1 section 2 LAS, the law covers all employees except those employed to work in the employer's household or as stated in § 2, employees in a high school apprenticeship. The law is also not applicable on employees who have a management role or a comparable position as stated in § 2, section 1. Employees who are within the family of the employer are also excluded, as stated in the same paragraph but section 2. Lastly the third section of the same paragraph states that employees with special employment support or employees performing protected work with salary contribution are also excluded.[27]

According to proposition 1973:129 to LAS an employer is obligated to redeploy (omplacera) the employee firstly within the company where the employee previously had their employment or work.[28] This means that the employer must, as previously mentioned, investigate whether there are jobs within the scope of the employee's employment. If this is not possible, the employer should, according to this government bill to LAS, investigate whether there are other redeployment opportunities within the company, namely other vacant positions that the employee could take on. If the company has several operating units, redeployment to all operating units should be considered, as dismissal should be the last possible resort.[29] In order for a redeployment to be possible, it is required that the employee to whom the redeployment relates must have sufficient qualifications for the new position. This means that a certain training period or short education is accepted, but not a redeployment to a position that the employee does not have the prerequisites to handle. The government bill also addresses that the redeployment however shall not entail that another employee is made redundant. The redeployment should by all means only concern vacant posts.[30]

[26] Samuelsson et al. (2012), p. 155.
[27] Lag (1982:80) om anställningsskydd.
[28] Proposition 1973:129 p. 121
[29] Ibid, p. 121.
[30] Ibid, p. 121.

2.1.1 Fairness of dismissal

In Sweden there are two acceptable reasons for dismissal, as declared in LAS; personal reasons and redundancies.[31] When claiming redundancy (arbetsbrist) for a dismissal, it is considered a legitimate reason regardless of how many redundant posts there are, meaning that the termination of just a single employment still can be claimed to be due to redundancy.[32] LAS does not have a qualification period, however, a probation period of no more than six months is allowed. During this period, the employment can be terminated without a certain reason needing to be stated.[33]

It is the employer's prerogative that gives the employer the right to freely manage and distribute the work. Decisions can concern the structure or profitability of the company, which can be decisions about reduction in staff due to redundancy. AD does not usually examine the reasons for the reduction.[34] Although the courts generally do not question the companies in their authority to establish a redundancy situation, it is the employers' duty to be able to prove that they have fulfilled their obligation of redeployment.[35] The employer also needs to prove a redeployment offer has been submitted.[36] The employer is not obliged to create new positions to ensure the employee can keep their employment.[37]

In § 7, section 2 of LAS it is expressed that a dismissal is not fair if it is reasonable to require that the employer redeploys the employee. The investigation of a redeployment is therefore important. Initially, the employer must investigate the work opportunities available at the same workplace within the framework of the employee's employment. If it is not possible for a redeployment within it, the employer must investigate employment elsewhere within the company. This may mean a redeployment to another operating unit if the company has several. However, the obligation to redeploy does not extend to other companies within the group.[38]

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[31] LAS § 7
[32] Inghammar, Andreas, "Sweden" in, Waas, Bernd (red.), *Restatement of Labour Law in Europe - Volume III: Dismissal Protection,* C. H. Beck, München, 2023, p. 1237.
[33] Ibid, p. 1224.
[34] Inghammar, *Funktionshindrad - med rätt till arbete,* Juristförlaget i Lund, Lund, 2007, p. 137.
[35] Inghammar, Waas (red.) (2023), p. 1238.
[36] Ibid, p. 347.
[37] Glavå (2021), p. 343.
[38] Ibid, p. 344.

2.2 The employer's redeployment investigation

2.2.1 Investigation of vacant positions

A reasonable redeployment (omplacering) within the company, such as another suitable post, affects whether a dismissal is considered fair.[39] In accordance with the principle of *ultima ratio*, a dismissal is not considered fair if a redeployment is possible. Vacant positions and redeployment possibilities are to be researched in all workplaces within the company but does not include other companies within the group. This means that the employer must research all possibilities of redeployment within their company and offer the employee the vacant position if the employee has the necessary qualifications. Otherwise, the dismissal is considered unfair. There are however limits to this.[40] The employment law LAS states the following in § 7, section 2: "En uppsägning är inte grundad på sakliga skäl om det är skäligt att kräva att arbetsgivaren bereder arbetstagaren annat arbete hos sig".[41] As the obligation of redeployment only is statutory if it is considered reasonable, it may not always apply, meaning that the employer is not obligated to offer the employee any alternative position, other than what is considered reasonable.[42]

When a dismissal takes place as a result of a redundancy, the employer's practical ability to offer redeployment is limited only to positions located outside the intended order of priority, this is according to § 22 in LAS. After the implementation of the redundancies, the positions remaining within the social selection will be distributed among the employees within the circle. This means on one hand that it shall take place in accordance with a predetermined order where the employees who have not received offers of vacant positions outside the circle are prioritized. In § 22 LAS it is stated that on the other hand the employer can make decisions about redeployment on its own judgement, where the consideration of what is considered most beneficial for the continued company is of importance.[43]

The obligation to redeploy covers all posts that are or will be available until the dismissal takes place. Meaning posts that are yet to be vacant, but have been decided to become so, will be taken into consideration in the redeployment investigation. Posts that are not yet definite

[39] Inghammar, Waas (red.) (2023), p. 1228.
[40] Ibid, p. 1238.
[41] Lag (1982:80) om anställningsskydd. Quote translation: A dismissal is not based on objective reasons if it is reasonable to require the employer to prepare the employee for other work with them.
[42] Inghammar, Waas (red.) (2023), p. 1238.
[43] Öman, Sören, L*agen om anställningsskydd - en kommentar*, 2nd edition, Karnov Group, Stockholm, 2017, p. 89.

in their vacancy cannot be required to be taken into account in the employer's redeployment investigation. Sören Öman exemplifies an AD case AD 2010 no. 72 where one might perceive that vacant posts could be filled by new employees. Öman however mentions that this is not the intended thing to do; the main rule is to consider all available positions for redeployment.[44] In the case of AD 2010 no. 72, AD found that there never was a vacant post to be redeployed to, as it had already been decided who would fill the position at the time of the other suitable employee's termination. Since there was no vacant position, the employer had not violated the obligation of redeployment, and the dismissal of the other suitable employee was considered fair.[45]

When redeploying to vacant positions, the employer must take into account the current employment and preferably make sure the redeployment is within the same employment and at the same workplace. An employee is liable according to their employment contract to perform certain tasks. The employer should therefore investigate whether there are tasks that fall within the scope of the employee's employment. However, the obligation of redeployment is not limited to work that is within the scope of the current employment. If that is not possible, the employer must investigate possibilities for other work in the company. The new position however must be equivalent to the current work in order to fulfil the obligation of redeployment correctly.[46]

When redeploying an employee, the employer must discuss this with the trade union, by negotiating, consulting, and informing. However, it is the employer's decision to redeploy.[47]

2.3 Requirements of the redeployment

2.3.1 Qualification

In order to offer an employee a redeployment (omplacering) to a vacant position the employee must have sufficient qualifications.[48] If an employee, within reasonable time, can acquire skills needed to qualify for a vacant post, the employer does not have reason to resist

[44] Öman (2017), p. 90.
[45] AD 2010 no. 72.
[46] Öman (2017) p. 90.
[47] Rönnmar, Mia, *Arbetsledningsrätt och arbetsskyldighet - en komparativ studie av kvalitativ flexibilitet i svensk, engelsk och tysk kontext*, 1st edition, Juristförlaget i Lund, Lund, 2004, p. 141.
[48] Öman (2017), p. 90.

offering the employee the vacant post. These skills are to be achievable with reasonable training and are limited in case law to generally last up to a few months.[49] Training periods that exceed six months are generally not considered reasonable.[50] In the government bill to LAS it is stated that an employee being redeployed should have a reasonable time of training for the new position, as a new hire would need that as well.[51] The training is to be related to the new post, meaning posts that would require the re-schooling of employees do not need to be offered, as it is not within a reasonable time period.[52] According to AD 1999 no. 24, the employer may accept a certain training period, but not extensive retraining. It is the employer who determines which qualifications must be present for a certain position.[53] In some cases, for example if organisational matters call for it, a certain position can be demanded to have higher requirements than before the organisational change.[54]

A case which is relevant in the interest of sufficient qualifications is AD 1995 no. 2.
This case is about a municipality that redeployed an employee due to redundancy. The redeployment concerned an employee who had been employed by the municipality for 16 years and had a job that involved teaching one school class. The redeployment meant that the employee now had to teach several classes, also in another subject that was not graded. According to the municipality, which is considered to be the employer in this case, the employee concerned did not have sufficient qualifications for any other vacant position than this downgraded teaching position. The employer refers in this case that the insufficient qualifications were based on the employee's cooperation difficulties and inappropriate teaching for the students. The employee had also received anonymous complaints and warnings. Instead of taking on this new position, the employee chose, as suggested as an alternative, to stay at home with full compensation. However, AD ruled that the new tasks that the employee received through redeployment were within the scope of the employment and were therefore an obligation to perform. In this case, the insufficient qualifications were about cooperation difficulties and inappropriate learning, which meant that the employee did not have sufficient qualifications for any other vacant position.[55]

[49] Inghammar, Waas (red.) (2023), p. 1239.
[50] AD 1993 no. 197.
[51] Proposition 1973:129, p. 260.
[52] Inghammar, Waas (red.) (2023), p. 1239.
[53] AD 1999 no. 24.
[54] Lunning, Lars, Toijer, Gudmund, *Anställningsskydd - Kommentar till anställningsskyddslagen*, 11th edition, Nordstedt Juridik AB, Stockholm, 2016, p. 501.
[55] AD 1995 no. 2.

Another case indicating that redeployment is only possible to positions for which the employee has sufficient qualifications is AD 1999 no. 24. In this case, the employee concerned was dismissed due to redundancy (arbetsbrist). The question in this case was whether the employee concerned could have been redeployed to another position in another county. At the time of the employee's dismissal, there were vacant positions and it was possible to offer the employee this. It was concluded that the employee did not have a sufficient level of education, as he had no experience of the profession, and did not have the personal prerequisites to cope with the profession such as stress tolerance. The labour court therefore ruled that the employee did not have sufficient qualifications for the vacant profession, which meant that the employer did not violate the obligation of redeployment.[56]

2.3.2 Status

In order to avoid the termination of an employment, an employer may provide a new or adjusted position when offering a redeployment (omplacering). This new position might be lower in both compensation and status.[57] If it is possible, the employment to which an employee is redeployed should be equivalent or similar to the previous position. For example, if a full-time position is vacant, one who previously had a full time position should have this, rather than being redeployed to a part-time position.[58]

A reduction in compensation can be accepted.[59] This is stated in AD 1982 no. 60, in which an employee was wrongfully dismissed due to redundancy, when a vacant position could have been offered. The court found that the dismissal was unfair as it was not based on acceptable reasons, as there was no redundancy. The court added that the employee should have been offered the vacant position, but that the employer in doing so could require that the employee would accept the decrease in compensation that the new position would entail.[60]

One way of proposing a redeployment offer is by dismissal for variation of contract. An example of this is AD 1993 no. 61 where the employer executed several dismissals for redundancy (arbetsbrist) and instantly offered the employees new employments with the same tasks as their previous employments, but with less favourable working conditions in

[56] AD 1999 no. 24.
[57] Inghammar, Waas (red.) (2023), p. 1239.
[58] Öman (2017), p. 92.
[59] Lunning (2016), p. 502.
[60] AD 1982 no. 60.

terms of compensation. As the rules of social selection and reinstatement were followed, the court did not question these new working conditions.[61]

Another example of when an employee was offered less favourable working conditions, both in terms of status and compensation, is in AD 1997 no. 121. In this case an employee who had originally been hired for a sales leadership position was offered to be redeployed to a position as a sales representative, which had less favourable working conditions. As the employee did not accept the offer, he was dismissed due to redundancy. In this case the court stated that the obligation to redeploy does not guarantee the employee any right to their original position or working conditions, including compensation. The employee denied the redeployment offer because of the decreased salary it would entail. The employer had therefore fulfilled their obligation to offer a redeployment and the dismissal was fair.[62]

In some cases if an employee has sufficient qualifications they can claim to be redeployed for a position which would be considered a promotion.[63] This was the case in AD 2013 no. 13, in which it was disputed whether an employee who was dismissed due to redundancy had sufficient qualifications for a more senior position. It is according to AD not a matter of promotion, but of sufficient qualifications. If an employee has sufficient qualifications for a position that involves a promotion, they must still be offered it. This means a changed status and is the employer's obligation to offer if such a position is vacant for which an employee has sufficient qualifications.[64]

2.3.3 Location

The obligation of redeployment, as stated previously, is relevant to vacant posts within the company, but also other workplaces within the company. When offering a redeployment (omplacering) due to redundancy (arbetsbrist), the positions being offered can geographically be quite broad, as the entirety of the company is included in the investigation of vacant positions.[65]

[61] Rönnmar (2004), p. 265 and AD 1993:61.
[62] AD 1997 no. 121.
[63] Lunning (2016), p. 502.
[64] AD 2013 no. 13.
[65] Inghammar, Waas (red.) (2023), p. 1238.

In AD 2009 no. 50, AD expressed: ”Ett omplaceringserbjudande till annat arbete hos arbetsgivaren i en arbetsbristsituation kan anses skäligt även om det medför förändringar eller försämringar för arbetstagaren genom att det ligger på en annan ort än det tidigare arbetet eller att det innebär en inkomstminskning”. In this case two employees were offered redeployment to another operating unit. They refused as they thought the offers were unreasonable due to the geographical distance and family situation. The employer party claimed that the offers were fair and that the workers concerned therefore refused fair offers. This resulted in dismissal, meaning that a redeployment can be considered reasonable even if it entails impairments, namely lower pay and worse family conditions.[66]

Sören Öman, referencing AD 2013 no. 60, claims that the employer's obligation to redeploy, within the private sector, can be restricted regionally. For companies with nationwide operations, it may not be a requirement for the employer to investigate the possibilities of redeployment within a different region, when these operations are autonomously managed, for example concerning personnel matters. This applies even if the business units perform the same tasks. In the public sector on the other hand, the obligation of redeployment can be restricted to which tasks the company performs. For example, if someone works for a regional council within the healthcare sector, they would be redeployed within this sector, even if the regional council has other sectors in the same region.[67]

An example of a case where a dismissal was invalid due to the fact that there were other vacant posts within the regional council is AD 1984 no. 141. In this case a doctor was dismissed due to redundancy. There were however other vacant positions within the region that he was qualified for, but these were at other managements considered to be autonomously managed. Similarly to in the private sector, such management may not always have to be considered in a redeployment investigation. In this case however, the hospitals at which there were vacant posts, were all part of the regional council and in some ways managed by this, even though they in some ways were autonomously managed. Since the vacant positions were in the regional council of which the doctor was employed, and the employer was aware of the vacant posts and the doctor’s qualifications, the dismissal was considered unfair, and the obligation of redeployment not fulfilled. The regional council

[66] AD 2009 no. 50, quote translation:“*a redeployment offer to another job with the employer in a redundancy situation can be considered reasonable even if it entails changes or deterioration for the employee in that it is in a different location than the previous job or that it means a reduction in income*”.
[67] Öman (2017), p. 89.

would have needed to enact the redeployment despite it being an autonomous unit, as it was part of the same region.[68]

In some cases, it can be reasonable to require that the employer researches redeployment possibilities in all national business units, as well as business units abroad. An example of when this has happened is AD 1987 no. 91. In this case employees were dismissed due to redundancy, however, these dismissals were considered unfair. The employee's employment contract stated that they would perform tasks both within national business units, as well as abroad, and several employees had worked abroad for the company. As the contract stated that they might perform tasks abroad, the labour court (AD) considered that the obligation of redeployment should include the business units abroad.[69]

Another case where location mattered for whether the redeployment offer was considered fair or not is AD 2015 no. 49. This case is also about the employee's personal situation, which is also of great importance and must be taken into account when redeploying to another geographical location. In the case the concerned employee was dismissed due to redundancy as a result of a reorganisation. Before the dismissal, the employee had received a redeployment offer, which was a position as a customer service employee in Örebro. That was the same position that the employee had today in Långsele. The employee who was 56 years old and had a partner, three children and five grandchildren in Långsele did not accept the offer. It also turned out that there was a vacant position as a team leader in Långsele that the employee had sufficient qualifications to perform. The labour court agreed and ruled that the redeployment offer was not reasonable given the employees personal situation.[70]

[68] AD 1984 no. 141.
[69] AD 1987 no. 91.
[70] AD 2015 no. 49.

3 Redeployment for redundancy in Germany

3.1 The legal framework

KSchG is the German dismissal protection law. The law however does not protect all employees, as it is limited to those employees who have had an employment period of at least six months without interruption, as declared in KSchG 1§ (1).[71] Generally this does not include several employment opportunities at different companies within the same group, however, it can be a significant factor if the employer uses this rule in order to circumvent the qualification period by offering different employment within the group. This is considered acting against faith and honour.[72] Those who are not covered by KSchG are through case law covered by the principle that a dismissal may not infringe on the principle of good faith.[73] In addition to those under the six-month qualification period, KSchG is also not applicable at companies with less than five employees.[74]

In the German legal system, the courts are of importance when interpreting the fairness of dismissals. The courts fill in the gap made by the legislator.[75] The gap may be in cases regarding those who are not covered by the KSchG. The courts then use case law to be able to cover these employees. In addition to this, employees not covered by the KSchG are protected from dismissal through the general clauses of civil law.[76]

3.1.2 Fairness of dismissal

In Germany, the employee's employment protection is regulated in KSchG. The aforementioned employment protection consists of three grounds for termination.[77]
One is capacity-related dismissals which are related to the employee's capacity to perform the work they have been hired to do. This could for instance be related to imprisonment, addiction, or sickness, although termination due to sickness alone usually is not allowed and must be investigated. Another ground is conduct-related dismissals which are usually only

[71] KSchG.
[72] Inghammar (2007), p. 244-245.
[73] Waas, Bernd (red.), *Restatement of Labour Law in Europe - Volume III: Dismissal Protection,* C. H. Beck, München, 2023, p. 433.
[74] Weiss, Manfred, Schmidt, Marlene, Hlava, Daniel, *IELL Germany,* Wolters Kluwer, The Netherlands, 2023, p. 134.
[75] Ibid, p. 41.
[76] Waas (2023) , p. 432-433.
[77] Inghammar (2007), p. 205.

applicable after a prior warning and are related to breach of contract, meaning that the employee has violated the employment contract. The third ground is dismissal for business reasons, which is related to urgent operational reasons, and is explained more in depth below.[78]

In order to claim that a dismissal is caused by redundancy (Arbeitskräftemangel) there are two requirements. Firstly, there has been a decrease in the need for the work that the employee carries out. Secondly, the situation of the company is considered urgent, leading to operational decisions having to be made. In Germany, a dismissal must be socially justified. For it to be justified, it must be based on one of the three grounds for termination mentioned above. In addition to this, there are also certain principles the employer has to take into consideration. In Germany there are three major legal principles that an employer must respect in order to lawfully terminate an employment contract. One of which is the *principle of proportionality*. This affirms, in alignment with the courts, that a dismissal must be seen as a last resort and should only be issued when all other forms of employment are inconceivable. This is what is called *ultima ratio*, and is applied to all terminations, regardless of the reason for termination.[79] This ultima ratio principle aims to ensure that dismissals are only allowed as a last resort.[80]

Redundancy where there are urgent reasons is one such example that makes a dismissal socially justified, but then the employer must be able to prove this. Dismissals due to operational reasons are thus a separate and individual ground for dismissal in Germany. BAG may examine the employer's alleged redundancy in order to determine if the reasons are to be considered urgent.[81] In the case that it is taken to court, it is the employer's obligation to prove that the dismissal was necessary, and explain in detail the economic situation that led to this decision.[82] When determining if a situation is considered urgent and is causing a redundancy, both internal and external factors have to be taken into account to prove that there were no measures possible other than dismissal. Internal factors are those that are influenced by changes within the company, which the company is able to manage themselves.

[78] Waas (2023), p. 442-444.
[79] Waas (2023), p. 440.
[80] Inghammar (2007), p. 228-229.
[81] Ibid, p. 228-229.
[82] Weiss et al. (2023), p. 137.

External factors however, are those that are influenced by changes outside of the company and are not within their control, such as market position and economy.[83]

Case law from BAG indicates that the principle of *ultima ratio* applies to all termination notices. According to BAG v. 30.5.1978 - 2 AZR 630/76, NJW 1779, 332, 333, opportunities for redeployment (Versetzung) must be investigated and offered before dismissals, even those positions that may imply worse working conditions, as dismissal should be the last resort.[84] The employer is obliged to do this according to the ultima ratio principle, but there are also limits to this principle. The employer only needs to perform the actions that are possible. These limitations can be stated in both law, as well as collective agreements.[85]

3.2 The employer's redeployment investigation

3.2.1 Investigation of vacant positions

As previously described, the *ultima ratio* principle states that dismissal has to be the last resort possible. Before a dismissal is to be made the employer is obligated to explore options of redeployment (Versetzung) within the company. A dismissal for operational reasons is not allowed if a redeployment to a vacant position is possible. The employer is compelled to give the employee time to adapt to the changes the new position may entail.[86] In alignment with the principle of *proportionality* and *ultima ratio,* and supported by § 1, sentences 2 and 3 in KSchG, the employer can avoid termination by offering employment within another business unit of the company. This can include those positions that the employee would need retraining to execute as well as those with other working conditions.[87] In § 1, second sentence of KSchG, it is stated that a dismissal is not justifiable if it is possible for an employee to keep their employment after needed retraining or if they can keep their employment with altered working conditions, after consenting to this.[88]

As described in the previous section, a dismissal - in accordance with the ultima ratio principle - should be seen as the last resort. Vacant positions investigated can be both within

[83] Inghammar (2007), p. 228-229.
[84] BAG v. 30.5.1978 - 2 AZR 630/76, NJW 1779, 332, 333.
[85] Preis, Ulrich, Temming, Felipe, *Arbeitsrecht*, 6th edition, Otto Schmidt, Köln, 2020, p. 579-580.
[86] Lingemann, Stefan, von Steinau-Steinruck, Robert, Mengel, Anja, *Employment & Labor Law in Germany,* 4th edition, C. H. Beck, München, 2016, p. 45.
[87] Waas (2023), p. 440.
[88] KSchG.

the business, but also - in some cases - within other business units within the employer's company. This is however not an obligation. When an employer makes an investigation of the possibilities of redeployment within the company, a redeployment between the business units may be an alternative. Yet, it should be emphasised that this only applies to parts of the current company. The obligation does therefore not extend to other operations under the company, or other companies within the group.[89]

In order for the possibility, as mentioned above, to be redeployed in the same company, it is required that there is a vacant position. For a position to be considered vacant, it is required that it is unoccupied at the time of the termination of the previous post. A post can also be seen as vacant if the employer knows that when the dismissal takes place another employee will leave another position and thus leave a post vacant. This is according to BAG v. 29.3.1990 - 2 AZR 369/89, NZA 1991, 181, 182. In BAG v. 5.6.2008 - 2 AZR 107/07, NZA 2008, 1180 Rz. 16 it is stated that a termination of an employment is prohibited, even if there is no possibility of redeployment, if this opportunity was taken away in bad faith. This could be, for example, if an employer consciously fills a position which the dismissed employee would have qualified for, in order to prevent the redeployment from happening.[90]

If an employer chooses to redeploy an employee the employer is obligated to discuss this with the work council (Betriebsrat) and receive their consent to the redeployment.[91] This applies to all businesses with more than 20 employees entitled to vote.[92] An employer is obliged to investigate the possibilities of a redeployment and enable such opportunities, in alignment with § 1, second sentence in KSchG. If the employer does not fulfil these obligations before a dismissal is decided, the dismissal can be regarded as absolutely socially unacceptable.[93]

[89] Inghammar (2007), p. 229-230.
[90] Preis, Ulrich, Temming, Felipe, *Arbeitsrecht*, 6th edition, Otto Schmidt, Köln, 2020, p. 582 and BAG v. 5.6.2008 - 2 AZR 107/07, NZA 2008, 1180 Rz. 16.
[91] Rönnmar (2004), p. 134.
[92] § 99 BetrVG.
[93] Inghammar (2007), p. 232.

3.3 Requirements of the redeployment

3.3.1 Qualifications

According to KSchG § 1 second sentence, a dismissal is socially unjustified if it is not based on capacity- or conduct-related reasons or urgent operational reasons. In § 1, section 2 b) it is declared that a dismissal is socially unjustified if the employee may continue the employment within the company.[94] The dismissal is also socially unjustified if a continued employment is possible after a reasonable retraining period or education. This is according to § 1, second sentence KSchG, and entails that the employer must offer a retraining or reasonable education to the possibly dismissed employee to enable a redeployment (Versetzung) and avoid a dismissal.[95] If an employee can qualify for another position through reasonable retraining measures and thus be redeployed, a dismissal is not socially justified.[96] The period of time in which the employee may be able to retrain in order to qualify for the new position is typically up to three months, as this is what is regularly considered a reasonable time according to Stefan Lingemann et al.[97] As for the cost of the retraining, it should not transcend what would be considered a reasonable amount, with regards to the employer's economic situation.[98]

A determining factor when deciding a redeployment to a vacant position is whether the employee is considered interchangeable. In the case that there are fewer vacant positions than employees being dismissed, the employee's ability to exchange tasks and positions is of value. This means that those who are able to take on a different position instantly, or after an appropriate time of retraining, are to be prioritised. Qualifications are therefore not only a precondition, but also a merit.[99]

In BAG v. 5.6.2008 - 2 AZR 107/07, NZA 2008, 1180 Rz. 16 it is stated that a redeployment (Versetzung) must be reasonable, and that it is considered to be so if there is a vacant position which is comparable, or with less favourable working conditions, for which the employee has the needed qualifications and knowledge or will be able to achieve them within a reasonable

[94] KSchG.
[95] KSchG.
[96] KSchG.
[97] Lingemann, Stefan, von Steinau-Steinruck, Robert, Mengel, Anja, *Employment & Labor law in Germany,* 4th edition, C. H. Beck, München, 2016, p. 45.
[98] Weiss et al. (2023), p. 139.
[99] Lingemann et al. (2016), p. 45.

retraining period. In this court case, there was a dispute around whether a dismissal was fair, as the employer had hired new personnel to vacant positions. The employee in this case was dismissed for operational reasons, in addition to capacity-related reasons, as the employee had been injured. Neither the operational reasons, nor the capacity-related reasons were considered socially justified, as the company hired new personnel, and the employee had the capacity to perform the work tasks despite the injury. In the case it is stated that the employer was not able to prove to the court that the employee would not be able to qualify for the vacant positions within a reasonable retraining period. As the employer trained the new employees for the roles they had been hired for, there was no reason as to why they could not retrain the employee in question. As the employee attained the essential requirements for the role, they could have been retrained and qualified for the vacant positions and therefore become redeployed. The employee received compensation for damages as the dismissal was not justified.[100]

If an employer decides not to retrain an employee, it is the employer who needs to prove that the employee was not suitable for retraining, or that these measures are not reasonable for the employee to require.[101]

3.3.2 Status

Although a redeployment (Versetzung) usually is mandatory for the employer to offer as an alternative to dismissal when it is comparable to the previous job and its working conditions, jobs with less beneficial working conditions can also be mandatory to offer the employee.[102] An employer may offer an employee continued employment under altered working conditions, if the employee agrees to this. If such a redeployment is possible, a dismissal would be considered unfair.[103]

If a company would need to issue dismissals for redundancy (Arbeitskräftemangel) or discontinue operations, a form of redeployment known as “dismissal for variation of contract” (Änderungskündigung) is allowed. This is a dismissal followed by a new job offer under altered conditions, possibly at a different location or area of business. This dismissal

[100] BAG v. 5.6.2008 - 2 AZR 107/07, NZA 2008, 1180 Rz. 16.
[101] Ascheid, Reiner, Preis, Ulrich, Schmidt, Ingrid, *Großkommentar zum Kündigungsrecht,* C. H. Beck, München 2000, p. 251.
[102] Weiss et al. (2023), p. 139.
[103] Waas (2023), p. 446- 447.

for variation of contract would continue the employee's employment, while altering conditions that could assist the employer as they could rearrange the workforce and hinder dismissals due to redundancy.[104] The working conditions of this new offer may be less beneficial, in regard to both compensation and workday hours.[105] This is stated in KSchG second paragraph, where it says that the employee can accept the offer unless it is socially unjustified.[106]

In the § 99 of the works constitution act Betriebsverfassungsgesetz, it is stated in the fourth section that the work council (Betriebsrat) may refuse to allow the redeployment of an employee if the redeployment would disfavour the employee in question if this is not justified by operational or personal reasons. This means that a redeployment that might disfavour the employee can be allowed if operational reasons motivate it.[107]

An employee can through a redeployment or altered working conditions acquire a form of employment with less favourable working conditions in terms of status. BAG 27.3.1980 AP Nr. 26 zu § 611 BGB Direktionsrecht is an example of how it is the employer who decides the work tasks of the employee.[108] In this case, a bank employee who mainly handled loan applications had the work tasks changed and would no longer work with customer advice. The employees' other working conditions and salary remained the same. The employee wished to return to the former work tasks, but the court found that the employer was within their right of distributing work and that the change of work tasks therefore was legal. It is stated that the employer's right to give instructions and distribute the work is an essential part of the employment contract, and that the working conditions and obligations stated in the contract are mainly decided by the employer, unless any collective agreements or laws prevent certain decisions. As the employee's area of responsibility was not specifically described, the employer was within their right to alter the work obligations of the employee, as it was within the right of the employment contract.[109] The employer's right to lead and distribute work, as well as their right to redeploy, in combination with the often vaguely described work obligation of the employee, gives the employer a unilateral right to specify the work obligation, and therefore alter or completely withdraw certain work tasks.[110]

[104] Lingemann et al. (2016), p. 46.
[105] Ibid, p. 45.
[106] KSchG.
[107] BetrVG.
[108] Rönnmar (2004), p. 103.
[109] BAG 27.3.1980 AP Nr. 26 zu § 611 BGB Direktionsrecht.
[110] Rönnmar (2004), p. 103.

However, this right to lead the work does not mean that the employer can change the fundamental exchange between employer and employee as stated in the employment contract, meaning that the right can not be used to alter working hours or compensation, as this would need to be altered in the employment contract that both parties agree to.[111]

3.3.3 Location

Although the obligation of redeployment (Versetzung) usually is limited to posts within the company and its operating units, other companies which the employer operates can in some instances be taken into consideration when planning a redeployment. For a redeployment to be within another company, this company has to be closely affiliated with the original company in question, mainly in terms of management. In this case, a redeployment to another company can be offered.[112]

In the trade regulations code Gewerbeordnung, it is stated in § 106 that it is the employer who decides the location in which the work is carried out, unless this is stated in the employment contract, or if there are other regulations made by collective agreements or legislative regulations.[113] Having an employee be redeployed to another employment can come with new working conditions, in which the geographical location can be specified. Thus a redeployment can change the location in which the employee is to carry out their work.[114] The 106th paragraph has to be taken into consideration when an employer wants to redeploy an employee to another location, as it would need to be considered reasonable. For it to be considered reasonable, the employer has to take into account certain aspects that could affect the employee's personal life negatively. Aspects that need to be taken into account is how the new location of employment could affect increased time and money spent on travels or commuting, as well as if it would make it more difficult for the employee to secure childcare. The employer might also need to investigate if it would be possible for another employee to be redeployed to the position instead.[115] When reviewing these aspects however, the interests of the employer also need to be taken into consideration, and in alignment with the 106th

[111] Rönnmar (2004), p. 104.
[112] Inghammar (2007) p. 229 and Preis, Ulrich, Schmidt, Ingrid, Erfurter Kommentar zum Arbeitsrecht, C. H. Beck, 2005. p. 2210.
[113] Gewerbeordnung.
[114] Rönnmar (2004), p. 103.
[115] Ibid, p. 126.

paragraph, it must be considered whether the employer is entitled to insist that the work is carried out, due to operational reasons.[116]

An example of when employees were moved to a different location is BAG v. 17.11.2021 – 7 ABR 18/20, which concerns a transfer of a business department 12 kilometres away from the original office which affected 59 employees. The work council claimed that this was a redeployment and that the employer therefore should have consulted with them, which they did not. According to § 99 BetrVG the employer is obligated to inform the work council (Betriebsrat) about the planned arrangement if the company has more than 20 employees entitled to vote. Because the employer did not do this, the work council stated that the redeployments should be revoked, in alignment with § 101 BetrVG.[117] In this paragraph it is stated that a work council may ask the labour court to revoke measures regarding employees as described in the 99th paragraph, if the employer did not ask for the work council's consent before carrying out said measures.[118] These measures include redeployments.[119] The work council stated that this 12 kilometres transfer should be seen as a redeployment, due to the disfavour it would cause the employees.[120] It is stated in § 111 BetrVG that the employer needs to inform the work council about planned operational changes that might disfavour the employees, which includes the relocation of the business or essential parts of it.[121] The court found however that the relocation was not to be considered a redeployment. The third section of § 95 BetrVG states that a redeployment should be considered as such if there is a significant change in work conditions and that if a specific location is not stated in the contract, the specification of this is not to be considered a redeployment.[122] In reference to this the court meant that it could not be considered a redeployment as the only change was that the employees place of work only moved a few kilometres within the community, with no other change to the employees' workplace or relationship to the business and its environment.[123]

This is also affirmed in BAG v. 27.6.2006 - 1 ABR 35/05, where it is stated that the relocation of the business or parts of it of only a few kilometres, without any other changes to

[116] Ibid, p. 128.
[117] BAG v. 17.11.2021 – 7 ABR 18/20.
[118] § 101 BetrVG.
[119] § 99 BetrVG.
[120] BAG v. 17.11.2021 – 7 ABR 18/20.
[121] § 111 BetrVG.
[122] § 95 BetrVG.
[123] BAG v. 17.11.2021 – 7 ABR 18/20.

to the employees' workplace or organisational environment, is not to be considered a redeployment. However, it is also stated that the relocation of a further distance or outside of municipality borders can make it unclear whether it is to be considered a redeployment or not.[124]

[124] BAG v. 27.6.2006 - 1 ABR 35/05.

4 Comparative analysis

4.1 The employer's redeployment investigation

In terms of the employer's redeployment (omplacering/Versetzung) investigation, Swedish and German legislation have several similarities. In both countries, there are laws and representatives of the employees that act to protect employees in a redundancy situation. As both countries have several similar measures in place, they are summarised in the chart below, which show their similarities, but also how they differ in some ways.

	Legality of dismissals for redundancy	Obligation of redeployment	Positions taken into consideration	The trade union or work council
Sweden	Ultima ratio[125]	Explore all *reasonable* options of employment, at all workplaces within the company (not within the group)[126]	Those who are or will be vacant[127]	Employer has to negotiate, consult, and inform. The decision to redeploy is the employers.[128]
Germany	Ultima ratio[129]	Explore all *possible* options of employment, at all workplaces within the company (not within the group)[130]	Those who are or will be vacant[131]	Employer has to discuss, consult, and inform. The employer needs the work councils consent to redeploy (companies with 20+ employees)[132]

In both Sweden and Germany, dismissal for redundancy (arbetsbrist/Arbeitskräftemangel) is considered a fair reason for dismissal, however the principle of *ultima ratio* applies in both countries. A dismissal shall be considered as the last resort possible in the case of redundancy, meaning all other options have been explored and are not able to be followed

[125] Waas (2023), p. 1238.
[126] Ibid, p. 1238.
[127] Öman (2017), p. 90.
[128] Rönnmar (2004), p. 141.
[129] Inghammar (2007), p. 228-229.
[130] Ibid, p. 229-230.
[131] Preis and Temming (2020), p. 582.
[132] BetrVG 99 §.

through. In Sweden, the dismissal of a single employee can be due to redundancy, and it is generally not questioned in court how the employer came to the conclusion of the redundancy of the current position. In Germany however, there are two requirements that need to be fulfilled in order to claim that a dismissal was due to redundancy: The need for the work that the employee carries out has decreased, and the situation of the company is considered urgent, which has led to the employer having to make operational decisions.

In both countries, all opportunities of redeployment shall be investigated, which includes other workplaces within the company, but not other companies within the group. The Swedish employment law LAS expresses that a dismissal is not based on objective reasons if it is *reasonable* to require the employer to prepare the employee for other work with them. This means that only options that are considered reasonable need to be explored, and the employer is not obligated to offer the employee any alternative employment unless considered reasonable.[133] In Germany however, the employment law KSchG states "The termination is also socially unjustified if [...] the employee can continue to be employed in another position in the same establishment of the company".[134]

In both Sweden and Germany all positions that are or will be vacant at the time of the dismissal have to be taken into consideration when investigating the possibility of a redeployment. In Sweden the employer's redeployment investigation does not extend to positions that are not yet definite in their vacancy. All workplaces within the company should be researched for having vacant positions and redeployment possibilities. If there's a vacant position that has not been considered, the employer has not fulfilled the obligation of redeployment. In Germany all positions that are or will be vacant are to be taken into consideration. In order for a position to be considered vacant, it is to be unoccupied at the time of the dismissal of the previous post. Alternatively, a post can also be considered vacant if the employer knows it will be vacant by the time the employee's current employment is terminated. The investigation of vacant positions applies to positions within the company, such as other workplaces in the company. The investigation does not include other operations under the company or those within the group. The employer may offer a redeployment to another position within the group, but it is not an obligation.

[133] 7§ section 2, LAS.
[134] KSchG, English translation quoted from Lingemann (2016), p. 205.

In Sweden the employer has to consult, negotiate and inform the trade union before a redeployment can take place. The decision is the employers which means in cases where a company is not bound by any trade union the employer has to make the decision without any consultation. This is similar to Germany where negotiation, consultation is necessary too. The difference here is that they in Germany have work councils too who have to give their approval for a possible redeployment. However, this is limited to companies with more than 20 employees.

4.2 Requirements of the redeployment

As for the requirements of the redeployment, Swedish and German legislation have many similarities in regards to all three categories discussed, as shown in the chart below. There are however some differences in the practical matters of how the actual offer needs to be made and justified, which are discussed more in detail below in the chart.

	Qualifications	Status	Location
Sweden	Employees must have sufficient qualifications or be able to get the qualifications within a reasonable time.[135] The employers have to accept a certain training period, but not extensive retraining. Typically a few months.[136]	The new position should be as similar to the previous position as possible.[137] If not possible, changes and impairments for the employment can be justified.[138]	Preferably in the same location. The employer must take into account the employee's personal situation. Redeployments are usually limited by region, but can in some instances be national or international.[139]
Germany	Employees must have sufficient qualifications or be able to get the qualifications within a reasonable time. The employer must offer a reasonable retraining period	The new position should be as similar to the previous position as possible. Positions with less favourable working conditions are also mandatory to offer the employee.[142]	Redeployments to other locations can be made without the work councils consent if it is justified by operational reasons.[143] The employer must take into account the employee's personal interests.[144] Redeployments are usually

[135] Öman (2017), p. 90.
[136] Waas (2023), p. 1239.
[137] Öman (2017), p. 92.
[138] AD 1982 no. 60.
[139] AD 2015 no. 49.
[142] Weiss et al. (2023), p. 139.
[143] Rönnmar (2004), p. 103.
[144] Ibid, p. 103.

	or education,[140] typically up to three months.[141]		within the companies' business units, but can in some instances include the whole group.[145]

When a redeployment is to take place, the employee concerned must have sufficient qualifications for the new position, this applies both in Sweden and in Germany. If the employee concerned does not currently have the qualifications required for the position, the employer is obliged to offer a reasonable training period for the employee. This means that if a continued employment, alternatively redeployment is possible after a reasonable training period, and the employer does not consider that, the dismissal is socially unjustified. Both countries have this as a basis, but it differs in terms of what is considered a reasonable training period. In Sweden it applies that the employer has to accept a certain training period, but not extensive retraining. This is also consistent with Germany; the difference, however, is how in Germany they define the training period, an employer does not have to accept a longer training period than three months in order for the employee to acquire sufficient qualifications.

As for status, both Swedish and German legislation strive for the new position that an employee will get through redeployment to be as similar to the current position as possible. This is not always possible, but then again the countries are very similar in terms of the approach to the solution. In a redundancy (arbetsbrist/Arbeitskäftemangel) situation, a redeployment is reasonable even if it entails deterioration for the employee concerned in terms of where the work is located, a reduction in income or, as they write in Germany, less favourable working conditions. In Germany tho, the redeployment to a position with less favourable working conditions is usually not allowed. An employer can not alter compensation unless this is altered in the employment contract, which both parties must agree to. When redeploying an employee, the employer must receive the work council's consent. In the 99th paragraph of BetrVG it is stated that the work council can refuse to allow a redeployment, unless it is justified by operational or personal reasons, meaning that a redeployment can be made without the consent of the work council, if operational reasons can motivate this, such as in the case of redundancy.

[140] KSchG §1 (2).
[141] Lingemann (2016) p. 45.
[145] Inghammar (2007) p. 229 and Preis, Schmidt, (2005), p. 2210.

In both Swedish and German legislation, the employer usually strives for the redeployment to be as similar to the previous position as possible, which includes location. In both countries, the investigation for redeployment includes all workplaces within the company, which means a redeployment to another work place, thus a different location, is possible.

When making a redeployment offer due to redundancy in Sweden, the geographical relocation can be quite broad, since all workplaces of the company are included in the investigation of the possible redeployment, however it is often restricted regionally. In some cases, given that it is stated in the contract that the employment might take place in other regions or even countries, the employer may be required to research redeployment possibilities in their company both nationally and abroad.

As for Germany, a redeployment investigation also usually includes all workplaces of the company and can lead to a redeployment to another employment, leading to altered working conditions and a new location. Usually a redeployment offer must be discussed with the work council and the employer must receive their consent, however if a redeployment needs to be carried out for operational reasons, the work councils consent does not need to be received. If an employee is relocated with no other changes to the employment, this usually is not considered to be a redeployment, and the employer therefore does not need the work councils consent, regardless if it is due to operational reasons or not. Although this would not be considered a redeployment, a relocation of further distance or outside of municipality borders can prompt the question of whether it is to be considered a redeployment or not, as this could change the employee's workplace and relationship to the operational environment. When the redeployment of an employee is topical, there are certain aspects the employer must factor in, such as increased costs for travels and the possibility of childcare. The employer might also need to investigate whether it is possible for another employee, who would suffer less negative consequences from the redeployment, could take on the new position instead.

5 Conclusions

In this section the research question is to be answered: What is considered a reasonable redeployment in the event of a redundancy, in Sweden and Germany, and what are the possible similarities and differences between the perceptions and enforcements of each country's legislation?

A reasonable redeployment in Sweden would include the following: All reasonable options, for which the employee is or could become qualified enough, have been investigated. In the investigation, vacant positions reasonable to offer are investigated, while acknowledging the employee's personal situation. The position is preferably as similar to the previous employment as possible. If this is not possible, changed or less preferable working conditions can be justified.

In Germany, the following is to be included: All possible options of redeployment, for which the employee is or could become qualified enough, have been investigated. In the investigation of the possible opportunities, the employee's personal interests are considered. The position is preferably as similar to the previous employment as possible. If this is not possible, an alternative employment with less favourable working conditions is to be offered. The redeployment needs to have the consent of the work union.

As for the similarities and differences between the perceptions and enforcements of each country's legislation, Sweden and Germany have many similarities regarding redeployment in the case of redundancy. Both countries have laws and other measures in place to protect the employee in a redundancy situation, making a dismissal the last possible resort. In both countries a thorough investigation of the possibility to redeploy is mandatory, in which the employer needs to explore all options to redeploy.

There are however some differences between the regulations of the two countries. Primarily, the investigation in Sweden explores all *reasonable* options, as described in LAS. In KSchG, the term reasonable is not mentioned - instead, the employer is to investigate all *possible* options of redeployment. When offering the redeployment, in Sweden the employer may need to discuss this with the trade union, but the decision ultimately is the employers to

make. In Germany however, all redeployments must be discussed with the work council and their consent must be given in order for the redeployment to be carried out.

In Sweden the employer can claim a redundancy situation even for a single dismissal, and this usually is not questioned by the court. In Germany however, the employer is obligated to motivate the claimed redundancy. The employer is held accountable when stating a redundancy situation as the two requirements need to be proven: The need for the work that the employee carries out has decreased, and the situation of the company is considered urgent, which has led to the employer having to make operational decisions.

When redeploying someone to a different location, in Sweden the employer must take into account the employee's personal situation. In Germany, the redeployment to another location must be considered reasonable, meaning the personal interests of the employee have been taken into account. This includes increased expenses on travels, childcare possibilities, and whether it has been investigated if it would be possible for another employee to fill the position instead.

Based on the information presented in this study it is revealed that the obligation for employers to redeploy is comprehensive in both Sweden and Germany. However, it can be concluded that the responsibility of employers appears more stringent in Germany. This is supported by the challenges in claiming redundancy, the thorough investigation of redeployment possibilities, the necessity of obtaining consent, and the more detailed legislation regarding redeployment criteria. In conclusion, in both Sweden and Germany the employer is obligated to make efforts to fulfil their obligation of redeployment, with Germany demonstrating a more extensive commitment compared to Sweden. Nevertheless, the analysis indicates that the process of determining a reasonable redeployment is notably similar in both countries.

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