LabourWatch Summary of

Evaldsson and Others v. Sweden (2007)
European Court of Human Rights (Application no. 75252/01)

Executive Summary

This case against the Kingdom of Sweden in the European Court of Human Rights alleged that a union's monitoring fees (union dues) paid by the applicant unionized construction industry employees, who had not also become Members of the union, violated several Articles of the European Convention on Human Rights.

The Court unanimously held that there had been a violation of their right to Peaceful Enjoyment of Possessions (or protection of property rights) under the European Convention of Human Rights (the Convention) - specifically Protocol 1, Article 1

Having found a violation, the Court declined to rule on whether other articles, particularly the freedoms of association and expression, were violated or not.

Each applicant was awarded 5,000 euros (EUR) for non-pecuniary damages and EUR 87,800, jointly, for costs and expenses which had to be paid by the Kingdom of Sweden, not the union, because Sweden had not protected the employees from the union's actions by ensuring that Swedish legislation was compliant with the Convention.

The implications of this ruling are that unionized employees, who do not also join a union, cannot have dues levied for general union activities. Dues or fees for a service provided, even if the employee does not wish to have the service carried out (such as "salary inspection"), would still be legal as long as the service fees do not generate a surplus and it must now be possible for employees to determine that there is no surplus.

The applicants did not attempt to contest the union dues on non-Members. Most, if not all unionized employees in the EU who do not become Members of the union in their workplace do not pay dues at all. They are still covered by a collective agreement and are unable to bargain their labour as they wish or, as unions would say – they still benefit from the collective agreement.

The union, which operated under a sectoral collective agreement covering employers represented by an employer's organization in subsequent bargaining in 2007 did not attempt to alter the scheme and is no longer collecting any dues at all from the non-Members, let alone dues for political and other purposes.

Summary

Eight unionized employees in the construction company LK Mässinteriör AB carried out work covered by a sectoral "labour agreement" (collective agreement for a group of employers) signed by the union and the Swedish Construction Industries (*Sveriges Byggindustrier*) – an employer association. Three of them were also Members of the Swedish Building Workers' Union (*Svenska Byggnadsarbetareförbunde*) while the five unionized applicants were not Members of this or any other union. They were employed from March 3 to July 30, 1999.

Under the collective agreement, the local union had the right to monitor employee pay ("salary inspection") and to be reimbursed for the costs involved on the basis of a fee - 1.5 per cent of the worker's pay. The employer was obliged to deduct that amount from the worker's pay and provide the local of the union with

the information it needed for this monitoring work. Only unionized employees who were Members of another union were exempt from these deductions by this union.

The applicants asked to be exempt from the deductions. The employer complied and stopped paying the fees to the union and stopped providing the agreed information concerning the applicants. The union insisted on payment and initiated formal local negotiations, no solution was reached.

The employer association brought the case before the Labour Court (*Arbetsdomstolen*) seeking a declaratory judgment that the employer was not required to levy the fees in question. On March 7, 2001, the Labour Court rejected the Industries claims.

The case was taken to the European Court if Human Rights in 2001 and heard in 2006.

The Judgment

The applicants maintained that they were forced to contribute to the financing of the general activities of a union against their will and in a manner comparable to a union Member, which was tantamount to forced Membership.

Their case against the Kingdom of Sweden in the European Court of Human Rights alleged that the levying of monitoring fees (union dues) on the individual applicants' wages involved violations of several of the European Convention on Human Rights: Specifically, they pointed to:

> Article 9 – The right to freedom of thought, conscience and religion
> Article 10 – The right to freedom of expression
> Article 11 – The right to freedom of association
> Article 14 – The right to freedom from discrimination
> Protocol 1, Article 1 - Entitlement to the peaceful enjoyment of ones possessions. (Protection of Property)

The employer argued that, because the amount of the fees "greatly" exceeded the cost of the monitoring pay, the balance was going into general union funds and was being used for purposes that the applicant employees did not support, which amounted to forced union Membership so breaching their human rights.

The union claimed that the monitoring fees were not Membership fees (which were charged separately to the actual Members) so did not amount to forced union Membership. Also, the union claimed that the Employer erred in its evaluation of the funds and stated that the monitoring fees operated at a loss, not a profit. They argued that the positive right to associate outweighed the negative right to not associate and that banning monitoring fees would induce Members to leave the union because non-Members would pay no monitoring fee and did not pay Membership fees.

The union made considerable submissions regarding where these funds were allocated within the union's structure.

The government of Sweden as defendant, argued that the costs of monitoring served not only the legitimate aim of protecting the rights and freedoms of others, but also pursued the general interest of the community, namely to uphold the legitimacy of the Swedish approach in the area of industrial relations. They claimed that the interference of the Protocol 1, Article 1 right was proportional to the aim of the Swedish system of collective bargaining.

The Court ruled that no clear picture could be developed regarding the accounting of the funds from monitoring or inspection activities versus those from Membership fees. The issue of whether or not the dues collected for monitoring purposes resulted in a surplus or not. The applicants asserted that most of the funds were used to support the pension plan of the union, "union agitation" and political work.

Such "agitation" work by union Members would include, among other things being paid by the union to work for whichever political party the union supports. Work could include leafleting, office work, and similar activities. In Sweden it is called Union/Political Co-operation (facklig/politisk samverkan) – a term so established that it is included and explained in Swedish dictionaries.

In the decision extensive analysis was made of the applicant's claims in regard to the allegation that the monitoring fees collected by the union were excessive and did not offer value for the service the union claimed to have provided – monitoring whether or not the employees were being paid in accordance with the collective agreement.

The Court found that while some value was provided to the applicants, neither the union's annual reports nor their budgets could support the union's claim that the monitoring program ran at a deficit.

The Court found that the applicants had not been given sufficient information for them to verify how the fees they paid were actually used, information to which they were all the more entitled given that those fees were paid against their will and to an organization with a political agenda they did not support.

In conclusion, the Court considers that the Union's wage monitoring activities, as applied in the present case in the context of the Swedish system of collective bargaining, lacked the necessary transparency.

Moreover, given that the Swedish authorities' organized its labour market by delegating the regulation and legislation of important labour issues to independent organizations through a system of collective agreements, the Court found that the State was under an obligation to protect the applicants' interests by holding those organizations accountable for their activities.

It was found that the government of Sweden had breached the applicant's property rights because the government had a positive obligation to protect employee interests. In short, the government of Sweden had failed to protect the property or possession rights of the applicants to their monies by ensuring appropriate Swedish legislation. If it existed, employees would be able to seek relief in Swedish courts instead of, in some instances having to proceed first through the Swedish system on to the European system.

LabourWatch Commentary

Of the countries that recognize unions and collective bargaining it is obvious that the current legal systems, industrial relations systems and traditions let alone the values of differ to varying degrees from country to country. That makes comparing certain legal realities in one country to others more challenging. AT the same time, there are certain principles which can be used as a basis for evaluating a given country's statutes and practices against others when asking whether a country should maintain its current policies or implement changes. It is in this framework that LabourWatch seeks to question key aspects of Canadian labour relations such as forced membership, conditional employment, forced union dues, union supervision of ratification and strike votes, etc.

Forced union Membership and conditional employment, whether by legislation or closed shop collective agreement provisions, are violations of the European Convention on Human Rights.

This was established clearly in the 2006 *Sørensen* and *Rasmussen* judgment which built on two key prior European Court of Human Rights rulings - *Sigurjónsson* (1993) and *Young, James and Webster* (1982).

The implications of the Evaldsson judgment for European employees appear to be that unionized employees who do not also join a union cannot have dues taken which exceed the costs a union incurs to administer the collective agreement. Unions now cannot fund political and other activities that are not directly related to administering the collective agreement on behalf of the unionized employees (Members or not).

In 1991, the Supreme Court of Canada reached a different conclusion with its *Lavigne* ruling and as such, while most unionized Canadians are not yet protected from forced membership, any Canadian employees who are not forced to join a union generally pay the same dues as Members and as such their monies are used for political and other activities not related to the administration of their collective agreement.

CONSEIL DE L'EUROPE

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COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

CASE OF EVALDSSON AND OTHERS v. SWEDEN

(Application no. 75252/01)

JUDGMENT

STRASBOURG

13 February 2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Evaldsson and Others v. Sweden,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr A.B. BAKA, *President*,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM,
Ms D. JOČIENĖ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 20 June 2006 and 16 January 2007,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 75252/01) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by five Swedish nationals, Mr Tommy Evaldsson, Mr Johan Svahn, Mr Tonnie Hodell, Mr Jonny Lindqvist and Mr Conny Brandt ("the applicants"), and the Swedish Construction Industries (*Sveriges Byggindustrier*) (hereinafter "the Industries") on 4 September 2001.

2. The applicants alleged that the levying of monitoring fees on the individual applicants' wages involved violations of Articles 9, 10, 11 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention.

3. By a decision of 28 March 2006, the Court declared the application admissible with respect to the five individual applicants and inadmissible insofar it concerned the Industries.

4. A hearing took place in public in the Human Rights Building, Strasbourg, on 20 June 2006 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr C.H. EHRENKRONA, Ministry for Foreign Affairs, *Agent*,
Ms K. RENMAN, Ministry of Industry, Employment and Communications,
Mr M. FALK, Ministry for Foreign Affairs,
Ms P. HERZFELD OLSSON, Ministry of Industry, Employment and Communications, *Advisers*;

(b) *for the applicants*

Mr P. BRATT, Representative, *Counsel*,
Mr J. SÖDERGREN, Representative, *Co-counsel*,
Mr C. CRAFOORD, Lawyer,
Mr G. HERRLIN, Head of the Lawyers' Section of the Industries,
Ms T. HOLM, Lawyer, *Advisers*,
Mr T. EVALDSSON, *Applicant*.

The Court heard addresses by Mr Ehrenkrona, Mr Bratt and Mr Södergren.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1948, 1974, 1965, 1964 and 1963 respectively. They were employed by the construction company LK Mässinteriör AB (hereinafter "the company") between 3 March and 30 July 1999 on a time-wage basis.

6. The company, being a member of the Industries, was bound by a collective labour agreement, the Construction Agreement (*Byggnads-avtalet*), concluded between the Swedish Building Workers' Union (*Svenska Byggnadsarbetareförbundet*, hereinafter "the Union") and the Industries. The relevant local branch of the Union in the instant case was the Stockholm branch, *Byggettan*.

7. At the material time, eight employees in the company carried out work covered by the labour agreement. Three of these workers were members of the Union whereas the five applicants were not members of the Union or of any other trade union.

8. Under section 3, subsection f 5 of the collective agreement, as it stood at the relevant time, the local branch had the right to inspect on a continuous basis wage conditions by measuring piecework (*ackordsarbete*) and result work (*resultatarbete*), as well as monitoring time-based work (*tidlönearbete*). If inspections were carried out in accordance with the collective agreement, the local branch had the right to reimbursement of the costs involved on the basis of a fee of 1.5% of the worker's wages. The employer was obliged to deduct this amount from the worker's wages and to supply the local branch with the information necessary for the inspection work.

9. On 12 January 1978 the Industries and the Union concluded an accord pursuant to which a worker organised in a trade union other than the Union could request his or her employer not to deduct the inspection fee, with the

result that the Union would no longer have the right to request either information or the payment of a fee in respect of that worker. In a subsequent dispute between the Industries and the Union over the interpretation of the accord, an out-of-court settlement was reached on 29 February 2000 to the effect that it applied to all workers belonging to a trade union other than the Union.

10. On 22 May 1991 the company and *Byggettan* concluded an agreement concerning the inspection work. The agreement gave details of the work and specified, *inter alia*, that it was the company's responsibility to provide *Byggettan* with the wage information and to deduct fees from the wages of the workers and pay them to *Byggettan* six times a year. The information was to include the place of work, the names and social security numbers of the workers and the working hours and net wages.

11. The applicants requested to be exempt from the deductions, which in their case concerned fees for monitoring the wages for hourly work. The company complied with their requests, stopped paying the fees to *Byggettan* and did not provide it with the above-mentioned wage information concerning the applicants. *Byggettan* insisted on payment and initiated formal local negotiations. These were held on 23 March and 19 April 1999. However, no solution was reached, either in the local negotiations or in the subsequent central negotiations between the Industries and the Union.

12. The Industries eventually brought the case before the Labour Court (*Arbetsdomstolen*), seeking a declaratory judgment to the effect that the company was not obliged to levy the monitoring fees in question. It argued that the inspection of wages, in so far as it did not concern the technical measuring of piecework, aimed at securing the observance of the provisions of the collective labour agreement and was therefore part of the general activities of the Union. Moreover, the 1998 and 1999 annual reports of *Byggettan* allegedly showed that the inspection fees greatly exceeded the costs of the work and that the surplus was used for general union activities. Consequently, the corresponding deductions from the applicants' wages were tantamount to forced union membership or, at least, involved an unacceptable compulsion to join the Union or another trade union. The conduct thus violated their negative freedom of association under Article 11 of the Convention as well as under domestic law. Furthermore, since the applicants did not share the political values of the Union, the levy on their wages also violated their rights under Article 10 of the Convention.

13. Two of the applicants, Mr Evaldsson and Mr Hodell, were heard by the Labour Court. They submitted that they opposed the deductions because they did not think that the monitoring work was of any use to them and considered the deductions an unnecessary expense. Allegedly, they also submitted that they felt that the deductions were unjust.

14. The Union disagreed with the Industries, arguing that the monitoring fees could not be seen as tantamount to forced membership of the Union,

such membership being secured through the payment of a separate membership fee. The system of monitoring fees did not involve a compulsion to join a trade union. Moreover, the applicants had not expressed any ideological reasons for their unwillingness to contribute to the monitoring work. The Union claimed that, contrary to the Industries' allegation, the 1998 and 1999 annual reports of *Byggettan* showed that the proceeds of that work had not contributed to general union activities but that, in fact, the monitoring had been run at a loss. Furthermore, the inspection work was strictly separated, economically and otherwise, from the other activities of *Byggettan*. Finally, arguing that the positive aspect of the freedom of association under Article 11 of the Convention was stronger than its negative counterpart, the Union claimed that a ban on the levying of monitoring fees on unorganised workers' wages would violate the positive rights of its members, as this could induce members to leave the Union in order to avoid paying the fees.

15. By a judgment of 7 March 2001, the Labour Court rejected the Industries' claims. It referred to several of its previous judgments concerning various types of measurement and monitoring fees. In a case from 1977 (AD 1977 nr 222), the court had found that the monitoring of time-based wages was wholly different from the measuring of piecework, as no special action had to be taken to establish the amount and type of work performed. Instead, the inspection of time-based wages rather aimed at securing the observance of the collective labour agreement and also served as a basis for the statistics used by the Union in wage negotiations with the employers. Consequently, the monitoring benefited the general union activities and the fees contributed financially to those activities. The court had therefore concluded that the levying of fees on the wages of members of the Syndicalist Union for monitoring work carried out by another trade union involved a violation of those worker's positive freedom of association, as they would have to resign from their own organisation in order to avoid contributing to both organisations.

The Labour Court stated that there was no reason to come to a different conclusion in the instant case as to the nature of the monitoring work. Thus, from the point of view of association law, there was no reason to distinguish between monitoring work and general union activities. Having reached that conclusion, the court found no reason to determine whether the monitoring fees generated a surplus which contributed to other union activities.

However, the situation in the instant case was different from the 1977 case in that the applicants were not subjected to pressure to leave their organisation. Instead, the question was to what extent they were protected by a right to negative freedom of association. The Labour Court noted that the negative freedom of association under domestic law was exclusively based on the Convention. It referred to the European Court's case-law and drew the conclusion that only the core of the negative freedom of

association was protected under Article 11 of the Convention, meaning that a person must have been subjected to a certain measure of force or at least strong pressure to join an organisation in order to give rise to a violation of Article 11.

The Labour Court initially concluded that the monitoring fee deductions did not entail membership of the Union and that no pressure had been exerted to compel the applicants to join the Union against their will.

It further found that the fact that the applicants, through payment of the monitoring fee, indirectly supported the activities of the Union did not in itself amount to forced membership, since being a member of the Union also entailed certain other duties, such as loyalty to its objectives and payment of a membership fee. The situation would have been different if the applicants would to some extent have been associated with the Union's ideology as a result of the monitoring fee deductions. However, the fee in issue was deducted in accordance with their employer's obligations under the collective labour agreement, and it was, accordingly, difficult to see a link with the Union's ideology. In this connection, the court also referred to the evidence given before it by Mr Evaldsson and Mr Hodell. While it questioned whether the grounds for their position in the case could have a bearing on their negative freedom of association, the court nevertheless found that there was no indication that they opposed the deduction of the fees because they took exception to union activities in general or to the ideology of the Union.

The Labour Court went on to state that, while the applicants, through the fee deductions, contributed to the general activities of the Union, they were not treated any differently from Union members as concerns the monitoring. In order to monitor the observance of the collective labour agreement, the work was carried out with respect to all employees affected by the agreement, whether belonging to a trade union or not. Noting that it could appear offensive to an unorganised worker to have to contribute to the work, the court stated that it was not without importance that the unorganised worker in fact obtained something in return for the fee paid.

The Labour Court further noted that, theoretically, the applicants could be inclined to join a trade union other than the Union in order to avoid the wage deduction for the monitoring fee. It found, however, that it was not very realistic that an employee would regard the wage deduction as a particular incentive to do so.

The Labour Court concluded that all the above considerations indicated that the deductions did not breach the applicants' rights under the Convention. As to the main issue to be determined – whether the monitoring fee was intended as a measure to pressure them to join the Union – the court could not find that it had any such coercive effect. As the fee was not tantamount to forced membership of the Union and had not influenced or forced the applicants to join the Union, the company had been obliged to

make a deduction from their wages in accordance with the collective labour agreement.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Freedom of association

16. Freedom of association is guaranteed in the Swedish constitution. Chapter 2, section 1 of the Instrument of Government (*Regeringsformen*) provides in its relevant parts:

> "In relation to the public administration, every citizen is guaranteed:
>
> 1. freedom of expression: the freedom to communicate information and to express ideas, opinions and emotions whether orally, in writing, in pictorial representations or in any other way; ...
>
> 5. freedom of association: the freedom to unite with others for public or private purposes; ..."

Chapter 2, section 2 protects, *inter alia*, the negative aspect of freedom of association. It reads:

> "In relation to the public administration, every citizen is protected against coercion to divulge an opinion in a political, religious, cultural or other such connection. In relation to the public administration, he is furthermore protected against coercion to participate in a meeting for the formation of opinion or in a demonstration or other manifestation of opinion, or to belong to a political association, religious congregation or other association for opinions referred to in the first sentence."

17. Section 7 of the 1976 Act on Co-Determination at Work (*Lag om medbestämmande i arbetslivet*, SFS 1976:580, hereinafter "the 1976 Act") guarantees the right of employers and employees to form, belong to and work for labour market organisations. The right of association is further protected by section 8, which forbids any recourse to action against someone on the opposing side for having exercised this right or in order not to exercise it.

B. The relationship between employers and employees

18. Section 10 of the 1976 Act gives employers' and employees' organisations as well as individual employers a right of negotiation in regard to matters concerning the relationship between employers and employees. It does not provide for any right of negotiation for the individual employees, who are obliged to exercise their powers through the trade unions.

19. Under section 26 of the 1976 Act, a collective labour agreement is binding not only on the employer's and employee's organisations but also on their members, i.e. companies and individual workers. Moreover, in

practice, the collective agreement is also of significance for employees who are not trade union members in that it has a normative effect. This entails that the individual work contracts are considered to have the same contents as the collective agreement unless the parties to the contract have expressly agreed otherwise.

20. Under section 27 of the 1976 Act, an employer and an employee cannot conclude a legally valid agreement which contradicts the collective agreement by which they are bound. This means that an agreement contradicting the collective agreement is automatically null and void. While contracts with less favourable conditions than the collective agreement are normally invalid, the validity of contracts with more favourable conditions depends on an interpretation of the agreement in question. As the instant provision formally only prohibits an employer from concluding contradictory contracts with members of the trade union which is party to the collective agreement, it is possible for the employer to conclude such contracts with employees who are not members of the relevant trade union. However, most collective agreements are based on the presumption that an employer does not have a right to conclude such contracts with non-member workers. Consequently, while the contracts in question remain valid, the employer may be liable to pay damages to the trade union.

C. The monitoring system

21. Monitoring of wages for hourly work is conducted in a manner determined by the employer and the local union branch. It normally involves the examination of documents provided by the employer and personal visits by the union's representatives to the employer. If a mistake is discovered, clarifications or corrections can be made by telephone or letter. In some cases, formal negotiations are required.

22. Under the terms of the Construction Agreement, the local union branch is entitled to a fee as compensation for the costs entailed by the monitoring work. The fee – 1.5% of the employee's wages – is deducted by the employer from the wages of each individual worker.

23. According to the applicants, a member of the Union pays about 3,500 Swedish kronor (SEK)[1] per year in monitoring fees in addition to the union membership fee of SEK 3,000. The largest competing trade union, the Syndicalist union, does not have a monitoring system. The Union therefore has a *de facto* monopoly in this field.

24. The regulation regarding the monitoring of wages was incorporated in the 1976 Construction Agreement. Previously, workers paid time-based wages had not been subjected to deductions for monitoring fees. According to the applicants, the purpose was that workers paid time-based wages, as an

[1] Approximately 390 euros (EUR) according to an exchange rate of EUR 1 = SEK 9.

act of solidarity with workers carrying out piecework, should contribute to the whole inspection system. At the material time, the majority of the workers performed piecework, the measurement of which was costly and time-consuming. The fee for monitoring time-based wages was thus not primarily introduced as reimbursement for the service in question, but as a means of supporting the measurement of piecework wages.

25. Today, approximately 80% of workers are paid time-based wages, which is almost the opposite ratio compared to the situation in 1976. In general, the monitoring of wages is now computerised and based on information provided by the employer.

26. According to a statement of 24 May 2006 by Mr Lars-Göran Bromander, former division manager at *Byggettan*, a review of the still existing audit material for 1999 showed that, as a result of the monitoring work, wages had been adjusted upwards for 648 workers, of which 250 were not Union members.

27. The activities of *Byggettan*, the local union branch, are divided into two parts: branch activities (*inter alia*, wage negotiations, union agitation and political work) and business activities (i.e. the inspection work, comprised of the monitoring of time-based wages and the measurement of piecework). Branch or non-profit activities are to be paid for by means of union membership fees. Revenue from the business activities, which is subject to value-added tax, should cover the costs of such activities.

D. Figures concerning monitoring and measuring work

28. The parties have submitted various documents to the Court containing information on the revenue and cost of the activities of the Building Workers' Union and the *Byggettan* branch. The following information has been compiled from these documents.

1. The annual reports of Byggettan

29. According to the annual report for 1998, *Byggettan* had 94 permanent employees (54 officials and 40 administrative personnel) on 31 December 1998. Before the Labour Court, the Building Workers' Union stated that the number of persons involved in inspection work (monitoring and measuring) during the period relevant to the present case, March – July 1999, was the same as at the end of 1998, and that the 1998 annual report named 21 officials who had been occupied with this activity. However, the annual report only mentions, in addition to the head of the relevant department, 12 officials who were dealing with such work, one of whom had been doing so only until 26 March 1998. It thus appears that, during the relevant period, 12-13 officials were involved in inspection work, i.e. about 22-24% of the total number of officials. Incidentally, the annual report for

1999 indicates that, at the end of 1999, the total workforce of *Byggettan* remained the same.

30. *Byggettan*'s annual reports for 1997-2000 contain statements of accounts where its business activities, i.e. the inspection work, are separated from its branch activities. According to the statement of accounts for 1999, *Byggettan*'s branch activities showed a loss of SEK 10.3 million, whereas the inspection work recorded a profit of SEK 5 million. The total revenue from the inspection work amounted to SEK 30.9 million, the operational and administrative costs of this sector of activity were SEK 25.2 million and the write-offs of movables came to SEK 0.7 million. Whereas it is shown, in a footnote to the statement of accounts, that, of the revenue from the inspection work, SEK 21.6 million derived from monitoring fees, there is no such differentiation as regards the costs.

However, in another footnote, information is provided on *Byggettan*'s costs, which are given separately for the branch activities and the inspection work. The total costs for wages and remunerations in 1999 amounted to SEK 25.5 million, of which SEK 12.5 million (i.e. about 49%) were attributed to the inspection work. The total amount of pension payments was SEK 6.9 million, of which SEK 6.346 million (or about 92%) were a burden on the latter activities. The remaining costs, including offices, travels, administration and social contributions, totalled SEK 28 million, of which SEK 12.7 million (about 45%) were attributed to the inspection work.

31. In submissions by the Building Workers' Union to the Labour Court and by the Government in the present proceedings, it has been claimed that the result of the inspection work has to be corrected to the extent that a reimbursement was received from the pension fund of the Building Workers' Union. In the statement of accounts for 1999, a reimbursement of SEK 6.360 million was recorded for the inspection work. As this reimbursement in effect reduced the costs, the amount has to be deducted from the recorded profit of SEK 5 million in order to arrive at the real financial result of the inspection work. Thus, in the Government's view, the pension payments should be recorded as a cost, whereas the pension fund reimbursement should not be considered as revenue. Consequently, in 1999, that sector of activity was actually run at a loss of more than SEK 1.3 million.

The applicants, however, disagree with the above calculation. They have stated that, throughout the years, the branches of the Building Workers' Union have made contributions to the pension fund, whose accumulated assets are used to honour the Union's pension commitments towards its retired personnel. Thus, when making pension payments, the Union branches are not the actual payer but are making the payments on behalf of the pension fund, presumably because the fund does not have an administrative division of its own to handle such payments. Accordingly, the applicants claim that, when determining the actual annual result of the

inspection work, the pension transactions should only be taken into account to the extent that the fund reimbursements differ from the pension payments. In 1999, the reimbursement received by *Byggettan* exceeded the pension payments by as little as SEK 14,000. The financial result of that year should thus be reduced by only that amount and the recorded profit of SEK 5 million consequently remains virtually unchanged.

In the statements of accounts of the Building Workers Union's Gothenburg branch for the years 1997-2000, pension fund reimbursements have been recorded as revenue and pension payments as costs. Consequently, only the differences between reimbursements and payments have affected the annual results.

32. The statements of accounts in the annual reports of *Byggettan* for 1997, 1998 and 2000 contain figures which give a picture similar to 1999. In 1997, the revenue from the inspection work was SEK 27.9 million (of which the monitoring fees came to SEK 17.3 million) and the recorded profit of that sector of activity amounted to SEK 3.4 million. *Byggettan* received a pension fund reimbursement of more than SEK 8.3 million. If the result is corrected with this amount, in the manner claimed by the Government, the profit would turn into a loss of SEK 4.9 million. However, the reimbursement exceeded the pension payments by only SEK 1.7 million. If pension transactions were altogether excluded from the calculation, as effectively suggested by the applicants, the profit would be halved and amount to SEK 1.7 million. 45% of the wage costs, 92% of the pension payments and 42% of the other costs of that year were attributed to the inspection work.

33. In 1998, the inspection work revenue was SEK 28.8 million (of which the monitoring fees amounted to SEK 19.8 million) and the recorded profit was SEK 3.5 million. A pension fund reimbursement of SEK 6.8 million was received which, if allowed to correct the result in full, would change the latter into a loss of SEK 3.3 million. However, as the reimbursement exceeded the pension payments by only SEK 14,000, the profit would remain at SEK 3.5 million if pension transactions were not taken into account. 46% of the wage costs, 93% of the pension payments and 44% of the other costs were attributed to the inspection work.

34. In 2000, the inspection work revenue was SEK 37 million (of which the monitoring fees came to SEK 27.2 million) and the recorded profit was SEK 8.5 million. A pension fund reimbursement of SEK 6.4 million was received which, if correcting the result, would reduce the profit to SEK 2.1 million. However, as the reimbursement exceeded the pension payments by only SEK 315,000, the profit would be SEK 8.2 million if pension transactions were not taken into account. 53% of the wage costs, 93% of the pension payments and 51% of the other costs were attributed to the inspection work.

2. The annual budgets of Byggettan

35. The budgets for 1998 and 2000-2003 have been made available to the Court by the parties.

36. In its budget for 1998, *Byggettan* estimated that the monitoring work would cost SEK 3.9 million and that the direct costs of the inspection unit (dealing with both monitoring of time-based wages and measuring of piecework) would amount to SEK 12 million. The projected revenue from the inspection work was SEK 29 million. It thus appears that the costs of the monitoring work accounted for about one-third of the inspection costs. However, as can be seen from the above-mentioned figures presented in the annual report for 1998 (see paragraph 33 above), the monitoring fees' share of the inspection revenue came to more than two-thirds (SEK 19.8 million out of a recorded total of SEK 28.8 million). That share was approximately the same in 1997, 1999 and 2000.

37. The budgets for 2000-2003 give the estimated total costs of the various units of *Byggettan*. In 2000, the total projected costs of all sectors of activity were SEK 69.4 million. The monitoring unit had a budget of SEK 6.1. million and the wages and contracts unit (the largest unit of *Byggettan*, which, according to the description in the budget, was dealing with, *inter alia*, the measurement of piecework, wage negotiations and matters concerning workers' co-determination, the work environment and safety) had a budget of SEK 18.1 million. It is not possible to discern, from the material available to the Court, how much of the latter unit's budgeted costs related to the measuring work. Furthermore, as an unknown portion of *Byggettan*'s general administrative costs would presumably have to be attributed to monitoring and measuring, the total budgeted costs for the two types of inspection work cannot be established.

However, the costs of the inspection work according to the official results for 2000 appear to be considerably higher than the budgeted costs for that activity. Thus, the statement of accounts for that year attributes SEK 28.5 million in operational and administrative costs and write-offs to the inspection work, which corresponds to about 52% of the grand total of SEK 54.8 million. If, as claimed by the Government, an amount corresponding to that year's pension fund reimbursement is to be added as an actual cost, the official costs attributed to the inspection work rise to 57% of the total costs.

38. In the budget for 2001, the projected total costs of *Byggettan* were SEK 73.5 million, while those pertaining to the monitoring unit and the wages and contracts unit were SEK 6.3 million and 19.6 million, respectively. The 2002 budget estimated the total costs at SEK 73.1 million. Both the monitoring unit and the new wages unit (responsible, *inter alia*, for measuring work) had a budget of SEK 7.2 million. In 2003, the budgeted total costs were SEK 77.8 million and those pertaining to the monitoring unit and the wages unit were SEK 7.1 million and 8.6 million, respectively.

3. The financial results of inspection work performed by all branches of the Building Workers' Union in the years 2001-2005

39. A chart compiled by Mr Leif Hjelm, Deputy Head of Finance at the Union, and submitted to the Court by the Government, contains the results of the monitoring and measuring activities of all 34 branches of the Union. According to the chart, *Byggettan* recorded a positive result in four out of the five years presented and had an accumulated profit of SEK 36.2 million during the period. If corrected with the reimbursements received from the pension fund, the accumulated profit would amount to SEK 21.8 million. However, the chart shows a negative overall result for 26 of the branches. As a consequence, the accumulated five-year result of the inspection work of all the branches of the Union was a loss of SEK 5 million, or – if the result is corrected with the contributions made by the branches to the pension fund and the reimbursements received from that fund during the period – a loss of SEK 58 million.

It should be noted that the chart in question does not provide any information on the actual pension payments made by the Union branches, nor how the annual costs had been assigned between the inspection work and the branches' other activities. The statements of accounts of the Gothenburg branch for the years 1997-2000 show, however, that that branch allocated the costs in much the same way as *Byggettan*.

4. Statement by Mr Rolf Andersson, treasurer at Byggettan

40. In a statement of 23 February 2005, made in regard to the present case and submitted to the Court by the Government, Mr Rolf Andersson gave the following information on the monitoring activities of *Byggettan* in 1999. A total of about SEK 9.4 million was deducted from the wages of workers working for employers bound by the Construction Agreement. The total costs of the monitoring work were approximately SEK 16.4 million. A large part of the costs was financed by the employers themselves and not by means of deductions from workers' wages.

5. Statement by Mr Hans Tilly, president of the Building Workers' Union

41. In the Union's periodical, *Byggnadsarbetaren*, issue no. 8/2006 (published on 18 May 2006), Mr Hans Tilly stated that the Union had a relatively low membership fee compared to other major trade unions because the monitoring and measuring fees bore the cost of the organisation of negotiations.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

42. The applicants asserted that the levying of the monitoring fees on their wages had amounted to a violation of their property rights. They relied on Article 1 of Protocol No. 1, which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. The submissions of the parties

1. The applicants

43. The applicants submitted that the situation in the present case was to be examined under the second sentence of the first paragraph of Article 1 of Protocol No. 1, as the wage deductions involved a deprivation of their property for a service which they had never requested and which, as regards the greater part of the deductions, did not correspond to any service at all. Whichever rule of Article 1 was applicable, there had been an interference with their property rights which lacked a legitimate aim and which, in any event, was not proportionate to any such aim.

44. As to the proportionality of the alleged interference, the applicants submitted, *inter alia*, the following. The monitoring fees constituted covert union membership fees. That conclusion followed already from the judgment of the Labour Court, which had stated that there was no reason to distinguish between monitoring work and general union activities and that the monitoring fees contributed financially to those general activities. Through the payment of those fees, the applicants came to support the Union's political and ideological programme with which they did not agree. Moreover, the monitoring system was unique to the Building Workers' Union and could not be seen as an indispensable tool for the proper functioning of the Union on the labour market. In balancing the interests involved, the applicants' interests thus weighed more heavily. Further, in so far as the monitoring work generated a surplus, a legitimate union interest was lacking altogether and a balancing exercise was irrelevant.

45. Referring to the documents submitted to the Court, including the annual reports and budgets of *Byggettan*, the applicants claimed that the

monitoring work generated a substantial annual surplus. This could be seen already from the official results in the annual reports. The Union's and the Government's claim, that the actual results were negative as amounts corresponding to the pension fund reimbursements had to be added to the costs for each year, was repudiated by the applicants; only the difference between reimbursements and actual pension payments affected the results, which thus remained positive. The applicants also questioned the allocation of costs made by *Byggettan* and other branches of the Union; despite the fact that only a small number of employees were involved in monitoring and measuring work – the majority of staff being occupied with branch activities – more than 90% of the pension payments and about half of the wage costs were allocated to the monitoring and measuring work. It was the applicants' opinion that this had been done because of the fact that the costs of wages attributed to the business activities were tax deductible. They also pointed out that the results forecasted in the budgets were far better than the results recorded in the annual reports and that these "negative budget deviations", i.e. miscalculations, continued year after year. In their view, the only possible conclusion was that the budgets more accurately indicated the true profits and that the results recorded in the annual reports were the effect of certain reallocations of costs.

The applicants further asserted that their submissions constituted sufficient evidence to conclude that the inspection work, in particular the monitoring activities, generated a surplus far exceeding the profits recorded in the annual reports of *Byggettan*. In these circumstances, the Government should bear the burden of proof for their claim that the Union's inspection work was run at a loss. To date, the Government had not presented adequate information allowing a full examination of the Union's revenue and costs in respect of the inspection work.

46. As to the Government's contention that all construction workers benefited from the wage monitoring, the applicants submitted that it was the wish of the Union that collective agreements have strong normative effects and that there was always a risk for the Union that its work, to a greater or lesser extent, benefited non-members. They also maintained that unorganised workers did not receive any help from the Union if a fault was discovered during the wage monitoring. Moreover, while, formally, the Union was entitled to compensation only if monitoring work actually had been carried out, it had never, in practice, declined to receive any monitoring fees.

47. The applicants finally submitted that it was the system of collective agreements with normative effect, regulated by law, which had made possible the alleged violations of their rights. The Swedish State, therefore, had had a positive obligation to protect their rights in relation to the Union.

2. The Government

48. The Government contended that, if Article 1 of Protocol No. 1 was at all applicable, what had occurred in the present case had to be considered as a control of the use of property falling within the scope of its second paragraph. They left it to the Court to decide whether an interference giving rise to State responsibility had occurred. They submitted, however, that the alleged interference had been lawful. Furthermore, the wage monitoring system that followed from the Construction Agreement, and the costs to which the applicants were compelled to contribute, served not only the legitimate aim of protecting the rights and freedoms of others, but also pursued the general interest of the community, namely to uphold the legitimacy of the Swedish approach in the area of industrial relations.

49. The Government further maintained that the alleged interference under Article 1 of Protocol No. 1 had been proportionate to the aim pursued. In support of that contention they submitted, *inter alia*, the following. In general, the assessment of proportionality had to be made in the light of the importance attributed in Sweden to the system of collective bargaining. The collective agreements had an important normative effect and protected workers' interests in a general sense. In the construction business, employees who were not members of the Union also benefited from the latter's negotiations with the Industries concerning, for instance, wage levels, although they did not contribute financially to this part of the Union's activities, which was financed by means of membership fees. As wage monitoring ensured that the collective agreement was adhered to by the employers, it fulfilled an important function in the interests of construction workers generally. There was no difference in treatment between Union members and other workers; *Byggettan* would also inform non-unionised workers and contact their employers in case any discrepancies were found. In this respect, the Government referred the statement by Mr Bromander, according to which, in 1999, wages had been adjusted upwards for 250 non-unionised workers as a result of the monitoring work (paragraph 26 above). The Government asserted that, if non-unionised workers were exempt from contributing to the wage monitoring system, it would appear to be at the expense of the Union's members, who would presumably have to contribute more to help cover the costs of the monitoring work.

50. The Government also adduced that it was an essential trade union interest, as such, to ensure that the wage clauses of the Construction Agreement were adhered to. The wage monitoring system had a preventive impact in the sense that employers, being aware of the fact that deviations from the Construction Agreement would probably not go unnoticed, presumably would take more care in respecting the wage levels specified by the agreement. Due to the short duration of their employment periods and their resultant difficulties in being informed of the applicable collective

agreement, this effect was particularly vital for construction workers. Furthermore, *Byggettan* was only entitled to compensation if monitoring work had actually been carried out and only the actual costs of monitoring were to be covered by the fees. According to the treasurer at *Byggettan*, during the relevant year 1999, the overall costs for wage monitoring had exceeded the total amount which had been deducted from the wages of workers employed by an employer bound by the Construction Agreement. This indicated that the applicants had not contributed to *Byggettan*'s branch activities by means of the deductions made to their wages. Further, in the Government's opinion, the applicants had provided no direct evidence to establish that any such contribution had occurred. Moreover, according to the Union, its business activities, including wage monitoring, were strictly separated, financially, from the branch activities. Thus, the monitoring fees provided financial support only to the monitoring work, which aimed to verify compliance with the collective agreement's provisions on wages. The fees should therefore be viewed as payment for a service which – as a consequence of the legal framework governing the labour market in Sweden – was provided by the Union rather than the State. The Government further pointed out that the amounts deducted from the applicants' wages were relatively limited.

51. With respect to the results of the wage monitoring activities, the Government submitted that the use of a standard fee of 1.5% of the wages necessarily meant that the precise outcome of the monitoring work might vary between different years and between the local branches of the Union. However, according to the information provided to the Government by the Union, the majority of local branches showed neither significant profits nor losses from their monitoring work. As regards the documents made available to the Court, the Union's position was that the profits from the monitoring and measuring activities of *Byggettan*, as shown in its annual reports for the years 1997-2000, did not reflect the real results, as money from the Union's pension fund had been used to cover part of the costs. Instead, when the effects of these pension fund reimbursements had been taken into account, the monitoring and measuring activities of *Byggettan* showed a loss in the first three years and a profit for the year 2000 of only SEK 2.1 million, rather than the profit of SEK 8.5 million recorded in the annual report. Furthermore, the chart compiled by the Union for the years 2001-2005 showed that, whether or not pension fund reimbursements were taken into account, the accumulated result of the monitoring and measuring activities of all the Union branches was a negative one. In this connection, the Government asserted that a fair examination required that not only the situation of one local branch was taken into account. The Government maintained, however, that they were entirely depending on information provided by the Union and were not in a position to assess whether the Union's analysis of the matter was economically correct.

B. The Court's assessment

1. Whether there has been an interference

52. The Court notes that, in accordance with the rules of the Construction Agreement, deductions of 1.5% on the applicants' wages were made to cover the monitoring fee. The Court finds that these deductions deprived the applicants of their possessions within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1.

2. Purpose and lawfulness of the interference

53. It must therefore be determined whether this deprivation pursued a legitimate aim "in the public interest" and was "subject to the conditions provided for by law" within the meaning of the second rule of Article 1 of Protocol No. 1.

54. The Court reiterates that a deprivation of property effected in pursuance of legitimate social, economic or other policies may be "in the public interest" even if the community at large derives no direct benefit from that deprivation (see *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 31-32, § 45). Having regard to the wider context of the case, namely the fact that, in Sweden, it has been left to the parties on the labour market to regulate wages and various other work conditions through collective agreements and that there is no State authority overseeing compliance with these agreements, the Court accepts that the levying on workers' wages of a fee to cover the costs of the Union's inspection work, as such, can be considered to pursue a legitimate aim "in the public interest", as the inspection work aims to protect the interests of construction workers generally. It further notes that it is not in dispute between the parties of the present case that this scheme was in accordance with Swedish law.

3. Proportionality of the interference

55. An interference with the peaceful enjoyment of possessions must strike a fair balance between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. The requisite balance will not be found if the person concerned has had to bear an individual and excessive burden (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, pp. 26 and 28, §§ 69 and 73). In other words, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see, for instance, *James and Others*, cited above, p. 34, § 50).

56. As to the facts of the present case, the Court notes that approximately 30 euros were deducted monthly from the applicants' wages during their five-month employment with the company in order to reimburse *Byggettan* for its costs relating to the monitoring of building workers' wages in the Stockholm region. The applicants have claimed that they, as unorganised workers, would not have received any help from *Byggettan* if faults had been discovered in the course of the wage monitoring. The Court accepts, however, the information given by Mr Bromander in his statement of 24 May 2006 that, in 1999, 250 unorganised workers had had their wages adjusted upwards as a result of *Byggettan*'s monitoring activities (paragraph 26 above). As concluded by the Labour Court in its judgment of 7 March 2001 (paragraph 15 above), it thus appears that the applicants received a certain service in return for the fee paid.

57. The Court further notes that the Construction Agreement stipulates that the fees which construction workers are compelled to pay for the monitoring of time-based wages and measuring of piecework and result work are to cover the costs pertaining to those inspection activities. The fees should not be used as a contribution towards the Union's branch activities. Moreover, the business activities, i.e. the inspection work, of *Byggettan* and other branches of the Union, are accounted for separately from the branch activities.

58. Nevertheless, the Court has taken into consideration the financial information submitted in regard to the activities carried out by *Byggettan*. It notes that, whereas less than one-fourth of its officials appear to have been involved in inspection work, the statement of accounts for the years 1997-2000, included in the annual reports, attributed more than 90% of the pension payments and almost half of the costs for wages, remunerations and other expenses to the inspection work. The Government have not commented on this fact and the annual reports of *Byggettan* do not provide any explanation for the allocation of costs between its business and branch activities. Whereas no information is available to the Court as to the allocation of costs for the Union as a whole, the statement of accounts of the Gothenburg branch for the same period show that it allocated the costs in the same manner as *Byggettan*. Noting that the matter at issue in the present case is the fees imposed for the monitoring of time-based wages, the Court observes that these statements of accounts do not differentiate between the costs of the monitoring work and those pertaining to the measuring activities.

The Court further notes that the annual reports of *Byggettan* and the Gothenburg branch for 1997-2000 all recorded profits from the inspection work, despite the rather high costs attributed to that sector of activity. It is true that the results in several of these years would be negative if, as claimed by the Union, the amounts reimbursed by the pension fund would

be added to the costs of the inspection work. The Court, however, accepts the applicants' view that, in order to arrive at correct annual results, the reimbursements should only be taken into account to the extent that they exceeded the actual pension payments made by the Union branches. The recorded profits remain largely unchanged if this excess is taken into account.

59. In estimating the financial results of the inspection work, the budgets of *Byggettan*, naturally, provide less reliable information than the annual reports. This is even more so as it is not entirely clear which units of *Byggettan* were involved, directly or indirectly, in the monitoring and measuring activities. Nevertheless, even a very careful analysis would appear to show that the budgeted costs of the inspection work were considerably lower than the costs attributed to these activities in the annual reports. No explanation has been forthcoming from the Government, or the Union, as to the difference between these figures or to the fact that the difference remained year after year.

60. However, the Government have presented a chart compiled by the Union for the years 2001-2005, which indicates an accumulated loss of SEK 5 million for the inspection work of all the branches of the Union taken together. Still, as the chart does not specify the revenue and costs of the various branches or the allocation of costs between the business and branch activities, it does not provide a basis for an analysis of the financial results of the inspection work in those years.

61. The Court considers that, although the above-mentioned documents give certain indications, it cannot draw any completely reliable conclusion from the available information as to whether profits have been made from the monitoring activities of *Byggettan* or the inspection work carried out by the Union branches as a whole. Moreover, it cannot be ascertained whether a possible surplus generated by the inspection work has been used to cover part of the costs relating to the Union's branch activities, i.e., *inter alia*, wage negotiations, union agitation and political work. It notes, however, the statement made by the Union president, Mr Tilly, that the monitoring and measuring fees carry the costs of the negotiation organisation (paragraph 41 above).

62. Even so, the Court finds that the absence of full information enabling a reliable examination of the results of the Union's inspection work and the actual use of the money received for that work raises an issue under Article 1 of Protocol No. 1. As has been noted above, the monitoring fees deducted from the applicants' wages constituted payment for a service provided by *Byggettan*. In accordance with the Construction Agreement, only the actual cost of monitoring was to be covered by the fees. In these circumstances, the applicants were entitled to information which was sufficiently exhaustive for them to verify that the fees corresponded to the actual cost of the inspection work and that the amounts paid were also not used for other

purposes. This was even more important as they had to pay the fees against their will to an organisation with a political agenda which they did not support. However, neither the facts and figures presented in the annual reports and budgets of *Byggettan*, nor those contained in the submissions of the Union and the Government in the domestic and the present proceedings, can be considered to have been sufficient for that purpose.

63. Moreover, while the respondent State has to be given a wide margin of appreciation in the organisation of its labour market, a system which, as in the present case, in reality delegates the power to legislate, or regulate, important labour issues to independent organisations acting on that market requires that these organisations are held accountable for their activities. This requirement was particularly significant in the present case, where the relevant labour market organisations had concluded a collective agreement whose effects also extended to unorganised workers, obliging them to contribute financially to a particular activity carried out by a trade union. In these circumstances, the Court finds that the State had a positive obligation to protect the applicants' interests.

64. In conclusion, the Court considers that the Union's wage monitoring activities, as applied in the present case in the context of the Swedish system of collective bargaining, lacked the necessary transparency. Thus, even having regard to the limited amounts of money involved for the applicants, it was not proportionate to "the public interest" in the case to make deductions to their wages without giving them a proper opportunity to check how that money was spent.

There has accordingly been a breach of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATIONS OF ARTICLES 9, 10, 11 AND 14 OF THE CONVENTION

65. The applicants also complained that the levying of the monitoring fees on their wages had violated their right to negative freedom of association under Article 11 of the Convention, since the fees had been tantamount to forced membership of the Union and had contributed to the general union activities. Moreover, under that Article, read in conjunction with Articles 9 and 10 of the Convention, they claimed that, through the payment of the fees, they had come to support the Union's political and ideological programme. Finally, under Article 14 of the Convention in conjunction with Article 11 and Article 1 of Protocol No. 1, they asserted that they had been discriminated against in relation to members of the Union as well as members of other trade unions.

66. The Government contested the applicants' allegations.

67. In the light of its findings with regard to Article 1 of Protocol No. 1 (paragraph 64 above), the Court does not consider that a separate examination of the merits of the case under Articles 9, 10, 11 and 14 is necessary.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

69. The applicants sought EUR 7,500 each for non-pecuniary damage, on account of anger, frustration and emotional distress caused by the events of the case.

70. The Government did not contest that, should the Court conclude that a violation of the Convention had occurred, the applicants might be entitled to compensation for non-pecuniary damage. In view of the limited financial impact that the monitoring scheme had had upon the applicants, the Government found, however, their claims to be somewhat excessive. They left it to the Court to determine an award.

71. The Court finds it appropriate to make an award for non-pecuniary damage. Ruling on an equitable basis, it awards each of the five applicants EUR 5,000 under that head.

B. Costs and expenses

72. The applicants claimed a total of SEK 1,012,500 (approximately EUR 112,000) in legal fees for the proceedings before the Court. This amount corresponded to 385 hours of work for the applicants' counsel Mr Bratt and Mr Södergren, and 65 hours of work for Mr Herrlin, all at an hourly rate of SEK 2,250, inclusive of value-added tax (VAT). They further claimed SEK 20,000 for an expert opinion given by Mr Eskil Qwerin, an accountant. Finally, they claimed SEK 28,513.50 for travel and accommodation expenses incurred in attending the Court's hearing in the case.

73. The Government did not question the number of hours worked by the applicants' counsel. With regard to the work of Mr Herrlin, they pointed out that he is the head of the lawyers' section of the Industries, the sixth applicant in the case whose complaints had been declared inadmissible by the Court's decision of 28 March 2006. They could therefore accept the

claim for compensation for his work only in so far as it had been undertaken to assist Mr Bratt and Mr Södergren in representing the five remaining applicants. Bearing in mind that the hourly rate applied within the Swedish legal-aid system was SEK 1,286, including VAT, the Government further considered that the hourly rate applied for the legal work was unduly high. Instead, they could accept an hourly rate of SEK 1,800, including VAT. They also found the sum concerning the expert opinion to be excessive, considering no more than half that sum to be appropriate. The Government, however, accepted the amount claimed for expenses incurred in connection with the Court's hearing.

74. According to the Court's case-law, an applicant is entitled to reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court finds the views expressed by the Government to be reasonable. It awards the applicants, jointly, compensation of EUR 77,000 (corresponding to 385 hours at an hourly rate of SEK 1,800) for the work carried out by Mr Bratt and Mr Södergren, EUR 6,500 (corresponding to half the hours claimed at an hourly rate of SEK 1,800) for the work undertaken by Mr Herrlin, and EUR 1,100 for the expert opinion given by Mr Qwerin. The expenses incurred in connection with the Court's hearing, approximately EUR 3,200, are to be compensated in full. In total, therefore, the Court awards the applicants, by way of costs and expenses, EUR 87,800.

C. Default interest

75. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

2. *Holds* that it is unnecessary to examine the merits of the remainder of the applicants' complaints;

3. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following

amounts, to be converted into Swedish kronor at the rate applicable at the date of settlement:

(i) EUR 5,000 (five thousand euros) to each of the five applicants in respect of non-pecuniary damage;

(ii) EUR 87,800 (eighty-seven thousand eight hundred euros) to the applicants jointly in respect of costs and expenses;

(iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ	A.B. BAKA
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Ms Fura-Sandström is annexed to this judgment.

A.B. B.
S. D.

CONCURRING OPINION OF JUDGE FURA-SANDSTRÖM

After some hesitation I voted with the majority in finding a violation of Article 1 of Protocol No. 1 although I would have preferred to have the case examined under Article 11 of the Convention for the following reasons:

Having reached the conclusion that the right to negative freedom of association under the Convention is weaker than the positive right, the Labour Court in its judgment of 7 March 2001 put the emphasis on the undisputed fact that the applicants were never under pressure or forced to join the Union. Hence there was no violation of their negative freedom of association, which under domestic law is exclusively based on the Convention. Referring to the European Court's case-law, the Labour Court considered that only the core of the negative freedom of association was protected under Article 11, meaning that a person must have been subjected to a certain measure of force or at least strong pressure to join an organisation in order to give rise to a violation of that Article (see paragraph 15 of the judgment). Assuming that the Court's case-law on the negative freedom of association can be interpreted in this way, it might be fair to describe it as somewhat undeveloped and conservative to date. Perhaps this case was not the appropriate one for developing the case-law further to include other situations than those where actual force or strong pressure had been exercised.

The applicants claim, among other things, that they cannot see where their money has gone. The lack of transparency of the accounts and other reports from *Byggettan* leads them to suspect that the fees levied on their wages might have been contributing to the general activities of "an organisation with a *political agenda which they did not support*" (see paragraph 62 of the judgment, my emphasis), which they find contrary to their rights under Article 11. Having regard to the financial information made available concerning the Union's monitoring work, I find that the applicants' suspicions in this respect were justified. Using the same reasoning as the national court, I find that the complaint falls within the ambit of Article 11 and, contrary to the national court, that there was a violation, since the Government failed in their positive obligation to protect the interests of the applicants (see paragraph 63 of the judgment). Taking this approach it would not have been necessary to examine the complaint under Article 1 of Protocol No. 1, which in my opinion would have been a more satisfactory line of reasoning, especially in view of the relatively small sum levied, in all about 160 euros per applicant.