

**No Forced Union Membership
or Dues for Politics:**

It's a Human Right

The European Experience

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AGENDA/OBJECTIVES

Overview European political and Court system

Summarize European history of:

- End of closed shop – forced membership
- End of non-member dues for politics & other non-bargaining purposes

NOTE: Most unions in Europe DO NOT seek dues from non-members

SWEDEN, EU & USA STATS

SWEDEN

EU

USA

GDP: \$290 billion*

\$13.08 trillion*

\$13.16 trillion*

Per Cap: \$32,200*

\$29,900*

\$43,500*

Pop: 9,031,088**

490,426,060**

301,139,947**

COE Pop:

806,595,500**

Provs: none

n/a

50 states 1 district

Founded: 1523

1992+
(Treaty of Maastricht)

1776

CIA World Factbook Data

* 2006 and \$US

** 2007

+ EU roots go back to 1951

BANNED – COUNCIL OF EUROPE (47 member countries)

Closed shops:

Post-entry (working & clause comes in)

- *Young, James and Webster* (1981)

Pre-entry (member before or must join to work)

- *Sørensen & Rasmussen v. Denmark* (2006)

Union dues from non-members:

For political purposes & other non-bargaining purposes

- *Evaldsson and Others v. Sweden* (2007)

UNIONS LOSING MEMBERS

Sweden

Blue collar unions lost 97,000 & white collar 40,000 in 2007 YTD

Members under age 25:

- 1994: 77%
- 2007: 52%

Decreasing due to government measures re cost of being a union members and end of forced membership

Denmark

Membership from 84.6% in 1994 to 81.7% in 2001 to 78.5% in 2005

Workers under 30:

Since 1995 a 40% drop from 471,000 to 284,000

UK

From 13 million in 1979 to just over 6 million today. Forced membership ended starting in 1981

REFORM IN EUROPE

Mostly not the result of political will – but in spite of

Litigation by employees 1976 – 2007, two venues:

- European Court of Human Rights
- European Social Committee

Role in European judgments of Art. 20 (2) of UN Declaration of Human Rights:

“No one may be compelled to belong to an association”

EUROPEAN BODIES



COUNCIL OF EUROPE (COE)

Founded '49 - wake of WWII

22 member countries, today 47

Principal focus: Human and social rights

European Convention on Human Rights (1950)

- European Court of Human Rights

European Social Charter

- Social Committee

EUROPEAN UNION (EU)

Founded '51 - wake of WWII

6 member countries, today 27

Principal focus: trans-border economic activities

Legislative powers

- European Court of Justice

EUROPEAN COURT OF HUMAN RIGHTS & THE CONVENTION

THE COURT

Individual & inter-state complaints
(collapsing under its success)

Declaratory judgments, awarding
damages & costs

May order general measures that
change national law

Labour law a sensitive social area left for member countries to decide
– at least 47 labour codes for 47 countries

THE CONVENTION

Human Rights

- Rights of association, conscience, opinion (Art. 11, 9, 10)
- Right of possession or property rights (Art. 1 of Protocol No. 1)

SOCIAL CHARTER & SOCIAL COMMITTEE

SOCIAL CHARTER

Social and human rights – including:

Express right to organize unions -
Art. 5

Social Committee has decided Social
Charter Art. 5 also includes right to
not associate

SOCIAL COMMITTEE

Rule on collective complaints
from NGO's & organizations –
actio popularis

NOT a venue for "victims"

Bi-annual reporting

Committee of Ministers adopts
resolutions "recommending"
measures to achieve compliance

EVALDSSON v. SWEDEN (2007)

- Master Agreement, construction sector, union monitored member & non-member wages for fee of 1.5 % (dues)
- Monitored piece-work & time-salary; latter easier - less expensive
- 5 unorganized employees (non-members) of 8 total directed employer to stop deductions. Employer complied
- Union claimed violation of Master Agreement
- Employer organization applied to the Swedish Labour Court claiming violation of the right not to associate - Art. 11
- Labour Court cited *Young*, found no compulsion as non-members did not become members merely by paying the monitoring fees
- Labour Court avoided issue of whether the system generated a surplus for the union

EVALDSSON

JUDGMENT

Court ruled on right of possession –
(property rights)

Court declined to rule on freedoms: from
forced association, conscience & opinion

Court found entitlement to verification that fees or dues
collected by union corresponded to union's costs:

*" This was even more important as they had to pay the fees
against their will to an organization with a political agenda
which they did not support. "*

Mere suspicion "dues" used for non-bargaining purposes
(political, social, etc) was enough to find violation



SØRENSEN & EVALDSSON

Evaldsson: Lack of information violated human right to Peaceful Enjoyment of Possessions (property rights)

Sørensen:

"...it is to be observed that such "non-political membership" does not entail any reduction in the payment of the membership fee to the specific trade union. In any event, there is no guarantee that "non-political membership" will not give rise to some form of indirect support for the political parties to which the specific trade union contributes financially."

Evaldsson & Sørensen together render union dues for non-bargaining purposes illegal under European Convention on Human Rights

Transparent accounting to non-members required

YOUNG, JAMES & WEBSTER v. UK (1981)



Legislation changed to allow post-entry closed shop collective agreements. Employer signs one on a renewal. Some employees opposed to union political agenda. Applicants refused to join; employer fired per union

- Judgment's effect: right of non-association even though it had been specifically considered and left out of Convention.
- Did not rule on all forms of closed shops, just post-entry
- Loss of livelihood struck at the very substance of freedom of association
- Other rights noted as factors: conscience and opinion (Art. 9 and 10)

SIGURJONSSON v. ICELAND (1993)

Taxi driver compelled member of professional organization. Applicant stopped paying membership fees, he did not share view on limiting competition. Expelled and lost license.



- Repetition of *Young* ruling re post-entry, but not a union and not clear cut post-entry; might be pre- entry case
- After adoption of legislation confirming compulsion he rejoined "Frami"
- ECHR - no jurisdiction to rule on the issue of expulsion, but could rule on the compulsion to join
- Court found Art. 11 violation since applicant faced the dilemma of joining organization or no work. Also noted right of conscience and opinion (Art. 9 and 10) as factor

COUNCIL OF EUROPE SOCIAL COMMITTEE ACTIONS

- Played a key role in the ending of 10,000 to 15,000 Swedish closed shops (in substitute agreements)
- 4 reports of violations in 14 years 1988-2002
- Some closed shops eliminated
- 2002: Collective complaint by the confederation of Swedish Enterprises (employers)
- 2003: Social Committee demands full resolution by next Report in 2005
- May 30, 2005 – all closed shops eliminated in Sweden

SØRENSEN & RASMUSSEN v. DENMARK (2006)



Sørensen

- University student applied for job, to last 10 weeks
- Job application required union membership
- Sørensen opposed union's political agenda
- Refused to pay membership fees, lost membership; fired
- Danish Supreme Court had banned post-entry, but not pre-entry
- Sørensen aware of requirement before employment, Danish Court ruled in favour of union pre-entry okay

Rasmussen

- Confederation union member but did not support political affiliations
- Resigned & joined a Christian union
- After period of unemployment offered job conditional on joining Confederation union
- He took the job, rejoined but still did not support its' political affiliations
- Applies to European Court of Human Rights claiming violation

EUROPEAN COURT OF HUMAN RIGHTS

Sørensen Grand Chamber Judgment

- Did not address equality of negative & positive freedom of association; but did not exclude possibility they are equal
- Found no reason to distinguish between post & pre-entry
- Recognised personal autonomy as a principle of Convention's guarantees
- Danish Government argued applicants merely subscribing to a "non-political membership". Court responded:

"...it is to be observed that such "non-political membership" does not entail any reduction in the payment of the membership fee to the specific trade union. In any event, there is no guarantee that "non-political membership" will not give rise to some form of indirect support for the political parties to which the specific trade union contributes financially."

Art. 11 applicable, next question: interference justified?

EUROPEAN COURT OF HUMAN RIGHTS

Sørensen Grand Chamber Judgment

Danish Government had a hard time justifying system

Court found little need for closed shops in modern society since trade unions have grown to be strong organizations

"...there is little support . . . for the maintenance of closed shop agreements...and that their use in the labour market is not an indispensable tool for the effective enjoyment of trade-union freedoms."

Conclusion: End of closed shops in 47 COE countries

FINAL REMARKS

UN Declaration of Human Rights

“No one may be compelled to belong to an association”

Used by European Court of Human Rights to read in freedom from forced association

End of non-member dues for politics & other non-bargaining purposes

NOTE: Most unions in Europe DO NOT seek dues from non-members

“Unionizing” non-union workplaces in Sweden mainly done via employer focused effort – no system of cards & votes