

Court of Human Rights case signals end of 'closed shop' agreements

In a little-known case in January 2006, the European Court of Human Rights cast a shadow over Danish rules on trade union membership. The Strasbourg-based court ruled that two Danish citizens had a point in their complaint about the violation of their right not join a trade union.

In the first case, a student was fired from his summer job for not being a member of a specific trade union, and in the second a worker was forced to join a particular union to keep a specific job. Both cases involved 'closed-shop' agreements between unions and employers which are permitted in Denmark and in Ireland. The judgment in this case unfortunately supports efforts by the ECJ (European Court of Justice) to roll back trade union rights within the EU.

The ECJ, the Luxembourg-based court which constantly seeks to expand the competency of the EU, is to rule this year on whether the right of free movement across the bloc was violated by trade unionists. But, according to the secretary-general of trade union 3F, Per Christensen, 'if eastern Europeans working in Denmark are to be ensured salaries according to Danish conditions, the unions have to fight for it, and the exclusive agreements [closed shop] are the key to ensuring that agreements are held'.

The Court of Human Rights acknowledged the Danish government's argument that the applicants could have chosen to seek a job with an employer who had not entered such an agreement with a trade union. However, the judges ruled that 'the applicants were nonetheless individually and substantially affected as a result of the application of the closed-shop agreements to them'. They concluded that 'Denmark had failed to protect the applicants' negative right to trade union freedom'. The court also argued that closed-shop deals have been abolished in most European countries over the years, indicating that 'such agreements were not an essential means for securing the interests of trade unions and their members'.