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***Article 11, the Right to be Protected against Trade Unions and Employers' Organizations?***

Initially article 11 of the European Convention on Human Rights was construed as an article to protect the individual's freedom of association. It was meant to postulate the positive freedom to associate, organise, to be a member of an organisation. Not mentioned in the article, was (and is) the negative dimension of the freedom of association. The preparatory texts of the Convention reveal that it was deliberately omitted by the "founding fathers". A reference to the negative freedom of association like in the International Declaration on Human Rights was thought to be undesirable given the diversity in national systems and the existence of closed shops in some of them. However, the historical context didn't dissuade the European Court on Human Rights from recognising a negative dimension in article 11, thus integrating a certain right not to associate, organise, to be a member of an organisation in the Convention. Moreover, the Court's case law about the freedom of association largely relates to disputes of this kind. As only organisations can complain to supervision bodies of the ILO and the Committee of Social Rights, the ECHR constitutes the place for individuals to dispute national practices which they consider as mandatory membership.

In twenty years the Court had the possibility to develop a concept of the negative freedom of association. Yet, many questions remain unanswered. Since the Court tends to broaden the scope of negative freedom of association, its extent continues to be the object of debate. Whereas in 1981 the Court hesitated to recognise a negative freedom of association, by 2006 this negative aspect was well established and overstrained pre-entry as well as post-entry closed shops. All case law has in common that it concerns trade unions and employers' organisations as private organisations and individuals who objected to membership on the grounds of political conviction. The aim of the Court's interpretation of article 11 is the protection of the individual against abuse of dominant position or influence by the state, but article 11 can certainly not be used against collective agreements. Before 2010 the compulsory membership had to be accompanied by severe consequences for non-members, like loss of employment. In 2010 the Court refined this condition, as even the payment of a small amount was considered as a severe consequence. At the same time paying contributions to an organisation was ruled to be an important aspect of membership, so that an individual (employer) cannot be compelled to pay a "tax" on behalf of an employers' organisation. Similar uncertainties determine the relation between the negative and the positive freedom. The question whether the negative freedom is as important as the positive freedom, was raised several times before the Court, but the Court seems to avoid to answer it. However, one thing is obvious: as an individual cannot be compelled to be member, the same applies to the organisation who cannot be compelled to accept an undesirable individual as a member.