

Sweden and the EU

A marriage of convenience or passion?



The long and winding road to the EU

- The policy of free-trade and non-alignment after WW II – a position of strength
- Two aborted applications – 1961 (association) and 1967 (conditioned membership)
- The EFTA as an alternative (1973-1993)
- The change – the fall of the Berlin wall and a declining economy – application for membership 1991, EEA 1994, full membership 1995

The constitutional framework

- Sweden is a parliamentary democracy with the Riksdag as the foremost representative of the Swedish people - The Riksdag is the supreme institution.
- The system of control is designed to check executive, not legislative, action. Heavy emphasis on political (not legal) accountability.



The constitutional framework

- The Swedish courts have a very limited constitutional role. The term “the third state power” applies to the press, not the courts
- Fundamental rights protection in the IG is primarily directed towards the Parliament. The freedom of expression of the media is the strongest right in the IG and regulated in detail in two separate basic laws – instrumental for securing parliamentary democracy
- The ECHR and the EU membership have led to an increased importance for judicial review and rights adjudication

The EU in the Swedish IG

- IG 10:5 – Sweden *may* transfer competencies to the EU if two conditions are met
- 1. The transfer may not affect the principles of the form of government
- 2. Rights protection must be equivalent to the IG and the ECHR

The conditions are very similar to the reasoning of the BvG in the Brunner case

The EU law

- The instruction of application of EU-law is made in a normal law (the EU law)
- Consequence: Whereas competence transfer must be made in accordance with constitutional law, revocation of competence can be done in the same procedure as normal legislation. The EU membership is not covered by constitutional protection.

Problems related to application of EU-law in Sweden

- Swedish courts have per 31 December 2007 referred 69 cases to the ECJ
- In 2004 Sweden was the subject of enforcement proceedings because of the reluctance of the supreme courts to refer to the ECJ
- Sweden has amended its procedural law to accommodate the criticism of the Commission

Concluding remarks

- Sweden is, together with the U.K and Denmark, an awkward member of the EU
- Swedish courts have a distinct low profile in EU matters. The constitutional law of the EU membership is predominantly elaborated by the Riksdag
- The debate in Sweden is primarily concerned with the position of the Riksdag and not with fundamental rights protection