

SUMMARY

ECJ 24 February 2015 , Case C-512/13 (Sopora & v & Staatssecretaris van Financiën), Freedom of movement, Tax

Facts

Dutch tax law contains a facility under which 30% of wages are untaxed. This tax facility is only available to skilled workers who are recruited abroad and who come to the Netherlands for a limited period of time. Thirty percent of the amount paid by the employer to the employee is considered to constitute a reimbursement of expenses which such “incoming employees” have and which local employees do not have (“extraterritorial expenses”). The tax facility (referred to by the ECJ as the “flat-rate rule”) is not available to incoming employees who at the time of recruitment lived within 150 kilometres from the Dutch border, unless and to the extent that they prove that they have extraterritorial expenses.

National proceedings

Mr Sopora was hired in Germany, within 150 km from the Dutch border. He was denied the 30% tax facility. He appealed this denial, first before the local court, then, before the Supreme Court. It asked the ECJ whether Article 45 TFEU precludes the Dutch legislation at issue.

ECJ’s findings

Article 45 TFEU prohibits a Member State from adopting a measure favouring workers residing in its territory. The freedom of movement of workers also prohibits discrimination between non-resident workers, if such discrimination leads to nationals of certain Member

States being unduly favoured in comparison with others (§ 21-25).

Workers who have accepted employment in the Netherlands whilst living abroad are liable to incur additional expenses. The objective pursued by the legislation at issue is achieved by making the flat-rate rule available to those workers but not to workers who have resided for a long time in the Netherlands. This is legitimate (§ 26-35)

Ruling

Article 45 TFEU must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, by which a Member State provides that workers who resided in another Member State prior to taking up employment in its territory are to be granted a tax advantage consisting in the flat-rate exemption of reimbursement of extraterritorial expenses in an amount of up to 30% of the taxable base, on condition that those workers resided at a distance of more than 150 kilometres from its border, unless – and this is a matter for the referring court to ascertain – those limits were set in such a way that that exemption systematically gives rise to a net overcompensation in respect of the extraterritorial expenses actually incurred.

Creator: European Court of Justice (ECJ)

Verdict at: 2015-02-24

Case number: C-512/13