

SUMMARY

ECJ 8 November 2012, case C-461/11 (Ulf Kazimierz Radziejewski – v – Kronofogdemyndigheten i Stockholm), Free movement

Facts

Mr Radziejewski is a Swedish national. He lived and worked in Sweden until 2001, when he moved to Belgium, where he worked for a Swedish charitable organisation. Five years prior to his emigration, in 1996, he and his wife had been declared insolvent in Sweden. In 2011 they were still subject to an earnings attachment order, issued by the agency that is responsible for debt administration in the Stockholm area, the 'KFM'. Mr Radziejewski applied to the KFM for cancellation of his remaining debts pursuant to the Swedish law on debt relief. Paragraph 4 of this law ('Paragraph 4') provides:

"Complete or partial debt relief may be granted to a debtor who is resident in Sweden and a natural person if: the debtor is insolvent and so indebted that he or she cannot be presumed to have the means to pay his or her debts within a foreseeable period; and it is reasonable, having regard to the debtor's personal and financial situation, that he or she should be granted debt relief.

A person who is registered in the population register in Sweden shall be regarded as being resident in Sweden for the purposes of application of subparagraph 1.

For the purposes of the application of subparagraph 2, particular attention shall be paid to the circumstances in which the debts arose, the efforts made by the debtor to meet his or her obligations and the manner in which the debtor has cooperated in the handling of the case for debt relief." The KFM rejected the application for debt relief on the ground that Mr

Radziejewski was not resident in Sweden. Mr Radziejewski appealed to the Stockholm District Court.

National proceedings

The District Court held that the Swedish debt relief procedure does not fall within the scope of Regulation 1346/2000 on insolvency proceedings. However, it was unsure whether Paragraph 4 was compatible with the principle of free movement. It therefore referred the following question to the ECJ: “Can the requirement for residence in Sweden in Paragraph 4 [...] be regarded as being liable to prevent or deter a worker from leaving Sweden and exercising his right to freedom of movement, and thus be regarded as running counter to the principle of freedom of movement for workers within the Union provided for in Article 45 TFEU?”

ECJ’s findings

1. The Swedish debt relief procedure does not fall within the scope of Regulation 1346/2000. A debt relief decision adopted by a public authority such as the KFM is excluded from the scope of Regulation 44/2001 on the recognition and enforcement of judgments (‘Brussels I’). The only issue, therefore, is that of free movement (§ 23-27).
2. Paragraph 4 is capable of dissuading an insolvent worker from exercising his right to free movement because, by moving to another Member State, he is denied the possibility of obtaining debt relief in his Member State of origin. Accordingly, Paragraph 4 is, in principle, unlawful (§ 29-32).
3. A measure which constitutes an obstacle to freedom of movement for workers can be justified by overriding reasons in the public interest if the manner in which the measure is applied does not go beyond what is necessary for that purpose. The Swedish government submits that Paragraph 4 is justified (i) by the legislature’s aim to protect debtors from foreign creditors who are not party to the Swedish debt relief procedure and (ii) by the need to establish, satisfactorily, the financial and personal situation of the debtor (§ 33, 34, 44).
4. By contrast, a debtor resident in Sweden can in certain cases be sued before the courts of another Member State without being able to rely on a debt relief measure such as that of the KFM. On the other hand, a debtor who resides in the EU but outside Sweden may in certain cases be sued by his creditors before the Swedish courts, in which case he would be unable to invoke the Swedish debt relief protection rules. It follows that Paragraph 4 goes beyond what is necessary to obtain objective (i). (§ 39-43).

5. In order that a person may benefit from debt relief, Paragraph 4 provides that the KFM must examine not only the initial information provided by the debtor but also be in a position to look into and monitor that information and to follow up the debtor's efforts to comply within his obligations, including the obligation to participate actively. It is legitimate for a Member State to wish to perform such monitoring before relieving him of all or part of his debts. However, a person who goes to live and work in another Member State, while remaining registered in the Swedish population register, continues to receive debt relief. Moreover, the financial and personal situation of a debtor such as Mr Radziejewski may be established without it being necessary for him to reside in Sweden, given that he is the object of an earnings attachment, that his employer is Swedish and that he is subject to Swedish income tax. In addition, the KFM may call upon Mr Radziejewski to travel to Sweden or to provide the KFM with information in another manner, on pain of suspension or cancellation of the debt relief. Consequently, the condition of residence goes beyond what is necessary to obtain objective (ii) (§ 44-50).

Ruling

Article 45 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which makes the grant of debt relief subject to a condition of residence in the Member State concerned.

Creator: European Court of Justice (ECJ)

Verdict at: 2012-11-08

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