Case C-67/08

Margarete Block

v

Finanzamt Kaufbeuren

(Reference for a preliminary ruling
from the Bundesfinanzhof)

(Free movement of capital — Articles 56 EC and 58 EC — Inheritance tax — National rules not allowing inheritance tax in respect of capital claims, paid by an heir in one Member State, to be credited against inheritance tax payable in another Member State where the owner of the assets was resident at the time of death — Double taxation — Restriction — None)

Summary of the Judgment

Free movement of capital — Restrictions — Inheritance tax

(Arts 56 EC and 58 EC)

Articles 56 EC and 58 EC must be interpreted as not precluding legislation of a Member State which — as regards the assessment of inheritance tax payable by an heir who is resident in that Member State in respect of capital claims against a financial institution in another Member State — does not provide for inheritance tax paid in that other Member State to be credited against inheritance tax payable in the first Member State where the person whose estate is being administered was, at the time of death, resident in the first Member State.

That fiscal disadvantage is the result of the exercise in parallel by the two Member States concerned of their fiscal sovereignty, which is demonstrated by the fact that one State has decided to make capital claims subject to domestic inheritance tax where the creditor is resident in that Member State, while the other has decided to make such claims subject to domestic inheritance tax where the debtor is established in that other Member State. Community law, in the current stage of its development and in a situation that concerns the payment of inheritance tax, does not lay down any general criteria for the attribution of areas of competence between the Member States in relation to the elimination of double taxation within the European Community. It follows from this that, in the current stage of the development of Community law, the Member States enjoy a certain autonomy in this area provided they comply with Community law, and are not obliged therefore to adapt their own tax systems to the different systems of tax of the other Member States in order, inter alia, to eliminate the double taxation arising from the exercise in parallel by those Member States of their fiscal sovereignty and, in consequence thereof, to allow the inheritance tax paid in a Member State other than that in which the heir is resident to be deducted.

These considerations are not liable to be affected by the fact that national legislation lays down more favourable offsetting rules where the person whose estate is being administered was, at the time of death, residing in another Member State, since that difference in treatment, as regards the inheritance of a person who was not resident at the time of death, arises equally from the choice by the Member State concerned — made pursuant to the exercise of its fiscal sovereignty — of the place of residence of the creditor as a connecting criterion for the purposes of establishing the 'foreign' nature of the estate and, therefore, for the ability to offset inheritance tax paid in another Member State.

(see paras 28, 30-32, 34, 36, operative part)