



## Reports of Cases

### JUDGMENT OF THE COURT (Third Chamber)

8 November 2012\*

(Freedom of movement for workers — Article 45 TFEU — Total or partial debt relief procedure — Debtor who is a natural person — National legislation making the grant of debt relief subject to a residence condition)

In Case C-461/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Stockholms tingsrätt (Sweden), made by decision of 23 August 2011, received at the Court on 2 September 2011, in the proceedings

**Ulf Kazimierz Radziejewski**

v

**Kronofogdemyndigheten i Stockholm,**

THE COURT (Third Chamber),

composed of R. Silva de Lapuerta, acting as President of the Third Chamber, K. Lenaerts (Rapporteur), E. Juhász, J. Malenovský and D. Šváby, Judges,

Advocate General: E. Sharpston,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 24 May 2012,

after considering the observations submitted on behalf of:

- Mr Radziejewski, by E. Envall, socionom/utredare,
- the Kronofogdemyndigheten i Stockholm, by A.-C. Gustafsson and S. Höglund Westermark, acting as Agents,
- the Swedish Government, by A. Falk, C. Meyer-Seitz and C. Stege, acting as Agents,
- the European Commission, by J. Enegren and G. Rozet, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 September 2012,

gives the following

\* Language of the case: Swedish.

## Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Article 45 TFEU.
- 2 The reference has been made in proceedings between Mr Radziejewski and the Kronofogdemyndigheten i Stockholm (Enforcement Service, Stockholm; ‘the KFM’) concerning an application for the grant of debt relief.

### Legal context

#### *European Union legislation*

Regulation (EC) No 1346/2000

- 3 According to recital 9 in the preamble to Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160. p. 1):

‘... The insolvency proceedings to which this Regulation applies are listed in the Annexes. ...’

- 4 Article 1(1) of Regulation No 1346/2000 reads as follows:

‘This Regulation shall apply to collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator.’

- 5 Article 2(a) of Regulation No 1346/2000 defines ‘insolvency proceedings’ as ‘the collective proceedings referred to in Article 1(1)’ which are listed in Annex A.

- 6 Article 3(1) of Regulation No 1346/2000 provides:

‘The courts of the Member State within the territory of which the centre of a debtor’s main interests is situated shall have jurisdiction to open insolvency proceedings. ...’

- 7 Annex A to Regulation No 1346/2000 provides:

‘Insolvency proceedings referred to in Article 2(a)

...

SVERIGE

— Konkurs

— Företagsrekonstruktion

...’

Regulation (EC) No 44/2001

- 8 Article 1 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) defines the scope of that regulation as follows:

‘1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

2. The Regulation shall not apply to:

...

(b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

...’

- 9 Article 5(1)(a) of Regulation No 44/2001 states:

‘A person domiciled in a Member State may, in another Member State, be sued:

(1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

...’

- 10 Article 32 of Regulation No 44/2001 provides as follows:

‘For the purposes of this Regulation, “judgment” means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.’

- 11 Under Article 62 of Regulation No 44/2001:

‘In Sweden, in summary proceedings concerning orders to pay (*betalningsföreläggande*) and assistance (*handräckning*), the expression “court” includes the “Swedish enforcement service” (*kronofogdemyndighet*).’

*Swedish law*

- 12 According to Paragraph 4 of Law No 548 of 2006 on complete or partial debt relief (*skuldsaneringslagen* (2006:548); ‘the Law on debt relief’):

‘Complete or partial debt relief may be granted to a debtor who is resident in Sweden and a natural person, if:

(1) 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

(2) 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.

If the debtor is a trader, debt relief may be granted only if the economic situation surrounding the trading activity is simple to investigate.'

- 13 Paragraph 13 of the Law on debt relief provides that an application for debt relief is to be rejected if it does not satisfy the requirements set out in Paragraph 4.
- 14 Paragraph 14 of the Law on debt relief states that the KFM must inquire, to the extent necessary, about the personal and financial circumstances of the debtor with other administrative authorities.
- 15 In accordance with Paragraph 17 of the Law on debt relief, the debtor shall, to the extent necessary, be heard before any decision is taken, and is obliged to appear in person when invited, bringing all necessary information.

#### **The facts underlying the dispute and the question referred for a preliminary ruling**

- 16 Mr Radziejewski is a Swedish national who has resided and worked in Belgium since 2001. He is employed by the Church of Sweden.
- 17 Between 1971 and 1996, with his wife, he ran a treatment centre in Sweden. In 1996 the treatment centre became the subject of bankruptcy proceedings, resulting in the Radziejewskis' insolvency. Since 1997 they have been subject to an earnings attachment order administered by the KFM.
- 18 In 2011, Mr Radziejewski applied to the KFM for debt relief. That application was rejected by decision of 29 June 2011 on the ground that one of the conditions for the grant of such a measure was that the debtor had to be resident in Sweden. The KFM did not examine whether M. Radziejewski satisfied the other statutory conditions for debt relief eligibility.
- 19 Mr Radziejewski appealed to the Stockholms tingsrätt (Stockholm District Court) against that rejection decision, arguing, inter alia, that the Swedish law is contrary to the freedom of movement for workers in the European Union. He requested the Stockholms tingsrätt to refer the case back to the KFM and to instruct it to open a debt relief procedure.
- 20 According to the Stockholms tingsrätt, the debt relief procedure does not fall within the scope of Regulation No 1346/2000. Consequently, a measure adopted by a Swedish authority pursuant to that procedure cannot, in principle, be executed outside the Kingdom of Sweden.
- 21 The Stockholms tingsrätt explains that debt relief can be granted only if the debtor resides in Sweden, although there is no Swedish nationality requirement. A person who has emigrated and resides abroad is not therefore eligible for debt relief in Sweden, even if there is a strong connection with that Member State because the debts arose in Sweden and the employer of that person is Swedish.

- 22 In those circumstances, the Stockholms tingsrätt decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Can the requirement for residence in Sweden in Paragraph 4 of the [Law on debt relief] be regarded as being liable to prevent or deter a worker from leaving Sweden to exercise his right to freedom of movement and thus be regarded as running counter to the principle of the freedom of movement for workers within the Union provided for in Article 45 TFEU?’

### **Preliminary observations**

- 23 It should be noted at the outset that, first, as stated by the Swedish Government in its written observations, the Swedish debt relief procedure does not entail the divestment of the debtor, with the result that it cannot be classified as an insolvency procedure within the meaning of Article 1 of Regulation No 1346/2000 (see, to that effect, Case C-341/04 *Eurofood IFSC* [2006] ECR I-3813, paragraph 46).
- 24 The Swedish debt relief procedure also does not appear in Annex A to Regulation No 1346/2000. Since that regulation applies only to the proceedings listed in that annex, the debt relief procedure at issue in the main proceedings does not fall within its scope.
- 25 Second, with regard to Regulation No 44/2001, it should be noted, as the Advocate General stated in paragraph 41 of her Opinion, that a debt relief decision such as that at issue in the main proceedings is a measure adopted by an administrative authority which, in proceedings other than those stated in Article 62 of that regulation, cannot be classified as a ‘court or tribunal’, within the meaning of Article 32 of that regulation.
- 26 It follows that a debt relief decision adopted by a public authority such as the KFM is excluded from the scope of Regulation No 44/2001.
- 27 It is in the light of those considerations that the question referred to the Court by the national court should be considered.

### **Consideration of the question referred for a preliminary ruling**

- 28 By its question, the referring court asks, in essence, whether 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.
- 29 In that regard, it should be noted that all of the provisions of the FEU Treaty relating to the freedom of movement for persons are intended to facilitate the pursuit by nationals of the Member States of occupational activities of all kinds throughout the European Union and preclude measures which might place nationals of the Member States at a disadvantage when they wish to pursue an economic activity in the territory of another Member State (see, in particular, Case C-325/08 *Olympique Lyonnais* [2010] ECR I-2177, paragraph 33 and case-law cited).
- 30 National provisions which preclude or deter a national of a Member State from leaving his country of origin in order to exercise his right to freedom of movement therefore constitute restrictions on that freedom, even if they apply without regard to the nationality of the workers concerned (see *Olympique Lyonnais*, paragraph 34).

- 31 It must be held that national legislation such as that in the main proceedings, which makes the grant of debt relief subject to a condition of residence, is capable of dissuading an insolvent worker, whose indebtedness is such that that he cannot be presumed to have the means to pay his or her debts within a foreseeable period, from exercising his right to freedom of movement. He will be dissuaded from leaving his Member State of origin to go and work in another Member State if by doing so he is denied the possibility of obtaining debt relief in that Member State of origin.
- 32 Accordingly, such legislation is an unlawful restriction on the freedom of movement of workers prohibited, in principle, by Article 45 TFEU.
- 33 A measure which constitutes an obstacle to freedom of movement for workers can be accepted only if it pursues a legitimate aim compatible with the Treaty and is justified by overriding reasons in the public interest. Even if that were so, application of that measure would still have to be such as to ensure achievement of the objective in question and not go beyond what is necessary for that purpose (see *Olympique Lyonnais*, paragraph 38).
- 34 The Swedish Government submits, first, as justification, that it follows from the *travaux préparatoires* of the Law on debt relief that the condition of residence is linked to the fact that the debt relief measures are not, in general, recognised abroad. By requiring a connection with the Kingdom of Sweden by means of the residence condition, the Swedish legislature sought to protect the debtor from foreign creditors who are not party to the Swedish debt relief procedure.
- 35 In that regard, it must be held that, to the extent that debt relief decisions such as those adopted by the KFM do not fall within the scope of Regulation No 1346/2000 or that of Regulation No 44/2001, European Union law does not impose any obligation to recognise such a decision on the authorities of the other Member States.
- 36 In the absence of harmonisation, it is therefore legitimate for a Member State to wish to protect the effectiveness of debt relief measures taken by its own authorities.
- 37 However, a condition of residence such as that at issue in the main proceedings risks, in the light of that objective, to be ineffective in certain cases and too general in others.
- 38 While a debt relief decision such as that of the KFM does not fall within the scope of Regulation No 44/2001, the fact remains that that regulation contains rules of international jurisdiction which apply in disputes in civil and commercial matters between creditors and their debtor.
- 39 Thus, on the one hand, a debtor resident in Sweden can be sued by his creditors before the courts of another Member State, without, however, it being established that he may rely before those courts on a debt relief measure such as that of the KFM. That is the case, for example, where a debtor is sued, pursuant to Article 5(1)(a) of Regulation No 44/2001, by his creditors before the courts of a Member State – other than the Kingdom of Sweden – which is the place of performance of the contractual obligation on which the claim is based.
- 40 It follows that a condition of residence such as that at issue in the case in the main proceedings cannot exclude the risk that the creditors of a debtor residing in Sweden will require the amounts owed to them to be paid in a Member State – other than the Kingdom of Sweden – where a debt relief measure such as that of the KFM is not recognised.
- 41 On the other hand, a debtor who resides in a Member State other than the Kingdom of Sweden may, pursuant to Article 5(1)(a) of Regulation No 44/2001, be sued by his creditors before the Swedish courts, which may claim jurisdiction particularly where Sweden is the place of performance of the contractual obligation.

- 42 In contrast to a debtor resident in Sweden, a debtor such as Mr Radziejewski is denied the possibility of obtaining the protection offered to him in Sweden by a debt relief measure such as that of the KFM in the context of legal proceedings brought against him, by his creditors, in that Member State.
- 43 It follows that national legislation such as that at issue in the main proceedings goes beyond what is necessary in order to attain the objective referred to in paragraph 34 of the present judgment.
- 44 The Swedish Government claims, second, that a condition of residence such as that provided for by the national legislation at issue in the main proceedings is necessary in order to establish, satisfactorily, the financial and personal situation of the debtor.
- 45 It explains that, in order that a person may benefit from a debt relief measure, Paragraph 4 of the Law on debt relief 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 with his obligations and undertakings. In addition, the debt relief procedure also presumes that the debtor will participate actively, such active participation being facilitated where he resides in the country where that procedure takes place. Thus, according to the Swedish Government, the residence condition can act to ensure the effectiveness of the checks carried out by the KFM.
- 46 In that regard, it is legitimate for a Member State to wish to monitor the debtor's financial and personal situation before adopting a measure in his favour which would relieve him of all or part of his debts (see, by analogy, Case C-406/04 *De Cuyper* [2006] ECR I-6947, paragraph 41).
- 47 However, at the hearing, the Swedish Government conceded that a debtor resident in Sweden when the application for debt relief is made but who, having been granted such relief, decides to go and work and reside in another Member State, while remaining registered in the population register in Sweden, continues to receive debt relief. Consequently, the setting of a residence criterion such as that used in the main proceedings, based solely on the date on which the application for the grant of debt relief is submitted, is not a condition linked to the effectiveness of the KFM checks (see, to that effect, Case C-192/05 *Tas-Hagen and Tas* [2006] ECR I-10451, paragraph 39). Residence in another Member State does not seem to preclude the monitoring which is required after the grant of such a debt relief measure.
- 48 Moreover, it should be pointed out that 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 order administered by the KFM, that his employer is Swedish and that he is, under Law No 1229 of 1999 on income tax (inkomstskattelagen (1999:1229)) subject to unlimited income tax liability in Sweden.
- 49 Equally, the KFM may call upon a debtor such as Mr Radziejewski to travel to Sweden or, if such a visit cannot be undertaken, to provide it with all relevant information concerning his personal and financial situation, on pain of suspension or cancellation of the Swedish debt relief procedure in the event of an unjustified refusal on the part that debtor. Thus, contrary to what is argued by the Swedish Government, the fact that certain information must be obtained from the debtor himself cannot as such undermine the KFM's monitoring ability.
- 50 Consequently, a condition of residence such as that at issue in the main proceedings goes beyond what is necessary in order to attain the objective referred to in paragraph 44 above.
- 51 Third, the Swedish Government claimed, at the hearing, that the condition of residence provided for under the legislation in question is necessary in order to ensure the effective application of Regulation No 1346/2000.

- 52 However, as was held in paragraph 23 above, a debt relief procedure such as that at issue in the main proceedings is not an insolvency procedure within the meaning of Article 1 of Regulation No 1346/2000.
- 53 It follows that the legislation at issue in the main proceedings is not capable of affecting the rule on international jurisdiction laid down in Article 3(1) of Regulation No 1346/2000.
- 54 In the light of the foregoing, the answer to the question referred is that 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.

### **Costs**

- 55 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

**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.**

[Signatures]