

SUPREME COURT'S DECISION

delivered in Stockholm on 11 June 2021

Case no.
Ö 5910-20

PARTIES

Appellant

CR

Counsel: Attorney JS

THE MATTER

Decision regarding dispensation

RULING APPEALED

Decision of the Swedish Bar Association of 2 October 2020, § 873

THE SUPREME COURT'S RULING

The Supreme Court, which rejects the claim according to which a preliminary ruling is to be obtained from the European Court of Justice, dismisses the appeal.

CLAIMS IN THE SUPREME COURT

CR has claimed that the Supreme Court shall grant dispensation for him to conduct the practice of law as an Advocate in more than one company. He has also claimed that the Supreme Court is to obtain a preliminary ruling from the European Court of Justice.

The Board of the Swedish Bar Association has stated that the Association's decision to deny the application for dispensation may not be appealed and that it is not necessary to obtain a preliminary ruling from the European Court of Justice.

REASONS FOR THE RULING

Introduction

1. The Swedish Bar Association is an association under private law. The charter of the Swedish Bar Association is established by the Government. This accords with the fact that the Swedish Bar Association in part conducts activities the character of which is governed by public law in accordance with the prescriptions of Chapter 8 of the Code of Judicial Procedure without, however, thereby constituting a public authority.

2. Chapter 8 of the Code of Judicial Procedure contains, *inter alia*, rules regarding the conditions for admission as a member of the Swedish Bar Association, regarding supervision by the Board and Disciplinary Committee of the activities of members and regarding disciplinary actions. The rules of the Code of Judicial Procedure are supplemented by provisions in the Charter of the Swedish Bar Association and by the Code of Professional Conduct for Members of the Swedish Bar Association which have been adopted by the Board. In the event a member of the Swedish Bar Association does not comply with the requirements of the Code of Conduct, he or she risks being subject to a reminder, warning or fine. He or she may also be expelled from the Swedish Bar Association and thereby lose the right to use the title *advokat*.

The case in the Supreme Court

3. In August 2020, the Board of the Swedish Bar Association decided to grant German attorney CR registration as EU lawyer (*cf.* Chapter 8, Section 2 a of the Code of Judicial Procedure). Immediately thereafter, he applied for an exemption (dispensation) from rule 7.4.2 of the Code of Professional Conduct which states that the practice of law as an Advocate may not be conducted in more than one company. CR's intention was to continue as partner in conducting the practice of law in a German company and to conduct the practice of law as a partner in a Swedish law firm.

4. The Board rejected CR's application for dispensation.

5. CR has appealed the decision of the Board to not grant him dispensation. He has stated that the appeal should be tried by the Supreme Court by means of an analogous application of the rules in Chapter 8, Section 8 and Chapter 56, Section 12 of the Code of Judicial Procedure, interpreted in a manner consistent with Article 6 of the European Convention and Article 47 of the European Union Charter. He has asserted as the principal argument that the decision has the same effect as a denied registration as an EU lawyer – a decision which would be appealable by virtue of direct support of Chapter 8, Section 8 of the Code of Judicial Procedure.

What is at issue in the case

6. Firstly, the case pertains to whether CR is entitled to appeal the decision of the Swedish Bar Association to not grant an exemption from the rule in 7.4.2 of the Code of Professional Conduct according to which the practice of law as an Advocate may not be conducted in more than one company.

Legal bases*EU lawyers*

7. A registered EU lawyer – in the same way as though he or she was a member of the Swedish Bar Association – is subject to an obligation in Sweden to conduct the practice of law subject to generally accepted legal practice and that the practice is carried on subject

to the supervision of the Swedish Bar Association (*cf.* Chapter 8, Section 2 and Sections 6–9 of the Code of Judicial Procedure).

The Code of Judicial Procedure

8. The possibility for an individual, with the support of the Code of Judicial Procedure, to challenge a decision of the Swedish Bar Association is limited to certain specifically stated decisions particularly relevant to the right to practice as an Advocate. Anyone whose application for admission to the Swedish Bar Association has been denied or who has been expelled from the Association may appeal the decision to the Supreme Court. The same applies to persons whose application for registration as an EU lawyer has been denied or who have had such registration revoked. The Code of Judicial Procedure does not provide an individual with any additional possibility to appeal decisions of the Board. (*Cf.* Chapter 8, Section 8 of the Code of Judicial Procedure).

9. As stated, there is a rule according to which the practice of law as an Advocate may not be conducted in more than one company only in the Code of Professional Conduct. Against this background and taking into account the position of the Swedish Bar Association as a private-law body, the right to appeal decisions of the Association – over and above the decisions regulated by the Code of Judicial Procedure – should only arise under specific circumstances (see, *inter alia*, “The Employed Advocate” case, NJA 2010, p. 204 with references and Peter Fitger, et al., *Rättegångsbalken* [The Code of Judicial Procedure], supplement 83, October 2017, p. 8:30 ff.).

The European Convention

10. Pursuant to Article 6.1 of the European Convention, everyone is entitled to a fair and public hearing by an independent and impartial tribunal in the determination of his or her civil rights and obligations.

11. The fact that the Board of the Swedish Bar Association may grant dispensation from rule 7.4.2 of the Code of Professional Conduct – that an Advocate may not conduct the practice of law in several companies – does not per se create a right pursuant to Article 6.1 to a review of the matter of dispensation.

12. It is clear, furthermore, that the rule in 7.4.2 of the Code of Professional Conduct does not constitute an impediment for an EU lawyer to permanently practice the profession of lawyers in Sweden. A decision not to grant dispensation thus does not have the same direct consequences on the practice of an Advocate's profession as a decision to deny registration in accordance with Chapter 8, Section 2 a of the Code of Judicial Procedure or such decisions in disciplinary proceedings according to which the practice of an Advocate's profession is at stake (*cf.*, for example, the judgment of the European Court of Justice in *W.R. v. Austria*, no. 26602/95, §§ 28–30, 21 December 1999 and the decision of the Office of the Chancellor of Justice of 7 April 2011 in the matter bearing journal no. 5749-09-71, and Lars Heuman, *God advokatsed* [Generally Accepted Attorney Practices], 2013, p. 26 f.). The right supported by registration as an EU lawyer to permanently practice as an Advocate in Sweden can, in this light, not be deemed to be infringed by virtue of a decision by the Swedish Bar Association to deny dispensation (*cf.* Article 13 of the European Convention).

13. Accordingly, there is no support in Article 6.1 of the European Convention for a right to appeal the decision to deny dispensation from the rule in 7.4.2 of the Code of Professional Conduct.

The Charter of Fundamental Rights of the European Union, etc.

14. Article 47 of the EU Charter of Fundamental Rights states, *inter alia*, that everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal.

15. The freedom of establishment following from Union law does not exclude the possibility that, under certain circumstances, there may be national restrictions on the freedom of establishment (see Article 49 of the Treaty on the Functioning of the European Union; *cf.* Article 15.2 of the EU Charter of Fundamental Rights). It is thus apparent from the case law of the European Court of Justice that, in principle, in the absence of specific rules of Union law in the field, each Member State is in principle free to regulate the practice of the profession of lawyers in its territory (*cf.* judgment of the European Court of Justice in *Wouters, et al.*, C-309/99, EU:C:2002:98). The measures or ethical rules, however, must be – and must be applied in a way which is – non-discriminatory, appear justified by imperative requirements in the general interest and be suitable for securing the

attainment of the objective which they pursue; they may not go beyond what is necessary in order to attain it (*cf.* judgment of the European Court of Justice in *Reinhard Gebhard*, C-55/94, EU:C:1995:411).

16. Union law does not in and of itself grant a right to anyone to conduct the practice of law in several companies. Articles 9 and 10 of the Establishment Directive¹ specifically regulate the types of decisions in the area which may be able to be examined by a court and these do not cover decisions of the type currently at issue.

17. A decision to deny dispensation from the relevant rule can certainly hinder an EU lawyer from carrying on the practice of law in Sweden in specifically the organisational form he or she so desires. The relevant rule in the Code of Professional Conduct, however, applies equally to members of the Swedish Bar Association as well as registered EU lawyers. The justification for the rule asserted by the Swedish Bar Association in its submission to the Supreme Court – namely to reduce the risk of conflicts of interest and to avoid a lack of clarity regarding which law firm the client has retained – is compatible with the requirements enumerated in Section 15.

18. Article 47 of the Charter of Fundamental Rights of the European Union thus does not lead to a right of appeal when the Board of the Swedish Bar Association decides to deny dispensation from the rule in 7.4.2 of the Code of Professional Conduct. This presupposes, however, that the application by the Swedish Bar Association fulfils the requirements stated by the ECJ (paragraph 15).

The assessment in this case

19. On the issue of dismissing the appeal, no issue has come to light which raises doubts regarding the interpretation of Union law and which render it necessary to obtain a preliminary ruling from the European Court of Justice. The claim for obtaining a preliminary ruling is thus rejected.

¹ Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyers on a permanent basis in a Member State other than that in which the qualification was obtained.

20. CR cannot base any right to appeal on the Code of Judicial Procedure or Article 6.1 of the European Convention.

21. As regards the possibility to bring an appeal pursuant to Article 47 of the Charter of Fundamental Rights of the European Union, the Supreme Court notes that the application by the Swedish Bar Association of the rule in 7.4.2 of the Code of Professional Conduct has not been arbitrary but, rather, has taken place based on the principles adopted by the Board as guiding for good advocate conduct. Nor can the decision be deemed in any other way to deviate from the criteria stated by the European Court of Justice (paragraph 15).

22. Accordingly, CR's appeal is dismissed.

Justices of the Supreme Court Gudmund Toijer, Kerstin Calissendorff (reporting Justice), Sten Andersson, Eric M. Runesson and Cecilia Renfors participated in the ruling.
Judge referee: Josefine Wendel.