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In case no. 1549-19, **The Public Representative for Social Insurance** (Appellant) v. **AA** (Respondent), the Supreme Administrative Court delivered the following judgment on 22 June 2020.

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## **RULING OF THE SUPREME ADMINISTRATIVE COURT**

The Supreme Administrative Court overturns the judgments of the administrative court and administrative court of appeal and affirms the decision of the Swedish Social Insurance Agency.

### **BACKGROUND**

1. A housing allowance is a needs-assessed financial subsidy which can be applied for by, *inter alia*, families with children. The purpose of the subsidy is to provide low-income households with the possibility to reside in sufficiently large residences. The amount of the housing allowance is determined based on the size of the household and combined income as well as the housing costs and the size of the residence.
2. The subsidy is provided for the residence in which the applicant resides and is registered. Persons who are married to each other are deemed to live together and shall then jointly apply for the housing allowance. The allowance is subsequently calculated for the spouses jointly in respect of the relevant residence. A married person, however, may obtain a housing allowance as a single person if he or she can demonstrate that the spouses do not live together.
3. Since 1997, AA has been married to BB and they have ten common children born between 1998 and 2017. However, BB is also married to another woman. Accordingly, what is involved is a foreign plural marriage (polygamy). The

Swedish Tax Agency has registered both marriages in the population registry. Together with his other wife, BB is registered at an address other than AA and receives a housing allowance for that residence.

4. Following the application, the Swedish Social Insurance Agency granted AA a provisional housing allowance as a single person for the period December 2016 – November 2017. With reference to the mutual maintenance responsibility of the spouses, however, the allowance was calculated on the basis of her and BB's combined incomes.
5. The Public Representative for Social Insurance appealed the decision to the Administrative Court in Gothenburg and claimed principally that AA, as a married person, was to be denied a housing allowance and, in the alternative, that she, as a single person, was to receive a housing allowance but that only her income would form the basis of the calculation of the amount of the allowance and stated the following.
6. AA and BB are registered as being married in the population registry. Such registration, however, is not decisive as to whether or not the marriage is to be recognised in other contexts. Accordingly, there are two ways to determine AA's right to a housing allowance.
7. One way is to recognise the marriage between AA and BB. Persons who are married to one another are deemed to live together and a housing allowance may only be obtained for one residence. BB has already received a housing allowance for the residence in which he is registered. AA can then obtain a housing allowance only if she shows that cohabitation has ceased. She has not done so but, on the contrary, it appears from the investigation that BB lives alternatively with both of his wives.

8. The other alternative is that the marriage is not recognised taking into account the fact that the Swedish Tax Agency's examination is summary and that polygamous marriages are normally not recognised in Sweden. AA can then obtain a housing allowance as a single person. If one does not regard BB as the husband of AA in a legal sense, his income should not be taken into account in conjunction with the calculation of her housing allowance.
9. The Administrative Court granted the appeal such that AA was not entitled to a housing allowance for the period relevant in the case. According to the Administrative Court, AA was to be regarded as married. Since the spouses have ten common children and it is apparent from the investigation that BB periodically lives together with AA, she could not be deemed to have shown that cohabitation had ceased and that the right to a housing allowance as a single individual accordingly subsisted.
10. The Public Representative appealed the judgment to the Administrative Court of Appeal in Gothenburg and claimed that AA was entitled to a housing allowance as a single individual and that BB's income should not affect the amount of the housing allowance.
11. The administrative court of appeal rejected the appeal. The administrative court of appeal, which proceeded on the assumption that AA and BB were to be regarded as married to one another, was of the opinion, like the administrative court, that AA had not demonstrated that she and BB did not live together. Furthermore, the administrative court of appeal noted that the application for a housing allowance had been made in an erroneous manner. An application which pertains to the residence of spouses must be joint if there is no special cause why the application is to be made by one spouse only. The fact that AA's spouse, furthermore, is married to another woman is not regarded as constituting special cause for her application for a housing allowance on her own.

**CLAIMS, ETC.**

12. *The Public Representative for Social Insurance* claims that the Supreme Administrative Court is to overturn the rulings of the lower courts and declare that AA is entitled to a housing allowance as a single person and that BB's income is not to affect the amount of the housing allowance.
13. AA has been provided the opportunity to comment but has not done so.

**REASONS FOR THE RULING****The question in the case**

14. The question in the case pertains to the application of the rules for housing allowances for spouses in a polygamous marriage.

**Legislation, etc.**

15. The provisions regarding housing allowances are set forth in Chapters 94–98 of the Social Insurance Code.
16. General provisions, including certain definitions, are found in Chapter 95. Section 5 (1) provides that, as regards housing allowances, households means families with children, spouses without children and single individuals without children. Spouses means according to section 5 (3) spouses who reside together. Section 6 provides that, as regards housing allowances, cohabitees are equated with spouses. According to section 7, persons who are married to one another are deemed to reside together except where otherwise shown by the applicant for a housing allowance or the person who receives the allowance.

17. Provisions regarding the entitlement to housing allowances are set forth in Chapter 96. According to section 2, second paragraph, a housing allowance is granted only for costs for a residence in which the insured resides and is registered. In addition, it is necessary that he or she owns or occupies the residence subject to a lease or tenancy right. Where special cause exists, however, an allowance may be provided to cover costs for a residence in which the insured is not registered.
18. The housing allowance is calculated on the basis of the insured's income in accordance with the provisions of Chapter 97. According to section 29, first paragraph, furthermore, the Swedish Social Insurance Agency may, following a special investigation, deny an application for an allowance or withdraw or reduce the allowance if it is obvious that the insured, due to the income or wealth of the household or any other circumstance, is not in need of a housing allowance which may be calculated in accordance with the provisions of the Social Insurance Code. It is apparent from the second paragraph that such a decision may be taken also where certain income or wealth cannot be included in the income forming the basis of the allowance.

#### **The Court's assessment**

19. The Swedish Tax Agency has registered the marriage between AA and BB in the population registry. The registration in the population registry of a foreign marriage, however, is not binding as to the manner in which the question of recognition of the marriage is to be assessed in other contexts (HFD 2012 reported case no. 17).
20. The regulation regarding housing allowances in the Social Insurance Code are based on the notion that an applicant is to be categorised as either a single individual or spouse/cohabitee. The manner in which the categorisation is to be

carried out is set forth in Chapter 95, sections 5–7. The category to which the applicant is deemed to belong is subsequently relevant as to the manner in which the housing allowance is calculated. For a person who is a single individual, the housing allowance is calculated based on the applicant's own income, while the allowance for spouses/cohabitees is calculated taking into account the incomes of both persons.

21. As the aforementioned regulation is formulated, it presupposes that a person is to be deemed to be a spouse/cohabitee with only one other person in the application of the provisions regarding housing allowances. That such is the case also follows from the fact that an insured in accordance with Chapter 96, section 2, may obtain a housing allowance for only one residence. Accordingly, in the view of the Supreme Administrative Court, there is no room to regard a person as a spouse/cohabitee with more than one person in conjunction with the application of these provisions.
22. BB is registered at an address other than with AA and lives there together with a woman with whom he is married. They receive a housing allowance for that residence. Since BB, in the application of the provisions regarding housing allowances, cannot simultaneously be deemed to be the spouse of AA and receive a housing allowance for the residence for which the current application applies, it was correct of the Swedish Social Insurance Agency to examine AA's application for a housing allowance as a single individual.
23. As mentioned, housing allowances granted to an applicant who is deemed to be a single individual are calculated on the basis of the applicant's own income. However, the Swedish Social Insurance Agency, pursuant to Chapter 97, section 29 of the Social Insurance Code, has also taken into account BB's income in the calculation of AA's housing allowance, as a consequence of which the allowance

is lower than would have been the case had only her own income been included in the calculation.

24. Based on the aforementioned statute, it follows that, in the calculation of housing allowances, there is a possibility to take into account such circumstances regarding income and wealth as are normally not considered. From the investigation in the case, it is apparent that AA and BB have ten children together and nothing has come to light which suggests something other than that BB regularly resides together with AA in the residence to which the application for a housing allowance applies. Accordingly, he may be considered to contribute to the income of the household in such a manner that the Swedish Social Insurance Agency had cause to calculate the housing allowance in the manner as occurred.
25. Accordingly, the judgments of the administrative court and administrative court of appeal are overturned, and the decision of the Swedish Social Insurance Agency is affirmed.

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Justices Henrik Jermsten, Kristina Ståhl, Anita Saldén Enérus, Ulrik von Essen and Mats Anderson have participated in the ruling.

Judge Referee: Kristina Linderöth.