

Sweden, Gothenburg District Court, B 2683-09, Decision 25 January 2011

Deciding bodies and decisions

Gothenburg District Court (Göteborgs tingsrätt) B 2683-09, Decision 25 January 2011

Area of law

Criminal Law

Subject matter

Tax crime – Sanctions – Ne bis in idem rule

A prosecution for grave tax crime was rejected as a tax surcharge had already been imposed for the same circumstances as those constituting the crime.

Summary Facts Of The Case

The defendant (Mrs Motlagh) was prosecuted for grave tax crime, but a tax surcharge had already been imposed for the same circumstances as those constituting the crime.

As Mrs Motlagh conducted international business on the EU market, the District Court concluded that EU law, and in particular Article 50 of the Charter, was applicable to the case. The District Court also noted, pursuant to Article 6 TEU, that the Charter had the same legal value as the EU Treaties and that it therefore was a superior norm to Swedish national legislation. Accordingly, the District Court held, the Charter had primacy over Swedish law, notwithstanding the qualifications to the setting aside of statutory law laid down in the Swedish Instrument of Government (a constitutional act).

The District Court held that it was contrary to EU law to try or to convict Mrs Motlagh for tax crime as a tax surcharge had already been imposed for the same action as constituted the crime.

The District Court therefore rejected the prosecution for grave tax crime brought before it.

In the decision, reference to the Charter was made by the District Court only. No reference was made to the Explanations.

Relation to the scope of the Charter

EU Charter Article 50 (Right not to be tried or punished twice in criminal proceedings for the same criminal offence)

The District Court argued that EU law, and in particular Article 50 of the Charter, was applicable to the case as the defendant committed the crime in connection with the conduct of international business on the EU market. The specific connection to EU law is not clear in the decision.

Impact on Jurisprudence

This case was part of the so-called “lower court rebellion” with regard to the Swedish Supreme Court’s interpretation of the ne bis in idem rule, which ended with NJA 2013 s 502, through which the Supreme Court adapted its stance to the views expressed by the European Court of Justice in Case C-617/10 Åkerberg Fransson.

Sources - EU and national law

National Law

- 1 kap 1 § regeringsformen (The Instrument of Government, Swedish constitutional act (Chapter 1 s 1))
- 2 kap 19 and 23 §§ regeringsformen
- 11 kap 14 § regeringsformen
- NJA 2002 s 75 (Supreme Court judgment)
- NJA 2010 s 168

EU Law

- Article 6 TEU
- Article 50 Charter
- Article 51(1) Charter

Sources - CJEU Case Law

Case C-617/10 Åkerberg Fransson

The decision is the national follow-up of Case C-617/10 Åkerberg Fransson
