

# Case C-224/02

Heikki Antero Pusa

v

Osuuspankkien Keskinäinen Vakuutusyhtiö

(Reference for a preliminary ruling from the Korkein oikeus)

(Citizenship of the Union — Article 18 EC — Right to move freely and to reside in the Member States — Attachment of remuneration — Detailed rules)

Opinion of Advocate General Jacobs delivered on 20 November 2003 . . . I - 5765

Judgment of the Court (Fifth Chamber), 29 April 2004 . . . . . I - 5774

## Summary of the Judgment

*Citizenship of the European Union — Right to move and reside freely in the territory of the Member States — National legislation calculating the attachable part of a pension by deducting from that pension the national tax prepayment levied in that State — Failure to*

I - 5763

*take account of the tax which the holder of such a pension must pay on it in the Member State where he resides — Not permissible — National legislation requiring the debtor to prove that the tax has in fact been paid in the other Member State before it can be taken into account — Whether permissible — Conditions*

*(Art. 18 EC)*

Community law in principle precludes legislation of a Member State under which the attachable part of a pension paid at regular intervals in that State to a debtor is calculated by deducting from that pension the income tax prepayment levied in that State, while the tax which the holder of such a pension must pay on it subsequently in the Member State where he resides is not taken into account at all for the purposes of calculating the attachable portion of that pension.

On the other hand, Community law does not preclude such national legislation if it provides for tax to be taken into account, where taking the tax into account is made subject to the condition that the debtor prove that he has in fact paid or is required

to pay within a given period a specified amount as income tax in the Member State where he resides. However, that is only the case to the extent that, first, the right of the debtor concerned to have tax taken into account is clear from that legislation; secondly, the detailed rules for taking tax into account are such as to guarantee to the interested party the right to obtain an annual adjustment of the attachable portion of his pension to the same extent as if such a tax had been deducted at source in the Member State which enacted that legislation; and, thirdly, those detailed rules do not have the effect of making it impossible or excessively difficult to exercise that right.

(see paras 35, 48, operative part 1-2)