


Moving to France to Bypass German Insolvency (and Tax) Law

On 16 September 2008, the Court of Appeal of Colmar (Alsace) ruled that a  German debtor could not benefit from French insolvency law, as he had apparently moved to France for that sole reason. Had he followed the advice of <http://www.insolvenz-frankreich.de> ?

I understand that under German law, insolvency proceedings do not have the effect of immediately cancelling debts. By contrast, under French law, insolvency proceedings result in the immediate cancellation of all debts, irrespective of whether the liquidation of the assets was sufficient to pay creditors. The Colmar court specifically insisted that the goal of the German debtor was to benefit from this rule of French law.

The German debtor had allegedly moved to France in 2005. He waited for two years before filing for insolvency in Strasbourg in November 2007. He then claimed that he lived in France and worked there part-time for a French company. He also claimed that he had become insolvent as he owed €56,000 to a German company. At a later stage, he added that he also owed €155,000 to German tax authorities. He alleged he had no assets.

Now, this did not really convince the court, for a variety of reasons:

1. The French company was not paying him much (€600), and he was not really able to explain in court what his job there actually was.
2. German tax authorities were seeking payment of taxes for years 2005, but also 2006 and 2007, which was hard to reconcile with the claim that he had not worked in Germany during that time. Indeed, he admitted that he was still registered as an auditor there.
3. The German company to which he owed €56,000 had its seat at his address in Germany, in Wissembourg.
4. A garage from Haguenau had notified him with an injunction of payment, which was hard to reconcile with the claim that he had no assets, and in particular

no car.

5. Finally, he had allegedly moved to France at the very moment when he had received a notification of debt from the German tax authorities. Strange coincidence, really. Did he make up the other € 56,000 debt to conceal that the point was to avoid paying the tax debt?

Until recently, French law did not provide for insolvency for individuals. This was different in Alsace - Lorraine, which always kept that possibility even after it became French again after the war. There is thus a special provision in the French commercial code which provides that all individuals domiciled in Moselle, Haut-Rhin and Bas-Rhin can enjoy the benefit of insolvency, but only if they are in "good faith" and "notoriously insolvent" (Com. code, art. L. 670-1). The Court found that he was not in good faith, and thus that the requirements under French insolvency law were not met. This means that, thanks to this substantive provision of French insolvency law, the Court did not have to discuss whether there had been any *fraude à la loi*, the traditional concept used by French conflict scholars to tackle strategic behavior of this kind.

Finally, the application of the European Insolvency Regulation was not discussed.