



JUDGMENT OF THE COURT

10 December 2010

(Failure by a Contracting Party to fulfil its obligations – Directive 2005/36/EC on the recognition of professional qualifications)

In Case E-10/10,

EFTA Surveillance Authority, represented by Xavier Lewis, Director, and Markus Schneider, Officer, Department of Legal & Executive Affairs, acting as Agents, Brussels, Belgium,

Applicant,

v

Kingdom of Norway, represented by Ms Janne Tysnes Kaasin, Adviser, Department of Legal Affairs, and Ms Tonje Skjeie, Deputy Advocate, Attorney General (Civil Affairs), acting as Agents, Oslo, Norway,

Defendant,

APPLICATION for a declaration that by failing, within the time prescribed, to adopt, or to notify the EFTA Surveillance Authority of, the measures necessary to fully implement into its national legislation the Acts referred to at point 1 and at point 1, indent 2, of Annex VII to the EEA Agreement, i.e. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as amended by Commission Regulation (EC) No 1430/2007 of 5 December 2007 amending Annexes II and III to Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications, each as adapted to the EEA Agreement by Protocol 1 thereto, the Kingdom of Norway has failed to fulfil its obligations under the first paragraph of Article 63 of the Directive and under Article 7 of the EEA Agreement,

THE COURT,

composed of: Carl Baudenbacher, President, Thorgeir Örlygsson and Henrik Bull (Judge-Rapporteur), Judges,

Registrar: Skúli Magnússon,

having regard to the written pleadings of the parties,

having decided to dispense with the oral procedure,

gives the following

Judgment

I The application

- 1 By application lodged at the Court Registry on 26 July 2010, the EFTA Surveillance Authority (hereinafter “ESA”) brought an action under the second paragraph of Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (hereinafter “SCA”), for a declaration that, by failing to adopt, or to notify ESA of, the measures necessary to fully implement the Act referred to at point 1 of Annex VII to the EEA Agreement, within the time-limit prescribed, the Kingdom of Norway has failed to fulfil its obligations under the first paragraph of Article 63 of that Act and Article 7 EEA. The application cites the Act referred to as Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as amended by Commission Regulation (EC) No 1430/2007 of 5 December 2007 amending Annexes II and III to Directive 2005/36/EC.

II Facts and pre-litigation procedure

- 2 Decision 142/2007 of 26 October 2007 of the EEA Joint Committee amended Annex VII to the EEA Agreement by adding Directive 2005/36/EC (hereinafter “the Directive”) to point 1 of that Annex. The Decision entered into force on 1 July 2009 and the time limit for EFTA States to adopt the measures necessary to implement the Directive and to notify ESA thereof expired on the same date.
- 3 The Directive was subsequently amended by Commission Regulation (EC) No 1430/2007 of 5 December 2007 and Commission Regulation (EC) No 755/2008 of 31 July 2008, which were incorporated into the EEA Agreement by Joint Committee Decisions No 50/2008 and No 127/2008 respectively.
- 4 By a letter of 27 January 2009, an undated letter received on 12 March 2009 and letters of 20 May 2009, 5 June 2009, 6 July 2009 and 20 January 2010, the

Government of the Kingdom of Norway notified ESA of partial implementation of the Directive. Amendments to a number of national regulations on the recognition of professional qualifications obtained in other EEA States were still required.

- 5 In the absence of any further information from the Government of the Kingdom of Norway as to the implementation of the Directive, ESA initiated proceedings under Article 31 SCA and, on 25 November 2009, issued a letter of formal notice to the Government, stating that Norway had failed to take or, in any event, to notify ESA of the measures necessary to ensure full implementation of the Directive. The Government was invited to submit its observations on the matter within two months of receipt.
- 6 In its observations of 29 January 2010 to the letter of formal notice, the Government of the Kingdom of Norway informed ESA that the Directive would have to be implemented in all of the 31 Norwegian regulations for the different regulated professions which set the professional qualifications for the profession. Of the 31 different regulations there were still eight which were in the process of being amended. The outstanding amendments were expected to be finalised between 1 March 2010 and 1 January 2011.
- 7 Under these circumstances, on 10 March 2010, ESA delivered a reasoned opinion concluding that by failing to adopt the measures necessary to implement the Directive, or in any event, by failing to notify ESA forthwith of the measures adopted to implement the Directive, Norway had failed to fulfil its obligations under the Directive and Article 7 EEA. The Kingdom of Norway was requested to take the measures necessary to comply with the reasoned opinion within two months.
- 8 By letters of 9 April 2010 and 10 May 2010, the Government of the Kingdom of Norway notified ESA of further measures to implement the Directive.
- 9 On 18 May 2010, the Government of the Kingdom of Norway repeated, in its observations on the reasoned opinion, that full implementation of the Directive required amendments to several national regulations. A total of seven regulations had not yet been amended as was necessary to implement the Directive. One of these regulations was expected to be amended by 1 July 2010, another by 15 September 2010 and the remaining regulations by 1 October 2010.
- 10 By letter of 12 July 2010, the Government of the Kingdom of Norway notified ESA that the EEA Act corresponding to Commission Regulation No 755/2008 had been implemented as early as 12 January 2009.

III Procedure before the Court

- 11 ESA lodged the present application at the Court Registry on 26 July 2010. The statement of defence from the Government of the Kingdom of Norway was received on 27 September 2010.

- 12 After having received the express consent of the parties, the Court, acting on a report from the Judge-Rapporteur, decided to dispense with the oral procedure.

IV Arguments of the parties

- 13 The application is based on one plea in law, namely that by failing to adopt, or to notify ESA of, the measures necessary to fully implement the Directive, within the time-limit prescribed, the Kingdom of Norway has failed to fulfil its obligations under the first paragraph of Article 63 of the Directive, as incorporated into the EEA Agreement, and under Article 7 EEA. The reasoned opinion concerned the Directive as amended both by Commission Regulation (EC) No 1430/2007 of 5 December 2007 amending Annexes II and III of the Directive and by Commission Regulation (EC) No 755/2008 of 31 July 2008 amending Annex II to the Directive. Even though Norwegian notification relating to the implementation of Commission Regulation (EC) No 755/2008 was received only on 13 July 2010, i.e. after the end of the period laid down in the reasoned opinion, ESA has limited the form of the order sought to partial non-implementation of the Directive as amended by Commission Regulation (EC) No 1430/2007.
- 14 It is undisputed that not all the necessary implementation measures were adopted within the time-limit prescribed and the Government of the Kingdom of Norway has not disputed the order sought by ESA. The Government emphasises, however, that the Directive has been partially implemented in Norway.

V Findings of the Court

- 15 Article 3 EEA imposes upon the Contracting Parties the general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the EEA Agreement (see Case E-3/10 *ESA v Iceland*, judgment of 18 October 2010, not yet reported, paragraph 18). Under Article 7 EEA, the Contracting Parties are obliged to implement all acts referred to in the Annexes to the EEA Agreement, as amended by decisions of the EEA Joint Committee.
- 16 The obligation to implement also follows from Article 63 of the Directive, according to which implementation by the EC Member States is required not later than 20 October 2007. As Decision 142/2007 of the EEA Joint Committee did not set a separate EEA time-limit for the implementation of the Directive into national law, Norway was obliged to adopt the national measures necessary to implement the Directive by the date on which that Decision entered into force, namely 1 July 2009.
- 17 The question of whether an EFTA State has failed to fulfil its obligations must be determined by reference to the situation in that State as it stood at the end of the period laid down in the reasoned opinion (see *ESA v Iceland*, cited above, paragraph 20). It is undisputed that Norway did not adopt those measures before the expiry of the time-limit given in the reasoned opinion.

- 18 It must therefore be held that, by failing to adopt, within the time-limit prescribed, the measures necessary to implement the Act referred to at point 1 of Annex VII to the EEA Agreement, i.e. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as amended by Commission Regulation (EC) No 1430/2007 of 5 December 2007 amending Annexes II and III to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as adapted to the EEA Agreement by Protocol 1 thereto, the Kingdom of Norway has failed to fulfil its obligations under the first paragraph of Article 63 of the Directive and under Article 7 of the EEA Agreement.

VI Costs

- 19 Under Article 66(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since ESA has requested that the Kingdom of Norway be ordered to pay the costs and the latter has been unsuccessful, the Kingdom of Norway must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

- 1. Declares that, by failing to adopt, within the time-limit prescribed, the measures necessary to implement the Act referred to at point 1 of Annex VII to the EEA Agreement, i.e. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as amended by Commission Regulation (EC) No 1430/2007 of 5 December 2007 amending Annexes II and III to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as adapted to the EEA Agreement by Protocol 1 thereto, the Kingdom of Norway has failed to fulfil its obligations under the first paragraph of Article 63 of the Directive and under Article 7 of the EEA Agreement.**
- 2. Orders the Kingdom of Norway to bear the costs of the proceedings.**

Carl Baudenbacher

Thorgeir Örlygsson

Henrik Bull

Delivered in open court in Luxembourg on 10 December 2010.

Skúli Magnússon
Registrar

Carl Baudenbacher
President