

EFTA COURT

Request for an Advisory Opinion from the EFTA Court by Borgarting Lagmannsrett in criminal proceedings against P

(Case E-15/20)

A request has been made to the EFTA Court dated 16 October 2020 from *Borgarting Lagmannsrett* (Borgarting Court of Appeal), which was received at the Court Registry on 21 October 2020, for an Advisory Opinion in criminal proceedings against P on the following questions:

Question 1

Do Articles 3 and 7(a) of the EEA Agreement, read in conjunction with Regulation 883/2004, in particular Articles 4, 5 and 7, read in conjunction with Chapter 6, preclude a national scheme under which:

- a) it is a condition for entitlement to unemployment benefits that the unemployed person stays (“oppholder seg”) in Norway (see Section 4-2 of the National Insurance Act); and**
- b) an exemption from the requirement to stay, including the provision in Article 64 of Regulation 883/2004, is provided for in the national Unemployment Benefits Regulation, which is also implemented in the Transposing Regulation?**

Question 2

Irrespective of the answer to question 1, is a scheme as described in question 1 a restriction under the EEA Agreement’s rules on free movement, including Articles 28, 29 and 36?

If so, can such a restriction be justified by reference to the following grounds:

- i. that stays in the competent State are usually viewed as giving the unemployed person better incentive and opportunities for seeking and finding employment, including being able to start quickly in a possible job;**
- ii. that stays in the competent State are usually viewed as helping the unemployed person to be available for the employment services, and**

that presence in Norway makes it possible for the public administration to monitor whether the unemployed person fulfils the conditions for receiving the cash benefit paid in the event of unemployment – including that the unemployed person is in fact unemployed and does not have hidden sources of income, is a genuine job-seeker, is engaged in an active search for employment or participates in other activities aimed at finding employment;

- iii. **that stays in the competent State are usually viewed as giving the employment services better opportunities to assess whether the unemployed person is being given suitable follow-up; and**
- iv. **that the national scheme allows for receiving unemployment benefits in another EEA State on the conditions provided for by Regulation 883/2004.**

Question 3

In so far as required by the answers to questions 1 and 2, equivalent questions are asked in relation to Directive 2004/38, including Articles 4, 6 and 7.

Question 4

The accused has been indicted for having provided false information to the administrative body NAV regarding stays in another EEA State, thereby having misled NAV into paying unemployment benefits to which he was not entitled because the National Insurance Act lays down conditions requiring a stay (“opphold”) in Norway in order to receive unemployment benefits. Given the Norwegian transposition of Regulation 883/2004 (see question 1), is the use of the provisions of the Criminal Code on fraud and providing a false statement in a case such as the present one in accordance with fundamental EEA law principles such as the principle of clarity and the principle of legal certainty?

Question 5

In the light of the specific case such as the present one and the transposition by Norway of Regulation 883/2004 (see question 1), is the criminal law sanction in accordance with the principle of proportionality?