

EFTA COURT

Action brought on 25 July 2014 by the EFTA Surveillance Authority against Principality of Liechtenstein

(Case E-17/14)

An action against the Principality of Liechtenstein was brought before the EFTA Court on 25 July 2014 by the EFTA Surveillance Authority, represented by Xavier Lewis and Janne Tysnes Kaasin, acting as Agents of the EFTA Surveillance Authority, 35 Rue Belliard, B-1040 Brussels.

The EFTA Surveillance Authority requests the EFTA Court to:

- 1. Declare that by maintaining in force national rules such as Article 63 of the Health Act and the transitional provision in the Act on the repeal of the Health Act, including the applicability of Article 63 paragraph 2 of the Health Act in those respects, which require that an authorised “Dentist” has to pursue his profession as an employee, under the direct supervision, instruction and responsibility of a fully qualified dental practitioner, the Principality of Liechtenstein has failed to fulfil its obligations arising from Article 31 of the EEA Agreement.**
- 2. Order the Principality of Liechtenstein to bear the costs of these proceedings.**

Legal and factual background and pleas in law adduced in support:

- Article 63 of the Liechtenstein Health Act provides that a “Dentist” can only work under the direct supervision, instruction and responsibility of a fully qualified dental practitioner (*Zahnarzt*).
- The right of establishment guaranteed under Article 31 EEA requires there to be no restrictions on the freedom of establishment, including the right to take up and pursue activities as self-employed persons.
- The EFTA Surveillance Authority submits that Liechtenstein has failed to fulfil its obligations under Article 31 EEA. In its view, Article 63 of the Health Act and the transitional provisions in the Act on the repeal of the Health Act, including the applicability of Article 63 paragraph 2 of the Health Act in those respects, amounts to a restriction under Article 31 EEA.

- The Liechtenstein government argues that the objective of Article 63 of the Health Act is to secure the protection of public health.
- The EFTA Surveillance Authority holds that it goes beyond what is necessary to attain the protection of public health that a fully trained and qualified “Dentist”, wishing to pursue his professional activity in accordance with his obtained diploma, has to be employed by a dental practitioner in Liechtenstein.