



JUDGMENT OF THE COURT

22 June 2000

(Failure of a Contracting Party to fulfil its obligations - Council Directive 92/51/EEC on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC)

In Case E-2/99,

EFTA Surveillance Authority, represented by Anne-Lise H. Rolland, Officer in the Department of Legal and Executive Affairs, acting as Agent, assisted by Jonas Fr. Jonsson, Officer in the Department of Persons, Services and Capital Movements, 74 Rue de Trèves, Brussels,

applicant,

v

The Kingdom of Norway, represented by Helge Seland, Assistant Director General, Royal Ministry of Foreign Affairs, acting as Agent, 7. juni plass 1, Victoria Terrasse 0251, Oslo,

defendant,

APPLICATION for a declaration that, by failing to adopt, within the time-limit prescribed, the national provisions necessary to comply with Article 10(2) of the act referred to in point 1 a of Annex VII to the Agreement on the European Economic Area (the “EEA Agreement”), i.e. Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (the “Directive”), as adapted by way of Protocol 1 to the EEA Agreement, with regard to the professions coming under the heading “3. Seafaring Sector” of Annex C to the Directive, the Kingdom of Norway has failed to fulfil its obligations under that Directive and Article 7 of the EEA Agreement,

THE COURT,

composed of: Thór Vilhjálmsson, President, Carl Baudenbacher (Judge-Rapporteur) and Per Tresselt, Judges,

Registrar: Gunnar Selvik

having regard to the application and written pleadings of the parties

gives the following

Judgment

- 1 By application lodged at the Court Registry on 20 December 1999, the *EFTA Surveillance Authority* submitted, pursuant to 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, an application for declaration that, by failing to adopt within the time-limit prescribed, the national provisions necessary to comply with Article 10(2) of the Directive, as adapted, with regard to the professions coming under the heading “3. Seafaring Sector” of Annex C to the Directive, the Kingdom of Norway has failed to fulfil its obligations under that Directive and Article 7 of the EEA Agreement.
- 2 Article 10(2) of the Directive provides *inter alia* for mutual recognition of medical certificates when they are required for taking up or pursuing a regulated profession. Under the relevant articles of the Norwegian Regulation of 3 February 1986 No. 237 concerning the medical examination of employees on ships, etc., health certificates shall be issued in Norway by a doctor authorized to practise in Norway, or abroad by a doctor who has been approved by a Norwegian foreign service career station.
- 3 In the opinion of the EFTA Surveillance Authority, this requirement amounts to a violation of Article 10(2) of the Directive.
- 4 The *Government of Norway* and the EFTA Surveillance Authority have consented to the oral procedure being dispensed with.

Facts and procedure

- 5 It follows from Article 17 of the Directive, as adapted, that Norway was to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 1 July 1994 and immediately to inform the EFTA Surveillance Authority of the measures which were taken.

- 6 In a written communication dated 18 April 1995, the EFTA Surveillance Authority asked the national authorities to provide the EFTA Surveillance Authority with the transposing legislation regarding each of the professions falling within the scope of the Directive. In its reply dated 31 May 1995, the Government of Norway indicated that not all the necessary national measures transposing the Directive had been adopted.
- 7 On 4 December 1995, the EFTA Surveillance Authority issued a letter of formal notice to the Government of Norway, stating that Norway had not adopted the national measures necessary to comply with the Directive and inviting the Government of Norway to submit its observations on the matter within two month of receipt.
- 8 Subsequent to the letter of formal notice, the Government of Norway adopted a number of transposition measures regarding different professions falling within the scope of the Directive and gave notice thereof to the EFTA Surveillance Authority. As regards *inter alia* the mutual recognition of medical certificates for professions referred to under the heading “3. Seafaring sector” in Annex C to the Directive, it was not transposed as required by Article 10(2).
- 9 Following further contacts, the EFTA Surveillance Authority delivered a reasoned opinion on 29 June 1998 in which it concluded *inter alia* that, by failing to amend its legislation relative to the professions referred to under the heading “3. Seafaring sector” in Annex C to the Directive in order for the legislation to comply fully with the provisions of Article 10(2), Norway had failed to fulfil its obligations under the legal act, as adapted, and Article 7 of the EEA-Agreement. The Government of Norway was asked to take the necessary measures to comply with the reasoned opinion within three months following notification thereof. The Government of Norway was notified of the reasoned opinion on 1 July 1998.
- 10 In its reply to the reasoned opinion, the Government of Norway maintained that the Norwegian legislation was in accordance with Article 10(2) of the Directive. Norway accepted medical certificates issued in other EEA States, in accordance with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (“the STCW Convention”). However, it continued to impose on EEA nationals its requirement that health certificates be issued in accordance with Norwegian provisions and by doctors approved by Norwegian authorities. Moreover, this approach had been endorsed at the meeting of a group of co-ordinators for the implementation of the Directive.
- 11 The Norwegian authorities and the EFTA Surveillance Authority had several more meetings and contacts, without reaching a solution.
- 12 The present application was then brought before the Court.

Law

- 10 The application of the EFTA Surveillance Authority is based on one plea of law, viz. that, by failing to adopt, within the prescribed time-limit, the national measures necessary to comply with Article 10(2) of the Directive, as adapted, Norway has failed to fulfil its obligations under Article 17 of that Directive and Article 7 of the EEA Agreement.
- 11 The time-limit for Norway to take the measures necessary to comply with the Directive expired on 1 July 1994. Norway did not implement such measures in respect of the seafaring sector, either at that time or by the time-limit set by the EFTA Surveillance Authority in its reasoned opinion.
- 12 In light of the foregoing, the EFTA Surveillance Authority asks the EFTA Court to grant the application and to order Norway to pay the costs of the proceedings.
- 13 The Government of Norway does not deny that the requisite measures had not been taken within the time limits established. However, it asks the EFTA Court to order each party to bear its own costs of the proceedings.
- 14 The *Court* notes that Norway was obliged to adopt national provisions necessary to comply with the Directive, as adapted, not later than 1 July 1994. On 1 October 1998, the date on which the time-limit given in the reasoned opinion of the EFTA Surveillance Authority expired, Norway had still not adopted national measures necessary to comply with the reasoned opinion.
- 15 The Court notes that Article 3 of the EEA Agreement 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 Agreement (See Judgment of the EFTA Court in Case E-10/97 *EFTA Surveillance Authority v The Kingdom of Norway* [1998] EFTA Court Report 134, at paragraph 15).
- 16 Furthermore, the Contracting Parties are obliged to implement all acts referred to or contained in the Annexes to the EEA Agreement or in decisions of the EEA Joint Committee (See Judgment of the EFTA Court in Case E-7/97 *EFTA Surveillance Authority v The Kingdom of Norway* [1998] EFTA Court Report 62, at paragraph 17).
- 17 It must therefore be held that, by failing to adopt, within the time-limit prescribed, the national provisions necessary to comply with Article 10(2) of Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC, as adapted by way of Protocol 1 to the EEA Agreement, with regard to the professions coming under the heading “3. Seafaring Sector” of Annex C to the Directive, the Kingdom of Norway has failed to fulfil its obligations under Article 17 of that Directive and Article 7 of the EEA Agreement,

Costs

- 18 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. The EFTA Surveillance Authority has asked for the Kingdom of Norway to be ordered to pay the costs. Since the latter has been unsuccessful in its defence, it 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 national provisions necessary to comply with Article 10(2) of Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC, as adapted by way of Protocol 1 to the EEA Agreement, with regard to the professions coming under the heading "3. Seafaring Sector" of Annex C to the Directive, the Kingdom of Norway has failed to fulfil its obligations under that Directive and Article 7 of the EEA Agreement.**
2. **Orders the Kingdom of Norway to pay the costs of the proceedings.**

Thór Vilhjálmsson

Carl Baudenbacher

Per Tresselt

Delivered in open court in Luxembourg on 22 June 2000.

Gunnar Selvik
Registrar

Thór Vilhjálmsson
President