JUDGMENT OF THE COURT

30 May 2002*

(State alcohol monopoly – incompatibility with 16 EEA – State liability in the event of a breach of EEA law – Conditions of liability)

In Case E-4/01

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by Héraðsdómur Reykjavíkur (Reykjavík District Court) for an Advisory Opinion in the case pending before it between

Karl K. Karlsson hf.

and

The Icelandic State

on the interpretation of the EEA Agreement, in particular Articles 11 and 16 EEA.

THE COURT,

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

Registrar: Lucien Dedichen

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* Language of the Request for an Advisory Opinion: Icelandic.

having considered the written observations submitted on behalf of:

– the Plaintiff, Karl K. Karlsson hf., represented by Stefán Geir Þórisson, hæstaréttarlögmaður (Supreme Court Advocate);

– the Defendant, the Icelandic State, represented by Skarphéðinn Þórisson, Attorney General (Civil Affairs), assisted by Einar Karl Hallvarðsson, hæstaréttarlögmaður (Supreme Court Advocate), Office of the Attorney General (Civil Affairs);

– the Government of Norway, represented by Thomas Nordby, Advocate, Office of the Attorney General (Civil Affairs), acting as Agent, and Frode Elgesem, Advocate, Office of the Attorney General (Civil Affairs), acting as Co-agent;

– the EFTA Surveillance Authority, represented by Bjarnveig Eiríksdóttir and Dóra Sif Tynes, Officers, Legal & Executive Affairs, acting as Agents;

– the Commission of the European Communities, represented by Lena Ström, Legal Adviser, Legal Service, acting as Agent;

having regard to the Report for the Hearing,

having heard the oral arguments of the Plaintiff, represented by Stefán Geir Þórisson; the Defendant, represented by Skarphéðinn Þórisson; the Government of Norway, represented by Thomas Nordby and Frode Elgesem; the EFTA Surveillance Authority, represented by Peter Dyrberg, Director of Legal & Executive Affairs, and Dóra Sif Tynes; and the Commission of the European Communities, represented by Lena Ström, at the hearing on 5 December 2001,

gives the following

Judgment

I Facts and procedure

1 By an order dated 6 April 2001, registered at the Court on 12 April 2001, the Héraðsdómur Reykjavíkur (Reykjavík District Court) made a Request for an Advisory Opinion in the case pending before it between Karl K. Karlsson hf. (hereinafter, the "Plaintiff") and the Icelandic State (hereinafter, the "Defendant").

2 The dispute before the Héraðsdómur Reykjavíkur concerns the questions of whether the State monopoly on the import and wholesale distribution of alcoholic beverages in force in Iceland until 1 December 1995 was incompatible with the

EEA Agreement, and, if so, whether a legal person prevented from importing alcoholic beverages is entitled to compensation from the State for financial loss incurred as a result of that monopoly.

3 The national legislation contested before the Héraðsdómur Reykjavíkur is the Icelandic *Áfengislög nr. 82/1969* (Act No. 82/1969 on Alcoholic Beverages, hereinafter the "Alcoholic Beverages Act") and *Lög nr. 63/1969 um verslun með áfengi og tóbak* (Act No. 63/1969 on Trading with Alcoholic Beverages and Tobacco, hereinafter the "Alcoholic Beverages and Tobacco Trading Act").

4 At the time of the entry into force of the EEA Agreement on 1 January 1994, the Alcoholic Beverages Act provided that only the Icelandic State was permitted to import alcoholic beverages, and that the Áfengis- og tóbaksverslun ríkisins (State Alcohol and Tobacco Monopoly) was to handle the import and wholesale distribution of such products. The State monopoly on the import and wholesale distribution of alcoholic beverages was abolished and the right to such imports and wholesale distribution was liberalised as of 1 December 1995, by way of the adoption of *Lög nr. 94/1995 um breyting á áfengislögum* and *Lög nr. 95/1995 um breyting á lögum um verslun með áfengi og tóbak*, amending the Alcoholic Beverages Act and the Alcoholic Beverages and Tobacco Trading Act, respectively. The Alcoholic Beverages Act has since been replaced by *Áfengislög nr. 75/1998* (Act No. 75/1998 on Alcoholic Beverages).

5 It is stated in the Request for an Advisory Opinion that, prior to the entry into force of the EEA Agreement, the Plaintiff, Karl K. Karlsson hf., had taken measures to commence the import and wholesale distribution of alcoholic beverages, and was appointed agent for many types of alcoholic beverages, including the French liqueur Cointreau, in Iceland.

6 Moreover, it follows from the Request for an Advisory Opinion that, from 1 January 1994, when the EEA Agreement entered into force, until 1 December 1995, when the State monopoly on the import and wholesale distribution of alcoholic beverages was abolished, the Plaintiff was prohibited from importing into Iceland the alcoholic beverages for which it was the agent, and distributing such products to retailers. The Plaintiff claims that it incurred a considerable financial loss as a result of that prohibition.

7 The Plaintiff brought proceedings against the Defendant before the Héraðsdómur Reykjavíkur seeking a declaratory judgment to the effect that the Defendant is liable for the financial loss sustained by the Plaintiff by not being permitted to import and distribute Cointreau on a wholesale basis. In the proceedings, the Plaintiff questioned the compatibility with the EEA Agreement of the State monopoly on the import and wholesale distribution of alcoholic beverages in force in Iceland until 1 December 1995. The Plaintiff has, moreover, claimed entitlement under EEA law to compensation for financial loss incurred as a result of that monopoly.

8 On 6 April 2001, Héraðsdómur Reykjavíkur submitted a Request for an Advisory Opinion to the EFTA Court on the following questions:

> *1. Should the provisions of the EEA Agreement, in particular Articles 11 and 16, be interpreted as meaning that Iceland was obliged to abolish the State monopoly for the import and wholesale distribution of alcoholic beverages as of the commencement of the Agreement on 1 January 1994?*
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> *2. If the aforementioned question is answered in the affirmative, is Iceland liable for compensation to a legal person which, at the time of entry into force of the Agreement, was the exclusive agent for a specific type of alcoholic beverage, for the financial loss it incurred due to the fact that the import and wholesale distribution of the alcoholic beverage was not permitted until nearly two years after the entry into force of the EEA Agreement, provided that the conditions for liability for compensation according to the case law of the EFTA Court and Court of Justice of the European Communities are fulfilled?*
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> *3. If Questions 1 and 2 are answered in the affirmative, are the conditions for liability for compensation according to the case law of the aforementioned courts fulfilled?*

9 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

II Findings of the Court

Admissibility

10 The Government of Norway has contended that the first question should be ruled inadmissible, as the national court has failed to comply with Article 96(3) of the Rules of Procedure of the EFTA Court, in that the Request from the Héraðsdómur Reykjavíkur for an Advisory Opinion does not contain a sufficient description of the facts of the case.

11 In order to provide an interpretation of EEA law that will be of use to the national court, it is necessary that the Request for an Advisory Opinion contains, at the very least, an explanation of the factual circumstances on which the submitted questions are based. The information provided must not only enable the Court to reply to the national court, but must also give the Governments of the EEA States and other interested parties the opportunity to submit observations pursuant to Article 20 of the Statute of the EFTA Court and Article 97 of its Rules of Procedure. It is the Court’s duty to ensure that this opportunity

is safeguarded, bearing in mind that only the requests are made available to the interested parties (see, *inter alia*, Joined Cases C-51/96 and C-191/97 *Deliège* [2000] ECR I-2549, paragraphs 30 and 31).

12 It is clear from the written observations submitted to the Court by the Government of Norway, the EFTA Surveillance Authority and the Commission of the European Communities that the information contained in the Request for an Advisory Opinion duly enabled them to take a position on each of the three questions submitted to the Court by Héraðsdómur Reykjavíkur. Those questions are admissible and must be answered by the Court.

The first question

13 By its first question, the Héraðsdómur Reykjavíkur essentially seeks to ascertain whether a State monopoly on the import and wholesale distribution of alcoholic beverages, such as the State alcohol monopoly in Iceland, as it existed until 1 December 1995, was incompatible with Article 11 or 16 EEA as of the entry into force of the EEA Agreement on 1 January 1994.

14 As a preliminary point, the Court observes that the product at issue in the main proceedings, Cointreau, falls within the material scope of the EEA Agreement. This follows from Article 8(3)(b) EEA read with Article 1 of Protocol 3 to the Agreement, which provides that the provisions in the Agreement are to apply to products listed in Tables I and II. Liqueurs containing more than 5% by weight of added sugar are listed in Table I under Heading 22.08 of the Harmonized Commodity Description and Coding System.

15 The first question relates to both Articles 11 and 16 EEA. The Court notes that rules relating to the existence and operation of a monopoly must be examined under Article 16 EEA, which applies specifically to a domestic commercial monopoly's exercise of its exclusive rights (see, *inter alia*, Case E-1/97 *Gundersen* v *Oslo kommune* [1997] EFTA Court Report 108, at paragraph 17; and Case C-189/95 *Franzén* [1997] ECR I-5909 (hereinafter, "*Franzén*"), at paragraph 35). The national rules contested in the main proceedings relate to the maintenance, after the entry into force of the EEA Agreement, of the State monopoly for the import and wholesale distribution of alcoholic beverages. These rules must therefore be examined under Article 16 EEA.

16 Article 16 EEA provides:

> "1. The Contracting Parties shall ensure that any State monopoly of a commercial character be adjusted so that no discrimination regarding the conditions under which goods are procured and marketed will exist between nationals of EC Member States and EFTA States.
>
> 2. The provisions of this Article shall apply to any body through which the competent authorities of the Contracting Parties, in law or in fact, either directly or indirectly supervise, determine or appreciably influence imports or exports between Contracting

> Parties. These provisions shall likewise apply to monopolies delegated by the State to others."

17 The purpose of Article 16 EEA is to reconcile the possibility for EEA States to maintain certain monopolies of a commercial nature as instruments for the pursuit of public interest aims with the requirements of the establishment and functioning of the EEA market. It seeks to eliminate obstacles to the free movement of goods, save, however, for restrictions on trade inherent in the existence of the monopolies in question (see *Franzén*, at paragraph 39).

18 At the time of the entry into force of the EEA Agreement on 1 January 1994, the national rules contested in the main proceedings provided that alcoholic beverages could only be imported and distributed on a wholesale basis by the Icelandic State. The State monopoly on the import and wholesale distribution of alcoholic beverages was not abolished until 1 December 1995.

The import monopoly

19 The Court has already held that a statutory State monopoly that enjoys exclusive right to import certain goods thereby has the discretion to determine the supply of those goods on the domestic market and may consequently also determine their price (see Case E-1/94 *Restamark* [1994-1995] EFTA Court Report 15 (hereinafter, "*Restamark*"), at paragraph 71). It follows from the case law of both the EFTA Court and the Court of Justice of the European Communities that Article 16 EEA must be interpreted as meaning that, as from the entry into force of the EEA Agreement, every national monopoly of a commercial character must be adjusted so as to eliminate the exclusive right to import from other EEA States (see *Restamark*, at paragraph 74; and Case 59/75 *Pubblico Ministereo* v *Manghera* [1976] ECR 91 (hereinafter, "*Manghera*"), at paragraph 13). Therefore, the maintenance after 1 January 1994 of a State monopoly on the import of alcoholic beverages is contrary to Article 16 EEA.

The wholesale distribution monopoly

20 As regards the contested wholesale distribution monopoly, the Court notes that Article 16 EEA requires that the organization and operation of such a commercial monopoly be arranged so as to preclude any discrimination between nationals of EEA States as regards conditions of procurement and marketing, so that trade in goods from other EEA States is not put at a disadvantage, in law or in fact, in relation to that in domestic goods (see, to this effect, *Franzén*, at paragraph 40). A wholesale distribution monopoly cannot be regarded as being discriminatory by nature. It may not be incompatible with Article 16 EEA if the trade in goods from other EEA States is not put at a disadvantage, in law or in fact, in relation to trade in domestic goods.

21 It is for the national court to make the necessary assessment of the organisation and operation of the wholesale distribution monopoly. If the national court finds that the monopoly was operated in a manner that gave rise to any disadvantage to trade in goods from other EEA States compared to trade in domestic goods, the exclusive right to wholesale distribution of the Icelandic State monopoly was incompatible with Article 16 EEA.

22 National rules that are separable from the operation of the wholesale distribution monopoly, although they have a bearing upon it, must be assessed by the national court under Article 11 EEA (see, to that effect, *Franzén*, at paragraph 36). In that assessment, regard must be had to the judgment in Case E-6/96 *Wilhelmsen* v *Oslo kommune* [1997] EFTA Court Report 56, at paragraph 51, from which it follows that the relevant question is whether the wholesale distribution monopoly impedes the access to the market of products from other EEA States more than it impedes the access of domestic products.

23 Based on the above considerations, the answer to the first question must be that the maintenance after 1 January 1994 of a State monopoly on the import of alcoholic beverages is incompatible with Article 16 EEA.

The second question

24 By its second question, the Héraðsdómur Reykjavíkur essentially seeks to ascertain whether, under the EEA Agreement, an EEA State may be liable to a prospective importer of alcoholic beverages for loss or damage incurred by him as a result of the maintenance of a State monopoly on the import of alcoholic beverages, provided that the conditions for State liability are fulfilled.

25 In Case E-9/97 *Sveinbjörnsdóttir* [1998] EFTA Court Report 95 (hereinafter, "*Sveinbjörnsdóttir*"), the EFTA Court held that the EEA Agreement is an international treaty *sui generis* that contains a distinct legal order of its own. The depth of integration of the EEA Agreement is less far-reaching than under the EC Treaty, but the scope and the objective of the EEA Agreement goes beyond what is usual for an agreement under public international law (see *Sveinbjörnsdóttir*, at paragraph 59). In *Sveinbjörnsdóttir*, the EFTA Court concluded that it is a principle of the EEA Agreement that an EEA State is obliged to provide for compensation for loss and damage caused to individuals as a result of breaches of the obligations under the EEA Agreement for which that State can be held responsible. The EEA Agreement does not entail a transfer of legislative powers. However, the principle of State liability must be seen as an integral part of the EEA Agreement as such (see *Sveinbjörnsdóttir*, at paragraphs 62 and 63). This was noted by the Court of Justice of the European Communities in Case C-140/97 *Rechberger and Others* [1999] ECR I-3499, at paragraph 39.

26 The Government of Norway has argued that the principle of State liability under Community law, as developed in the case law of the Court of Justice of the

European Communities, is inseparable from the fundamental principle of direct effect. The principles of direct effect and State liability constitute complementary elements of the supranationality of Community law, which is absent in the EEA. The Government of Norway has stated that "it would be contrary to the expressed views of both the [Court of Justice of the European Communities] and the [EFTA] Court to establish a principle of State liability which in [] effect is similar to the principle of direct effect…."

27 This line of argument cannot succeed. It is correct, as the Government of Norway has pointed out, that the principle of State liability under Community law is regarded as a necessary corollary of the direct effect of Community provisions (see Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame* [1996] ECR I-1029 (hereinafter, "*Brasserie du Pêcheur*"), at paragraph 22). However, this cannot mean that the finding of a principle of State liability, based directly on the EEA Agreement as such, is in any way contingent upon recognition of a corollary principle of direct effect of EEA rules.

28 It follows from Article 7 EEA and Protocol 35 to the EEA Agreement that EEA law does not entail a transfer of legislative powers. Therefore, EEA law does not require that individuals and economic operators can rely directly on non-implemented EEA rules before national courts. At the same time, it is inherent in the general objective of the EEA Agreement of establishing a dynamic and homogeneous market, in the ensuing emphasis on the judicial defence and enforcement of the rights of individuals, as well as in the public international law principle of effectiveness, that national courts will consider any relevant element of EEA law, whether implemented or not, when interpreting national law.

29 The absence of recognition of direct effect for EEA rules does not preclude the existence of an obligation on the State to provide for compensation for loss and damage caused to individuals and economic operators as a result of breaches of obligations under the EEA Agreement for which that State can be held responsible.

30 The finding that the principle of State liability is an integral part of the EEA Agreement differs, as it must, from the development in the case law of the Court of Justice of the European Communities of the principle of State liability under EC law. Therefore, the application of the principles may not necessarily be in all respects coextensive.

31 The Defendant, supported by the Government of Norway, has argued that the concept of State liability under the EEA Agreement must in any circumstances be limited to incorrect implementation of directives. It contends that the EEA Agreement does not require that an EEA State be held liable for breach of the main part of the EEA Agreement.

32 That argument must be rejected. An EEA State can be held responsible for breaches of its obligations under EEA law where three conditions are met: first, the rule of law infringed must be intended to confer rights on individuals; second,

the breach must be sufficiently serious; and third, there must be a direct causal link between the breach of the obligation resting on the State and the damage sustained by the injured party (see *Sveinbjörnsdóttir*, at paragraph 66). The three conditions for State liability must be satisfied both where the loss or damage for which compensation is sought is the result of a failure to act on the part of the EEA State, and where it is the result of the adoption of a legislative or administrative act in breach of EEA law (see, for comparison, Case C-424/97 *Haim* [2000] ECR I-5213 (hereinafter, "*Haim*"), at paragraph 37). Under the EEA Agreement, an EEA State may, in principle, be held liable for breaches of its obligations under both secondary acts of EEA legislation and the main part of the EEA Agreement.

33 Subject to the existence of an obligation under EEA law of the State to provide for compensation, and where the conditions for State liability for breach of EEA law are met, compensation by the State for the loss and damage caused must be based on national liability law. The conditions for compensation of loss and damage laid down by national law must not be less favourable than those relating to similar domestic claims and must not be framed so as to make it in practice impossible or excessively difficult to obtain compensation (see, for comparison, *Haim*, at paragraph 33).

34 The answer to the second question must therefore be that an EEA State will, under the EEA Agreement, be liable to a prospective importer of alcoholic beverages for loss or damage incurred as a result of the maintenance of a State monopoly on the import of alcoholic beverages, provided that the conditions for State liability are fulfilled. Where those conditions are fulfilled, compensation by the State for such loss and damage must be based on national liability law. The rules on compensation laid down by national law must not be less favourable than those relating to similar domestic claims and must not be framed so as to make it in practice impossible or excessively difficult to obtain compensation.

The third question

35 By its third question, the Héraðsdómur Reykjavíkur is asking whether the conditions for State liability under the EEA Agreement are fulfilled in the case before it.

36 It is, in principle, for the national court to assess the facts, and to determine whether the conditions for State liability for breach of EEA law are met. The EFTA Court may nevertheless indicate certain circumstances and considerations that the national court may take into account in its evaluation (see, to that effect, Case C-150/99 *Stockholm Lindöpark* [2001] ECR I-0493 (hereinafter "*Stockholm Lindöpark*"), at paragraph 38).

The first condition

37 As regards the condition that the rule of law infringed must be intended to confer rights on individuals, the Court has previously held that such is the case when the relevant provision is unconditional and sufficiently precise (see *Restamark*, at paragraph 77). The Court has also found that this condition is satisfied in the case of Article 16 EEA. Article 16 EEA imposes an obligation on the EEA States to adjust their statutory commercial monopolies so as to exclude any discrimination between nationals of EEA States with respect to the procurement and marketing of goods. Article 16 EEA constitutes an obligation with a precise objective, and that obligation is not subject to any condition (see *Restamark*, at paragraphs 79 and 80, and *Manghera*, at paragraphs 15 and 16). Since Article 16 has been implemented in Icelandic law, that provision confers rights on individuals for which they may seek the protection of national courts.

The second condition

38 As regards the condition that the breach must be sufficiently serious, the Court has already held that this depends on whether, in the exercise of its legislative powers, an EEA State has manifestly and gravely disregarded the limits on the exercise of its powers. In order to determine whether this condition is met, the national court hearing a claim for compensation must take into account all the factors that characterise the situation before it. Those factors include, *inter alia*, the clarity and precision of the rule infringed; the measure of discretion left by that rule to the national authorities; whether the infringement, and the damage caused, was intentional or involuntary; and whether any error of law was excusable or inexcusable (see *Sveinbjörnsdóttir*, at paragraphs 68 and 69).

39 It is clear from the judgment of the EFTA Court in *Restamark*, that Iceland, by maintaining its State import monopoly on alcoholic beverages, was in breach of Article 16 EEA from the entry into force of the EEA Agreement on 1 January 1994. That judgment was delivered on 16 December 1994 and relied essentially on the case law of the Court of Justice of the European Communities prior to the entry into force of the EEA Agreement, in particular the judgment in *Manghera*. The State monopoly on the import of alcoholic beverages was not abolished until 1 December 1995, nearly two years after the entry into force of the EEA Agreement.

40 However, the finding of a breach of EEA law is not in itself determinative. A mere infringement of EEA law by an EEA State does not necessarily constitute a sufficiently serious breach (see *Stockholm Lindöpark*, at paragraph 41). A breach will, however, be sufficiently serious if it has persisted despite settled case law from which it is clear that the conduct in question constituted an infringement (see, for comparison, *Brasserie du Pêcheur*, at paragraph 57).

41 The Plaintiff, supported by the EFTA Surveillance Authority and the Commission of the European Communities, has pointed out that, at the entry into force of the EEA Agreement, it had long been clear from the case law of the Court of Justice of the European Communities, in particular the judgment in *Manghera*, that national import monopolies of a commercial nature were incompatible with the provision of the EC Treaty corresponding to Article 16 EEA. On that basis, they argue that maintaining the Icelandic import monopoly on alcoholic beverages after the entry into force of the EEA Agreement constitutes a sufficiently serious breach of EEA law.

42 The Court observes that in *Manghera*, the Court of Justice of the European Communities ruled that every national monopoly of a commercial nature must be adjusted so as to eliminate any exclusive import rights. Even if it did not deal specifically with alcohol monopolies, it is clear from *Manghera* that an exclusive right to import alcoholic beverages constitutes an infringement of the provision of the EC Treaty corresponding to Article 16 EEA. Therefore, the Icelandic State could exercise no discretion in amending its legislation so as to eliminate the import monopoly on alcoholic beverages with effect from the entry into force of the EEA Agreement. The Icelandic State should have been aware of that judgment and its relevance for the interpretation of the EEA Agreement both during the EEA negotiations and at the time of signing the EEA Agreement on 2 May 1992.

43 This finding is not affected by the Declaration of the Governments of Finland, Iceland, Norway and Sweden on alcohol monopolies, annexed to the Final Act to the EEA Agreement, in which the declarant States recall "that their alcohol monopolies are based on important health and social policy considerations." The Declaration is made "without prejudice to the obligations arising under the Agreement." Even under general public international law, it does not amount to a formal reservation detracting from treaty obligations. The important health and social policy considerations referred to are not pertinent with respect to alcohol import monopolies.

44 The Icelandic State, supported by the Government of Norway, has argued that, following the entry into force of the EEA Agreement, amendments were sought to the contested national legislation in order to adapt to the EEA Agreement. They contend that the breach of EEA law was not sufficiently serious to entail State liability, since the period of time used to abolish the import monopoly was not excessive.

45 The Court observes that generally where a judgment of the EFTA Court or the Court of Justice of the European Communities has clarified previously uncertain obligations under the EEA Agreement, the EEA States must be allowed a reasonable time to adjust their legislation without incurring liability (see, to that effect, *Haim*, at paragraph 46, *et al*.). As held above, it was clear long before the entry into force of the EEA Agreement that an import monopoly could not be maintained. The Court finds that the Icelandic State, having negotiated, drafted, signed and ratified the EEA Agreement, was in the best position to assess the

legislative amendments required to comply therewith and had an obligation so to do before the entry into force on 1 January 1994. It appears that the Icelandic State had sufficient time, between the signing of the EEA Agreement and its entry into force, to make the necessary amendments in its national legislation, thereby preventing any breach of its obligation to abolish its import monopoly on alcoholic beverages.

46 Based on the above considerations, the Court concludes that the maintenance of the Icelandic import monopoly on alcoholic beverages after the entry into force of the EEA Agreement constitutes a sufficiently serious breach of EEA law to entail State liability, provided that the other conditions are fulfilled.

The third condition

47 As regards the condition that there must be a direct causal link between the breach of the obligation of the State and the damage sustained by the injured parties, the Court notes that this has to be determined by the national court (see, *inter alia*, Case C-5/94 *The Queen* v *MAFF, ex parte Hedley Lomas* [1996] ECR I-2553, at paragraph 30).

48 The answer to the third question must be that it is, in principle, for the national court to decide whether the conditions for State liability are fulfilled. In that assessment, the following considerations are to be taken into account: (1) Article 16 EEA is intended to confer rights on individuals; (2) the breach of Article 16 EEA is sufficiently serious to entail liability; (3) whether there is a direct causal link between the breach of Article 16 EEA and any damage sustained, is for the national court to decide.

III Costs

49 The costs incurred by the Government of Norway, the EFTA Surveillance Authority and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by Héraðsdómur Reykjavíkur by an order of 6 April 2001, hereby gives the following Advisory Opinion:

1. The maintenance after 1 January 1994 of a State monopoly on the import of alcoholic beverages is incompatible with Article 16 EEA.

2. An EEA State will, under the EEA Agreement, be liable to a prospective importer of alcoholic beverages for loss or damage incurred as a result of the maintenance of a State monopoly on the import of alcoholic beverages, provided that the conditions for State liability are fulfilled. Where those conditions are fulfilled, compensation by the State for such loss and damage must be based on national liability law. The rules on compensation laid down by national law must not be less favourable than those relating to similar domestic claims and must not be framed so as to make it in practice impossible or excessively difficult to obtain compensation.

3. It is, in principle, for the national court to decide whether the conditions for State liability are fulfilled. In that assessment, the following considerations are to be taken into account: (1) Article 16 EEA is intended to confer rights on individuals; (2) the breach of Article 16 EEA is sufficiently serious to entail liability; (3) whether there is a direct causal link between the breach of Article 16 EEA and any damage sustained, is for the national court to decide.

Thór Vilhjálmsson Carl Baudenbacher Per Tresselt

Delivered in open court in Luxembourg on 30 May 2002.

Lucien Dedichen
Registrar

Thór Vilhjálmsson
President