

EFTA COURT

Request for an Advisory Opinion from the EFTA Court by Oslo tingrett dated 14 March 2022 in the case of Stendi AS & Norlandia Care Norge AS v Oslo kommune v/ordføreren

(Case E-4/22)

A request has been made to the EFTA Court, dated 14 March 2022, from *Oslo tingrett* (Oslo District Court), which was received at the Court Registry on 30 March 2022, for an Advisory Opinion in the case of *Stendi AS & Norlandia Care Norge AS v Oslo kommune v/ordføreren*, on the following questions:

On whether the procurement comes within or falls outside the concept of service:

1. Is a contract for pecuniary interest providing for the provision of long-term places in nursing homes, the procurement of which is effected under the conditions described [in the request], to be regarded as a contract relating to the provision of “services” under point (9) of Article 2(1) of Directive 2014/24/EU?

On the exception in Article 32 EEA for exercise of official authority:

1. Is a public contracting authority’s ability to rely on the exception in Article 32 of the EEA Agreement, read in conjunction with Article 39, affected by whether:
 - a) the services in question have previously been the subject-matter of public service contracts between the contracting authority and both non-profit organisations and other (not non-profit) providers?
 - b) other public contracting authorities in the same State still opt to conclude contracts for equivalent services with both non-profit organisations and other (not non-profit) providers?
 - c) the power to take decisions to administer coercive health care in relation to persons without legal capacity to give consent who are opposed to that health care, is not placed directly with the contracting public authority’s contractor, but rather with the health personnel working for the contractor?

2. How is the wording “*even occasionally*” in Article 32 of the EEA Agreement, read in conjunction with Article 39, to be construed?

On the reservation for non-profit organisations:

1. Do Articles 31 and 36 of the EEA Agreement and Articles 74 – 77 of Directive 2014/24/EU preclude national legislation allowing public contracting authorities to reserve the right to participate in tendering procedures relating to health and social services for “non-profit organisations” on the terms laid down in the national legislative provision in question?