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Judgment in Case E-5/21 *Anna Bryndís Einarsdóttir* v *the Icelandic Treasury*

BASIS FOR CALCULATION OF A MATERNITY BENEFIT

In a judgment delivered today, the Court answered a question referred by Reykjavík District Court (*Héraðsdómur Reykjavíkur*) regarding the interpretation of Regulation (EC) No 883/2004 on the coordination of social security systems ("the Regulation").

The case before Reykjavík District Court concerns a decision of the Icelandic Maternity/Paternity Leave Fund not to take Ms Einarsdóttir's income earned in Denmark into account when determining the amount of her maternity benefit. The basis for this decision was that according to Icelandic law, the calculation of such a benefit was to be based only on income earned on the domestic labour market.

The referring court sought guidance on whether income received in other EEA States should be taken into account when calculating maternity/paternity benefits, in particular with reference to Articles 6 and 21(3) of the Regulation.

The Court noted that Article 6 of the Regulation concerns the entitlement to benefits, and not how benefits are calculated. Furthermore, that pursuant to Article 21(2) and (3), the calculation of cash benefits is linked to the income paid in the domestic labour market. Accordingly, the competent institution is not obliged to calculate the amount of a benefit such as that at issue in the main proceedings, on the basis of income received in another EEA State.

However, the Court held that Article 21 of the Regulation must be interpreted in light of Article 29 of the EEA Agreement, which entails that migrant workers must not lose their right to social security benefits or have the amount of those benefits reduced because they have exercised their right to free movement. Thus, the Court found that attributing no income to periods of employment completed in other EEA States is incompatible with Article 21(2) and (3). The Court therefore concluded that Article 21(2) and (3), interpreted in accordance with the objective set out in Article 29 EEA, requires that the amount of a benefit, such as that at issue in the main proceedings, granted to a migrant worker who, during the reference period set out in national law only had income in another EEA State, must be calculated by taking into account the income of a person who has comparable experience and qualifications and who is similarly employed in the EEA State in which that benefit is sought.

The full text of the judgment may be found on the Court's website: www.eftacourt.int.