

EFTA COURT

Request for an Advisory Opinion from the EFTA Court by the Supreme Court of Norway dated 7 June 2023 in criminal proceedings against LDL

(Case E-5/23)

A request has been made to the EFTA Court dated 7 June 2023 from the Supreme Court of Norway (*Norges Høyesterett*), which was received at the Court Registry on 7 June 2023, for an Advisory Opinion in criminal proceedings against *LDL*:

- 1. Based on the information provided about the factual background to the case [as set out in the request], in the light of which provision(s) of Directive 2004/38/EC should the restriction-related questions in the present case be examined?**
- 2. Provided that LDL, upon returning to Norway, could rely on his rights under Articles 4, 5, 6 and/or 7 of Directive 2004/38/EC, does a *more extensive right* to cross the border and reside in Norway without restrictions derive from his right of free movement as a worker under Article 28 of the Main Part of the EEA Agreement or from his right to travel to Sweden to receive services under Article 36 of the Main Part of the EEA Agreement?**
- 3. If a more extensive right of entry derives from the provisions on freedom of movement under the Main Part of the EEA Agreement, ref. question 2, and if LDL's travel to Sweden *on its own* also came within the scope of his right to travel there to receive services, is the question of whether the restriction on the freedom to provide services absorbed by the question of whether the restriction on his free movement as a worker can be justified?**
- 4. Does Chapter VI of Directive 2004/38/EC allow for the introduction of restrictions on rights under that directive, with the objective of safeguarding public health, in the form of general regulations, or is that option limited to individual measures based on considerations of risk of infection relating to the individual traveller?**
- 5. In light of the fact that the authorities are free to determine the degree of protection, and assuming that EEA law would not have precluded the adoption of even more invasive measures such as total or partial closure of borders, or a decision to require all travellers to undergo the period of quarantine at a quarantine hotel, what implications does it have for the EEA law assessment of**

the suitability of the scheme chosen that only certain groups had to go to a quarantine hotel?

- 6. What significance does it have for the assessment of whether the measure is consistently implemented and therefore suitable, that the quarantine hotel scheme (was part of an overall strategy for control of communicable diseases that also) was based on prioritisations as to which groups who, out of consideration for society as a whole, should be given priority within the parameters of the overall infection burden which the authorities considered acceptable at that time?**
- 7. In the drafting of the rules in a pandemic situation such as that at issue in the present case, how much weight can be attached to the need to introduce general and simple rules which can be easily understood and applied by concerned parties and easily managed and supervised for compliance by the authorities, see C-110/05 *Commission v Italy*, paragraph 67?**
- 8. Is it within the consideration of enforceability and control – and therefore within the legitimate aims in the assessment of whether the measure is justified – that the quarantine hotel scheme could potentially have a deterrent effect for persons contemplating travel abroad, with the consequence that the total infection pressure was reduced?**
- 9. What implications does it have for the assessment of the lawfulness of the restrictions if individual legal certainty safeguards under Articles 30 and 31 of Directive 2004/38/EC apply to the present case, but were potentially not fulfilled?**
- 10. In the assessment of whether the measure is proportionate under Articles 27 and 29 of Directive 2004/38/EC, and potentially also under the Main Part of the EEA Agreement, is there a requirement of proportionality in the narrow sense of the term (*stricto sensu*) in the present case?**
- 11. If question 10 is answered in the affirmative, what is potentially the legal content of and the legal subject-matter to be examined in the assessment of whether such a requirement is fulfilled in the present case?**