



Luxembourg, 21 March 2024

PRESS RELEASE 02/2024

Judgment in Case E-5/23 *Criminal proceedings against LDL*

PUBLIC HEALTH-BASED RESTRICTIONS ON THE FREE MOVEMENT OF PERSONS DURING THE COVID-19 PANDEMIC

In a judgment delivered today, the Court answered questions referred to it by the Supreme Court of Norway (*Norges Høyesterett*) concerning the interpretation of the Agreement on the European Economic Area (“EEA”), in particular Articles 28 and 36 thereof, and Directive 2004/38/EC (“the Directive”).

In light of the COVID-19 pandemic, Norway adopted the Regulation on measures for the control of communicable diseases during the COVID-19 outbreak (“the COVID-19 Regulation”) which provided for a general obligation to quarantine for persons entering Norway from specified areas. If the travel was to be deemed unnecessary under the COVID-19 Regulation, the traveller had to undergo quarantine at a quarantine hotel. The main proceedings concern the appeal by LDL to the Supreme Court of Norway. LDL is a Swedish national, resident in Norway. His parents and siblings reside in Sweden. For about a week in April–May 2021, he went to Sweden to visit his father. On his return, LDL was stopped at the border and ordered to a quarantine hotel. However, he opted to return home to undergo quarantine there.

On 25 June 2021, LDL was issued with an optional penalty writ for violation of the Norwegian framework for the control of communicable diseases (“the CCDA”), read in conjunction with the COVID-19 Regulation. LDL did not accept the optional penalty writ and the case was referred to Østre Innlandet District Court for judgment. LDL was convicted as charged and ordered to pay a fine and costs. LDL appealed to Eidsivating Court of Appeal on the point of the application of the law concerning the question of guilt, including whether the rules on quarantine hotels were contrary to EEA law. On 6 July 2022, Eidsivating Court of Appeal delivered judgment concluding that the rules were valid. Thus, LDL’s appeal was dismissed. LDL appealed to the Supreme Court of Norway. By letter of 7 June 2023, registered at the Court on 19 June 2023, the Supreme Court of Norway referred eleven questions to the Court.

By its first question, the referring court asked under which provisions of the Directive the restriction related questions in this case should be examined. The Court held that a restrictive measure, under circumstances such as those in the main proceedings, is to be examined with regard to the right of residence in Article 7(1)(a) of the Directive. Any interpretation of that Directive must be exercised in the light of and in line with fundamental rights and freedoms that form part of the general principles of EEA law.

By its second question, the referring court asked whether Articles 28 or 36 EEA provide more extensive rights than the Directive for an individual such as LDL to enter and reside in Norway. The Court held that, in circumstances such as those of the main

proceedings, neither Article 28 EEA nor Article 36 EEA provides for a more extensive right for an individual such as LDL to enter and reside in an EEA State such as Norway than the Directive.

By its third question, the referring court asked if the answer to the second question is in the affirmative, whether an examination of Article 36 EEA is material in circumstances such as in the main proceedings if a restriction of Article 28 EEA may be justified. The Court held that, in principle, a measure in dispute is examined only in relation to one of two freedoms if it appears, in the circumstances of the case, that one of them is entirely secondary in relation to the other and may be considered together with it. In the circumstances set out in the request, the right to receive services as a traveller in another EEA State under Article 36 EEA is entirely secondary to the right of free movement of workers.

The referring court's fourth and ninth questions concerned the interpretation of Chapter VI of the Directive. The Court held that restrictions based on grounds of public health may, depending on the circumstances and in particular the health situation, be adopted in the form of an act of general application which applies to any person in a situation covered by that act, while the conditions and safeguards laid down in Articles 30 and 31 of the Directive must be applied in the case of restrictive measures adopted in this form. The Court further held that when considering whether the restrictions are justified, it must be verified whether the procedural guarantees in Articles 30 and 31 have been fulfilled.

The referring court's remaining questions concerned aspects of the justification of the measure in question with regard to the principle of proportionality. The Court held that the objective of protecting public health referred to in Articles 27(1) and 29(1) of the Directive may not be pursued by a national measure without having regard to the fact that the national measure must be reconciled with the fundamental rights and principles affected by that measure, by properly balancing that objective of general interest against the rights and principles at issue, in order to ensure that the disadvantages caused by that measure are not disproportionate to the aims pursued. Moreover, the question of whether a limitation on free movement may be justified must be assessed by measuring the seriousness of the interference which such a limitation entails, and by verifying that the importance of the objective of general interest pursued by that limitation is proportionate to that seriousness.

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

This press release is an unofficial document and is not binding upon the Court.