



# NORGES HØYESTERETT

EFTA Court  
Rue du Fort Thüngen  
1499 Luxembourg  
Luxembourg

Doc 109

## Case No 22-152518STR-HRET, criminal case, appeal against judgment: Request for an Advisory Opinion

### 1. INTRODUCTION AND BACKGROUND TO THE REQUEST

- (1) Pursuant to Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (pSCA), see also Section 51a of the Norwegian Courts of Justice Act (*lov om domstolene*), the Supreme Court of Norway (*Norges Høyesterett*) hereby requests an Advisory Opinion from the EFTA Court for use in Case No 22-152518STR-HRET. The appellant is LDL, whilst the respondent is the prosecuting authority.
- (2) The case before the Supreme Court concerns the question whether LDL can be convicted for having failed to undergo an ordered stay at a quarantine hotel following travel abroad. LDL was convicted for that both in the District Court (*tingretten*) and the Court of Appeals (*lagmannsretten*).
- (3) The case raises, inter alia, questions about the interpretation of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States etc., and potentially the interpretation of certain rules in the Main Part of the EEA Agreement. Those questions of interpretation have also arisen in a number of other cases pending before Norwegian courts.
- (4) On 10 January 2023 the European Court of Justice (“ECJ”) held a hearing in Case C-128/22 *Nordic Info*. At the time of writing and pending judgment in that case, there are no decisions or opinions from the EFTA Court or the ECJ on the compatibility of measures for control of communicable diseases during the Covid-19 pandemic.
- (5) During the Covid-19 pandemic, the Member States and the rest of the world were in a unique situation. The particular features of the pandemic have given rise to certain questions concerning the understanding of the established assessment to be applied when the Supreme Court is to decide whether the restriction on freedoms under EEA law that the obligation to undergo a period of quarantine at a quarantine hotel constituted, may be justified. This includes, inter alia, questions as to which requirements, as part of the assessment of the suitability and proportionality of the measure for the control of communicable diseases, must

be imposed in respect of consistent implementation and the knowledge basis underlying the authorities' decision to introduce the measure in question.

- (6) The Supreme Court has found that it is appropriate to request the EFTA Court to provide its opinion on these matters of interpretation. This also concerns certain questions on which the ECJ may already have ruled in the said Case C-128/22 *Nordic Info* by the time of the EFTA Court's Advisory Opinion.
- (7) The case also raises some questions concerning the relationship between rules in the Main Part of the EEA Agreement and Directive 2004/38/EC, and, depending on the answer to that question, potentially also questions concerning the relationship between different freedoms under the Main Part of the EEA Agreement. The Supreme Court has found that it also is appropriate to request the EFTA Court to provide its opinion on those aspects of the case as well.

## 2. OVERVIEW OF THE PARTIES TO THE CASE

- (8) The parties involved in the case before the Supreme Court are:

Appellant:	LDL
Defence Counsel:	Advokat John Christian Elden Elden Advokatfirma AS P.O. Box 6684 St. Olavs plass 0129 Oslo
Defence Co-Counsel:	Advokat Olaf Halvorsen Rønning Elden Advokatfirma AS P.O. Box 6684 St. Olavs plass 0129 Oslo
Respondent:	Prosecuting Authority ( <i>Påtalemyndigheten</i> )
Prosecuting Authority:	Prosecuting Associate ( <i>Riksadvokatfullmektig</i> ) Mads Fredrik Baardseth Director of Public Prosecutions ( <i>Riksadvokat</i> ) P.O. Box 2120 Vika 0125 Oslo

## 3. FACTS

- (9) The factual background of the criminal proceedings against LDL are summarised as follows in the Court of Appeal's judgment, with further references to the District Court's judgment:

**“The indicted is a Swedish national, but is resident together with his wife at Bruvoll in Nord-Odal (in Norway). His parents and siblings reside in Sweden. For about a week from the end of April until the beginning of May 2021, he went to Sweden to visit his father in Karlstad in Värmland. The reason for the travel, as well as the further course of events, are described as follows in the District Court's judgment:**

**‘His father was very distraught after his brother (the indicted’ s uncle) had recently passed away. In Karlstad, the indicted was also together with his brothers and his father’s cohabiting partner. The indicted was to return to Norway because he has permanent residence here, where he resides with his wife.**

**On the way home, the indicted was stopped at the border at Magnormoen. He was ordered to the quarantine hotel, but instead he opted to return home to undergo the quarantine at home. His wife was in Oslo at that time, so the indicted considered it acceptable to undergo quarantine at home. Trysil municipality attempted to contact him by telephone on 2 and 3 May, but were unable to reach him.”**

- (10) Although not expressly stated in the judgments of the lower courts, it is undisputed that LDL works in Norway. It has been informed that LDL has resided and worked in Norway since the autumn of 2016.
- (11) On 25 June 2021, the Chief of Police of Innlandet County (*Politimesteren i Innlandet*) issued LDL with an optional penalty writ (*forelegg*) for violation of Section 7-12 of the control of communicable diseases act (*Act of 5 August 1994 No 55 relating to control of communicable diseases (lov 5. august 1994 nr. 55 om vern mot smittsomme sykdommer (smittevernloven)*), read in conjunction with Section 24 of the Covid-19 Regulation (*covid-19-forskriften*) and Section 4-3 of the control of communicable diseases act, read in conjunction with a combined reading of Sections 4 and 5 of the Covid-19 Regulation. The grounds were described as follows:
- “Sunday 2 May 2021, at around 20:00, he entered Norway via Magnormoen. Under the applicable provisions on control of communicable diseases, he was to stay at a quarantine hotel, and a room was organised at Kjølén hotel, but despite of this he never presented himself at Kjølén hotel.”**
- (12) LDL did not accept the optional penalty writ. The optional penalty writ took the place of an indictment, see Section 268 of the Criminal Procedure Act (*straffeprosessloven*), and the case was referred to Østre Innlandet District Court (*Østre Innlandet tingrett*) for judgment.
- (13) On 28 February 2022, Østre Innlandet District Court delivered judgment in which LDL was convicted as charged in the optional penalty writ. The District Court set the penalty to a fine of NOK 24 000. LDL was also ordered to pay costs in favour of the State in the amount of NOK 4 000.
- (14) The District Court held that the rules on quarantine hotels were not contrary to the control of communicable diseases act, the Constitution (*Grunnloven*) or the European Convention on Human Rights. Accordingly, in the District Court’s view, the order on quarantine hotel was valid, with the result that LDL could be sanctioned for failing to undergo the quarantine period at a quarantine hotel. The District Court did not, however, consider whether the rules on quarantine hotels were compliant with Directive 2004/38/EC or the Main Part of the EEA Agreement.
- (15) LDL appealed on the point of application of the law under the question of guilt. By decision of 29 April 2022, Eidsivating Court of Appeal (*Eidsivating lagmannsrett*) the appeal was referred for appeal proceedings.
- (16) Subsequently, on 6 July 2022, Eidsivating Court of Appeal delivered judgment in the case. In the judgment, the Court of Appeal considered whether the rules on quarantine hotels were

contrary to EEA law, but concluded that they were not. Like the District Court, the Court of Appeal further held that the rules were not contrary to the control of communicable diseases act, the Constitution or the European Convention on Human Rights, and accordingly concluded that the rules were valid. Accordingly, LDL's appeal was dismissed.

- (17) LDL appealed to the Supreme Court on the point of application of the law under the question of guilt and the procedure before the Court of Appeal. By decision of 25 November 2022 of the Appeals Selection Committee of the Supreme Court (*Høyesteretts ankeutvalg*), LDL was granted leave to appeal “on the point of application of the law in so far as it concerns the question whether the applicable rules in the Regulation are contrary to the rules of the control of communicable diseases act, the Constitution, the European Convention on Human Rights or EEA law”. Leave to appeal was refused as to the remainder.

## 4. LEGAL BACKGROUND TO THE CASE

### 4.1. Relevant Norwegian legislation and case law of the Supreme Court

#### 4.1.1. Introduction and overview of the rules

- (18) The relevant national rules were to a large extent laid down in the Regulation on measures for the control of communicable diseases during the Covid-19 outbreak (‘the Covid-19 Regulation’) (*forskrift om smitteverntiltak mv. ved koronautbruddet (covid-19-forskriften)*). The provisions of that regulation at issue in the present case, and the other main parts of the Covid-19 Regulation, were enacted on the basis of several different provisions in the control of communicable diseases act. The control of communicable diseases act also contains relevant rules.
- (19) Both the control of communicable diseases act and the Covid-19 Regulation have been amended on a number of occasions during the Covid-19 pandemic. Today, the rules on quarantine hotels have been repealed. Unless otherwise stated, the rules reproduced in the following are as they were at the time of the offence, 2 May 2021.

#### 4.1.2. The control of communicable diseases act and related case law

- (20) In Norway, the authorities' efforts in the control of communicable diseases are primarily regulated by the control of communicable diseases act. The Act is general and applies both in the day-to-day work with communicable diseases and in crisis situations involving communicable diseases posing a hazard to public health, such as during a pandemic. The control of communicable diseases act is, to some extent, a form of delegated legislation (*fullmaktsslov*), which provides the administration with a legal base to adopt and implement regulations to prevent or combat communicable diseases. At the same time, the Act sets out limits for which measures that may be used and under which conditions.
- (21) Section 1-1 of the Act provides that the purpose is inter alia to “protect the population from communicable diseases by preventing their occurrence and hindering them from spreading among the population, and by preventing such diseases from being brought into Norway or carried out of Norway to other countries”. The Act is also intended to “safeguard the legal rights of individuals who are affected by the measures to control communicable diseases pursuant to the Act”.

- (22) Section 1-5 of the control of communicable diseases act regulates the basic requirements for the implementation of measures for control of communicable diseases. Those requirements must be fulfilled for each and every measure for control of communicable diseases that is adopted. The provision reads as follows:

**“Measures for control of communicable diseases pursuant to this Act shall be based on a clear medical justification, be necessary for the purpose of controlling infection and appear appropriate after an overall assessment. Upon the implementation of measures for control of communicable diseases, emphasis shall be given to voluntary participation by the person or persons concerned by the measure.”**

- (23) In several cases in 2022 involving different Covid-19 restrictions, the Supreme Court has provided explanations on how Section 1-5 of the control of communicable diseases act is to be construed. In HR-2022-2171-A, paragraphs 47 and 50–53, for example, it is stated:

- (47) **The first condition is that the measure must be ‘based on a clear medical justification’. Just as in HR-2022-718-A *Hyttekarantene* paragraph 69, I base myself on the statements on the interpretation in Prop. 91 L (2018–2019). On page 10 of that proposition, the Ministry discusses the proposal in the consultation memorandum, in which it is highlighted as a condition that the measure for control of communicable diseases ‘on its own or together with other measures has been shown to have effect in similar situations’. I further refer to the specific remarks to the provision on page 45:**

**‘The requirement of medical justification must not be interpreted too strictly, and there is no requirement of scientifically-proven effect. It must also be viewed in relation to both the degree of threat of infection and how invasive the measure is. The measure for control of communicable diseases must, as a minimum, be relevant for the disease in question on the basis of a medical assessment.’**

[...]

- (50) **The second condition is that the measure must be ‘necessary for the purpose of controlling communicable diseases’. The preparatory works give limited guidance as to how the condition is to be construed on its own. I nevertheless refer to the statement in the specific remarks in Prop. 91 L on page 45, where it is stated that the measure must be ‘suitable for preventing or hindering the spread of infection of the disease in question’.**

- (51) **Third, the measure for control of communicable diseases must seem ‘appropriate after an overall assessment’. The condition is discussed as follows on page 10 of the proposition, see also paragraph 71 of the *Hyttekarantene* judgment:**

**‘The benefit must be weighed up against potential drawbacks, harm or violations of personal integrity which the measure may entail. If the benefit is minor or doubtful and the burdens of the measure are considerable, the measure should not be implemented. In other words, this condition comprises a proportionality assessment.’**

- (52) **The last two conditions must be read in conjunction, and an overall proportionality assessment must be made. I refer to paragraph 72 of the *Hyttekarantene* judgment, in which the reporting judge (*førstvoterende*) expresses it as follows:**

**‘The conditions that the measure must be necessary for the purpose of controlling infection, and that it must seem appropriate are closely**

connected. Together they constitute a requirement that the measure must be proportionate. On page 45 of the proposition this is elaborated on as follows:

**“The requirement that the measure must seem appropriate after an overall assessment means that the measure must not entail unnecessary drawbacks or harm for the person or persons concerned by the measure. The benefit must be weighed up against the burden entailed by the measure.**

**Furthermore, the measure must be necessary for the purpose of controlling infection. This means that the measure must be suitable for preventing or hindering the spread of infection of the disease in question. The requirements of an overall assessment and assessment of necessity will, in most cases in practice, amount to a proportionality assessment.”**

(53) **The proportionality requirement under the control of communicable diseases act must be viewed as closely connected to the requirements of proportionality imposed for implementing measures interfering with rights under the Constitution and the ECHR, see HR-2022-718-A *Hyttekarantene* paragraph 73.”**

(24) In Chapter 4 of the control of communicable diseases act, a legal base is provided to enact different measures for control of communicable diseases, including quarantine measures, subject to certain specified conditions. The authority to provide regulations on quarantine provision are set out in Sections 4-3 and 4-3 a of the control of communicable diseases act. Section 4-3 provides a legal base, inter alia, to lay down rules on so-called entry quarantine, and was worded as follows:

**“The King may issue regulations to prevent communicable diseases from being brought into the country or spread to other countries (quarantine measures), including provisions regarding measures in respect of persons, animals, means of transport, goods and objects which may conceivably transmit communicable diseases. In the regulations the King may also establish further requirements for examinations, removal of sources of contagion and documentation in connection with entry into and departure from Norway and in connection with the import and export of goods.**

**In order to prevent or hinder the spread of Covid-19, the King may issue regulations governing where and how persons entering Norway shall undergo quarantine. The King may also issue regulations governing deductibles for persons in quarantine or their employers or clients to cover costs of the quarantine stay.**

**The King may issue regulations governing procedural rules for decisions taken pursuant to regulations under the second paragraph. In that connection, exceptions may be made from Chapters IV, V and VI of the Public Administration Act (*forvaltningsloven*)”**

(25) Furthermore, Section 4-3 a of the control of communicable diseases act conferred authority to enact rules on isolation of infected persons and rules governing so-called infection-related quarantine (*smittekarantene*) or “waiting quarantine” (*ventekarantene*). Infection-related quarantine was directed at persons having had close contact with an infected or presumably infected person, whilst waiting quarantine concerned persons living in the same household as a person placed in infection-related quarantine.

(26) Section 8-1 of the control of communicable diseases act provided that intentional or negligent violation of the act or measures enacted on the basis of the act constituted a punishable offence.

### 4.1.3. The Covid-19 regulation

#### *The rules in the Covid-19 Regulation*

- (27) Section 4 of the Covid-19 Regulation contained general rules on who was subject to the obligation to quarantine. In addition to entry quarantine, which is the type of quarantine at issue in the present case, Section 4 of the Regulation also contained rules on infection-related quarantine and waiting quarantine.
- (28) The entry quarantine scheme was regulated by letter (a) of the first paragraph of Section 4, to the effect that “persons entering Norway from an area with an obligation to quarantine as set out in Appendix A shall go into quarantine for a period of 10 days”.
- (29) Appendix A contained a continuously up-to-date overview of which countries and, where applicable, which areas in that country, for which there upon entry into Norway applied a requirement to quarantine as a result of increased infection. At the time of the offence, the Värmland region of Sweden, which LDL had visited and returned to Norway from, was listed in the overview in Appendix A.
- (30) Under Sections 6a–6j of the Regulation, certain types of travel, persons performing public functions, etc., were exempted from the entry quarantine requirement. Those exemptions must be viewed in connection with the recommendations laid down in point 19 of the Council Recommendation (EU) 2020/1475. It is undisputed that LDL does not come within any of the categories for exemption from the entry quarantine.
- (31) The quarantine hotel scheme was first established in November 2020 and, at that time, led to more detailed regulation and tightening-up of the rules on the implementation of entry quarantine for certain groups of persons. The scheme was originally adopted by the King in Council. The detailed arrangements of the scheme, particularly the rules regulating the groups of persons and entry situations were covered, has been amended several times. Several of those amendments, including the tightening-up provisions introduced in March 2021 discussed below, were adopted following discussion in the Government’s Covid-19 Committee (GCC) (*regjeringens covid-19-utvalg (RCU)*). The GCC was a supplement to the regular government conferences and had as its purpose to strengthen the Government’s overall crisis management and to ensure quick response to and governmental support of matters relating to the handling of the pandemic. The GCC was primarily comprised of the political party leaders, the Minister of Health and Care Services, the Minister of Justice and Public Security and the Minister of Finance. Other ministers participated as needed.
- (32) Persons subject to the rules on quarantine hotels as they applied at the material time were required to undergo the entry quarantine at an assigned room in certain hotels specifically designated to accommodate travellers entering Norway, see the first paragraph of Section 5 of the Covid-19 Regulation. That provision read as follows at the time of the offence:
- “Persons in entry quarantine shall stay at a quarantine hotel at the first point of entry in the Kingdom during the period of quarantine.”**
- (33) The requirements for the entry quarantine were tightened up in March 2021, by expanding the categories of persons to which the obligation to undergo entry quarantine at a quarantine hotel applied. This was done through an amendment to the second paragraph of Section 5 of the

Regulation, which regulated exemptions from the obligation to stay at a quarantine hotel, as provided for in the first paragraph of Section 5 of the Regulation. Until 18 March 2021, the question of an obligation to undergo quarantine at a quarantine hotel had been linked to whether the traveller had a suitable location to undergo quarantine. The amendment entailed that, as from 19 March, the purpose of the travel could trigger the obligation to quarantine at a quarantine hotel *irrespective* of whether the traveller had a suitable quarantine location. This followed, inter alia, from letters (a) and (c) of the second paragraph of Section 5 and the fifth paragraph of Section 5, which read as follows at the time of the offence:

**“The obligation to stay at a quarantine hotel shall not apply in respect of persons who fulfil the conditions in Section 4d and who:**

- a. **upon entry, are able to document that they are resident in Norway and that the travel was necessary, and who stays at the residence or other suitable location where it is possible to avoid close contact with others, with a separate bedroom, separate bathroom and separate kitchen or the possibility of having meals provided. [...]**
- c. **upon entry, are able to document that they own or rent a permanent residence in Norway where they can undergo quarantine in a separate living space with a bedroom, bathroom and kitchen, and that the travel was necessary. A lease as referred to in the first sentence must have a minimum duration of six months. [...]**

**Work-related travel will be deemed necessary under letters (a) and (c) of the second paragraph when confirmation from an employer or client is provided. For persons who are resident in Norway, see letter (a) of the second paragraph, and temporarily work abroad, studies abroad or are accompanying members of the household of persons who work or study abroad, travel into and out of Norway during the period they are based abroad shall be considered necessary. Travel will also be necessary if it is justified on compelling welfare-related grounds such as spending time with minor children, visiting close relatives who are seriously ill or dying, or attendance at the burials or funerals of close relatives.”**

- (34) Section 4d of the Covid-19 Regulation, which it is referred to in the second paragraph of Section 5 of the Regulation, contained requirements for testing for SARS-CoV-2 at border crossings.
- (35) As is apparent, the system was designed so that Section 4 of the Regulation provided for a general obligation to quarantine for persons entering Norway from an area with an obligation to quarantine as set out in Appendix A. The obligation was not contingent on an individual decision having been adopted against the person concerned. Principally, depending on whether or not the travel was to be deemed necessary under Section 5 of the Regulation, the traveller had to undergo the period of quarantine at a quarantine hotel. This obligation was also not contingent on an individual decision having been adopted against the traveller.
- (36) Section 5 of the Regulation contained detailed rules regulating what was permitted and not permitted during the completion of the quarantine period. Among other things, it emerged from the seventh paragraph of Section 5 that:

**“Persons in entry quarantine may only be outside their place of residence if they can avoid close contact with people other than those with whom they reside. Persons in quarantine may not be at a workplace where other persons are also present, or at schools or kindergartens. The use of public transport is not permitted.”**



- (37) According to the information provided, at the quarantine hotels the restrictions set out in the seventh paragraph of Section 5 were practised in such a way that persons in entry quarantine were allowed to walk through the common areas and out of the hotel, usually to get some fresh air. It was not permitted to use other parts of the hotel than the assigned room. Apart from any persons together with whom a person was undergoing quarantine – usually a spouse, common law partner, child(ren) or parents – it was neither permitted to have close contact with other persons undergoing entry quarantine at the same hotel.
- (38) The quarantine hotels were responsible for having routines that ensured compliance with the rules on control of communicable diseases for persons in quarantine and the health authorities' standards governing the serving of food and cleaning, see Revised Circular on quarantine hotels (*Revidert rundskriv om karantenehotell*) (G-2021-12), point 4(f).
- (39) Persons under an obligation to stay at a quarantine hotel during the quarantine period according to Section 5 of the Regulation also had to pay a deductible for their stay. This followed from the first paragraph of Section 22 of the Regulation, which read as follows:
- “Individuals staying at a quarantine hotel during the quarantine period under Section 5 shall pay a deductible of NOK 500 per day. If a person has an employer or client in Norway, that party shall pay the deductible of NOK 500 per day.”**
- (40) At the time of the offence, the quarantine period for entry quarantine was ten days, see letter (a) of the first paragraph of Section 4 of the Regulation. The quarantine period – and thus also the duration of the stay at the quarantine hotel – could nevertheless be shortened if the traveller could document a negative Covid-19 test result. At the time of the offence, such a test could at the earliest be taken seven days after entry into Norway, see the first paragraph of Section 4c of the Regulation. Such a test was to be offered to persons staying at a quarantine hotel, see the third sentence of the second paragraph of Section 4c of the Regulation. Thus, at the time of the offence, under the first paragraph of Section 22 of the Regulation, persons under an obligation to quarantine at a quarantine hotel under Section 5 had to pay a minimum deductible for seven days – for a total of NOK 3500 – for the stay.
- (41) Violation of the provisions of the Covid-19 Regulation was largely subject to criminal sanctions. As stated above, the threat of criminal sanctions followed from Section 8-1 of the control of communicable diseases act, but also from Section 24 of the Covid-19 Regulation. Section 24 of the Covid-19 Regulation provided that intentional or grossly negligent violation of Section 5 of the Covid-19 Regulation – the obligation to undergo the stay at a quarantine hotel – was punishable by fine or imprisonment up to six months.

***Further on the background to and reasons for tightening-up of the rules in the Covid-19 Regulation***

- (42) The background to and justification for the aforementioned tightening-up of the Covid-19 Regulation in March 2021 follows from a document published on the Government's website entitled “Justification for amendments of 16 March 2021 to Section 5 of the Covid-19 Regulation on place of stay for entry quarantines” (“*Begrunnelse for endringer 16. mars 2021 i covid-19-forskriften § 5 om oppholdssted for innreisekarantene*”).
- (43) Part 1 contains the background to and need for the tightening-up. Particularly highlighted is the experience gained from rapidly increasing infections following the previous year's winter holiday, and how the combination of the imminent Easter holiday and new, more infectious

variants of the virus means that increased rates of imported infection can now have far greater implications. By extension thereof, the following is stated:

**“In the difficult situation in which we now find ourselves, in the Government’s assessment it is necessary to introduce measures which are both conducive to having as few people as possible opting to travel abroad and to limit the risk that people who nevertheless do opt to travel bring the virus with them upon their return and spread it in Norway.”**

- (44) Part 2 contains the reasons for the tightening-up in terms of control of communicable diseases. The main factors in that assessment are repeated in the Government’s assessments in part 3, and the assessment in part 2 is accordingly not reproduced separately.
- (45) The Government’s assessments in part 3 – entitled “The relationship to the Constitution and human rights” (“*Forholdet til Grunnloven and menneskerettighetene*”) – begins with a discussion of the State’s duty to implement measures to safeguard the right to life and health, see inter alia Section 93 of the Constitution, Article 2(1) of the European Convention on Human Rights, Article 6(1) of the United Nations International Covenant on Civil and Political Rights and the United Nations International Covenant on Economic, Social and Cultural Rights, in the light of other fundamental human rights such as the right to respect for private and family life, and the right of free movement.
- (46) Next, the question of quarantine hotels is discussed in greater detail:

**“The Government has concluded that it is necessary to tighten up on the exemption from stays at a quarantine hotel for persons who are resident or have a permanent residence in Norway. In light of the recommendations from the Directorate of Health (*Helsedirektoratet*) and the Institute of Public Health (*Folkehelseinstituttet – FHI*) to delay the introduction and spread of the mutated virus variants as much as possible, the Government takes the view that it is absolutely necessary to restrict unnecessary travel out of the country. An increase in the number of journeys will likely lead to increased import infection and subsequent spread of infection in Norway. The Government further refers to the public directorates’ assessment that the mutated viruses are more infectious, and accordingly takes the view that a person’s home can no longer, to the same extent, be considered a suitable place to undergo quarantine. For persons who shall undergo quarantine in their own home, there are, inter alia, on grounds of the right to respect to private life and family life, no requirements for a separate bedroom, bathroom and kitchen, as is done for most of the exemptions from a quarantine hotel. This entails a heightened risk that persons in quarantine will infect members of their own household, who in turn can further spread the infection in society. Lastly, reference is made to the States’ assessment that there is a need to strengthen monitoring of compliance with the rules applicable to persons in entry quarantine. Such monitoring is possible only to a limited degree in respect of persons who quarantine in their own homes. Quarantine hotels are generally considered the most suitable place for completing quarantine and offer the best possibilities for carrying out monitoring of compliance with the rules.”**

- (47) In the document the Government considers whether other, less restrictive measures might be sufficient, but concluded that this was not the case. Reference is made in that connection, inter alia, to the alternative measures, such as requirements of a separate bedroom, separate bathroom and separate kitchen in a person’s own home, would give rise to other challenges, including in terms of documentation. It is also observed that alternative formulations of the tightened-up rules will interfere with the right to respect for private life and family life, without any gain in the prospects for monitoring of compliance with the quarantine rules. The lack of such monitoring opportunities is also highlighted separately as an argument illustrating that such a measure would not be sufficient if allowing people to stay in their own

homes on such terms were to become a general alternative to a quarantine hotel, irrespective of whether or not the stay abroad had been necessary.

- (48) The Government also explicitly points out that a tightening-up of the exemption allowed for quarantine hotels is a less invasive measure than a ban on unnecessary travels (“non-essential travels”) abroad, as certain other countries had introduced at that time.
- (49) By way of conclusion, a proportionality assessment is made of the tighter rules, partly in the light of EEA law. The Government’s assessments are reproduced here in their entirety:

**“The Government further takes the view that the measure will be proportionate. It is only in those cases where the travel out of the country is found to be unnecessary that persons who are resident in Norway must undergo quarantine at a quarantine hotel. The tightening-up of the rules will primarily affect purely leisure travel and visits to family abroad in those cases where there are no compelling welfare considerations suggesting that the visit cannot wait. Those considerations also justify why it is necessary and proportionate to impose more stringent requirements on persons who are returning from unnecessary travel, even though the purpose of the travel on its own has no implications for the risk of infection the person represents. Reference is also made to the fact that the measure is temporary, in a situation where there is an acute need to limit the spread of the mutated viruses until a larger proportion of the population is vaccinated.**

**In line with the foregoing, the Government takes the view that the quarantine hotel requirement can be limited to those who have been on an unnecessary travel abroad, as that term is defined in the Covid-19 Regulation. The handling of the pandemic is based on reducing infection pressure as much as possible, without the measures being more restrictive than necessary. In such a situation, it will be legally possible, also within the framework of the Constitution and human rights, to emphasise other legitimate societal considerations in the assessment of who must undergo the entry quarantine at a quarantine hotel. In addition, in the handling of the pandemic it must be possible to have general rules that can be enforced without it being necessary to consider whether the individual traveller satisfactory would have undergone quarantine in its own home. In this balancing of different considerations, the Government considers that it is proper that people engaged in leisure travel who are unable to document compelling welfare considerations must undergo quarantine at a quarantine hotel, whilst an arrival back after documented work-related travel will be considered differently. This is also consistent with the Government’s strategy to prioritise working life and the economy over holiday and recreation.**

**A requirement to stay at a quarantine hotel during the quarantine period will also constitute a restriction under EEA law. Reference is made to the general assessments of the relationship to EEA law in Prop. 62 (2020-2021) part 4.2. As discussed herein, measures for control of communicable diseases that restrict the right of free movement must be suitable and necessary for attaining the objective pursued by the measure. As regards the tightening-up of the rules in question, the Government considers that the requirement of proportionality under EEA law does not place further limitations than what is considered above.”**

#### **4.1.4. Revised Circular on quarantine hotels, expanding on the practical situation at border crossings and at the quarantine hotels**

- (50) As elaborated on above, the Covid-19 Regulation regulated the key aspects of the quarantine hotel scheme. Some further, more practical regulations also followed from the Revised Circular on quarantine hotels (G-2021-12) of 27 March 2021.
- (51) Point 1 of the Circular highlights, inter alia, that the police, in their border control, shall verify the conditions for entering Norway, and where these are met, provide guidance on the

regulations, including the obligation to stay at a quarantine hotel as required under Section 5 of the Covid-19 Regulation. It is also stated that, as a general rule, it is for the individual traveller itself to consider whether he or she are subject to any of the Covid-19 Regulation's exemptions from the obligation to undergo the quarantine period at a quarantine hotel.

- (52) Point 4 of the Circular also contains some guidance on compliance checks at quarantine hotels, etc. Point 4(h) states that the municipality, in cooperation with the hotel, has to establish a control system to ensure that those in quarantine complies with the guidelines and stays at the hotel. If a breach of the quarantine obligation was revealed, the police was to be contacted to consider potential criminal sanctions, see point 4(h) and (j). It is also stated therein that the use of coercion in the implementation of the quarantine hotel scheme is not permitted.

#### **4.2. The Main Part of the EEA Agreement and related case law**

- (53) Article 28(1) of the Main Part of the EEA Agreement provides that there shall be free movement of workers among the EFTA States and the EU States. A national measure is deemed to be a restriction on the free movement of workers where that measure is liable to hamper or to render less attractive the exercise of the right, see, for example, the ECJ's judgment in Case C-19/92 *Kraus*, paragraph 32.
- (54) Article 36(1) further provides that there shall be no restrictions on freedom to provide services within the EEA. Article 36 also includes a passive right, entailing a right for recipients of services to go to another EEA State to receive services there, without being hindered by restrictions, see inter alia Case E-8/20 *Criminal proceedings against N*, paragraph 75. Thus, rules which, on their own, only apply after the return from other EEA States can render the exercise of the freedom to provide services less attractive and, for that reason, constitute a restriction.
- (55) Restrictions on the freedoms in Article 28 and Article 36 can be justified – and thereby be lawful – if they are based on overriding reasons in the public interest, appropriate for attaining the legitimate objectives pursued and proportionate having regard to those objectives, in particular by not going beyond what is necessary to attain them, see, for example, the EFTA Court's advisory opinions in Case E-8/20, paragraph 91, and Case E-5/10 *Dr Kottke*, paragraphs 46 and 47, see also Article 28(3) and Article 39 of the EEA Agreement, read in conjunction with Article 33.
- (56) The parties to the case agree that the restriction was based on overriding reasons in the public interest, those being public health grounds.
- (57) In Case E-16/10 *Philip Morris Norway AS*, the EFTA Court addressed the question whether a restriction on the free movement of goods could be justified on grounds of public health. In paragraph 77, the Court observed that the life and health of humans rank foremost among the assets and interests protected by Article 13 of the EEA Agreement. The Court further stated that the States have broad discretion to determine the degree of protection they wish to ensure, see paragraphs 77 and 80, which can lead to a situation where one EEA State has stricter rules than another, although this does not necessarily entail that the latter's rules are disproportionate. The EFTA Court further held that uncertainty about the effects of a measure does not preclude its implementation, see paragraphs 82 and 83.

- (58) In previous case law from the EFTA Court and the ECJ, as part of the assessment of suitability, there has also been imposed requirements that the restrictive measure must be part of a consistent safeguarding of the relevant public interest that is claimed to be capable of justifying the restriction. This is expressed *inter alia* in the advisory opinion in Case E-3/06 *Ladbroke's Ltd*, in which the EFTA Court stated in paragraph 51 that it must be considered whether “the State takes, facilitates or tolerates other measures which run counter to the objectives pursued by the legislation at issue”, and that “[s]uch inconsistencies may lead to the legislation at issue being unsuitable for achieving the intended objectives”.
- (59) The ECJ has also in previous case law held that Member States cannot be denied the possibility of ensuring public health protection by the introduction of general and simple rules which will be easily understood and applied by concerned parties and easily managed and supervised for compliance by the competent authorities, see C-110/05 *Commission v Italy*, paragraph 67.

#### **4.3. Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 etc.**

- (60) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, etc. also contains rules that are relevant to the case. The Directive has been implemented in Norwegian law through Chapter 13 of the Immigration Act (*utlendingsloven*).
- (61) The Directive lays down detailed rules on the exercise by EEA nationals and their families of the right to enter and reside on Member States’ territory, including restrictions on those rights on grounds of public policy, public security or public health, see Article 1.
- (62) More detailed rules regulating the aforementioned rights is found *inter alia* in Articles 4–7. Article 4(1) and Article 5(1) provide that Member States shall allow EEA nationals to leave and enter their territory with a valid identity card or passport. Article 6(1) further provides that EEA nationals have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport. Article 7 regulates the right of residence for periods of longer than three months. Article 7(1)(a) provides that the right of residence for periods of longer than three months *inter alia* is granted to all EEA nationals who are workers or self-employed persons in the host Member State.
- (63) It is undisputed that the quarantine hotel scheme entailed restrictions on LDL’s rights under the Directive. Under Article 27 of the Directive, such restrictions on EEA nationals’ right of free movement and residence can be introduced “irrespective of nationality, on grounds of public policy, public security or public health”.
- (64) As regards restrictions on grounds of public health, Article 29(1) further provides that:
- “The only diseases justifying measures restricting freedom of movement shall be the diseases with epidemic potential as defined by the relevant instruments of the World Health Organisation and other communicable diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the host Member State.”**
- (65) In addition, Articles 30 and 31 contain certain specific individual legal safeguards.

- (66) On 13 October 2020, the Council Recommendation (EU) 2020/1475 was adopted. It contained various recommendations for the response to the Covid-19 pandemic.

## **5. THE PARTIES' VIEWS ON THE QUESTIONS OF EEA LAW**

### **5.1. Submissions of the defence counsel**

#### **5.1.1. Restrictions in relation to obligations under EEA law**

- (67) The defence counsel submits that the facts of the case as presented lead to a number of restrictions on LDL's rights of free movement. First, the national measures entail restrictions on LDL's right to exercise his right of free movement as an EEA national both to exit and entry to Norway under Articles 4 and 5 of Directive 2004/38/EC and his right to stay here under Articles 6 and 7 of the Directive. The measures also constitute restrictions on his right of free movement as an economically active person under Article 28 of the EEA Agreement and his right to travel to Sweden to receive services under Article 36 of the EEA Agreement.
- (68) It is not disputed that the restrictive measures in question pursued legitimate objectives, namely the protection of public health.

#### **5.1.2. Restriction of free movement on public health grounds – are general regulations entailing restrictions on EEA nationals' right of free movement permitted on public health grounds?**

- (69) It is submitted that Articles 27 and 29 of Directive 2004/38/EC cannot be applied in order to justify *general measures* that restricted EEA nationals' right of free movement, but that those legal bases can only justify sufficiently *individualised measures*. That general principle has inter alia found expression in Article 27 and Articles 30 and 31 of the Directive, which exhaustively regulate the individual legal safeguards and procedural rules applicable to each and every restriction under Chapter VI of the Directive.
- (70) It follows from the foregoing that schemes such as the Norwegian one, under which restrictions placed on individuals' free movement were not instituted following an individualised assessment or in the form of an individual decision, but only on the basis of general regulations lacking specific individual legal certainty safeguards, by their very nature cannot be justified.
- (71) In the alternative, in the case that there is a limited possibility to introduce such general restrictions on EEA nationals' right of free movement for measures that has as its objective to protect public health, the general principle that only individual measures can justify restrictions to protect human life and health must be given considerable emphasis in the assessment of whether the measures are suitable, necessary and proportionate.

### 5.1.3. Justification of restrictions

- (72) In the event that measures restricting the right of free movement under Directive 2004/38/EC can be made through general regulations, it is submitted that the restrictive measures in question cannot be justified.

#### *Suitability of the measures*

- (73) The defence counsel submits that, in the determination of whether restrictions to protect public health are suitable and consistently implemented, see inter alia E-3/06 *Ladbroke's Ltd*, paragraph 51, regard must be had solely to health-related grounds, such as the risk of infection through the behaviour which the measures restrict.
- (74) In this context it cannot be allowed that emphasis is placed on other economic considerations when drawing up the restrictive measures for the control of communicable diseases since such considerations are expressly forbidden under Article 27(1) of Directive 2004/38/EC. Nor can it be emphasised that drawing up more individualised rules which take greater account of the risk of infection posed by the person in question will lead to higher administrative burdens for national authorities, see Case C-318/07 *Persche*, paragraph 55. It is submitted that it is not permitted to attach weight to the measures' general preventive effect when drawing up measures restricting EEA nationals' right of free movement. This follows explicitly from the second paragraph of Article 27(2) of Directive 2004/38/EC.
- (75) Should the EFTA Court find that other considerations than health-related ones can be emphasised in the assessment of whether a restriction is suitable for and consistently safeguards public health, it is submitted that such considerations should in that case only be given limited weight. In the assessment of other societal considerations, the balancing must safeguard the fundamental considerations of the functioning of the EU and the EEA, including being neutral in relation to societal sectors and not prioritising national interests over other Member States' interests.
- (76) In the defence counsel's view, this means that the restrictive measures in question do not fulfil the requirements for being considered suitable, since national authorities allowed equivalent measures with a similar risk of infection, in particular by allowing persons travelling for work-related purposes which presented the same risk of infection, not to be made subject to equivalent restrictions, and allowing infected persons to undergo infection-related quarantine in their own home.

#### *Proportionality of the restrictions – the necessity assessment*

- (77) The restrictive measure will not be proportionate if other measures can be shown having an effect which, to a similar extent, attain the objective pursued by the restrictions, see, for example, C-394/97 *Heinonen*, paragraph 42, and which amount to less invasive restrictions on fundamental rights.
- (78) The States' duty to consider alternative measures and show that these will not attain an equivalent degree of protection is, in the submission of defence counsel, significant when concerning such invasive restrictions on fundamental freedoms. Considerable weight must be given to the fact that national authorities were able to obtain or conduct general expert analyses and reports on the appropriateness of the scheme, but opted not to do so. On the

contrary, no emphasis must be given to whether the alternative measure would have been more costly or administratively burdensome for the State authorities. In so far one can emphasize purely compliance-related considerations, see, for example, C-110/05 *Commission v Italy*, paragraph 67, those should be given modest weight in the assessment of whether such invasive measures can be justified.

*Proportionality of the measures (proportionality in the narrow sense)*

- (79) It is submitted that, in cases such as the present one, a particular requirement of proportionality *strictu sensu* applies.
- (80) In the assessment of whether the measure is proportionate in the narrow sense, the restrictive measure's effect on fundamental rights in the EU and EEA must be weighed against the significance of the legitimate objectives pursued and the measure's expected advantages/contributions towards attaining that objective, see, for example, C-333/14 *Scotch Whisky Association*, paragraph 58.
- (81) It is submitted that restrictive measures of this nature encroach upon the most fundamental EU and EEA rights, and that the EFTA Court's view of where the threshold should be will have great significance, in the short- and long term, for the functioning of the EU and the EEA. When it comes to measures encroaching upon the fundamental functioning of the EU and the EEA to such an extent, the requirements for the advantages of the measure in question must be set at a high level.
- (82) Thus, the encroachment on fundamental rights represented by the restrictive measure is not proportionate to the limitation the restrictive measure places on fundamental rights.

**5.2. Submissions of the Prosecuting Authority**

- (83) The Prosecuting Authority submits that the rules in the Covid-19 Regulation on the obligation to stay at a quarantine hotel, as they read on 2 May 2021, were compliant with the relevant requirements under EEA law. As a result, EEA law rules cannot lead to impunity for LDL under criminal law.
- (84) In the Prosecuting Authority's submission, it is the right as an EEA national that is the relevant basis to rely on, and it is not disputed that the EU Citizenship Directive applies, see Article 3(1). Even though LDL presumably availed himself of services in Sweden, this has not been subject to evidence the case. In the Prosecuting Authority's view, it is sufficient to assess the present case in light of the right of entry and exit provided for in Articles 4 and 5 of Directive 2004/38/EC.
- (85) The Prosecuting Authority does not dispute that the obligation to stay at a quarantine hotel in order to undergo the entry quarantine amounted to a restriction. As far as is understood, it is not the requirement of entry quarantine that is challenged, but rather the lawfulness of *the requirement to undergo* that entry quarantine at a hotel. The Prosecuting Authority submits that this measure for control of communicable diseases is authorised by and compliant with Directive 2004/38/EC and its associated requirements. The restriction can, therefore, be justified under EEA law and is lawful. The rule in the Covid-19 Regulation could lawfully be enacted and enforced by Norwegian authorities. The Prosecuting Authority further submits that any procedural requirements under the Directive were satisfied.



- (86) The parties agree that the restriction pursued a legitimate objective. Within that, it is for national authorities to decide what degree of protection they wish to assure, see C-333/14 *Scotch Whisky Association*, paragraph 35. In the Prosecuting Authority's view, the other criteria for the restriction to be justified – which are the cruxes of the present case – are also met. The restriction was suitable for attaining the objective it pursued and did not go beyond what was necessary in order to attain it.
- (87) The EU Citizenship Directive allows for adopting *general restrictions* in the case of measures that seek to safeguard public health. There is nothing in the wording of Article 27 or 29 to suggest that it does not allow for general restrictions, and that finding is further supported by the wording in Article 27(2), which explicitly refers *only* to “public policy or public security” – and not “public health”.
- (88) The purpose of the quarantine hotel scheme was to protect *public health*, and the measure was one of several measures for control of communicable diseases in the society. The measures were based on the infection situation in the society and previous experience from the pandemic. The handling of the pandemic and the specific measures were the result of thorough assessments by both the expert authorities and the highest political authorities. A quarantine hotel scheme based on a distinction between necessary and unnecessary travel was a suitable means for attaining the objective of protecting public health *in abstracto* and *in concreto*. The requirement of consistency cannot be such so as to preclude a proper, sound and non-discriminatory criterion such as the distinction between necessary and unnecessary travel.
- (89) The ambition was to reduce the risk of infection, partly by (i) having the measure contribute to fewer people traveling to the specifically designated areas listed in Appendix A, *and* partly by (ii) reducing the risk for that those who travelled returned (to Norway) with infection. Both were legitimate and proper aspects at which to direct measures, without being discriminatory in nature. The rule of having a distinction between necessary and unnecessary travel must be viewed in context with point 19(e) of Council Recommendation (EU) 2020/1475, where it is recommended to provide for an exemption from the quarantine requirements where the travel was necessary on compelling family-related grounds (“Travellers with an essential [...] need [...], in particular: [...] imperative family [...] reasons”). This supports the position that the measure was suitable for reducing infection rates and very desirable from the point of view of EU law. The consequence should also be assessed in light of all of the measures for control of communicable diseases, and bearing in mind that the Norwegian authorities' criterion was aimed at avoiding even more stringent regulatory rules (and even greater restrictions on EEA rights).
- (90) The measure was assessed by itself and together with other measures for control of communicable diseases, to be suitable for reducing infection. The measure was also consistent in its implementation. The requirement that the measure “genuinely reflects a concern to attain the objective in a consistent and systematic manner”, see C-209/18 *Commission v Austria*, paragraph 94, is fulfilled in the present case.
- (91) The Prosecuting Authority underlines that there is room for having rules that are simple and general – which can easily be applied and enforced, see C-110/05 *Commission v Italy*, paragraph 67. This must particularly apply in a pandemic situation.

- (92) The Prosecuting Authority further submits that the measure did not go beyond what was necessary. As emphasised in the aforementioned Council Recommendation, the Covid-19 pandemic was “an unprecedented health emergency”, and “the protection of public health has become an overriding priority for both the Union and its Member States”. The authorities must then have a broad discretion for making their assessments, and the courts should subsequently exercise a greater restraint in its judicial review in the context of a pandemic. In the Prosecuting Authority’s view, a requirement of proportionality *stricto sensu* should not be imposed in a pandemic situation – but in any event the Prosecuting Authority is of the opinion that the measure also fulfils any such requirement.
- (93) In the specific assessment it is submitted that the same objective attainment could not have been realised with a different, less restrictive regulation. And a relatively comprehensive obligation to stay at a quarantine hotel was less burdensome than the alternatives that were considered. Moreover, entry quarantine in people’s own homes had already been tried. The Prosecuting Authority further highlights that the measure must be assessed in light of the situation and knowledge at the time the measure was adopted. The pandemic threatened public functions and individuals’ lives and health in a situation in which large portions of the population in Norway were unvaccinated. A high degree of protection does not render the rules disproportionate per se. The rule(s) in the Covid-19 Regulation were based on a sound selection of countries and regions with particularly high infection pressure – and therefore risk of infection, for both Norwegian nationals and EEA nationals based in Norway. Accordingly, the rules did not discriminate and were consistent with Council Recommendation (EU) 2020/1475.
- (94) The burden of the measure, on its own and overall, must be assessed in light of the nationally-chosen strategy to combat the pandemic and the challenging infection situation being faced. The authorities’ ambition was to get as many people as possible vaccinated before the infection could spread further. In the comparison with having an alternative scheme allowing people to undergo the entry quarantine in their own home, it must be borne in mind that the quarantine hotel scheme, to a greater extent than the alternative, hinders the possibility of the infection spreading further among the population through household members who are not in quarantine infecting others before they realise that they are carriers of the disease. The restriction was therefore necessary.

## 6. QUESTIONS REFERRED TO THE EFTA COURT

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?

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Oslo, 7 June 2023

Cecilie Østensen Berglund  
Supreme Court Justice