



JUDGMENT OF THE COURT

10 December 2010

(Failure by a Contracting Party to fulfil its obligations – Directive 2005/36/EC on the recognition of professional qualifications)

In Case E-9/10,

EFTA Surveillance Authority, represented by Xavier Lewis, Director, and Markus Schneider, Officer, Department of Legal & Executive Affairs, acting as Agents, Brussels, Belgium,

Applicant,

v

Principality of Liechtenstein, represented by Dr Andrea Entner-Koch, Director, and Thomas Bischof, Legal Officer, EEA Coordination Unit, acting as Agents, Vaduz, Liechtenstein,

Defendant,

APPLICATION for a declaration that by failing, within the time prescribed, to adopt, or to notify the EFTA Surveillance Authority of, the measures necessary to fully implement into its national legislation the Act referred to at point 1 of Annex VII to the EEA Agreement, i.e. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as amended by Commission Regulation (EC) No 1430/2007 of 5 December 2007 amending Annexes II and III to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications and by Commission Regulation (EC) No 755/2008 of 31 July 2008 amending Annex II to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as adapted to the EEA Agreement by Protocol 1 thereto, the Principality of Liechtenstein has failed to fulfil its obligations under the first paragraph of Article 63 of the Directive and under Article 7 of the EEA Agreement,

THE COURT,

composed of: Carl Baudenbacher, President, Thorgeir Örlygsson and Henrik Bull (Judge-Rapporteur), Judges,

Registrar: Skúli Magnússon,

having regard to the written pleadings of the parties,

having decided to dispense with the oral procedure,

gives the following

Judgment

I The application

- 1 By application lodged at the Court Registry on 26 July 2010, the EFTA Surveillance Authority (hereinafter “ESA”) brought an action under the second paragraph of Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (hereinafter “SCA”), for a declaration that, by failing to adopt, or to notify ESA of, the measures necessary to fully implement the Act referred to at point 1 of Annex VII to the EEA Agreement, within the time-limit prescribed, the Principality of Liechtenstein has failed to fulfil its obligations under the first paragraph of Article 63 of that Act and Article 7 EEA. The Act referred to is Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as amended.

II Facts and pre-litigation procedure

- 2 Decision 142/2007 of 26 October 2007 of the EEA Joint Committee amended Annex VII to the EEA Agreement by adding Directive 2005/36/EC (hereinafter “the Directive”) to point 1 of that Annex. The Decision entered into force on 1 July 2009 and the time-limit for EFTA States to adopt the measures necessary to implement the Directive and to notify ESA thereof expired on the same date.
- 3 The Directive was subsequently amended by Commission Regulation (EC) No 1430/2007 of 5 December 2007 and Commission Regulation (EC) No 755/2008 of 31 July 2008, which were incorporated into the EEA Agreement by Joint Committee Decisions No 50/2008 and No 127/2008 respectively.
- 4 By a letter of 14 May 2009, the Government of Liechtenstein notified ESA of partial implementation of the Directive regarding all regulated professions except those of the crafts sector. The notified measures entered into force on 1 July

2009. The outstanding measures required amendments to the Trade Act (*Gewerbegesetz*) and the Ordinance (*Gewerbeverordnung*) based thereon. The Government of Liechtenstein estimated that those measures would enter into force in the first half of 2010.

- 5 In the absence of any further information from the Government of Liechtenstein as to the implementation of the Directive, ESA initiated proceedings under Article 31 SCA and, on 25 November 2009, issued a letter of formal notice to the Government of Liechtenstein, stating that Liechtenstein had failed to take or, in any event, to notify ESA of the measures necessary to comply with the Directive. The Government of Liechtenstein was invited to submit its observations on the matter within two months of receipt.
- 6 In its observations of 21 January 2010 to the letter of formal notice, the Government of Liechtenstein informed ESA that the full implementation of the Directive in Liechtenstein still required amendments to the Trade Act and the Ordinance based thereon. A draft bill (*Vernehmlassungsbericht*) had been adopted by the Government of Liechtenstein and was, at the time, in public consultation, scheduled to end on 31 January 2010. According to the Government of Liechtenstein, the first reading of the bill in the Landtag (the Liechtenstein Parliament) was scheduled for the second quarter of 2010, the second reading for the third quarter of 2010. The amendments to the Trade Act should enter into force by the end of 2010.
- 7 Under these circumstances, on 10 March 2010, ESA delivered a reasoned opinion concluding that by failing to comply with the time-limit set out in the Directive Liechtenstein had failed to fulfil its obligations under the Directive and Article 7 EEA. The Government of Liechtenstein was requested to take the measures necessary to comply with the reasoned opinion within two months.
- 8 On 12 May 2010, the Government of Liechtenstein repeated, in its observations on the reasoned opinion, its earlier submissions that the measures necessary to fully implement the Directive still required amendments to the Trade Act and the Ordinance based thereon. The Government of Liechtenstein stated that the bill would be finalised in the coming weeks and sent to Parliament, that the first reading of the bill was scheduled for June 2010, the second reading for September 2010 and that, according to this timetable, the legislative amendments should enter into force before the end of 2010.

III Procedure before the Court

- 9 ESA lodged the present application at the Court Registry on 26 July 2010. The statement of defence from the Government of Liechtenstein was received on 27 September 2010. On 14 October 2010, ESA submitted a reply to the defence lodged by Liechtenstein.
- 10 After having received the express consent of the parties, the Court, acting on a report from the Judge-Rapporteur, decided to dispense with the oral procedure.

IV Arguments of the parties

- 11 The application is based on one plea in law, namely that by failing to adopt, or to notify ESA of, the measures necessary to fully implement the Directive, within the time-limit prescribed, the Principality of Liechtenstein has failed to fulfil its obligations under the first paragraph of Article 63 of the Directive, as incorporated into the EEA Agreement, and under Article 7 EEA.
- 12 It is undisputed that not all the necessary national implementation measures were adopted within the time-limit prescribed and the Government of Liechtenstein has not disputed the order sought by ESA. The Government of Liechtenstein emphasises, however, that the Directive has been partially implemented in Liechtenstein.
- 13 The Government of Liechtenstein requests the Court to order each party to bear its own costs of the proceedings. No reasons are submitted to substantiate this request.
- 14 In its reply to the statement of defence from the Government of Liechtenstein, ESA contests the request for sharing of costs.

V Findings of the Court

- 15 Article 3 EEA imposes upon the Contracting Parties the general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the EEA Agreement (see Case E-3/10 *ESA v Iceland*, judgment of 18 October 2010, not yet reported, paragraph 18). Under Article 7 EEA, the Contracting Parties are obliged to implement all acts referred to in the Annexes to the EEA Agreement, as amended by decisions of the EEA Joint Committee.
- 16 The obligation to implement also follows from Article 63 of the Directive, according to which implementation by the EC Member States is required not later than 20 October 2007. As Decision 142/2007 of the EEA Joint Committee did not set a separate EEA time-limit for the implementation of the Directive into national law, Liechtenstein was obliged to adopt the national measures necessary to implement the Directive by the date on which that Decision entered into force, namely 1 July 2009.
- 17 The question of whether an EFTA State has failed to fulfil its obligations must be determined by reference to the situation in that State as it stood at the end of the period laid down in the reasoned opinion (see *ESA v Iceland*, cited above, paragraph 20). It is undisputed that Liechtenstein did not adopt all those measures before the expiry of the time-limit given in the reasoned opinion.
- 18 It must therefore be held that, by failing to adopt, within the time-limit prescribed, the measures necessary to fully implement the Act referred to at point 1 of Annex VII to the EEA Agreement, i.e. Directive 2005/36/EC of the

European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as amended by Commission Regulation (EC) No 1430/2007 of 5 December 2007 amending Annexes II and III to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications and by Commission Regulation (EC) No 755/2008 of 31 July 2008 amending Annex II to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as adapted to the EEA Agreement by Protocol 1 thereto, the Principality of Liechtenstein has failed to fulfil its obligations under the first paragraph of Article 63 of the Directive and under Article 7 EEA.

VI Costs

- 19 Without putting forward any pleas in support, whether in law or in fact, the Government of Liechtenstein has requested that each party be ordered to bear its own costs. The Court can see no basis for this claim. Under Article 66(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since ESA has requested that the Principality of Liechtenstein be ordered to pay the costs and the latter has been unsuccessful, and since none of the exceptions in Article 66(3) apply, the Principality of Liechtenstein must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

- 1. Declares that, by failing to adopt, within the time-limit prescribed, the measures necessary to fully implement the Act referred to at point 1 of Annex VII to the EEA Agreement, i.e. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as amended by Commission Regulation (EC) No 1430/2007 of 5 December 2007 amending Annexes II and III to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications and by Commission Regulation (EC) No 755/2008 of 31 July 2008 amending Annex II to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as adapted to the EEA Agreement by Protocol 1 thereto, the Principality of Liechtenstein has failed to fulfil its obligations under the first paragraph of Article 63 of the Directive and under Article 7 of the EEA Agreement.**

2. Orders the Principality of Liechtenstein to bear the costs of the proceedings.

Carl Baudenbacher

Thorgeir Örlygsson

Henrik Bull

Delivered in open court in Luxembourg on 10 December 2010.

Skúli Magnússon
Registrar

Carl Baudenbacher
President