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**PRESS RELEASE 10/2013**

**Judgment in Case E-15/12 *Jan Anfinn Wahl v the Icelandic State***

**DENIAL OF ENTRY INTO ICELAND FOR A NORWEGIAN MEMBER OF HELLS ANGELS  
REQUIREMENTS OF A DENIAL DECISION PURSUANT TO ARTICLE 27 OF THE CITIZENSHIP DIRECTIVE 2004/38/EC**

In a judgment delivered today, the EFTA Court gave judgment on questions referred to it by the Hæstiréttur Íslands (the Supreme Court of Iceland) regarding the interpretation of Articles 7 of the EEA Agreement and 27 of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the EEA States (“the Directive”).

In February 2010, Icelandic authorities denied Jan Anfinn Wahl (“the Plaintiff”), a Norwegian national and member of the Hells Angels, entry into Iceland. The decision was mainly based on an “open danger assessment” of the National Commissioner of Police. The assessment concerned the Plaintiff’s presumed role in the final accession stage of an Icelandic motorcycle club as a new charter in Hells Angels. The assessment found that wherever that organisation had established itself, organised crime had increased. The assessment was also based on the fact that the accession had been directed from the Plaintiff’s home State. It furthermore appeared from the reference that the information and evidence was gathered and/or compiled specifically on account of the Plaintiff’s planned entry into Iceland.

The Plaintiff’s administrative appeal against the decision was rejected. So was the subsequent action before a district court, claiming compensation for non-pecuniary damages and for financial loss. His claim was based on the view that the decision to deny him entry into Iceland was unlawful. The Plaintiff appealed the district court’s decision to the Supreme Court. The Supreme Court decided to make a request under Article 34 SCA to the EFTA Court and referred questions *inter alia* as regards the implementation of a directive pursuant to Article 7 EEA and requirements to deny a national of another EEA State entry pursuant to Article 27 of the Directive.

The Court held that under Article 7 EEA, an EEA/EFTA State has the choice of form and method when implementing an act corresponding to a directive. Depending on the legal context, the implementation of a directive does not necessarily require legislative action, as long as it is implemented with unquestionable binding force and the specificity, precision and clarity necessary to satisfy the requirements of legal certainty. Moreover, Article 3 EEA requires the EEA States to take all measures necessary, regardless of the form and method of implementation, to ensure that a directive which has been implemented and satisfies the conditions set out in well-established case law prevails over conflicting national law and to guarantee the application and effectiveness of the directive.

Concerning the application of the Directive it was noted that it follows from Joint Committee Decision No 158/2007 and its accompanying Declaration that “Union Citizenship” and “immigration policy” are excluded from the EEA Agreement. Further it was found that these exclusions had no material impact on the present case. The Court nevertheless held that the impact of these exclusions must be assessed on a case-by-case basis. As regards the exclusion of Union citizenship the impact had to be determined, in particular, in cases concerning Article 24 of the Directive which deals *inter alia* with the equal treatment of family members who are not nationals of a Member State and who have the right of residence or permanent residence.

As regards the interpretation of Article 27 of the Directive in the present case, it was held that it is sufficient for an EEA State to base a decision denying a national of another EEA State entry to its territory on grounds of public policy and/or public security only upon a danger assessment which assesses the role of the individual in the accession of a new charter to an organisation of which the individual is a member, and concludes that the organisation is associated with organised crime and that where such an organisation has managed to establish itself, organised crime has increased. It is required that the assessment is based exclusively on the personal conduct of the individual concerned. Moreover, this personal conduct must represent a genuine, present and sufficiently serious threat to one of the fundamental interests of society, and the restriction on the right to entry must be proportionate. In the light of the relevant matters of fact and law, it is for the national court to determine whether those requirements are met.

Furthermore, the Court found that an EEA State is not obliged to declare an organisation and membership therein unlawful before it can deny a member of that organisation who is a national of another EEA State leave to enter its territory pursuant to Article 27 of the Directive if recourse to such a declaration is not thought appropriate in the circumstances. The EEA State must nevertheless have clearly defined its standpoint as regards the activities of that organisation and, considering the activities to be a threat to public policy and/or public security, it must have taken administrative measures to counteract these activities.

Finally, national administrative authorities must ensure that there is sufficient evidence to conclude under Article 27(2) of the Directive that the individual concerned was likely to engage in personal conduct that represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. It is for the national court to determine in compliance with the principles of equivalence and effectiveness whether this is the case.

The full text of the judgment may be found on the Internet at: [www.eftacourt.int](http://www.eftacourt.int).

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