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Judgment in Case E-6/12 *EFTA Surveillance Authority v Kingdom of Norway*

NORWEGIAN ADMINISTRATIVE PRACTICE ON FAMILY BENEFITS PARTIALLY IN BREACH OF EEA LAW

In a judgment delivered today, the Court partially upheld an application brought by the EFTA Surveillance Authority (“ESA”) against the Kingdom of Norway. The applicant claimed that a Norwegian administrative practice refusing family benefits in certain cases to workers in Norway constitutes an infringement of the EEA Agreement.

The practice in question concerns a failure to assess whether a child of a person working in Norway is mainly dependant upon that parent, although the parents are separated and the child lives with the other parent in an EEA State other than Norway.

The application rested on two pleas: an infringement of Articles 1(f)(i) and 76 of Regulation 1408/71 on the coordination of social security schemes (“the Regulation”).

The Court noted that even if the applicable national legislation itself complies with EEA law, a failure to fulfil obligations may arise due to an administrative practice which infringes EEA law when it is, to some degree, of a consistent and general nature. The Court found that the administrative practice in question fulfilled this criterion.

First, the Court upheld the application as regards the infringement of Article 1(f)(i) of the Regulation. The Court rejected Norway’s argument that the Article is merely a definitional norm, incapable of being infringed by itself. Article 1(f)(i) defines the personal scope of the Regulation with regard to members of the family. The scope is essential for the correct application of the choice of law rules of the Regulation. Consequently, a failure to apply that provision correctly jeopardises the effectiveness of this Regulation.

Second, the Court rejected the application on the alleged infringement of Article 76 of the Regulation. ESA had failed to present sufficient evidence as to how this provision had been infringed. In that context, the Court noted in particular that the situation described in the application could also be covered by Article 10 of Regulation 574/72. However, the application did not contain sufficient information to determine which of these rules should apply and which would be infringed as a result of the administrative practice in question.

The full text of the judgment may be found on the Internet at: www.eftacourt.int.

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