

Former President Thór Vilhjálmsson 1930 - 2015

The Court's former Judge and President Thór Vilhjálmsson died on 20 October 2015 in Reykjavík.

Thór Vilhjálmsson served from 1994 to 2002 as a Judge of the newly established EFTA Court. From 2000 to 2002 he was the Court's second President. During those early years, the Court had to fight for recognition. It was planned with seven Judges. However, since the Swiss withdrew from the project and the Liechtensteiners postponed membership, it took up its functions in Geneva on 1 January 1994 with only five Judges. Thór Vilhjálmsson was one of them, and he also remained on the EFTA bench when it started to consist of three Judges. Thór had mixed feelings about the move of the Court's seat from Geneva to Luxembourg in September 1996. As an elegant, cosmopolitan man, he enjoyed life in the international capital with its many cultural events and its fine restaurants. We immediately became friends over a bottle of *Humagne rouge*, an autochthon wine from Valais. However, rumour has it that the move to Luxembourg had a specific Icelandic background. When the respective decision was taken, the Liechtensteiners were not yet EEA members and the Norwegians were about to leave the EFTA pillar for EU membership. Allegedly, the EU was determined to maintain the EEA Agreement even with just one EFTA State - Iceland - and a single EFTA Court Judge - Thór Vilhjálmsson. The case load of the EFTA Court would, at least at the beginning, have been very low, Thór Vilhjálmsson would have resided in Reykjavík, and since there was a direct flight from Reykjavík to Luxembourg, the Court's seat needed to be Luxembourg. Be that as it may, Thór, together with his spouse Ragnhildur Helgadóttir, rented a beautiful house in Luxembourg, and as a Judge of the European Court of Human Rights for many years, he easily found his bearings in EU judicial circles.

Both in Iceland and in Norway politicians, diplomats and academics kept a jealous watch over the Court's activities. They were less interested in the substance of single market law than in the question of whether the Court was, in the name of homogeneity, interfering with their countries' sovereignty. The EEA law community held its breath when the Reykjavík District Court submitted the question to us whether the EEA Agreement entailed State liability in the *Erla María Sveinbjörnsdóttir* case. We answered yes, and Thór Vilhjálmsson later said to me that this was the only way forward; had we said no, the EEA Agreement would never have taken off. He realised that the Court found itself in a make-or-break situation. Obviously his human rights background and his humanity, but also his political instincts had helped him reaching the right decision. At the same time, the Court held that EEA law did not produce direct legal effect in the orders of the EFTA States and that it did not take primacy over conflicting national law. I should note here that EEA State liability has been accepted by the Supreme Courts of all the three EEA/EFTA States, as well as by the Swedish Supreme Court in a case dating back to Swedish EEA/EFTA membership. Over these institutional matters, people overlooked that during Thór Vilhjálmsson's presidency, the Court gave its first judgment in a free movement of capital case (*Íslandsbanki*), it defined its competences vis-à-vis the EEA Joint Committee, it ruled on the relationship between antitrust law and collective bargaining (*LO*), and, most importantly, in *Kellogg's* it rendered a judgment of global significance. In this case, the Court held that a Member State was allowed to ban the sale of fortified food if certain conditions were fulfilled. In particular, it had to carry out a comprehensive risk

assessment, and the measures had to be non-discriminatory, transparent, proportionate and consistent. Both the ECJ and the EU General Court later adopted this position.

Thór had a sixth sense for what was just and fair and what was feasible in a case. Although he called himself a dualist, he had understood that the EEA Agreement was primarily about citizens and economic operators and to a much lesser extent about States. When he retired from the EFTA bench, I gave the farewell speech for him. I teased him by saying that deep in his heart he was a monist, and I saw from the corner of my eye that he had his characteristic smile. After his return to Reykjavík, I kept a good contact with my Icelandic brother. Occasionally, some bottles of *Humagne rouge* found their way to Iceland. Whenever Doris, my wife, and I visited the *Insula Gardari*, we saw to it that we could meet Thór and Ragnhildur. We got to know their family and we spent many happy hours together. I learnt a lot about European high nobility, in particular about the Danish Royal House, about the mentally ill King Christian VII, his wife Matilde and his physician Johann Friedrich Struensee, the big reformer. Thór told me that the cruel execution of Struensee for having been the Queen's lover contributed to the early abolition of the death penalty in the Scandinavian countries.

I am grateful that I knew Thór Vilhjálmsson, an outstanding lawyer and an independent mind, and most importantly, a decent, warm-hearted man with a wonderful sense of humour. May he rest in peace. On behalf of the Court and on my own behalf, I thank Thór for his crucial contribution to the establishment of our institution and the good functioning of the EEA.

Luxembourg, 21 October 2015

Carl Baudenbacher