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Judgment in Case E-1/18 *EFTA Surveillance Authority v The Kingdom of Norway*

THE COURT DISMISSES ESA'S APPLICATION CONCERNING NORWEGIAN PARENTAL BENEFITS

In a judgment delivered today, the Court dismissed an application from the EFTA Surveillance Authority (“ESA”). ESA sought a declaration that by maintaining in force provisions such as Section 14-13, second and third paragraphs, and Section 14-14, first paragraph, of the Norwegian National Insurance Act, Norway had failed to fulfil its obligations under Article 14(1)(c) of Directive 2006/54/EC (“Equal Treatment Directive”).

The Norwegian legislative provisions at issue concern a benefit granted primarily during periods of parental leave after the birth or adoption of a child through the Norwegian social security scheme. The parental benefit scheme renders a father’s entitlement to parental benefits during a shared period of leave dependent on the mother’s situation, whereas a mother’s entitlement to parental benefits is not similarly dependent on the father’s situation.

The Court noted that the parties agree that conditions for granting parental leave under the Norwegian Working Environment Act constitute employment and working conditions within the meaning of Article 14(1)(c) of the Equal Treatment Directive. However, the case concerned whether the conditions for receiving benefits during such leave constituted employment and working conditions.

The Court held that the parental benefit scheme established by the Norwegian National Insurance Act does not concern “employment and working conditions” within the meaning of Article 14(1)(c) of the Equal Treatment Directive, and thus fell outside its scope. The Court found that, while the granting of parental benefits affects workers’ ability to exercise their right to parental leave, the purpose of the benefits in question is to provide income support, which is in and of itself unrelated to an employment relationship. Additionally, the Court noted that Section 14-6 of the Norwegian National Insurance Act lists a number of activities unrelated to a working relationship that qualify for receiving parental benefits, and that the amount of benefits paid under the Norwegian National Insurance Act may be calculated based on income from sources other than income from an employment relationship, such as income of self-employed persons, benefits received from the social security scheme, or remuneration during the military service.

The Court rejected the argument that the parental benefits are intimately connected to the right to parental leave, thus affecting the qualification of such benefits as employment and working conditions. The Court recalled that although the EEA States must afford the right to parental leave to both parents on equal grounds except for a specific period of protection granted to the mother, it is optional for EEA States to provide for continued entitlements to relevant social security benefits.

Finally, the Court noted that the concept of “pay” in the Equal Treatment Directive cannot be extended to encompass social security benefits such as those at issue. Such schemes give employees and other beneficiaries benefits that are determined not by an employment relationship, but by considerations of social policy. For the same reasons, the Court held that the concept of “working conditions” cannot be extended to cover such benefits merely because the conditions for entitlement refer to “employment activities”.

Consequently, ESA’s application was dismissed.

The full text of the judgment may be found on the Court’s website: www.eftacourt.int.

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