



Luxembourg, 5 May 2021

**PRESS RELEASE 06/2021**

**Judgment in Case E-8/20 *Criminal proceedings against N***

**SOCIAL SECURITY –RETENTION OF CASH BENEFITS DURING SHORT-TERM STAYS IN ANOTHER EEA STATE**

In a judgment delivered today, the Court answered questions referred by the Supreme Court of Norway (*Norges Høyesterett*). The sixteen questions concerned in essence the compatibility with Regulation (EEC) No 1408/71 (“Regulation 1408/71”), Regulation (EC) No 883/2004 (“Regulation 883/2004”), and the freedom to provide services, of national legislation making the right to a sickness benefit subject to a condition of presence in Norway, and exemptions for short-term stays in another EEA State subject to a time limit condition and a system of prior authorisation.

The case concerned criminal proceedings against N, who was indicted for grossly negligent aggravated social security fraud under Norwegian law. The basis for the indictment was that, from 19 May 2010 to 31 October 2012, N was considered to have misled the Norwegian Labour and Welfare Administration (“NAV”) to make payments to him in work assessment allowance. N had failed to inform NAV that he had stayed abroad during certain periods without approval by NAV. He was thus not entitled to a work assessment allowance during that time.

Under the Norwegian legislation at issue in the main proceedings, an insured person must be physically present in Norway in order to be entitled to work allowance benefits. Exemptions may be granted from such requirement by prior authorisation. Authorisation will be refused unless the stay in another EEA State is for a limited period of time and that it can be demonstrated that the stay is compatible with the implementation of the insured person’s activity plan and does not impede control and follow-up by NAV.

The Court held that a benefit such as the work assessment allowance constitutes a sickness benefit within the meaning of point (a) of Article 4(1) of Regulation 1408/71 and point (a) of Article 3(1) of Regulation 883/2004.

As regards the legal situation prior to 1 June 2012, the Court found that national rules such as those at issue in the main proceedings did not come within the scope of Articles 19 or 22 of Regulation 1408/71. However, that finding did not have the effect of removing such national rules from the scope of the provisions of the main part of the EEA Agreement.

In that regard, the Court found that a condition limiting the duration of stays abroad constitutes a restriction on the freedom to receive services under Article 36 EEA because it is liable to lead to the loss of benefits or to limit the places to which the individual may travel. The Court further held that such a restriction may be justified only if it pursues a legitimate objective and that the restriction is suitable and do not go beyond what is necessary to attain its objective. As regards the condition providing that the benefit recipient may stay abroad only for a limited period of time, the Court observed that as persons in receipt of benefits follow individualised activity plans, their

needs in terms of follow up and control may vary significantly. Consequently, a maximum of four weeks outside of Norway per year does not take the individual needs of persons based on their activity plans sufficiently into account, and such a condition goes beyond what is necessary.

The Court further held that a system of prior authorisation must be considered disproportionate as it had not been demonstrated why less restrictive measures, such as a prior notification system, would not be sufficient, whilst minimising the restriction upon the free movement of services. Furthermore, the Court considered that the Norwegian Government had not put forward any argument capable of supporting the assertion that, were insured persons at liberty to go without prior authorisation to another EEA State, that would be likely seriously to undermine the social security system's financial balance.

As regards the situation from 1 June 2012, which was assessed under Regulation 883/2004, the Court held that Article 21(1) of that regulation precludes an EEA State from making retention of entitlement to a cash benefit subject to conditions, such as a condition of physical presence on its territory or subjecting the right to prior authorisation. Therefore, Article 21(1) precludes conditions such as those at issue in the main proceedings.

The full text of the judgment may be found on the Court's website: [www.eftacourt.int](http://www.eftacourt.int).

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