REPORT OF THE EFTA COURT 2021

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In last year's address, I stated that 2020 would be the year remembered for the COVID-19 pandemic. Unfortunately, the same goes for 2021. In that context, the EFTA Court has continued the practice of organising remote oral hearings, which started in spring 2020. Thankfully, that exercise has proven to be successful and has facilitated the proper functioning of the Court throughout the pandemic. It has also brought greater transparency to the workings of the Court, as all hearings have been streamed on its website. The Court has been mindful of the famous dictum that "justice must not only be done; it must also be seen to be done". Once the pandemic is over, given the advantages that such remote hearings and their streaming have brought, we should strive to maintain them.

In 2021, the Court took its dedication to transparency even further. In addition to the streaming of oral hearings, the Court took other steps to enhance transparency. It was decided that all requests for advisory opinions registered at the Court would be published on the website, as well as the written observations received in those cases, which are placed on the Court's website after the delivery of the judgment. There is no doubt that these changes have improved transparency at the Court.

Last autumn, the Court was finally able to hold its annual conference, with a programme originally scheduled for spring 2020. The theme of the conference was People and the EEA and among the distinguished speakers participating were Professor Miguel Poiares Maduro, Judge Sacha Prechal and the Danish Parliamentary Ombudsman Niels Fenger. The theme was fitting for the Court's activities in the last years. Several rulings have been handed down concerning individual's rights under the Citizenship Directive, the exportability of social security benefits and in the area of recognition of professional qualifications.

Perhaps the most important judgment the Court delivered in 2021 was in response to a request for an advisory opinion from the Norwegian Supreme Court in the so-called NAV case. This case concerned the legality of an authorisation scheme for recipients of a work assessment allowance, wishing to export that benefit. The Court concluded that the allowance constituted a sickness benefit under the classification of both the new and old Social Security Coordination Regulations. Prior to the entry into force of the currently applicable Regulation 883/2004, the scheme was an unjustified restriction on the freedom to provide services. Regarding the situation after its entry into force, the Court held that, in respect of cash sickness benefits, the Regulation prohibited both a requirement of physical presence and an authorisation scheme.

The Court received two other requests for an advisory opinion related to the NAV case, both on the export of unemployment benefits. Those benefits are regulated in a different manner as a matter of EEA law. While sickness benefits in cash are generally exportable, the situation is the reverse with regard to unemployment benefits. The EEA States are only required to allow for export of unemployment benefits in the circumstances explicitly laid down in the Social Security Coordination Regulation. Thus, the Court held that it was compatible with EEA law to require recipients of unemployment benefits to be present in Norway unless the conditions of the Social Security Regulation for the export of the benefit were met. Together, these three judgments demonstrate the complexity of the rules on social security at EEA level.

Among other judgments delivered in 2021, I would like to highlight *Lindberg* and *Haugland* concerning the recognition of professional qualifications and, in particular, the applicability of the fundamental freedoms to persons who do not fulfil the conditions laid down in the Directive. The Court also rendered a judgment in the *Kerim* case, in which it examined the fundamental issue of a marriage of convenience for the purposes of the Citizenship Directive. In *Liti-Link*, the Court clarified the disclosure requirements, vis-à-vis their clients, on investments firms accepting an inducement from third parties.

In 2021, the Court delivered 17 judgments, all bar one being in response to a request for an advisory opinion. This represents a high level of activity for the Court. In contrast, only five new cases were registered at the Court in 2021, four requests for an advisory opinion and one action for annulment.

Recently, we have witnessed worrying developments in some European States regarding the rule of law and judicial independence. Thankfully, the EFTA States are not among the States in which these events are taking place. However, that does not mean that the rule of law is something that should be taken for granted. In this context, it is worth bearing in mind that at the end of 2020, the Grand Chamber of the European Court of Human Rights concluded that Iceland had failed to comply with Article 6 of the European Convention of Human Rights in the appointment of judges to the newly established Court of Appeal. The Strasbourg Court held that Iceland had not ensured that the requirement of a tribunal *established by law* had been met. This should be a reminder to all who work in the judiciary that compliance with the rule of law requires continuous vigilance and does not allow anyone to rest on their laurels.

Páll Hreinsson
President

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v

The Norwegian Government, represented by the Immigration Appeals Board (Utlendingsnemnda – UNE)

Case E-1/20

(Freedom of movement – Directive 2004/38/EC – Abuse – Marriages of convenience – Derived rights for third-country nationals)

Judgment of the Court of 9 February 2021

The Supreme Court of Norway *(Norges Høyesterett)* referred several questions to the Court concerning the concept of abuse under Article 35 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 Member States ("the Directive"). In essence, the referring court asked for guidance as to what constituted a marriage of convenience within the meaning of the Directive.

The Court found that in order to determine whether a marriage of convenience exists in circumstances in which reasonable doubts exist as to whether the marriage in question is in fact genuine, it is necessary for the national authorities to establish on a case-by-case basis, that at least one spouse in the marriage has essentially entered into it for the purpose of improperly obtaining the right of free movement and residence by a third-country national spouse rather than for the establishment of a genuine marriage.

The Court also held that it could be relevant to take account of, for example, the duration of the relationship measured at the time when the person applied for residence, whether the parties resided together, had children

together or shared parental responsibilities and had serious long-term commitments together which could be financial. The Court held that it was for the national court to verify whether the examination of the marriage in question complied with the requirements of EEA law.

Finally, the Court held that facts had to be established and assessed in their entirety, which included considering the subjective intention of an EEA national for entering a marriage with a third-country national since a genuine marriage is predicated upon the good faith of both spouses. «

https://eftacourt.int/cases/e-120/

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v

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Judgment of the Court of 25 February 2021

The Supreme Court of the Principality of Liechtenstein *(Fürstlicher Oberster Gerichtshof)* referred questions regarding the interpretation of Directive 2009/138/EC ("Solvency II") and its predecessors – Directive 73/239/EEC, Directive 88/357/EEC and Directive 92/49/EEC.

The case concerned an action brought by two insurance companies against the Liechtenstein Financial Supervisory Authority *(Finanzmarktaufsicht Liechtenstein)* ("the FMA"). The applicants in the main proceedings alleged that the FMA failed to fulfil its supervisory obligations towards a Liechtenstein insurance company, Gable Insurance AG, and that the FMA was ultimately responsible for losses incurred by the applicants as a result of the insolvency of Gable Insurance AG.

Two questions were referred to the Court. The first question concerned whether Solvency II, in particular Articles 27 and 28, and the predecessor directives confer rights on economic operators such as the applicants, which can be the basis for liability claims against a supervisory authority such as the FMA. The second question concerned the national implementation of relevant EEA law.

The Court held that liability of a supervisory authority for failure to fulfil its obligations under EEA law must be assessed based on the principle of State liability. The Court found that Solvency II is not intended to guarantee against insolvency or the winding-up of insurance undertakings, and economic operators are not protected from losses incurred from the insolvency of insurance undertakings.

The Court also found that neither Solvency II nor its predecessor directives confer any express rights on economic operators such as the applicants in the circumstances of the main proceedings. Therefore, the directives do not give rise to any State liability claim against a supervisory authority.

Considering its answer to the first question referred, the Court found that there was no need to answer the second question. «

https://eftacourt.int/cases/e-520/

The Norwegian Government, represented by the Ministry of Health and Care Services (Helse- og omsorgsdepartementet)

v

Anniken Jenny Lindberg

Case E-3/20

(Freedom of movement of persons – Directive 2005/36/EC – Recognition of professional qualifications – Access to profession of dental practitioner – Automatic recognition)

Judgment of the Court of 25 March 2021

The Supreme Court of Norway *(Norges Høyesterett)* requested an advisory opinion concerning the interpretation of Directive 2005/36/EC on the recognition of professional qualifications ("the Directive").

The case before the national court concerned the rejection of an application for authorisation and licence to practice as a dental practitioner in Norway (the host State). Ms Lindberg possessed a *cand. odont.* degree from Aarhus University in Denmark (the home State). She was granted authorisation as a dental practitioner, with the right to pursue the professional activities of a dental practitioner in Denmark. However, an additional certificate following the completion of postgraduate practice of at least 12 months, is required to practice independently in Denmark.

The Supreme Court sought clarification of Article 21(1) of the Directive. That provision states that formal qualifications must be accompanied, "where appropriate", by further certificates if listed in the Directive. The Court held that the term "where appropriate" must be interpreted in the context of automatic recognition of professional qualifications. The term must be understood as referring to any additional certificate required in the home State and listed in Annex V to the Directive for access to the profession. Thus, an applicant must be in possession of all certificates accompanying the evidence of formal qualifications as listed and in line with the home State's requirements for the relevant profession, in order to benefit from automatic recognition under the Directive.

The referring court also sought guidance on whether the host State is obliged to examine an application for recognition under Articles 28 and 31 EEA if an applicant does not fulfil the criteria for recognition under Articles 10 and 21 of the Directive, and if so, the relevant factors in that assessment.

The Court held that Articles 28 and 31 EEA must be interpreted as requiring a host State to carry out an individual assessment of the knowledge and training attested by the applicant's professional qualifications. The assessment must entail a comparison of all diplomas, certificates and other evidence of formal qualifications and experience as compared to its own requirements to pursue the profession in question. If the applicant's knowledge and qualifications attested by the diploma and relevant working experience are not equivalent, or only partially correspond to those required, the host State must specify which training is lacking in order for the applicant to complete or supplement the training to facilitate the effective exercise of the fundamental freedoms guaranteed by the EEA Agreement. The fact that an applicant does not have full access to the profession in the home State cannot be decisive for the assessment of whether the applicant may be given access to the same profession in the host State. «

https://eftacourt.int/cases/e-320/

Tor-Arne Martinez Haugland and Others

v

The Norwegian Government, represented by the Ministry of Health and Care Services (Helse- og omsorgsdepartementet

Case E-4/20

(Freedom of movement of persons – Directive 2005/36/EC – Recognition of professional qualifications – Access to the profession of psychologist – General system of recognition – Notion of "same profession")

Judgment of the Court of 25 March 2021

The case concerned a request from Borgarting Court of Appeal *(Borgarting lagmannsrett)* for an advisory opinion concerning the interpretation of Directive 2005/36/EC on the recognition of professional qualifications ("the Directive").

Mr Haugland and others hold Master's degrees in psychology from Hungary. Since 2016, candidates holding such degrees have had their application for licences to practice as psychologists in Norway rejected. As a result, a class action was brought against the Norwegian Government, seeking to have the decisions rejecting their applications annulled and to be awarded compensation.

The referring court sought guidance on the relevant factors for assessing whether two professions are the "same

profession" for the purposes of the Directive. The Court held that for the professions to be regarded as the same, the activities they cover must be comparable. Any relevant differences in the scope and nature of those activities must be considered. If the activities are comparable, the professions will be regarded as the same for the purposes of the Directive. Pursuing certain activities for a limited time, as part of training subject to the condition of commitment to further studies, cannot be considered the pursuit of a profession. Differences in degree of independence and patient responsibility may be relevant when determining the exact scope or nature of activities in assessing whether the two professions are the "same profession".

The Court also found that the possibility of requiring compensation measures under Article 14 of the Directive cannot have any bearing on the interpretation of the "same profession".

Furthermore, the Court held that the expression "specifically geared to the pursuit of a given profession" in point (e) of Article 3(1) of the Directive must be construed as covering training that is specifically designed to prepare candidates to exercise a given profession. It does not cover qualifications that give access to a wide range of professions, or merely attest, inter alia, academic competence within a given field.

Finally, the Court found that applicants who do not fulfil the requirements for recognition under the Directive may rely on Articles 28 and 31 EEA. The host State must compare all diplomas, certificates and other evidence of formal qualification and relevant professional experience of the applicant, with its own requirements to pursue the profession in question. If the applicant's knowledge, qualifications, and professional experience are not equivalent, or only partially correspond to those required, the host State must specify what training is lacking to facilitate the effective exercise of the fundamental freedoms guaranteed by the EEA Agreement. «

https://eftacourt.int/cases/e-420/

The Norwegian Government, represented by the Immigration Appeals Board (Utlendingsnemnda – UNE)

v

L

Case E-2/20

(Directive 2004/38/EC – Freedom of movement and residence – Expulsion – Protection against expulsion – Genuine, present and sufficiently serious threat – Imperative grounds of public security – Exclusion orders – Applications for lifting of exclusion orders – Material change – Necessity – Proportionality – Fundamental rights – Right to family life)

Judgment of the Court of 21 April 2021

The case concerned a request from Borgarting Court of Appeal *(Borgarting lagmannsrett)* for an advisory opinion concerning the interpretation of Directive 2004/38/EC on the right of Union citizens and their family members to move and reside freely within the territory of the Member States (the "Directive").

The Norwegian Government appealed Oslo District Court's judgment which invalidated the Immigration Appeals Board's decision to uphold an expulsion decision of the Norwegian Directorate of Immigration against L *(utvisningsvedtak)*. The expulsion decision included a permanent exclusion order *(innreiseforbud)*

entailing that L would be prohibited from entering Norway.

L – a Finnish national – had been a resident in Norway since 1998 and has a 100% disabled common-law partner and three children in Norway. In 2012 he had been sentenced to 11 years' imprisonment for illicit drug trafficking. Whilst serving his sentence he received positive acclamation from the Norwegian Correctional Service and was assigned tasks requiring a high level of trust. In 2016 the expulsion orders in question were adopted. He was released on probation in 2019. Since then, he has been in full-time employment.

Borgarting Court of Appeal referred five questions to the Court which aimed to determine whether the expulsion of an EEA national in combination with a permanent exclusion order is contrary to the Directive, the scope of "material change" in Article 32(1) of the Directive and how the principle of proportionality affects the expulsion decision with respect to family life and good behaviour during imprisonment and on probation.

The Court held that a permanent exclusion order is not contrary to the Directive, if it satisfies the conditions in Articles 27 and 28 of the Directive and may be lifted in accordance with Article 32 of the Directive. An expulsion measure must be based on an individual examination. As regards EEA nationals who have legally resided in the host State for a period of more than 10 years, expulsions may only be adopted, pursuant to Articles 27 and 28(3) of the Directive, on imperative grounds of public security, in circumstances where the personal conduct of the individual concerned poses an exceptionally serious threat that an expulsion measure is necessary for the protection of the fundamental interests of society. Any subsequent exclusion decision must be limited to what is necessary to safeguard the fundamental interest that the expulsion intended to protect and must adhere to the principle of proportionality.

The Court further held that the good behaviour of the individual concerned during the period of imprisonment, and subsequently, under probation, together with other evidence of re-integration into society mitigate against a present threat to public security. Family and children of the individual, including stepchildren, are an important consideration in the assessment of the necessity of a restrictive measure under the Directive in the light of the principle of proportionality, of the child's best interests, and of fundamental rights. The Court recalled that the provisions of the European Convention on Human Rights, which enshrines in Article 8(1) the right to respect for private and family life, and the judgments of the European Court of Human Rights are important sources for determining the scope of these fundamental rights. Consideration of any alternatives to the expulsion must be part of the overall assessment.

Finally, the Court held that Articles 32(1) and 33(2) of the Directive presuppose that a "material change" in an individual's personal conduct is possible. Each application must be assessed on a case-by-case basis. A change is considered material if it removes the justification for the initial decision, which must be based on the individual's personal conduct, rather than on what is assumed to be an unalterable personal characteristic. The assessment whether the individual still represents a threat to the fundamental interests of society has to provide an objective indication that an individual has genuinely repudiated his past conduct and is unlikely to re-offend. Factors could include, but are not limited to, evidence that a person has refrained from engaging in further criminality, evidence of re-integration in the host society, starting and keeping up a stable economic activity, the results of psychological assessments, credible expressions of remorse, and evidence of having engaged positively and constructively in society. Any evidence showing that the individual has engaged in activities such that it is unlikely that he/she would revert to the type of activities that led to the expulsion must be considered. The Court emphasised that social rehabilitation (in the State in which he/she has become genuinely integrated) is one of the main aims of probation measures. «

https://eftacourt.int/cases/e-220/

Criminal Proceedings

against

N

Case E-8/20

(Freedom to receive services – Freedom of movement for workers – Regulation (EEC) No 1408/71 – Regulation (EC) No 883/2004 – Retention of social security benefits in another EEA State – Sickness benefit – Stay – Restriction of a fundamental freedom – Justification)

Judgment of the Court of 5 May 2021

The Supreme Court of Norway *(Norges Høyesterett)* referred sixteen questions to the Court. The questions concerned in essence the compatibility of Regulation (ECC) No 1408/71 ("Regulation 1408/71"), Regulation (EC) No 833/2004 ("Regulation 833/2004"), and the freedom to provide services with 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. N was considered to have misled the Norwegian Labour and Welfare Administration ("NAV") to make payments to him in work assessment allowance. N had stayed abroad during certain periods without authorisation, as required by law. N was thus not entitled to a work assessment allowance during that time.

The Court held that a benefit such as the work assessment allowance constituted 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.

Regarding the legal situation prior to 1 June 2012, the date on which Regulation 883/2004 entered into force, 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. The Court found that a condition limiting the duration of stays abroad constituted a restriction on the freedom to receive services under Article 36 EEA as it was liable to lead to the loss of benefits or to limit the places to which the individual could travel. The Court held that a national measure constituting a restriction could only be justified if it pursued a

legitimate objective, was suitable and did not go beyond what was necessary to attain its objective.

The Court further held that a system of prior authorisation was disproportionate as it had not been demonstrated why less restrictive measures, such as a prior notification system, would not be sufficient. Furthermore, the Court considered that the Norwegian Government had failed to support the assertion that, were insured persons free to go without prior authorisation to another EEA State, it would be likely to undermine the social security system's financial balance.

The Court finally held, regarding the situation from 1 June 2012, which was assessed under Regulation 833/2004, that Article 21(1) of that regulation precluded an EEA state from making retention of entitlement to a cash benefit subject to conditions, such as conditions of physical presence in its territory or subjecting the right to prior authorisation. «

https://eftacourt.int/cases/e-820/

ADCADA Immobilien AG PCC in Konkurs

v

Finanzmarktaufsicht

Case E-10/20

(Regulation (EU) 2017/1129 – Investor protection – Notion of an "offer of securities to the public" – Disclosure of information – Obligation to publish a prospectus – Exemptions)

Judgment of the Court of 18 June 2021

The Appeals Board of the Financial Market Authority *(Beschwerdekommission der Finanzmarktaufsicht)* ("the Appeals Board") referred four questions to the Court seeking clarification on the interpretation of Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market ("the Prospectus Regulation").

The case concerned an appeal brought by ADCADA Immobilien AG PCC in Konkurs ("ADCADA") against a decision of the Financial Market Authority *(Finanzmarktaufsicht)*, which deemed a bond issued in Lichtenstein by ADCADA to have been offered to the public and prohibited it in the absence of a prospectus.

The first two questions referred to the Court related to the interpretation of "offer of securities to the public" within the meaning of point (d) of Article 2 of the Prospectus Regulation. The Court held that, whether sufficient information was presented within the meaning of point (d) of Article 2 of the Prospectus Regulation, had to be assessed on a case-by-case basis. However, in circumstances such as those in the main proceedings, the extent of the information had to be considered as presenting sufficient information for the purposes of that provision. The Court further held that if a communication already presented sufficient information, the inclusion of statements that further information could be obtained elsewhere would not be capable of altering its qualification as an "offer of securities to the public".

The last two questions referred to the Court concerned the interpretation of the exemption in point (b) of Article 1(4) of the Prospectus Regulation. The Court held that in order to rely on that exemption, an offer of securities had to be actually addressed to fewer than 150 natural or legal persons per EEA State, other than qualified investors. However, in circumstances where an offer of securities to the public had been published and promoted on the internet in a manner freely accessible to anyone, such an offer had to be considered as being addressed to an unlimited number of persons for the purposes of point (b) of Article 1(4) of the Prospectus Regulation. Furthermore, the Court held that the limit set out in that provision cannot be circumvented by disseminating the offer in an EEA State through various media. «

https://eftacourt.int/cases/e-1020/

O

v

The Norwegian Government, represented by the Labour and Welfare Directorate (Arbeids- og velferdsdirektoratet)

Case E-13/20

(Social security – Regulation (EC) No 883/2004 – Articles 7, 63 and 64 – Unemployment benefits – Requirement to stay in the competent EEA State – Unemployed person going to another EEA State)

Judgment of the Court of 30 June 2021

The National Insurance Court *(Trygderetten)* requested an advisory opinion from the Court concerning the interpretation of Regulation (EC) No 883/2004 on the coordination of social security systems ("the Regulation").

The case concerned an order for repayment of unemployment benefits that were paid to O, whilst O was staying in Germany. The repayment order was based on the fact that O did not fulfil a requirement that an insured person must be physically present in Norway in order to be entitled to unemployment cash benefits. O was sanctioned on the ground that he had been grossly negligent in failing to report his stay outside of Norway.

The Court noted that Article 63 of the Regulation derogated from the main

rule in Article 7 and allowed EEA States to impose residence rules, including presence requirements, for entitlement to unemployment benefits in cases other than those provided for by Articles 64, 65 or 65a. The Court further noted that those articles exhaustively regulated the three situations in which the competent EEA State was required to allow recipients of an unemployment benefit to reside or stay in the territory of another EEA State. The Court therefore held that the requirement to stay in Norway to be entitled to unemployment benefits in cases where the conditions of Articles 64, 65 or 65a were not fulfilled to be compatible with the Regulation, including Article 5(b) thereof.

The Court further held that outside the situations expressly mentioned in Articles 64, 65 and 65a of the Regulation, a condition to stay in the competent EEA State for entitlement to unemployment benefits neither fell to be assessed under Articles 31 and 36 of the EEA Agreement nor 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 Member States.

The Court finally held that EEA States retained the power to determine whether or not unlawfully acquired allowances and benefits should be repaid. The EEA States, however, had to exercise that power in accordance with EEA law and its general principles, including the principles of equivalence and effectiveness. «

https://eftacourt.int/cases/e-1320/

Criminal Proceedings

against

P

Case E-15/20

(Social security – Regulation (EC) No 883/2004 – Articles 7, 63 and 64 – Unemployment benefits – Requirement to stay in the competent EEA State – Unemployed person going to another EEA State)

Judgment of the Court of 30 June 2021

The case concerned a request from Borgarting Court of Appeal *(Borgarting lagmannsrett)* for an advisory opinion concerning the interpretation of Regulation (EC) No 833/2004 on the coordination of social security systems ("the Regulation").

P appealed against the Oslo District Court's judgment that convicted him of aggravated fraud and providing false statements to the Norwegian Labour and Welfare Administration ("NAV") in connection with the receipt of unemployment benefits. It remained undisputed that P stayed abroad during a certain time period and did not notify the NAV as required by Norwegian law.

The Court held, with reference to its judgment in Case E-13/20 *O v The Norwegian Government, represented by the Labour and Welfare Directorate (Arbeids- og velferdsdirektoratet)*, that a

requirement, by national law, that the unemployed person must stay in the competent State, to be entitled to a cash benefit in the event of unemployment in cases where the conditions of Articles 64, 65 or 65a were not fulfilled to be compatible with Regulation. Furthermore, the Court held, citing its judgment in Case E-13/20, that outside the situations expressly mentioned in Articles 64, 65 and 65a of the Regulation, a condition to stay in the competent EEA State for entitlement to unemployment benefits did not fall to be assessed under Articles 28, 29 and 36 of the EEA Agreement. According to the same considerations, the Court found that the requirements did not fall to be assessed in the light of Directive 2004/38/EC.

The Court further held that EEA States retained the power, through their domestic legislation, to determine whether criminal sanctions should be imposed for obtaining unemployment benefits by knowingly providing wrongful information. However, the EEA States must exercise that power in accordance with EEA law and its general principles, including the principle of proportionality. «

https://eftacourt.int/cases/e-1520/

Criminal Proceedings

against

M & X AG

Case E-7/20

(Directive 2001/83/EC – Directive 2011/62/EU – Medicinal products – Wholesale distribution of medicinal products – Brokering of medicinal products – Freedom of establishment)

Judgment of the Court of 15 July 2021

The case concerned a request from the Princely Court of Appeal *(Fürstliches Obergericht)* for an advisory opinion concerning the interpretation of Directive 2001/83/EC (the "Directive") and Directive 2011/62/EU relating to medicinal products for human use.

M and X AG appealed the Princely Court's judgment which found them guilty of trading medicinal products abroad without the requisite authorisation pursuant to point (a) of Article 47(1) in conjunction with Article 38 of the Liechtenstein EEA Medicinal Products Act.

M – a practicing doctor in Austria – is the only board member of X AG – a legal person with its seat in Liechtenstein – which, *inter alia*, pursues trade in goods of all kinds, including food supplements. Between 2015 and 2016

X AG sold a product referred to as a "burnout infusion in accordance with Dr. M's formula" to customers in Austria, Germany, and Switzerland. The infusion ampoules were produced in Germany. Invoicing and payments were directed to a Liechtenstein address and bank account for tax reasons. M had been informed by the director of the Office for Economic Affairs *(Amt für Volkswirtschaft)* that only the national legislative provisions of the country in which the products are delivered must be observed. In 2015 the Office for Health *(Amt für Gesundheit)* initiated proceedings against X AG and M for trading medicinal products without authorisation.

The Princely Court of Appeal referred several questions to the Court. The referring court asked whether the burnout infusions constituted "medicinal products" within the meaning of Article 1(2) of the Directive, whether they were placed on the market or prepared industrially within the meaning of Article 2(1) of the Directive and whether the burnout infusions were covered by the exception provided in Article 3(2) of the Directive. The referring court further sought guidance on the interpretation of the term "wholesale distribution" within the meaning of the Directives. Furthermore, the referring court asked for guidance on the compatibility of respective national legislation with Article 31 EEA et seq. and whether it is of relevance if the product in question does not require authorisation in another EEA State.

The Court held that the determination of whether a product falls within the definition of a medicinal product must be made on a case-by-case basis taking into account the factors set out in Article 1(2) of the Directive, such as the product's presentation or pharmacological, immunological or metabolic properties. The product at issue in the main proceedings, which is intended to be administered intravenously, presented as being in accordance with the formula of a medical practitioner and as alleviating the symptoms of diseases in human beings, constitutes such a medicinal product.

The Court further reasoned that "placing on the market" requires a broad interpretation. If a medicinal product has been sold at the wholesale and/or retail level in EEA States, it must be considered as having been intended to be placed on the market in EEA States for the purposes of the Directive.

Furthermore, the Court found that a medicinal product is prepared industrially or manufactured by a method involving an industrial process if its preparation or manufacture involves an industrial process characterised, in general, by a succession of operations, which may be mechanical or chemical, in order to obtain a significant quantity of a standardised product. The Court noted that while the quantity of the product may be a relevant factor in this regard, the production of a relatively small quantity of a medicinal product does not necessarily exclude that product from the scope of Article 2(1) of the Directive.

The Court also held that if a medicinal product that has not been prepared in accordance with the prescriptions of a pharmacopoeia or is not intended to be supplied directly to the patients served by the pharmacy in question cannot benefit from the exception of Article 3(2) of the Directive as the conditions of the exception must be met cumulatively.

As to the definition of "wholesale distribution of medicinal products", the Court found that the activity of procuring, supplying and exporting medicinal products came within the scope of that definition even though a wholesale distributor had not physically handled those products.

The Court further held that a national measure subjecting an activity constituting "wholesale distribution of medicinal products" to an authorisation requirement under Article 77(1) of the Directive is compatible with EEA law.

The Court concluded that the fact that a product, such as the product at issue in the main proceedings, is not categorised as a medicinal product in one EEA State does not have an influence on whether another EEA State may classify it as a medicinal product in accordance with the Directives. «

https://eftacourt.int/cases/case-e-720/

EFTA Surveillance Authority

v

The Kingdom of Norway

Case E-9/20

(Free movement of workers – Freedom of establishment – Regulation (EU) No. 492/2011 – Combined residence and nationality requirement for corporate officers – General manager – Members of the board – Consistency)

Judgment of the Court of 15 July 2021

The EFTA Surveillance Authority ("ESA") sought a declaration that by maintaining in force provisions such as Sections 6-11(1) and 6-36(2) of the Public Limited Companies Act, Section 6-11(1) of the Private Limited Companies Act and Sections 7-5 and 8-4(5) of the Financial Undertakings Act, Norway had failed to fulfil its obligations under Articles 28 and 31 EEA Agreement, as well as Article 1(1) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (the "Regulation").

ESA had initiated formal proceedings against Norway regarding a possible breach of EEA law with respect to nationality and/or residency requirements for corporate officers in 2014. In 2019 ESA decided to refer the matter to the Court.

The provisions of Norwegian law at issue required both residence in and nationality of an EEA State for the general manager and at least half of the board members of private limited companies, public limited companies and financial undertakings, for members of the corporate assembly in the case of public limited companies ("the corporate officer scheme"), and for the founders of a financial undertaking ("the founder scheme").

The Court held that both the corporate officer and founder schemes must be considered restrictions on the freedom of establishment guaranteed under Article 31 EEA. While safeguarding of the administration of justice as such constituted a legitimate objective for justifying restrictive measures, the restrictions in question were not justified on the ground of ensuring the effective enforcement of the civil and criminal liability of corporate officers.

As to the corporate officer scheme the Court found that imposing such a

requirement only on half of the board members will not hinder the other board members from residing or moving to a third country to escape liability for their actions. The unsuitability was underlined also by the practice of granting exemptions if the company had a contact person in Norway since a contact person would not ensure enforcement. As mere residence in Norway is regarded as sufficient to attain the aim of the corporate officer scheme, the combined requirement of nationality and residence is neither suitable nor necessary to attain the objective stated by Norway.

As to the justification of the founder scheme the Court held that Norway had failed to provide any justification.

Thus, the Court declared that Norway failed to fulfil its obligations under Article 31 EEA by maintaining the respective provisions of the Public Limited Companies Act, the Private Limited Companies Act and the Financial Undertakings Act.

With regard to ESA's further pleas, based on Article 28 EEA and Article 1(1) of the Regulation, the application was dismissed. «

https://eftacourt.int/cases/e-0920/

Eyjólfur Orri Sverrisson

v

The Icelandic State

Case E-11/20

(Directive 2003/88/EC – Protection of the safety and health of workers – Working time – Travel to a location other than a worker's fixed or habitual place of attendance – International travel)

Judgment of the Court of 15 July 2021

The case concerned a request from Reykjavík District Court *(Héraðsdómur Reykjavíkur)* for an advisory opinion concerning the interpretation of Directive 2003/88/EC concerning certain aspects of the organisation of working time (the "Directive").

Mr. Sverrisson brought an action before Reykjavík District Court against the Icelandic State in 2019 for the time spent on travelling in connection with projects abroad to be recognised as working time. After his request to seek an advisory opinion from the Court regarding the interpretation of Article 2 of the Directive was denied at first, the Icelandic Court of Appeal *(Landsréttur)* overturned Reykjavík District Court's

ruling and decided that an advisory opinion was to be requested.

Mr. Sverrisson worked as an "inspector" *(eftirlitsmaður)* in the airworthiness and registration department of the Icelandic Transport Authority's (ICETRA) transport division in Reykjavík. While Mr. Sverrisson usually worked during daytime hours between 8 a.m. and 4 p.m. on weekdays, he also had to undertake "inspection visits" *(eftirlitsheimsóknir)* to foreign countries. At the time of the request ICETRA did not recognise the time spent on travelling as working time. Mr. Sverrisson claimed a total of 44.67 hours of travelling time related to two trips to Israel and Saudi Arabia to be regarded as working time.

Reykjavík District Court referred three questions to the Court asking whether Article 2(1) of the Directive should be interpreted as including the time spent travelling by an employee to and/or from a location other than the worker's fixed or habitual place of attendance, in order to carry out his activity or duties in that other location, as required by his employer, in particular, when it falls outside traditional daytime working hours. It also sought guidance on the significance of the journey being made domestically or between countries and whether it was of significance what form the work contribution took during the journey.

The Court held that despite a reference in Article 2(1) of the Directive to national laws and/or practice, EEA States may not unilaterally determine the scope of "working time". The Court confirmed the three elements of "working time" which comprise that the worker (i) is carrying out his activity or duty in the context of the worker's employment relationship, (ii) is at the employer's disposal during that time, and (iii) is working during that period of time. The Court found that the necessary time spent travelling, outside normal working hours, by a worker to a location other than his fixed or habitual place of attendance in order to carry out his activity or duties in that other location, as required by his employer, constitutes "working time". The Court noted that the concept of "working time" covers the entirety of periods of stand-by time, during which the constraints imposed on the worker are such as to

affect, objectively and very significantly, the possibility for the latter freely to manage the time during which his or her professional services are not required and to pursue his or her own interests. The Court held that it is indispensable to include necessary travel time in the concept of working time in order to protect workers' safety and health in accordance with the Directive. Furthermore, the Court noted that during such work trips, a hotel or other suitable lodging, even if determined by the employer, may be treated in an equivalent manner to the worker's home for the purpose of determining "rest periods". Likewise, when on a work trip, it is for the referring court to determine whether it is more reasonable, in the circumstances of the facts before it, for the journeys to have begun and/or been completed at either the worker's hotel or other suitable lodging, or his place of work during that trip. In a situation such as that at issue in the main proceedings, it is for the employer to put in place any necessary monitoring procedures to avoid potential abuse by a worker in engaging in social activities during a journey.

Furthermore, the Court found that the form of the work contribution during the journey is insignificant because the intensity of the work performed by the worker and his output are not among the characteristic elements of the concept of "working time". Consequently, no assessment of the intensity of the work performed while travelling is required.

The Court further held that, as such, the provisions of collective agreements may not affect the definition or scope of working time as defined by the Directive, including time spent travelling.

The Court concluded that it is immaterial whether a journey is made entirely within the EEA or to or from third countries if the employment agreement was established under and governed by the national law of an EEA State. «

https://eftacourt.int/cases/e-1120/

Liti-Link AG

v

LGT Bank AG

Case E-14/20

(Directive 2004/39/EC – Directive 2006/73/EC – Notion of "essential terms" – Sufficient disclosure of information to clients – Notion of "summary form" – Admissibility)

Judgment of the Court of 15 July 2021

The Supreme Court of the Principality of Liechtenstein *(Fürstlicher Oberster Gerichtshof)* referred questions regarding the interpretation of Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive ("the Implementing Directive").

The case before the referring court concerned a request for information on advantages with a monetary value paid to LGT Bank AG in relation to its business relationship with a client. In 2018, the client had assigned all claims arising from his business relationship with LGT Bank AG to Liti-Link AG for collection. The referring court sought guidance on the interpretation of Article 26 of the Implementing Directive with regards to the disclosure of fees, commissions or non-monetary benefits ("inducements").

The Court found that the final paragraph of Article 26 of the Implementing Directive, which must be read in conjunction with the first paragraph of that provision and Article 19 of Directive 2004/39/EC (MiFID I), must be inter-

preted as meaning that the essential terms of the arrangements relating to inducements may be disclosed in summary form. The precondition for this is that the investment firm has; clearly disclosed to the client, prior to the provision of an investment or ancillary service, that such inducements are paid to or received from a third party, has undertaken to disclose further details at the client's request, and honours this undertaking. The Court also held that disclosure may be made in general or preformulated terms and conditions. This is however contingent upon each individual client receiving the information related to the specific investment service and that the information gives the client a sufficient basis to make an informed investment decision.

Further, the Court found that such a disclosure entails an obligation on the investment firm to indicate clearly whether and when an inducement is provided in a manner that is comprehensive, accurate and understandable prior to the provision of the relevant investment or ancillary service. A generic disclosure which merely refers to the possibility that an investment firm might receive such inducements from a third party, is not sufficient. Furthermore, the Court found that the conditions for a disclosure of inducements in summary form are not fulfilled if the investment firm undertakes to disclose further details merely for a period of twelve months preceding the request.

With regards to disclosures under point (b)(i) of the first paragraph of Article 26, the Court held that if the amount of fees or commissions cannot be ascertained, a correct disclosure must place the client in a position to calculate this amount provided to the investment firm by a third party so that the client is enabled to make an informed decision on an investment.

Finally, the Court held that EEA law does not require any direct effect of EEA law provisions not correctly transposed into national law. The national court is nevertheless obliged, as far as possible, to ensure the result sought by EEA law through the interpretation of national law in conformity with EEA law. «

https://eftacourt.int/cases/e-1420/

Zvonimir Cogelja

v

the Directorate of Health (Embætti landlæknis)

Case E-17/20

(Free movement of persons and services – Directive 2005/36/EC – Evidence of formal qualifications – Issuance of evidence – Competent authority)

Judgment of the Court of 10 November 2021

The Reykjavik District Court *(Héraðsdómur Reykjavíkur)* referred a question regarding the interpretation of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ("the Directive").

The case before the national court concerned a request for issuance of evidence of formal qualifications as a specialist in plastic surgery from the Directorate of Health in Iceland under the Directive. Mr Cogelja had pursued specialist training for a total of seven years and eleven months, all outside of Iceland. The Directorate of Health rejected Mr Cogelja's request on the relevant occasion, considering that it could only confirm that Mr Cogelja had received a licence to practise plastic surgery in Iceland. It considered itself unable to issue evidence under the

Directive on the basis that such training is not available in Iceland. Thus, the Directorate of Health was unable to attest that the training had been in accordance with the requirements of the Directive.

The referring court essentially asked whether Article 25 of the Directive requires an EEA State itself to administer specialist training to issue evidence of formal qualifications, even if specialist training in the subject of qualification did not take place in that State.

The Court held that for the competent authority of an EEA State to issue evidence of formal qualifications in compliance with the Directive, it must be able to assess and confirm that the requirements under the Directive are fulfilled. This is possible if the EEA State offers specialist medical training that fulfils the minimum requirements within its own territory. Otherwise, the competent authority must have a system in place that secures the verification of compliance with the requirements laid down in Article 25 of the Directive. This may be achieved by having a curriculum or its equivalent at the national level in place, prescribing a comprehensive programme of education and training. If that is not the case, the competent authority may not issue evidence of formal qualifications under the Directive. «

https://eftacourt.int/cases/e-1720/

Q and Others

v

The Norwegian Government, represented by the Immigration Appeals Board (Utlendingsnemnda – UNE)

Case E-16/20

(Continued right of residence – Stepchild, an EEA national – Derived rights for third-country national parent carer – Abuse of rights –Marriage of convenience – Regulation (EU) No 492/2011 – Directive 2004/38/EC)

Judgment of the Court of 23 November 2021

The Oslo District Court *(Oslo tingrett)* referred questions to the Court seeking clarification on the interpretation 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 Member States ("the Directive").

The case before the national court concerned the validity of the Immigration Appeals Board's decision to reject the application for a Norwegian residence permit submitted by a third-country national and her child, an EEA national. Ms Q and her child A had previously been granted residence permits in Norway as family members of Mr C, a Greek national who worked in Norway. At the time of the request, Ms Q and

Mr C were married and Mr C was A's stepfather. However, Mr C had filed for divorce in Greece. Furthermore, the immigration authorities viewed the marriage as one of convenience.

The Court found that the case should be examined under the provisions of Regulation (EU) No 492/2011 on the freedom of movement for workers within the Union ("the Regulation"), not the Directive. The Court held that a child of an EEA national who previously worked in another EEA State and the child's third country national parent caring for that child derived a right of residence on the basis of Article 10 of the Regulation. This applied regardless of whether the child was common to the EEA national and the spouse, or the spouse only.

The Court further held that a child who is the descendant of the EEA national's third-country national spouse only, who was granted a right of residence on the basis of Article 10 of the Regulation using the EEA national as a reference person, retained such right of residence even if the EEA national had applied for divorce from the third-country parent of that child.

The Court finally held that, in the event that the authorities of an EEA State had established that a marriage between an EEA national and a third-country national amounted to a marriage of convenience, the relevant EEA State could take any measures necessary to refuse, terminate or withdraw rights derived from such an abuse. Such measures would have to be proportionate and subject to procedural safeguards. «

https://eftacourt.int/cases/e-1620/

ISTM International Shipping & Trucking Management GmbH

v

Liechtensteinische Alters- und Hinterlassenenversicherung, Liechtensteinische Invalidenversicherung and Liechtensteinische Familienausgleichskasse

Case E-1/21

(Social security – Regulation (EC) No 883/2004 – Regulation (EC) No 987/2009 – Registered office or place of business – Provisional determination – Article 3 EEA –Principle of sincere cooperation)

Judgment of the Court of 14 December 2021

The Princely Court of Appeal *(Fürstliches Obergericht)* referred questions which sought to clarify the interpretation of Regulation (EC) No 883/2004 on the coordination of social security systems ("Regulation 883/2004") and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems ("Regulation 987/2009").

ISTM International Shipping & Trucking Management GmbH ("ISTM") appealed against a decision that determined that Liechtenstein social security law was neither applicable to ISTM, nor to its employees registered in 2016. The decision was based on the fact that ISTM did not carry out the essential decisions

and functions of its business operations at its registered office in Liechtenstein.

The Court held that the mere presence of the registered office of an undertaking did not suffice for the purposes of point (b)(i) of Article 13(1) of Regulation 883/2004, read in conjunction with Article 14(5a) of Regulation 987/2009. The Court further held that when determining where the essential decisions of an undertaking are adopted and where the functions of its central administration are carried out, a series of factors had to be taken into consideration. Foremost amongst which are the location of its registered office, the place of its central administration, the place where its directors meet and the place where the general policy of that company is determined. The Court also noted that a presence such as that of a "letter box" or "brass plate" could not be described as a registered office or place of business where the essential decisions of the undertaking are adopted and where the functions of its central administration are carried out.

The Court further held that in order for a provisional determination to become definitive in accordance with Article 16(2) and (3) of Regulation 987/2009, the designated institution of the place of residence must have informed the designated institutions of each EEA State in which an activity was pursued of its provisional determination. It does not suffice for the purposes of Article 16(2) and (3) if the provisional determination reaches the designated institution of an EEA State in which an activity is pursued in whatever form, such as through the undertaking or person concerned.

Finally, the Court held that Article 16(4) of Regulation 987/2009 had to be interpreted as meaning that the designated institution of an EEA State could still challenge a provisional determination that had become definitive, in accordance with Article 16(3) of that regulation, as a result of the two-month period expiring without use having been made of it. Use of the procedure provided for in Article 16(4) could result in a determination that had become definitive in accordance with Article 16(3) being set aside with retroactive effect. «

https://eftacourt.int/cases/e-1-21/

Norep AS

v

Haugen Gruppen AS

Case E-2/21

(Self-employed commercial agents – Directive 86/653/EEC – Article 1(2) – Definition of "commercial agent" – Negotiation of the sale or purchase of goods on behalf of the principal)

Judgment of the Court of 14 December 2021

The Supreme Court of Norway *(Norges Høyesterett)* requested an advisory opinion from the Court concerning the interpretation of Directive 86/653/EEC on the coordination of the laws of the Member States relating to self-employed commercial agents ("the Directive").

The case concerned an appeal brought by Norep AS against the judgment of the Hålogaland Court of Appeal *(Hålogaland lagmannsrett)* in relation to a claim for remuneration upon the termination of a contract with Haugen Gruppen AS. The claim was made under the Norwegian Act on Commercial Agents and Commercial Travellers which was intended to implement the Directive. The parties disagreed as to whether the activity performed by

Norep AS under the contract was to be regarded as that of a commercial agent under that act.

The Court was asked whether the term "negotiate" in Article 1(2) of the Directive required commercial agents to be involved with orders from customers to the principal, with the result that the orders could not go directly from the customers to the principal. The Court held that the term should be interpreted as not necessarily presupposing the agent's direct involvement with the placing of orders by customers with the principal, nor excluding a scenario in which customers' orders went directly to the principal. The Court noted that the fact that a commercial agent does not have a role in taking or finalising orders on behalf of the principal does not prevent the commercial agent from carrying out their main tasks, namely, to bring the principal new customers and to increase the volume of business with existing customers.

The Court was further asked which factors were relevant for the assessment of whether sales-related activity should be deemed to constitute negotiation for the purposes of Article 1(2) of the Directive. The Court held that sales-related activity should be deemed to be negotiation if it was specifically undertaken with a view to achieving the conclusion of contracts of sale or purchase of goods by the principal, and if the agents acted as an intermediary between the principal and his customers. «

https://eftacourt.int/cases/e-221/

2021

News and Events

EFTA COURT

Court's Rules of Procedure enter into Force

During the year 2021, the complete revision of the Court´s Rules of Procedure was finalised, including the translation into the languages of the EEA States. Following the publication of the new Rules in the Official Journal of the European Union and the EEA Supplement to the Official Journal, the Rules entered into force on 1 August 2021. The new rules are accessible on the Court´s website: www.eftacourt.int.

The purpose of the revision of the Rules was to align them with the Rules of Procedure of the Court of Justice and of the General Court, in so far as those provisions are relevant for the structure and jurisdiction of the EFTA Court. This included taking account of technological changes, in particular the introduction of the e-EFTACourt application, which allows for electronic lodging and service of documents.

The new rules introduce inter alia an article on the possibility of videoconferencing which provides that the Court may decide on the criteria for its use of video communication and transmission. The last two years have seen oral hearings of the Court taking place entirely via video conference. Public sittings have also been streamed live on the Court´s website. These arrangements have proven to be quite effective and are likely to continue in some form.

EFTA Court Conference

On Friday 15 October 2021, the EFTA Court held its annual Conference on the topic "People and the EEA", at the Novotel Luxembourg Kirchberg. The conference was also streamed via the Court´s website.

The conference was attended in person by more than 100 participants, including members of EFTA States' supreme courts, the European Court of Justice, the European Court of Human Rights, and of other EU institutions, ambassadors, civil servants, practitioners, and academics. The conference was also streamed via the EFTA Court´s website and via Zoom with around 80 participants following the conference in that manner.

Following an introductory welcome speech by President Páll Hreinsson, the keynote speaker, Professor Miguel Poiares Maduro, gave his speech “The Rescue of European Democracy” on challenges to democracy and how they can be addressed by EU law. It was very well received and was followed by questions and interesting comments from conference guests.

The morning session of the conference, moderated by EFTA Court Judge Bernd Hammermann, focusing on the “Free movement of persons in the EEA”, started with Professor Christa Tobler discussing the free movement of persons beyond EU law, with a particular focus on the EEA, comparing the different degrees of regulation on free movement of persons by the Ankara Agreement, EU-Swiss Agreement on the Free Movement of Persons, the European Economic Area and European Union. The subject of diverging visions for the EEA as a guarantor of individual rights was addressed by Professor Ciarán Burke, when he contemplated the potential consequences of the I.N. case of the Court of Justice of the EU (C-897/19 PPU) and the Norwegian Confederation of Trade Unions case of the European Court of Human Rights (Application no. 45487/17) and whether these two courts were going in different directions when it comes to including the EEA Agreement within and alongside the EU legal order. This was followed by an impassioned intervention by President Róbert Spanó of the European Court of Human Rights. He assured the audience that the EFTA Court was fully integrated into the system of the Convention.

To close this session, Dóra Guðmundsdóttir, Senior Lawyer at the UK Government Legal Department, discussed the privilege of being a citizen, comparing the rights of EU/EEA citizens and citizens with settled status in the United Kingdom following its EU exit. The session ended with questions and comments from the conference participants and a continued discussion with the speakers of the morning session.

The afternoon session, moderated by Ólafur Jóhannes Einarsson, the Registrar of the EFTA Court, concentrated on EEA law and national administrative law. The opening speech was delivered by Professor Sacha Prechal, Judge at the Court of Justice of the European Union, discussing the influence of Union law on national administrative law. Next, Professor Niels Fenger, the Danish Parliamentary Ombudsman, discussed the subject matter of the challenges the influences of Union law bring into day-to-day national administration, and the way in which national administrative law changes

because of EU law/ EEA law. Professor Christoffer Conrad Eriksen completed the afternoon talks. He went through the NAV-saga, which he referred to as the "social security scandal", in which thousands of recipients had lost their social security benefits when temporarily staying in another EEA State. Under the title "Living on the edge", he asked how EEA law could have been disregarded by both the Norwegian Labour and Welfare Administration (NAV) and by the Norwegian Courts for such a long period of time.

The addresses of the speakers were followed by a panel where the conference participants had the opportunity to engage in discussion with the speakers of the afternoon session or to ask them questions. This spurred some interesting and thought-provoking debate and discussion.

The Registrar of the EFTA Court closed the conference by thanking the speakers for their contribution and for sharing their insight and the audience and participants for their interesting questions and comments.

Remote Oral Hearings

Due to the continued challenges that the COVID-19 pandemic has placed on the normal working of the Court, all oral hearings which normally take place at the premises of the Court were substituted by remote oral hearings. The Court has made the necessary arrangements to hold its oral hearings via video conference with full participation of the parties to each case. To ensure the accessibility and transparency of the hearings, the hearings are streamed live on the Court's website, as are other sittings of the Court, i.e. for delivery of judgments.

The Court held twelve remote oral hearings in this manner in 2021, and more have already been scheduled for the first half of 2022.

Other events

On 14 October 2021, during a public sitting of the EFTA Court, Mr. Stefan Barriga took the oath as a new member of the EFTA Surveillance Authority. Prior to taking up this position, Mr. Barriga was deputy ambassador at the Liechtenstein Mission to the European Union.

Due to the pandemic the Court has not received the number of visitors it generally welcomes in the course of the year. However, in November, President Páll Hreinsson, and Registrar Ólafur Jóhannes Einarsson, welcomed a delegation from the Council of Bars and Law Societies of Europe (CCBE) to discuss the developments in the case law of the EFTA Court and other topical procedural issues.

2021

Judges and Staff

EFTA COURT

Judges and Staff

The members of the Court in 2021 were as follows:

Mr Páll Hreinsson, President (nominated by Iceland)
Mr Per Christiansen (nominated by Norway)
Mr Bernd Hammermann (nominated by Liechtenstein)

The judges are appointed by common accord of the Governments of the EFTA States.

Mr Ólafur Jóhannes Einarsson is the Registrar of the Court.

Ad hoc Judges of the Court are:

Nominated by Iceland:
Mr Benedikt Bogason, forseti Hæstaréttar (President of the Supreme Court)
Ms Ása Ólafsdóttir, hæstaréttardómari (Supreme Court Judge)

Nominated by Liechtenstein:
Ms Nicole Kaiser, Rechtsanwältin (lawyer)
Mr Martin Ospelt, Rechtsanwalt (lawyer)

Nominated by Norway:
Mr Ola Mestad, University of Oslo (Professor)
Ms Siri Teigum, Advokat (lawyer)

In addition to the Judges, the following persons were employed by the Court in 2021:

Ms Annette Lemmer, Receptionist/Administrative Assistant
Mr Birgir Hrafn Búason, Senior Lawyer Administrator
Ms Bryndís Pálmarsdóttir, Administrator
Ms Candy Bischoff, Administrative Assistant
Ms Erica Charlotte Worsley, Administrative Assistant
Mr Gjermund Fredriksen, Financial Officer
Ms Hanna Faksvåg, Legal Secretary
Mr Hans Ekkehard Roidis-Schnorrenberg, Legal Secretary
Mr Håvard Ormberg, Legal Secretary
Ms Hrafnhildur Mary Eyjólfsdóttir, Personal Assistant
Ms Katie Nsanze, Administrative Assistant
Ms Kerstin Schwiesow, Personal Assistant
Mr Kristján Jónsson, Legal Secretary
Ms Marie Smedås Munthe-Kaas, Legal Secretary
Mr Michael-James Clifton, Legal Secretary
Mr Ólafur Ísberg Hannesson, Legal Secretary
Mr Ólafur Jóhannes Einarsson, Registrar
Ms Silje Næsheim, Personal Assistant
Mr Thierry Caruso, Caretaker/Driver