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Reykjavík, 4 March 2022

TO THE PRESIDENT AND MEMBERS OF THE EFTA COURT

WRITTEN OBSERVATONS

submitted pursuant to Article 20 of the Statute and Article 90(1) of the Rules of Procedure of the EFTA Court by

THE GOVERNMENT OF ICELAND

(the Defendant),

represented by Guðrún Sesselja Arnardóttir,

Supreme Court Attorney, Office of the Attorney General (Civil Affairs)

acting as Agent in

CASE E-5/21

Anna Bryndís Einarsdóttir

v

the Icelandic Treasury

in which the Reykjavík District Court (Héraðsdómur Reykjavíkur) requests the EFTA Court to give an advisory opinion pursuant to Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice on the interpretation of Article 6 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, cf. also Article 21(3) of the Regulation and Article 29 of the EEA Agreement. The Icelandic Government, on its own behalf has the honour to submit the following written observations.

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I. INTRODUCTION

1. By an application of 8 December 2021, the Reykjavík District Court (Héraðsdómur Reykjavíkur) requested the EFTA Court to give an advisory opinion pursuant to Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("SCA"), on a question in a case before it. The question is the following:

   Does Article 6 of Regulation (EC) No 883/2004, on the coordination of social security systems (cf. also Article 21(3) of the Regulation), oblige an EEA State, when calculating payments in connection with maternity/paternity leave, to calculate reference income on the basis of a person's aggregate wages on the labour market across the entire European Economic Area? Does it infringe the aforementioned provision and the principles of the EEA Agreement (see for example, Article 29 EEA) if only a person's aggregate wages on the domestic labour market are taken into account?

II. LEGAL BACKGROUND

1. EEA Law

1.1 Basic provisions of the EEA Agreement

2. In its application to the EFTA Court, the referring court is asking if the disputed method of calculation of maternity benefit payments infringes the principles of the EEA Agreement, for example if it infringes Article 29. The Icelandic Government considers that the answers to those questions shall be solely based on the provisions of Regulation (EC) No 883/2004 and Article 29 of the Agreement on the European Economic Area (the EEA Agreement).

3. Article 29 EEA, which is specifically aimed at the coordination of social security schemes to facilitate the free movement of workers and self-employed within the EEA, is as follows:

   In order to provide freedom of movement for workers and self-employed persons, the Contracting Parties shall, in the field of social security, secure, as provided for in Annex VI, for workers and self-employed persons and their dependants, in particular:

(a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;

(b) payment of benefits to persons resident in the territories of Contracting Parties.

4. The main text of the EEA Agreement is implemented in Iceland by Act No 2/1993 on the European Economic Area (the EEA Act), which contains the Agreement in its Annex I. Article 2, paragraph 1, of the EEA Act provides that the main text of the EEA Agreement shall have the force of law in Iceland.

1.2 EEA Secondary Law

5. Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems ("the Coordination Regulation") is referred to in point 1 of Annex VI to the EEA Agreement. The Regulation was incorporated into the EEA Agreement by Decision of the EEA Joint Committee (JC Decision) No 76/2011 of 1 July 2011.

6. In Iceland, governmental regulation No 442/2012 on the entry into force of Regulations of the European Union on Social Security (*Reglugerð um gildistöku reglugerða Evrópusambandsins um almannatryggingar) incorporates into Icelandic law* the JC Decision No 76/2011, Regulation (EC) No 883/2004, Regulation (EC) No 988/2009 amending Regulation (EC) 883/2004, and its Implementing Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for Implementing Regulation (EC) No 883/2004 on the coordination of social security systems. The governmental regulation which *inter alia* is based on Article 35 of the Act No 95/2000 on Maternity/Paternity Leave and Parental Leave was published in the Official Gazette (*Stjórnartíðindi*) on 11 May 2012 and contains in its Annexes 1, 2, 3 and 4 respectively the JC Decision, Regulation (EC) No 883/2004, Regulation (EC) No 988/2009 and Regulation (EC) No 987/2009. The Icelandic governmental regulation No 442/2012 has been amended several times to incorporate subsequent amendments that have been

made to the Coordination Regulation and incorporated into the EEA Agreement. That is by governmental regulations No 860/2012, No 861/2012, No 617/2013, No 618/2013, No 1098/2013, No 1099/2013, No 960/2015, No 961/2015, No 962/2015, No 286/2019, No 306/2019, No 410/2019, No 761/2019, No 781/2019 and No 875/2019 that are presently in force.

7. Title I of the Coordination Regulation is entitled "*General provisions.*" Article 1 the first article within Title I, is entitled "*Definitions*" and reads, in extract:

   For the purpose of the Regulation:

   [...]

   (u) "period of employment" or "period of self-employment" means periods so defined or recognised by the legislation under which they were completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to periods of employment or to periods of self-employment.

   [...]

   (z) "Family benefit" means all benefits in kind or in cash intended to meet family expenses, excluding advances in maintenance payments and special childbirth allowances mentioned in Annex I.

8. Article 3, paragraph 1, of the Coordination Regulation, entitled "*Matters covered*" reads, in extract:

   1. *This Regulation shall apply to all legislation concerning the following branches of social security:*

      [...]

      (b) maternity and equivalent paternity benefits;

      [...]

(j) family benefits.

9. Article 4 of the Coordination Regulation provides for equality of treatment in the following way:

> *Unless otherwise provided for by this Regulation, persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof.*

10. Article 5 provides for equal treatment of benefits, income, facts or events as follows:

> *Unless otherwise provided for by this Regulation and in the light of the special implementing provisions laid down, the following shall apply:*
> *(a) where, under the legislation of the competent Member State, the receipt of social security benefits and other income has certain legal effects, the relevant provisions of that legislation shall also apply to the receipt of equivalent benefits acquired under the legislation of another Member State or to income acquired in another Member State;*
> *(b) where, under the legislation of the competent Member State, legal effects are attributed to the occurrence of certain facts or events, that Member State shall take account of like facts or events occurring in any Member State as though they had taken place in its own territory.*

11. Article 6 of the Coordination Regulation provides for the aggregation of periods as follows:

> *Unless otherwise provided for by this Regulation, the competent institution of a Member State whose legislation makes:*
>
> - *the acquisition, retention, duration or recovery of the right to benefits,*
> - *the coverage by legislation, or*
> - *the access to or the exemption from compulsory, optional continues or voluntary insurance,*

conditional upon the completion of periods of insurance, employment, self-employment or residence shall, to the extent necessary, take into account period of insurance, employment, self-employment or residence completed under the legislation of any other Member State as though they were periods completed under the legislation which it applies.

12. Title III of the Coordination Regulation contains special provisions concerning the various categories of benefits. Chapter 1 of Title III consists of Articles 17-31 and covers sickness, maternity and equivalent paternity benefits. Article 21 provides for the following on the calculation of cash benefits:

1. An insured person and members of his family residing or staying in a Member State other than the competent Member State shall be entitled to cash benefits provided by the competent institution in accordance with the legislation it applies. By agreement between the competent institution and the institution of the place of residence or stay, such benefits may, however, be provided by the institution of the place of residence or stay at the expense of the competent institution in accordance with the legislation of the competent Member State.

2. The competent institution of a Member State whose legislation stipulates that the calculation of cash benefits shall be based on average income or on an average contribution basis shall determine such average income or average contribution basis exclusively by reference to the incomes confirmed as having been paid, or contribution bases applied, during the periods completed under the said legislation.

3. The competent institution of a Member State whose legislation provides that the calculation of cash benefits shall be based on standard income shall take into account exclusively the standard income or, where appropriate, the average of standard incomes for the periods completed under the said legislation.

4. Paragraphs 2 and 3 shall apply mutatis mutandis to cases where the legislation applied by the competent institution lays down a specific reference period which corresponds in the case in question either wholly or partly to the periods which the person concerned has completed under the legislation of one or more other Member States.

1.3 Administrative Decisions

13. As provided for in Title IV of the Coordination Regulation the Administrative Commission for the coordination of Social Security Systems made up of governmental representatives deals with administrative questions and questions of interpretation of the Regulation and the Implementing Regulation. The Decision of the Administrative Commission No H6 of 16 December 2010 concerning the application of certain principles regarding the aggregation of periods under Article 6 of Regulation (EC) No 883/2004 on the coordination of social security systems, referred to in point 3.H6 in Annex VI to the EEA Agreement, provides as follows:

> *1. All periods of insurance — be they contributory periods or periods treated as equivalent to insurance periods under national legislation — fulfil the notion of 'periods of insurance' for the purposes of applying Regulations (EC) No 883/2004 and (EC) No 987/2009.*
>
> *2. All periods for the relevant contingency completed under the legislation of another Member State shall be taken into account solely by applying the principle of aggregation of periods as laid down in Articles 6 of Regulation (EC) No 883/2004 and 12 of Regulation (EC) No 987/2009. The principle of aggregation requires that periods communicated by other Member States shall be aggregated without questioning their quality.*
>
> *3. Member States retain however — having applied the principle of aggregation under point 2 — the jurisdiction to determine their other conditions for granting social security benefits taking into account Article 5 of Regulation (EC) No 883/2004 — provided that these conditions are applied in a non discriminatory way — and this principle shall not be affected by Article 6 of Regulation (EC) No 883/2004.*

2. National Law

14. At the material time in March 2020, the applicable act on maternity payments due to the plaintiff was the Act No 95/2000 on Maternity/Paternity Leave Fund and Parental Leave (also referred to as the "MPL Act"), as amended. The last amendment being the Act No 150/2019 amending the MPL Act. In addition, governmental regulation No 1218/2008, on payments from the Maternity/Paternity Fund and the payment of maternity /paternity grants,

as amended by regulation No 1238/2019, lays down more detailed requirements, in particular a revision of the relevant amount of monthly maternity/paternity payments and grants that according to Articles 13(8) and 18(5) shall be revised in connection with the enactment of the Fiscal Budget every year to take account of trends in wages, price levels and the economy.

15. The Maternity/Paternity Leave Fund (also referred to as "the Fund" or the MPL Fund) is managed by the Directorate of Labour as provided by Article 4, paragraph 2 of the MPL Act. As described in Article 4, the Fund administers applications and makes payment for two different and financially separate categories of maternity/paternity benefits:

(a) *For economically active: maternity/paternity payments from the Fund* to parents who are entitled to payments due to their participation in the labour market prior to the birth of the child in accordance with Article 13, paragraph 1, (cf. Paragraph 12) of the MPL Act. The payments are directly from the Fund and are financed by mandatory social security tax paid by employers in accordance with the Act No 113/1990 on Social Security Tax (see further below in 2.6).

(b) *For students and those not considered economically active: maternity/paternity grants from the Icelandic Treasury* in accordance with Section VI of the MPL Act to parents that are not considered to have been economically active prior to the birth of the child. These are students or persons employed in less than 25% of a full-time position, for the last six months before the child's date of birth. The grants are of fixed amount. According to governmental regulation No 1218/2008, as amended by regulation No 1238/2019, the revised amount of grant for each month at the material time was ISK 80.341. Each parent has independent entitlement to payment of a grant for three months. In addition, the parents have joint entitlement to grant payment for three months, that either parent or both may request. The maternity/paternity grant system is based on solidarity and according to Article 4, paragraph 1 of the MPL Act the grants are financed directly from the State Treasury.

16. The Icelandic system of maternity/paternity benefits under the MPL Act provides for a two-step procedure for the evaluation of applicants. The *first* step, laid down under the rules on the six months "*entitlement acquisition period*" in Article 13(1) of the Act, is the determination of whether an applicant is eligible for maternity/paternity benefits for

economically active persons or not (see further in 2.3 below). The *second* step, laid down under the rules on the twelve-months "*reference period*" in Article 13(2) and (4), is the determination of the amount of maternity/paternity payments that economically active persons shall receive (see further 2.4 below).

2.1 The requirement of economic activity

17. The right to maternity/paternity payments for the economically active is described in paragraphs 1-3 of Article 7 of the MPL Act, which reads as follows:

> *For the purposes of this Act, maternity/paternity leave and parental leave refers to leave from salaried employment that is occasioned by:*
>
> *a. a birth,*
>
> *b. a primary adoption of a child under the age of eight years, or*
>
> *c. a permanent foster care of a child under the age of eight.*
>
> *For the purposes of this Act, employee refers to anybody who is employed in a salaried position in the service of others amounting to at least a 25% of a full-time position each month. Notwithstanding this, the term employee, as used in Section VII, shall apply to all those who are employed in salaried positions in the service of others.*
>
> *Self-employed individual refers to anybody who works for himself, irrespective of the type of company, to the effect that she/he is obliged to pay an insurance levy every month, or in another manner decided by the tax authorities.*

2.2 The duration of payments

18. According to Article 8, paragraph 1 of the MPL Act, as it stood at the material time in March 2020, parents were entitled to maternity/paternity payments for a total of ten months. Thereof, each parent had independent entitlement to four months of payments. This entitlement is not assignable. In addition, parents had joint entitlement to an additional two months, which either parent may draw in its entirety, or parents may divide between them. According to Article 8 paragraph 3, the mother shall take maternity leave for at least the first two weeks following the birth of her child. This is in accordance with Article 8(2) of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers

who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC which was incorporated into the EEA Agreement by the Decision of the EEA Joint Committee No 7/94 of 21 March 1994).

19. According to Article 8, paragraph 2 of the MPL Act, the right to maternity/paternity leave is established upon the birth of a child. However, a parent shall be permitted to start his/her leave up to one month prior to the expected birth date, which shall be confirmed by a medical certificate. The right to maternity/paternity leave in connection to a birth of a child expires when the child reaches the age of 24 months.

20. According to Article 12 of the MPL Act the right to payments is maintained in case of a still-born child or a miscarriage, but for a shorter period of up to three months each parent.

2.3 The requirement of economic activity during the six month "entitlement acquisition period"

21. To be entitled to maternity/paternity leave payments from the Fund, Article 13, paragraph 1 of the MPL Act, prescribes that a parent "*acquires the right to payments from the Maternity/Paternity Leave Fund after she/he has been active on the domestic labour market for six consecutive months prior to a birth of a child or the date on which a child enters the home in the case of adoption or permanent foster care [...]*" Those failing to meet the requirement of six months economic activity may, according to Article 13, paragraph 12, be entitled to maternity grants in accordance with Chapter VI of the Act. Article 13a of the MPL contains detailed definition on the term "*participation in the domestic labour market*" and includes work as an employee or a self-employed individual, annual leave, a parent receiving unemployment benefit payments, parents receiving payments during leave due to accident or illness and parents receiving or having right to payments because of chronically ill children.

22. Economic activity in other EEA countries shall be taken into account in determining the "*rights acquisition period*" in accordance with Article 13, paragraph 12, which is as follows:

> *When a parent has worked on the domestic labour market for at least the last month of the entitlement acquisition period under the first paragraph, the Directorate of Labour*

shall, to the extent necessary, take account of his/her working periods as an employee or a self-employed individual in another Member State of the Agreement on the European Economic Area, [...] during the entitlement acquisition period, providing that the parent's work conferred rights on him/her under the legislation of the state in question regarding maternity/paternity leave. If, on the other hand, the parent worked on other domestic labour market for less than the last month of the entitlement acquisition period under the first paragraph, then the Directorate of Labour shall assess whether the parent in question is to be regarded as having worked on the domestic labour market for the purposes of this Act with the consequence that account is to be taken, to the extent necessary, of his/her working periods as an employee or a self-employed individual in another Member State of the Agreement on the European Economic Area, [...] during the entitlement acquisition period, providing that the parent's work conferred rights on him/her under the legislation of the state in question regarding maternity/paternity leave. A condition for this shall be that the parent began work on the domestic labour market within ten working days of stopping work on the labour market of the other state within the EEA, [...]. The parent shall submit the required certificate of accrued employment periods and insurance periods in the other state, according to the provisions of the agreements, together with her/his application for payments from the Maternity/Paternity Leave Fund under Article 15.

2.4 ***The determination of the monthly payments and the 12 months reference period***

23. The general rule for calculating monthly maternity/paternity leave payments is in Article 13, paragraph 2 of the MPL Act, and provides for a twelve-month "*reference period*" to be used for the calculation of the payments in the following way:

The Maternity/Paternity Leave Fund's monthly payment to an employee (cf. the second paragraph of Article 7) during maternity/paternity leave shall amount to 80% of her/his average total wages, these being based on a continuous twelve-month period ending six months prior to the birth month or the month the child enters the home for initial adoption or permanent foster-care.

24. Article 13, paragraph 2 further defines that "*wages*" for the purpose of calculation of "*average total wages*" shall include "*all forms of wage and other remuneration according to the Social Security Tax Act, and also payments from the Maternity/Paternity Leave Fund, payments from the Unemployment Insurance Fund, payments under indents a and b of Article 5 of the Wage Guarantee Fund Act, per diem payments for illness and accident injury, payments from Trade Unions' Sickness Funds, payments from an insurance company due to temporary loss of employment or wage-related payments under Section III of the Act on Payments to the Parents of Chronically Ill or Severely Disabled Children (cf. indents a-e of the second paragraph of Article 13 a)*"

25. Notwithstanding the provisions on the calculation of the monthly payments in Article 13, paragraph 2 of MPL Act, there are *maximum* and *minimum* limits for the monthly payments. According to Article 13, paragraph 3, the monthly payment from the Maternity/Paternity Leave Fund to a worker during maternity/paternity leave may never exceed ISK 370.000. In 2020 the revised maximum amount was ISK 600.000 according to governmental regulation No 1218/2008, as amended by regulation No 1238/2019.

26. The *minimum* monthly payment from the Fund during maternity/paternity leave according to Article 13, paragraph 7, "*to a parent in a 25–49% part-time job shall never be less than ISK 97.786 and to a parent holding a 50–100% job shall never be less than ISK 135.525.*" In 2020 the revised amounts of these payments were ISK 132.859 and ISK 184.119, respectively, according to governmental regulation No 1218/2008, as amended by regulation No 1238/2019.

27. The MPL Act requires that only wages earned in the domestic labour market during the twelve-month reference period may be used as base for the calculation of the average total wages. There is no requirement that the parent has been working during all twelve months of the reference period. This means that for parents that have been working *in the domestic labour market during only part* of the twelve-month "*reference period*" the "*reference period*" may be shorter. In this case the following applies, irrespective of whether the parent is an employee or self-employed, according to Article 13, paragraph 2 in fine (subparagraphs 8 and 9):

Only average total wages for those months during the reference period in which the parent was on the domestic labour market shall be taken into account (cf. also the second paragraph of Article 13 a), irrespective of whether wages under the second sentence or calculated remuneration under the fifth paragraph were paid. In no case shall fewer than four months be taken as a reference base when average total wages are calculated.

28. For parents that meet the requirement of having been economically active according to Article 13, paragraph 1, but have worked for less than four months during the reference period, the total wages during the reference period are taken into account but the average is still calculated on the basis of four months. As an example, if a parent works in the domestic labour market for two months during the reference period and earns ISK 1.000.000 each month. Then the average wages are ISK 500.000, and the parent receives 80%, which is ISK 400.000. The calculation cannot lead to payments below the minimum stipulated in Article 13, paragraph 7.

29. A parent that has not been working *in the domestic labour market* in Iceland during the 12 months continuous "*reference period*", receives minimum payments in accordance with Article 13(7). This is provided for in Article 13 paragraph 4 which is as follows:

When an employee meets the conditions of the first paragraph but has not worked on the domestic labour market during the reference period as specified in the second paragraph of Article 13, she/he shall acquire the right to minimum payments under the seventh paragraph in accordance with her/his employment ratio.

30. According to this a parent that had not worked in the domestic labour market during the twelve-month reference period was at the material time entitled to minimum payment of ISK 184.119 for 50-100% of a full-time position and 132.859 for 25-49% of a full-time position. The employment ratio used is the ratio of the employee during the of the six-month rights acquisition period prior to the date of birth of the child.

2.5 The concept of wages and the mandatory social security tax payments

31. According to Article 13, paragraph 2 the wages that are subject to calculation of average total wages during the reference period are as follows:

> *"Wages" here shall include all forms of wage and other remuneration according to the Social Security Tax Act, and also payments from the Maternity/Paternity Leave Fund, payments from the Unemployment Insurance Fund, payments under indents a and b of Article 5 of the Wage Guarantee Fund Act, per diem payments for illness and accident injury, payments from Trade Unions' Sickness Funds, payments from an insurance company due to temporary loss of employment or wage-related payments under Section III of the Act on Payments to the Parents of Chronically Ill or Severely Disabled Children (cf. indents a-e of the second paragraph of Article 13 a).*

32. Article 15, paragraphs 3 and 4 of the MPL Act further provide that the competent authority must verify that the "*wages*" received by applicants during the "*reference period*" have been subject to insurance levy payments, as follows:

> *Calculation of payments to a parent on maternity/paternity leave shall be based on data which the Directorate of Labour shall acquire on parents' income from tax returns, tax authorities' records of income tax (PAYE) and social security tax payments. The Directorate of Labour shall seek confirmation from the tax authorities that the data from the records of income tax and social security tax payments corresponded to the taxes levied by the tax authorities in respect of the reference periods under the second, fifth and sixth paragraphs of Article 13. The consent of the applicant shall be required for obtaining these materials.*
>
> *The tax authorities shall supply the Directorate of Labour with the data necessary to apply this Act.*

2.6 The Social Security Tax Act and the financing of the Maternity/Paternity Fund

33. Maternity/paternity payments for the economically active are paid directly by the Maternity/Paternity Fund. The Fund is financed through collection of social security tax from employers. The Act No 113/1990 on Social Security Tax concerns the tax paid by employers in respect of wages paid to employees as well as on earnings by the self-employed. According to Article 1 of the Act No 113/1990 all employers registered under the Act No 45/1987 on the withholding of public levies at source, must pay a social security tax on all wages and the like paid to employees. According to Article 4, the obligation to pay the tax is upon all parties that pay or calculate payments that are considered wages. This includes all employers as well as self-employed and independent operators. In addition, Article 22.a. permits that foreign parties paying wages in respect of workers resident in Iceland may pay the tax, provided they register with the authorities.

34. Article 3, paragraph 2(5) of the Act No 113/1990 provides that the Maternity/Paternity Fund receives 1,1% of the tax base.

III. FACTS

35. The case concerns a dispute between the plaintiff and the Icelandic Treasury regarding the calculation of maternity leave payments due to the plaintiff. It is not disputed by the Government in the case that the plaintiff has by her employment in another EEA country completed the necessary periods of employment in accordance with Article 29 EEA and Article 6 of Regulation (EC) No 883/2004 to receive maternity payments in accordance with the Act No 95/2000 on Maternity/Paternity Leave Fund and Parental Leave. The dispute concerns whether her income earned in the Danish labour market during the reference period stipulated in the MPL Act shall be taken into account in the calculation of the amount of the plaintiff's payments.

36. The plaintiff was in full-time employment in Denmark since 1 September 2015. She moved to Iceland on 17 September 2019 and was employed by Landspítali. Her first day of work was on 30 September 2019. The plaintiff notified Landspítali of the proposed structure of her maternity leave on 15 January 2020 and submitted her application for payments from

the Maternity/Paternity Leave Fund (*Fæðingarorlofssjóður*) on 22 January 2020. Her application was accompanied by relevant information concerning the pregnancy, payslips from Landspítali (*the National University Hospital*), confirmation on her employment at Landspitali and E-104 certificate from Denmark. The plaintiff's child was born on 16 March 2020.

37. The Maternity/Paternity Leave Fund approved of the plaintiff's application on 3 March 2020 and informed her that monthly payments to her would be ISK 184.119 for 100% maternity leave.

38. On 28 May 2020 the plaintiff appealed the decision of the Maternity/Paternity Leave Fund to the Welfare Appeals Committee (*úrskurðarnefnd velferðarmála*). On 2 September 2020 the Appeals Committee confirmed the decision of the Fund. In its reasoning the Appeals Committee considered that the plaintiff was entitled to payments from the Maternity/Paternity Leave Fund as an employed person in accordance with Article 13(1), cif also Article 13(12) and (13) of the MPL Act due to her periods of work in another EEA country. The plaintiff's child was born in March 2020. Therefore, in accordance with Article 13(2) the plaintiff was entitled to 80% of the average aggregated wages she had earned in the domestic labour market during the reference period from September 2018 to August 2019. The Appeals Committee noted that the plaintiff had been working in Denmark during the reference period. As the plaintiff had not been working in the domestic labour market during the reference period, she had in accordance with Article 13(4) of the MPL Act, a right to minimum payments in accordance with Article 13(7) of the Act in accordance with her employment ratio. As the plaintiff had been in 100% employment, she was to receive ISK 184.119 for each month of her maternity leave.

39. The Appeals Committee noted that neither the MPL Act nor governmental regulation No 1218/2008 permitted that wages received by the plaintiff in the labour market of another country be taken into account for the calculation of average aggregate wages as the plaintiff had requested. Furthermore, the *traveaux preparatoires* for Article 13(2) of the Act and the precise wording of subparagraph 8 of the provision strongly suggested that only wages earned in the domestic labour market could be taken into account. The Appeals Committee therefore concluded that the calculation of the Maternity/Paternity Fund of 3 March 2020 was in accordance with the MPL Act and confirmed the contested decision of the Fund.

40. The plaintiff initiated a case before the Reykjavík District Court on 25 January 2021 by the service of writ of summons against the Icelandic State. The plaintiff seeks to have annulled the decision of the Maternity/Paternity Leave Fund, of 3 March 2020, concerning the scheduled payments from the Fund to the plaintiff during her maternity leave, and to have annulled the ruling of the Welfare Appeals Committee No 261/2020 of 2 September 2020 in which the decision of the Fund was affirmed.

The plaintiff's pleas

41. In her application to the national court, the plaintiff argues that the contested decision of the Maternity/Paternity Fund that was affirmed by the Welfare Appeals Committee is in violation of the rules of the European Economic Area. The point at issue in the case being whether income earned by the plaintiff through her work in Denmark is to be taken into account when payments to her from the Fund are calculated.

42. The plaintiff has referred to Article 3 of the EEA Act, according to which statues and regulations, are to the extent appropriate, to be interpreted in conformity with the EEA Agreement and the rules based thereon. In addition, the plaintiff refers to Protocol 35 of the EEA Agreement.

43. The plaintiff has referred to the fact that she was in full time employment from the year 2015 when residing in Denmark. She had moved to Iceland on 17 September 2019 and begun working on 30 September 2019. The plaintiff argues that she was therefore receiving wages during the "*reference period*" and that her maternity leave payments should have been based on these wages.

44. The plaintiff has also referred to Article 4 EEA which is a general principle on the prohibition of discrimination and Article 29 EEA on the obligations in respect of social security undertaken by the Contracting Parties to the EEA Agreement. The plaintiff has argued that the coordination of the social security systems is an integral part of the principle of free movement of workers in Article 28 EEA.

45. The plaintiff has also relied on the provisions of the Coordination Regulation, Articles 4 and 5, which should be understood to mean that individuals shall be in equal position throughout the EEA Area in respect of social security.

46. The plaintiff maintains that the Maternity/Paternity Fund was under the obligation to respect the provisions of EEA law when assessing her application. The plaintiff maintains that Article 13(2) of the MPL Act, providing that only the aggregate wages received in the domestic labour market during the "*reference period*" be used to determine her rights, are in direct violation of the said provisions of EEA Law.

47. The plaintiff has maintained that not taking into account her wages in Denmark during the reference period is in violation of the EEA legislation that the Icelandic State has undertaken to respect. Furthermore, that Article 13(2) of the MPL Act violates the unconditional right of European citizens to not lose any rights to social security rights earned by working in the EEA. In this respect the plaintiff has referred to the judgements of the Court of Justice of the European Union in cases C-185/04 *Bergström,* EU:C:211:859 and C-185/04 *Öberg,* EU:C:2006:107.

48. The plaintiff considers that the reference in Article 13(2) to the domestic labour market is in contradiction with the basic provision on free movement and the judgements referred to by the plaintiff.

The defendant's pleas

49. The defendant considers the plaintiff's pleas unfounded. The defendant considers that its pleas are adequately addressed in the request for advisory opinion to the EFTA Court which contains a translation of the plaintiff's statement of defence. The defendant, however, finds it appropriate to list its main arguments which are as follows.

50. The defendant notes that the plaintiff's payments were not calculated based on her income in Denmark but based on her employment in the domestic labour market during the reference period. The plaintiff was entitled to minimum payments for 50-100% employment of ISK 184.119 each month for 100% maternity leave. In the defendant's view this is in accordance with Article 13 of the MPL Act.

51. According to Article 13(1) of the MPL Act, parents acquire entitlement to payments from the Maternity/Paternity Fund after being in the domestic labour market for six continuous months prior to the birth of a child (the "*entitlement acquisition period*"). According to Article 13(12), when a parent has worked in the domestic labour market for at least the last month of the "*entitlement acquisition period,*" the Directorate of Labour shall to the extent necessary, take account of periods in which the worker or self-employed person worked in another EEA State, provided that this work conferred entitlement on him/her under the legislation of that state regarding maternity/paternity leave.

52. The defendant has also referred to Article 13(2) of the MPL Act (cf. Article 8 of the Act No 74/2008, amending the act) which states that monthly payments from the Maternity/Paternity Fund to an employee shall be 80% of aggregate wages during a continuous twelve-month period ending six months prior to the month in which the child is born (*the reference period*). The "*wages*" referred to are inter alia all kind of wage payments and other remuneration under the Act on Social Security Tax. Furthermore, the eight sentence of Article 13(2) provides that only aggregate wages for those months that the parent has been working in the domestic labour market shall be considered for calculation (cf. also Article 13a (2)).

53. According to Article 4 of the MPL Act, the Fund is financed by a social security tax in accordance with the Act No 113/1990 and interests earned by the Fund on its assets. This means that applications are examined in view of payments of this tax in respect of applicant's wages when the parent's aggregate wages during the reference period are calculated. The wages earned by the defendant through her work in Denmark are not regarded as wages and other remunerations under the Act on Social Security Tax. No social security tax was paid in respect of these wages that could finance the Maternity/Paternity Leave Fund.

54. The defendant refers to the commentary to Article 8 in the bill of law that became Act No 74/2008 amending the MPL Act. There it was clearly stated that for the calculation of the average aggregate wages during the reference period only the months "*during which the parent has been on the domestic labour market*" were to be considered and that "*account should not be taken of wages for which the parent worked outside the domestic labour*

market." Moreover, that the commentary had stated that it was important that the act be interpreted in accordance with the EEA Agreement and that in accordance with Regulation (EC) No 1408/71 (Council Regulation (EC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community) account must be taken of parents working periods in the labour market in other EEA States when assessing if parents were entitled to payments from the Maternity/Paternity Fund under Article 13(1) of the MPL Act. However, in calculating the average aggregate wages, account should only be taken of parent's wages during the reference period in which the parent had been on the domestic labour market.

55. The defendant refers to obligations contained in Article 29 EEA and Article 6 of the Coordination Regulation. The defendant submits that Article 6 which implements Article 29 EEA requires any EEA State to take into account periods of insurance, employment, self-employment or residence completed in any other EEA State as though they were completed under the legislation which it applies and that this has been provided for in the MPL Act. However, no provision is made in Article 6 for taking into account reference wages earned in another EEA State, only periods of employment.

56. The defendant refers to Article 21(3) of the Coordination Regulation regarding the calculation of benefits in which it is states: "*The competent institution of a Member State whose legislation provides that the calculation of cash benefits shall be based on standard income shall take into account exclusively the standard income or, where appropriate, the average of standard incomes for the periods completed under the said legislation.*" In the defendant's view this provision shall be applied in respect of maternity/paternity payments from the Fund to economically active persons that have earned this right in the labour market in accordance with Article 11 of the Regulation. The defendant submits that Article 21 of the Regulation contains a clarification of Article 29 EEA. Therefore, the content of Article 29 EEA must be interpreted in view of Article 21 of the Regulation. Even though there shall be aggregation of periods, Article 21 still provides that the EEA State paying the benefit shall calculate the amount based only on income earned in the labour market of that state. In accordance with this, the Icelandic MPL Act does not take into account income in respect of which there have been no payments of social insurance tax. Therefore, average wages earned in the labour market in Denmark are not taken into account as they have not

been earned "*under the said legislation*" as provided by Article 21(3) of the Coordination Regulation.

57. The defendant refers to Article 29 EEA, point (a), which states "*and of calculating the amount of benefits*" which the defendant maintains is applicable when account shall be taken of periods that are needed for the calculation of certain fixed sums that are not proportions of the average income. For example, if a worker has been working only 50% of full-time employment during the last six months preceding the date of birth of a child and has average total wages below the minimum amount of Article 13(7). In such cases the worker is entitled to a minimum payment based on his/her job proportion during the period. When deciding whether a worker is entitled to a higher or lower minimum sum, then account is also taken of his/her working periods elsewhere in the EEA during the six-month period.

58. The defendant points out that the Swedish maternity payment systems at issue in the judgements referred to by the plaintiff are not comparable. In the referred cases, payments were calculated on the basis of wages that the parents could be expected to earn. In the *Öberg* case the Court did not accept that payments should be calculated on the basis of wages Mr Öberg earned from his post in the European Court but took account of the number of days he had been insured. The ruling in *Bergström* was on similar notes. The Court did not accept that payments should be calculated based on wages in Switzerland but took into account the period of insurance.

59. The defendant does not consider that the *Bergström* case is comparable to the plaintiff's case. In the Bergström case the relevant national legislation contained no rules for the calculation of payments to those not insured in Sweden. In the case at hand, Article 13 of the MPL Act contains rules on the calculation of payments to applicants that have not been active in the Icelandic labour market during the reference period. These rules, which are very clear, are in full compliance with Article 29 EEA and Article 21(3) of the Coordination Regulation.

60. In both of the cases referred to by the plaintiff, the European Court of Justice had concluded that the Swedish State was obliged to take into account periods of employment during which the persons involved were workers in the European Union during the 240 days preceding

the birth of the children. The conclusion was not, on the other hand, that income acquired outside Sweden was to be taken into account when calculating these payments, as the plaintiff had argued. The defendant therefore considers that this case-law is in full conformity with the decision of the Fund not to take into account income earned in Denmark during the reference period when calculating the plaintiff's maternity leave payments.

IV. LEGAL ARGUMENTS

1. Introductory remarks

61. The question put forward by the national court is based on the claim made by the plaintiff in the case pending before it that the EEA Agreement, in particular Article 29 EEA and Article 6 (cf. also Article 21(3)) of the Coordination Regulation, prescribe that the Icelandic Maternity/Paternity Payments Fund must base the calculations of the amount of the monthly maternity leave payments to the plaintiff not only on wages earned in Iceland but additionally on the wages earned by the plaintiff in Denmark prior to her moving to Iceland.

62. The provisions of the Coordination Regulation, as well as earlier Regulation (EC) No 1408/71, were adopted to give effect to Article 29 EEA and shall be interpreted in light of its provisions which, in order to provide for freedom of movement for workers and self-employed, require the Contracting Parties, as provided in Annex VI, for workers and self-employed persons and their dependents, to secure in particular;

> *(a) the aggregation, for the purpose of acquiring and retaining the right to benefit and of calculation of the amount of benefit, of all periods taken into account under the laws of several countries;*
> *(b) payment of benefits to persons residing in the territories of Contracting parties.*

63. It is common ground and confirmed by consistent case law of the Court of Justice and the EFTA Court that the system provided by the TFEU and Article 29 EEA does not provide for the harmonisation of the social security legislation of the Member States. According to its recital 1 in the preamble, the Coordination Regulation only seeks to coordinate the national social security systems with the objective of promoting the free movement of persons and contributing towards improving their standard of living and conditions of

employment. As recognized in recital 4 there is a need to respect the special characteristics of national social security legislation. Substantive and procedural differences between the social security systems in individual EEA States, and therefore in the rights of the persons working there, are therefore unaffected by the basic provisions that provide for coordination. The Coordination Regulation, therefore, does not seek to harmonise the material content of social security benefits but draws up a system of coordination (see Case E-2/18 *Concordia* [2019] EFTA Ct. Rep. 12, paragraph 43 and Joined cases C-393/99 and C-394/99 *Hervein and Hervillier* EU:C:2002:182, at paragraph 51).

64. The Coordination Regulation lays down common principles which EEA States must observe and a system of conflict rules to determine which state's social security legislation shall apply in individual cases. The system laid down in Title II of the Coordination Regulation is mandatory for the EEA States and its application depends solely on the objective situation of the employed person concerned (see E-2/18 *Concordia* [2019] EFTA Ct. Rep. 12, at paragraph 47). For employed persons, it is the *lex loci laboris*, the social security rules in the country of employment, that shall apply.

65. There are substantive and procedural differences between the social security legislation of the different EEA States and therefore, transfer of activities may be to the advantage of a worker or not, depending on the circumstances. It follows, that EEA law offers no guarantee to a worker that the extension of his activities into one or more EEA State or that a transfer of activities to another EEA State will be neutral as regards social security (see *Hervillier*, at paragraphs 50-51).

2. Maternity/paternity benefit or family benefit

66. As described in the request for advisory opinion to the EFTA Court the Icelandic Government has in the case pending before the national court relied on Articles 6 and 21 of the Coordination Regulation. The latter provision, Article 21 is contained in Chapter 1 in Title III of the Regulation. Chapter 1 concerns sickness, maternity and equivalent paternity benefits. Maternity and paternity benefits can either be in kind, such as provision of medical care, or in cash, such as payments during maternity leave. It should be noted that earlier EEA legislation on the coordination of Social Security, Regulation (EC) No 1408/71, contained a more restricted definition of the term "*maternity benefits.*" The present

Coordination Regulation (EC) No 883/2004 has extended the term to include also paternity benefits, as expressed in recital 19 in the following way:

> *In some cases, maternity and equivalent paternity benefits may be enjoyed by the mother or the father and since, for the latter, these benefits are different from parental benefits and can be assimilated to maternity benefits* strictu sensu *in that they are provided during the first months of a new-born child's life, it is appropriate that maternity and equivalent paternity benefits be regulated jointly.*

67. Similar benefits paid to parents, typically over a longer period of time, such as specific child raising allowances, have by the Court of Justice of the European Union been considered as "*family benefits.*" Family benefits are defined in Article 1(1)(z) as "*all benefits in kind or cash intended to meet family expenses, excluding advances of maintenance payments and special childbirth and adoption allowances mentioned in Annex I.*" These include family credit for families of limited means (see Case C-78/91 *Huges* EU:1992:331) and parental leave of 450 days (see Case C-275/96 *Kuusijärvi* EU:C:1998:279).

68. In the Coordination Regulation, Title III, Chapter 1 on sickness, maternity and equivalent paternity benefits, includes a specific rule for the calculation of cash benefits, Article 21. No comparable rule exists in chapter 8 concerning calculation of family benefits paid in cash. The Court of Justice has ruled (see Case C-257/10 *Bergström* EU:C:211:859) that despite such benefits being classified as family benefits it was appropriate to apply Article 23 of Regulation (EC) No 1408/71. Article 23 of Regulation (EC) No 1408/71 is identical in substance to Article 21 of Regulation (EC) No 883/2004, so this case law is applicable in the present case. It is submitted that the rationale of the Court for applying Article 23 to the family benefit in question was due to its nature and likeness to income related sickness and maternity benefits. In view of this the Icelandic Government submits that for the purposes of the present case it is not necessary to decide whether the benefit in question is a maternity benefit or a family benefit as Article 21 applies in both cases.

3. The principle of aggregation of periods and calculation of payments

69. In the case before the national court, the plaintiff and the Icelandic Government disagree as to the scope of application of the aggregation requirement contained in Article 6 of the Coordination Regulation. More precisely which obligations Article 6 (cf. also Article 21)

of the Regulation places upon the Contracting Parties and if the rules on the equality of treatment and the equality of benefits, income and facts or events in Articles 4 and 5 of the Coordination Regulation mean that the wages that the plaintiff earned in Denmark prior to moving to Iceland are to be considered to give the plaintiff entitlement to maternity payments as if these wages had been paid to her in the Icelandic labour market.

70. Article 6 of the Regulation concerns the aggregation of periods of insurance, employment or of self-employment. Article 6 was introduced in the Coordination Regulation as a general rule concerning the taking into account periods of insurance, employment and residence which under the previous Regulation (EC) No 1408/71 were contained in the different chapters of that regulation, depending on the nature of the benefit in question. For sickness and maternity, Article 18 applied and for family benefits there was Article 72 of Regulation (EC) No 1408/71.

71. The recitals in the preamble to the Coordination Regulation provide guidance to the intended aim and scope of the obligations contained in Article 6. Recital No 13 states that the coordination rules shall guarantee that persons moving within the EEA retain their rights and advantages acquired and in the course of being acquired. Article 6 is therefore intended to ensure that *these periods* will not be lost to the person concerned simply by this person relying on the right to free movement within the EEA (see also Case C-306/03 *Alonso* EU:C:2005:705, at paragraph 29).

72. Recital 10 in the preamble concerns the relationship between Article 5 and Article 6 of the Regulation. It states that "*the principle of treating certain facts or events occurring in the territory of another Member State as if they had taken place in the territory of the Member State whose legislation is applicable should not interfere with the principle of aggregating periods of insurance, employment, self-employment or residence completed under the legislation of another Member State with those completed under the legislation of the competent Member State. Periods completed under the legislation of another Member State should therefore be taken into account solely by applying the principle of aggregation of periods.*" This indicates that Article 6 as *lex specialis* is given priority over Article 5.

73. The Icelandic system of maternity/paternity benefits under the MPL Act provides for a two-step procedure for the evaluation of applicants. The *first* step, laid down under the rules on

the six months "*rights acquisition period*" in Article 13(1) of the Act, is the determination of whether an applicant is eligible for maternity/paternity benefits for economically active persons or not. The *second* step, laid down under the rules on the twelve months "*reference period*" in Article 13(2) and (4), is the determination of the amount of maternity/paternity payments economically active persons shall receive.

74. In the *first* step, for the acquisition of rights to maternity leave payments as economically active persons in accordance with Article 13(1) of the MPL Act, applicants must have been active in the domestic labour market for at least six months, that is during the six month "*rights acquisition period.*" Persons not fulfilling this requirement receive maternity/paternity grants in accordance with Chapter VI of the MPL Act.

75. Article 13(12) of the MPL Act further provides that for the purposes of the "*rights acquisition period*" the competent authority shall take into account periods of work in another EEA State. This is the situation in the case pending before the national court. The national authority by applying the principle of aggregation in Article 13(12) of the MPL Act accepted that as the plaintiff had been working in Denmark she was entitled to maternity payments as an economically active person. This is unlike the situation described in question 1 in the *Bergström* case where the national authority had decided that Ms. Bergström was only eligible for payment at the basic level intended for those that were not economically active.

76. The *second* step is the determination of the amount of payments that applicants that are economically active are entitled to. The general rule of the MPL Act, Article 13(2), is that monthly payments during leave be based on 80% of the average total wages of the person concerned during a continuous twelve-month "*reference period*" which ends six months prior to the month of birth of the child. If a person only works part of the period, the reference period is shorter. The payments are, however, also subject both to maximum and minimum levels. The plaintiff was not working in Iceland during the reference period, and therefore received minimum maternity leave payments for employed persons in accordance with Article 13(7) of the MPL Act.

77. Article 21(2) of the Coordination Regulation provides that *"[t]he competent institution of a Member State whose legislation stipulates that the calculation shall be based on average*

income [...] *shall determine such average income* [...] *exclusively by reference to the incomes confirmed as having been paid* [...] *during the period completed under the said legislation.*" In the same way, Article 21(3) of the Regulation also states that when cash benefits are calculated on the basis of standard income, the calculation shall "exclusively" be based on "*the standard income or, where appropriate, the average of standard incomes for the periods completed under the legislation of the said legislation*", that is the legislation of the competent state. Thus, Article 21(2) and (3) of the Regulation provide for a clear rule for calculation of maternity benefits which are based on average income or on an average contribution basis or, as the case may be, on standard income or average standard income only for periods completed under the legislation of the competent state. The principle of assimilation in Article 5 of the Regulation does not appear to alter this principle.

78. The Icelandic Government submits that the provisions of Article 21(2) and (3) of the Coordination Regulation do not leave any scope for doubt. The Regulation does not place any obligations for calculating the benefit at issue in the present case on the basis of income received in other EEA States. Reference is, in particular, made to the judgement in *Bergström* where the Court of Justice did not accept that income received in Switzerland could, in view of the obligations under the Agreement between EU and its Member States and Switzerland, as well as Regulation (EC) No 1408/71, serve as basis for calculation of income-related benefit for childcare. The provisions of Regulation (EC) No 1408/71 at issue in that case are identical in substance to Articles 6 and 21 of the Coordination Regulation.

79. It is submitted that the decision of the Court of Justice in the *Bergström* case to apply Article 21(2) and (3) of the Regulation as a rule of calculation for the family benefit in question, even though no such rule existed in the chapter on family benefits in the Regulation, must have been based on the fact that the benefit in question was income related, unlike classic family benefits which are normally residence based with no requirement for insurance periods.

80. Therefore, it is submitted in the present case that Article 6, in light of the specific rule of calculation in Article 21(2) and (3) of the Regulation, does not place any obligation on the competent institution to use the income received by applicants during previous employment in other EEA States as basis for calculation.

81. In point 3 of Administrative Decision No H6 which reflects the case-law of the Court of Justice, it is stated that the EEA States, having applied the principle of aggregation, retain jurisdiction to determine their national conditions for granting social security benefits, provided that these conditions are applied in a non-discriminatory way. It is also affirmed that this principle remains untouched by the principle of aggregation.

82. As described above the plaintiff began working in the Icelandic labour market less than six months prior to the month of birth of her child and therefore, according to Article 13(4) of the MPL Act, received minimum maternity payments in accordance with Article 13(7) of the MPL Act, intended *inter alia* for those workers that have low or no income during the reference period, thus reflecting the short time of contributions to the system. This requirement applies to all workers in the domestic labour market.

83. The Icelandic Government notes that Article 21(2) and (3) of the Coordination Regulation presupposes that an EEA State may, when calculating cash benefits that are intended to have an income replacement function, base the calculation only on income earned in the competent state. This is precisely the way the benefit is calculated under the national legislation.

84. Furthermore, there are legitimate reasons for basing income related benefits on the economic reality in each EEA State and to respect the autonomy of an EEA State to decide that it has no obligation to grant benefit with an income replacement function in cases where no such income has been received in the State and in respect of which no social security taxes or levies have been paid. Likewise, in such cases it must be considered within the power of an EEA State to request that social security contributions have been made in respect of applicants during a certain minimum period of reference.

85. The Icelandic system of maternity/paternity leave payments for economically active persons is financed by a special Social Security Tax (*tryggingagjald*) levied in accordance with the Act No 113/1990 on Social Security Tax. This tax is levied on wages and wage related payments, contributions to retirement funds and various other income, that are paid to employed and self-employed persons. According to Article 3(2), item 5, of the Act No 113/1990, the Maternity/Paternity Leave Fund receives 1,1% of the tax base. This is also reflected in the MPL Act, Article 13(2), which defines the wages that are deemed relevant

as reference for the calculation of the maternity/paternity payments from the fund, *inter alia*, as wages in respect of which income tax and Social Security Tax have been made. The Icelandic Government notes that in accordance with Article 15(3) of the MPL Act the competent authority, the Directorate of Labour, must "*seek confirmation from the tax authorities that the data from the records of income tax and Social Security Tax payments correspond to the taxes levied by the tax authorities in respect of the reference periods.*" Accordingly, no maternity/paternity leave payments are made to economically active persons unless the legally required Social Security Tax has been levied on the wages paid during the reference period.

86. The Government notes that unlike the Swedish system described in the *Bergström* case, the MPL Act contains a specific provision that ensures minimum payments to economically active persons should their wages in the domestic labour market during the reference period fall below a certain level. Everyone in the Icelandic labour market is subject to the requirement that the average aggregate wages be calculated on the basis of wages earned in the Icelandic labour market during the reference period, which is of short duration and must be regarded proportionate to the aim of ensuring the cohesion and financial stability of the system.

87. The Icelandic Government therefore submits that the system described above providing that for economically active persons the aggregate wages on the domestic labour market during a certain reference period are taken into account does not infringe Article 6, cf. Article 21 of Regulation (EC) No 883/2004 and consequently not Article 29 EEA. The Icelandic Government submits that the calculation of maternity leave payments as described in the request from the national court is in full compliance with Article 6, cf. Article 21 of Regulation (EC) No 883/2004 and therefore also in compliance with Article 29 EEA.

V. CONCLUSION

88. In view of the above the Icelandic Government respectfully submits that the EFTA Court answer the question from the national court as follows:

Article 6 of Regulation (EC) No 883/2004, on the coordination of social security systems (cf. also Article 21 of the Regulation), does not oblige an EEA State when calculating maternity/paternity leave payments, to calculate reference income on the basis of a person's aggregate wages in the labour market across the entire Economic Area.

It does not infringe Article 29 EEA or Article 6 (cf. also Article 21 of Regulation No (EC) No 883/2004) if only a person's aggregate wages in the domestic labour market during a reference period between six to eighteen months prior to the month of birth, are taken into account.

On behalf of the Government of Iceland

Guðrún Sesselja Arnardóttir

Agent