

Request for an Advisory Opinion from the EFTA Court by Verwaltungsbeschwerdeinstanz des Fürstentums Liechtenstein (Administrative Court for the Principality of Liechtenstein) by decision of that court of 15 June 2000 in the case of Dr Jürgen Tschannett

(Case E-6/00)

(2001/C 49/13)

A request has been made to the EFTA Court by decision of 15 June 2000 of Verwaltungsbeschwerdeinstanz des Fürstentums Liechtenstein (Administrative Court for the Principality of Liechtenstein), which was received at the Court Registry on 21 June 2000, for an Advisory Opinion in the case of Dr Jürgen Tschannett, on the following questions:

1. Is the single practice rule applying without exception to all doctors under Liechtenstein national law, and in particular Article 9(1) of the Regulation of 8 November 1988 on the medical professions which provides: 'A doctor may pursue his profession in a self-employed capacity, as a sole practitioner or jointly with others, only if he holds a licence authorising him to do so and only if he himself works on his own behalf in the practice concerned. A doctor may not operate more than one practice, whether as a sole practitioner or jointly with others' compatible with the EEA and/or with the Agreement on the European Economic Area (EEA Agreement) of 2 May 1992?
2. If the answer to the first question is that the Liechtenstein single practice rule, as laid down in Article 9(1) of the Regulation of 8 November 1988 on the medical professions, is basically compatible with the EEA, does that none the less mean that, in an individual case, regard must be had to the specialist medical activities carried on by an 'occupational physician', so that the necessary exceptions should be made for such specific activities, which do not require a 'medical practice' within the generally accepted meaning of the term?

Request for an Advisory Opinion from the EFTA Court by Arbeidsretten (The Labour Court of Norway) of 27 September 2000 in the case of Landsorganisasjonen i Norge (Norwegian Federation of Trade Unions), with Norsk Kommuneforbund (Norwegian Union of Municipal Employees) v Kommunenes Sentralforbund (Norwegian Association of Local and Regional Authorities) and Others

(Case E-8/00)

(2001/C 49/14)

A request has been made to the EFTA Court by Arbeidsretten (The Labour Court of Norway), which was received at the Court Registry on 2 October 2000, for an Advisory Opinion in the case of Landsorganisasjonen i Norge (Norwegian Federation of Trade Unions), with Norsk Kommuneforbund (Norwegian Union of Municipal Employees) v Kommunenes Sentralforbund (Norwegian Association of Local and Regional Authorities) and Others, on the following questions:

Scope of application of Article 53 of the EEA Agreement

- 1(a) Does a collective agreement generally entail binding legal effects mutually between the participating members on the employer side which can be regarded as an 'agreement between undertakings' under Article 53 of the EEA Agreement?
- 1(b) If an employer organisation concludes a collective agreement, is this a 'decision by an association of undertakings' under Article 53 of the EEA Agreement?
- 1(c) Is a municipality an 'undertaking' under Article 53 of the EEA Agreement when, in its capacity as

employer, it becomes bound by a collective agreement without being a party thereto?

- 2(a) Can a collective agreement provision which has objectives other than to improve salary and working conditions come within the scope of Article 53 of the EEA Agreement?
- 2(b) If question 2(a) is answered in the affirmative, which conditions must then be met?
3. Do collective agreement provisions on group occupational pension schemes, such as the provisions in clause 2.1.8, second, third and fourth paragraphs of the Basic Collective Agreement for municipalities, etc., for the period 1998-2000 fall within the scope of application of Article 53 of the EEA Agreement?

Prohibition in Article 53 of the EEA Agreement

4. Is it compatible with Article 53 of the EEA Agreement for a collective agreement condition to require that a group occupational pension scheme be based on a gender-neutral financing system which can only be satisfied by one supplier?

- 5(a) Is it compatible with Article 53 of the EEA Agreement for a collective agreement provision to provide that an offer concerning occupational pension schemes made by an insurance company to an employer must be approved by representatives for the parties to a collective agreement?
- 5(b) If question 5(a) is answered in the affirmative, will the assessment be otherwise if approval can only take place through unanimity amongst the parties?
6. Is it compatible with Article 53 of the EEA Agreement for a collective agreement provision to provide that it is a condition for transfer of an occupational pension scheme that the new insurance product must have been tacitly or expressly accepted by a public body?
- 7(a) Is it compatible with Article 53 of the EEA Agreement for collective agreement provisions to provide that a change of supplier of an occupational pension scheme is subject to the condition that the employer, before a decision on change can be made, must have entered into a separate agreement on mutual transfer of pension schemes through approval by the public body which administers the transfer scheme?
- 7(b) If question 7(a) is answered in the affirmative, will the assessment be otherwise if inclusion in the

transfer agreements cannot take place before a decision on change has been made?

8. Can the sum of provisions in a collective agreement, such as the provisions in clause 2.1.8, second, third and fourth paragraphs of the Basic Collective Agreement for municipalities, etc., for the period 1998-2000, be held to be contrary to Article 53 of the EEA Agreement even though none of the provisions, viewed in isolation, come under the prohibition therein?

Interpretation of Article 54 of the EEA Agreement

9. Can an association of municipalities which is an interest and an employer organisation, such as the Norwegian Association of Local and Regional Authorities, be regarded as an 'undertaking' under Article 54 of the EEA Agreement in the negotiation of collective agreements?
10. Can an undertaking, assuming that it has a 'dominant position', conclude an agreement for or practise conditions for change of supplier of occupational pension schemes such as those laid down in clause 2.1.8, second, third and fourth paragraphs of the Basic Collective Agreement for municipalities, etc., for the period 1998-2000, regardless of Article 54 of the EEA Agreement?

Action brought on 21 December 2000 by the EFTA Surveillance Authority against the Kingdom of Norway

(Case E-9/00)

(2001/C 49/15)

An action against the Kingdom of Norway was brought before the EFTA Court on 21 December 2000 by the EFTA Surveillance Authority, represented by Peter Dyrberg, acting as Agent of the EFTA Surveillance Authority, 74 Rue de Trèves, B-1040 Brussels.

The applicant claims that the Court should declare that the Kingdom of Norway has failed to fulfil its obligations under the following provisions of the EEA Agreement:

- Article 16, by applying two forms of sale at the retail level where beer with an alcohol content between 2,5 % and 4,75 % by volume, mainly produced domestically, may be sold outside the outlets of the State controlled Wine and Spirits Monopoly ('Vinmonopolet'), while other alcoholic beverages with the same alcohol content, mostly imported from other EEA States, may only be sold through the Monopoly, and

- Article 11, by applying more restrictive measures regarding licences to serve alcoholic beverages with an alcoholic content between 2,5 % and 4,75 % by volume, mostly imported from other EEA States, compared to beer with the same alcohol content, mainly produced domestically, these measures not being necessary and proportionate in relation to the objective of safeguarding public health under Article 13 of the EEA Agreement.

Legal and factual background and pleas in law adduced in support:

- Article 16 provides that any State monopoly of a commercial character must be adjusted so that no discrimination regarding the conditions under which goods are procured and marketed will exist between nationals of EC Member States and EFTA States,