

EFTA Seminar on the EEA
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The Functions of the EFTA Court

Skúli Magnússon,
Registrar
EFTA Court

Some imposing Questions



- Does the functioning of the EEA require a court of law?
- If so, is a permanent court within the EFTA Pillar really necessary?
- What are main the differences between the EU Court(s) and the EFTA Court?

Do the Aims of the EEA Refer to any Judicial Functions?



“ CONSIDERING the objective of establishing a dynamic and homogeneous European Economic Area, based on common rules and equal conditions of competition and providing for the adequate means of enforcement including at the judicial level [...]

CONVINCED of the important role that individuals will play in the European Economic Area through the exercise of the rights conferred on them by this Agreement and through the judicial defence of these rights ”

What is the Yardstick for the Judicial Functions of the EEA?



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- The objective of providing adequate means of enforcement at the judicial level is to be ...

“ ...achieved on the basis of equality and reciprocity and of an overall balance of benefits, rights and obligations for the Contracting Parties”

→ Comparable judicial functions as within the EU

What is there for the EEA Judiciary to do?



- To ensure that in the interpretation and application of the EEA the law is observed (cp. to Art. 9F of the TEU)
 - What is “EEA law”?
- How should this be achieved?
 - EEA aims should be “achieved on the basis of equality and reciprocity and of an overall balance of benefits, rights and obligations for the Contracting Parties.”

Two EEA Courts



- Why isn't there one integral EEA Court?
 - Cf. Opinion of the ECJ No 1/91
- Two Pillar Approach – Judicial functions assigned to:
 1. The ECJ since the EEA is an integral part of the “acquis communautaire”
 2. The EFTA Court by virtue of Art. 108 EEA as further implemented by the ESA/Court Agreement
- Up to what standards is the EFTA Court to live?

In a nutshell ...



- A two pillar approach with regard to the judicial functions of the EEA
- The EFTA Court is to do what the ECJ does but *vis-à-vis* EFTA States, EFTA nationals and ESA
- Two main types of procedure
 - **Direct Actions**
 - **Advisory Opinions**

The Differences ...



- The material scope of EC Law
 - Special attributed functions
 - pursuant to the TEU (i.a. second and third pillar)
 - pursuant to other int. agreements (e.g. the Brussels Convention of 1968 - enforcement of judgements in civil and commercial Matters)
 - A constitutional function (review of EC sec. law)
 - A (quasi) legislative function?
 - Differences in organisation, size etc.
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Legal Sources



- Art. 108 (2) EEA
- Agreement Between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice
- The EFTA Court Statute (1994)
 - Protocol 5 to the ESA/Court Agreement
- Rules of Procedure (originally from 1994)
 - Adopted by the Court and approved by the EFTA States
- Instructions to the Registrar (1994)

Direct Action Cases



- Infringement actions against EFTA States
 - Actions brought by ESA (Art. 31 ECA)
 - Actions brought by other EFTA States (Art. 32 ECC)
- Actions Against ESA
 - Annulment of ESA decision (Art. 36)
 - Failure to act (Art. 37)
 - Liability of ESA (Art. 39)

Advisory Opinions – Art. 34 ECA



(1) The EFTA Court shall have jurisdiction to give advisory opinions on the interpretation of the EEA Agreement.

(2) Where such a question is raised before any court or tribunal in an EFTA State, that court or tribunal may, if it considers it necessary to enable it to give judgment, request the EFTA Court to give such an opinion.

(3) An EFTA State may in its internal legislation limit the right to request such an advisory opinion to courts and tribunals against whose decisions there is no judicial remedy under national law.

(Cp. to Art. 234 EC)

Common Characteristics with ECJ's Preliminary Ruling Procedure



- Aims to insure uniform interpretation in the application of EC Law by national courts
- Access to Justice and Protection of Rights of private parties
- An opportunity for a judicial dialogue and a development of a body of case law

Differences cp. to the ECJ



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- “Rulings” contrary to “Opinions”
 - What would be the effects of not complying with a “ruling” of the ECJ?
 - What would be the effects of not following an “advisory opinion” of the EFTA Court?
 - How are advisory opinions treated in the EFTA States?
 - Obligation to refer contrary to “may”
 - Permission to limit references to courts and tribunals against whose decisions there is no judicial remedy under national law

The Relation between the ECJ and the EFTA Court



Art. 6 EEA and Art. 3 ECA

→ The EEA should be interpreted in conformity with the relevant case law of the ECJ

- EFTA Court following the ECJ
 - To some extent in every case (L Oreal, E 9/07 and 10/07)
- EFTA Court goes first ...
 - See e.g. Mattel/Lego (E-8/94 and E-9/94) and De Agostini (C-34/95, C-35/95 and C-36/95)
- EFTA Court ruling on EEA specific problems
 - E.g. EFTA State liability – Sveinbjörnsdóttir (E-9/97)

Composition and Procedures



- Three judges
 - National cabinets + registry
- Seated in Luxembourg
- Procedures are, as a rule, modelled after the ECJ
 - Predominately written procedure
 - No Advocate Generals
- One Court – No system of appeal

Comments on Statistics (annexed)



- Are there really so few cases?
- Direct Actions
- References from national courts

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Has the EFTA Court Lived up to its Functions?



- Can there be an EEA without an independent court of justice?
- Is the low number of cases a sign of Pathology?
- Discrepancies between the EFTA Court and ECJ?
- The EFTA Court and “hard cases” – How has the EFTA Court managed its pro-active role?

WWW.EFTACOURT.INT



- The Court's Diary
- The Composition of the Court
- All Legal Sources regarding the Court
- All Decided and Pending Cases
- The Yearly Report of the Court as from 2004
- Contact Info: eftacourt@eftacourt.int

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Annex - Statistics



New cases lodged

- 1994–2008 total: 107
- Yearly average: ca 8 cases pr. year
- Low: 2 cases (1999)
- High: 11 cases (2007)

38 direct actions



Against ESA

- 1994–2008:

– *almost 1 per year*

- 13

By ESA

- Against Iceland:
- Against Liechtenstein:
- Against Norway:

– *less than 2 per year*

- 8
- 9
- 14

60 advisory opinion requests



Present EFTA States

- Icelandic courts: • 12 (since 1997)
- Liechtenstein courts: • 8 (since 1998)
- Norwegian courts: • 35 (since 1994)

Previous EFTA States

- Finnish courts: • 1 (1994)
- Swedish courts: • 4 (1994/95)