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Judgment in Case E-3/11 *Pálmi Sigmarsson v the Central Bank of Iceland*

ICELANDIC RESTRICTIONS ON CAPITAL MOVEMENTS COMPATIBLE WITH THE EEA AGREEMENT

In a judgment delivered today, the EFTA Court gave an Advisory Opinion on questions referred to it by Héraðsdómur Reykjavíkur (Reykjavík District Court) concerning the interpretation of Article 43 of the EEA Agreement, which provides for the adoption of derogations from the free movement of capital.

Following its financial crisis in late 2008, Icelandic authorities adopted a temporary prohibition on transfer of Icelandic krónur to Iceland. The Plaintiff before the national court is an Icelandic national resident in the United Kingdom. He applied for an exemption to those rules, in order to transfer 16.4 million Icelandic krónur, which he had bought on the offshore market. The Central Bank of Iceland rejected the Plaintiff's application. This conclusion was upheld by a ruling of the Ministry of Economic Affairs.

In the proceedings before the Reykjavík District Court, the Plaintiff has sought judicial review of the Central Bank's decision, arguing that it is incompatible with the rules on free movement of capital established in the EEA Agreement.

The Court held that it has jurisdiction to review whether measures taken pursuant to Article 43 EEA satisfy the substantive requirements of that provision.

Moreover, the Court held that the conditions laid down in Article 43(2) and (4) EEA call for a complex assessment of various macroeconomic factors. EFTA States must therefore enjoy a wide margin of discretion, both in determining whether the conditions are fulfilled, and the choice of measures taken, as those measures in many cases concern fundamental choices of economic policy.

The Court noted that a critical situation existed in Iceland after the financial crash. This situation satisfied the substantive requirements for applying the derogation clause at the time when the measures were adopted (October 2009), as well as when the Plaintiff was finally denied an exemption from the prohibition on importation of offshore krónur (October 2010).

Moreover, the Court noted that it had not been provided with information to suggest that the measures were not in accordance with the principle of proportionality. On the contrary, the Court observed that it was only when the rules prohibiting inbound transfer of offshore krónur were enacted that the króna and the country's foreign exchange reserves were stabilised. The measures did not either contravene the principle of legal certainty, as the applicant was given sufficient information about the exemption scheme.

The full text of the judgment may be found on the Internet at: www.eftacourt.int.

This press release is not an official document. Please note that the Court may not comment on the case.