



ORDER OF THE COURT

19 November 2008

In Case E-5/08,

Ms. Yannike Bergling

Applicant,

v

EFTA Surveillance Authority

Defendant,

APPLICATION for a declaration that the EFTA Surveillance Authority (“ESA”) shall fulfil its obligation of general surveillance, concerning access to medical professions in the Nordic countries.

THE COURT

composed of: Carl Baudenbacher, President, Thorgeir Örlygsson and Henrik Bull, Judges

Registrar: Skúli Magnússon

makes the following

ORDER

- 1 By an application registered at the Court on 10 September 2008, the Applicant requested the EFTA Court to declare that:

*“1. The ESA shall fulfill its obligation of "general surveillance" in relation to the EFTA States according to Article 31 ESA/EFTA Court. Within the wording of Article 169 EEC, it is obliged to **closely examine** the Complaints of the infringements in Norway and Iceland due to Article 15 the Nordic Agreement 1982-03-06. Are the practices of EFTA States' competent authorities/bodies, in collaboration with the colleagues in ex-EFTA States and Denmark, incompatible with EU- and ECHR-legislations for Patients' Safety? Subsequently, a **formal investigation** shall be opened based on the lists of "Swedish" Specialists' Diplomas transferred to Norway 2002-2007 - without independent controls of professional status in the host Member State (Norway). Other investigations shall follow.*

*2. The ESA may request **further information** from my findings and seek the opinion of independent experts. When the ESA has enough information to justify an approach, it shall send a first request to the Governments of Norway and Iceland (Sweden, Finland and Denmark) asking them to clarify facts of the cases and to provide further information.*

3. The ESA shall dwell upon questions on gross & systematic Crimes against Humanity: - How did certain EU-27 double Specialists receive their salaries from the Swedish State Hospitals (paid taxes/social security costs) during 12 years' of study in Sweden according to the Yellow Book - without any personal/coordination No? - Shall migrating Doctors be allowed to transfers Diplomas with false addresses in order to avoid taxes? ...

*4. **A reasoned opinion** shall be delivered by the ESA, which obliges Norway and Iceland to honor the positive rules of non-discrimination in EU, ECHR, UNESCO, UN on Higher Education. I e independent controls of Recognition of Qualifications for Patients' Safety.”*

- 2 Article 88(1) of the Rules of Procedure provides that the Court may, where an action is manifestly inadmissible, by reasoned order and without taking further steps in the proceedings, declare the action inadmissible. Such a decision may be given before the application is served on the other party.
- 3 The application has been submitted as concerning a “Failure to Act” and it is the Court’s understanding that the Applicant wishes to pursue an action under Article 37 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (the “SCA”).

- 4 For such an action to be admissible, the Applicant must first have formally called upon ESA to act, as required under the second paragraph of Article 37 SCA. The required notice calling upon ESA to act must indicate that it constitutes a preliminary to legal proceedings and it must enable ESA to determine what measures it is actually being asked to take. See, for comparison, Case 25/85 *Nuovo Campsider v Commission* [1986] ECR 1531, at paragraphs 8–9.
- 5 In the application, reference is made to a letter dated 3 July 2008, by which ESA informed the Applicant that her case, concerning access to medical professions in the Nordic countries, had not been registered with ESA. However, there is nothing in the letter to suggest that the Applicant had complied with the requirements under the second paragraph of Article 37 SCA, by formally calling upon ESA to act (cf. paragraph 4 above). Nor is there any other reference to this effect in the application.
- 6 Thus, the action under Article 37 SCA is manifestly inadmissible.
- 7 The Court also notes, in particular, that it does not follow from the application that the Applicant is represented by a lawyer, as required by the second and third paragraphs of Article 17 of the Statute of the EFTA Court (see, for comparison, Cases C-174/96 P and C-175/96 P, both *Lopes v European Court of Justice*, [1996] ECR I-6401 and [1996] ECR I-6409).

On the grounds stated above,

THE COURT

hereby orders:

The application to be dismissed as manifestly inadmissible.

Carl Baudenbacher

Thorgeir Örlygsson

Henrik Bull

Luxembourg, 19 November 2008.

Skúli Magnússon
Registrar

Carl Baudenbacher
President