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Judgment in Case E-3/04 *Tsomakas Athanasios and Others v the Norwegian State*

Social security for migrant workers

In an Advisory Opinion delivered today, the EFTA Court dealt with a question concerning the interpretation of the choice of law rules contained in Title II of Regulation 1408/71 on the application of social security schemes to employed persons, to self employed persons and to members of their families moving within the community.

The question arose in the context of a dispute before Gulating lagmannsrett in Norway (Gulating Court of Appeal) between Greek mariners who worked on board vessels registered in Norway and the Norwegian State. The dispute before the Norwegian court concerned a decision of Folketrygdekontoret for utenlandssaker (the National Office for Social Insurance Abroad), denying the mariners' request for an exemption from the Norwegian social security legislation. The decision was based on the grounds that the legislation of the flag State (Norway) was to apply to the mariners and not the legislation of the presumed state of residence (Greece) since Greek social security authorities had not issued form E 101 or another official statement declaring that Greek social security legislation was applicable to the mariners.

The EFTA Court found that in a situation where no form E 101 or an equivalent official statement has been issued, the States concerned are under an obligation pursuant to the principle of sincere cooperation laid down in Article 3 EEA to ensure the correct application of the choice of law rules contained in Title II of Regulation 1408/71. The EFTA Court stated that the flag State (Norway) must assess whether the conditions for an exemption from the flag State principle are fulfilled, and evaluate other evidence presented to it, including unofficial evidence. Furthermore, the Court stated that any other solution would impair legal certainty and thereby undermine the aims of the choice of law rules in Regulation 1408/71 and restrain the free movement of workers.

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

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