



ORDER OF THE PRESIDENT

24 April 2017

(Discontinuance of the proceedings)

In Case E-20/16,

Autonomy Capital (Jersey) LP,

Eaton Vance Management,

represented by Pétur Örn Sverrisson and Halldór Backman, Supreme Court Attorneys,

applicants,

v

EFTA Surveillance Authority, represented by Carsten Zatschler and Maria Moustakali, members of its Department of Legal and Executive Affairs, acting as Agents,

defendant,

APPLICATION for the annulment of EFTA Surveillance Authority Decision No 207/16/COL of 23 November 2016 closing a complaint against Iceland in the field of free movement of capital (capital controls),

THE PRESIDENT

makes the following

ORDER

I Facts and procedure

- 1 On 6 June 2016, the applicants each lodged a complaint with the defendant against Iceland concerning the treatment of holders of offshore króna assets. The complaints mainly concerned Iceland's adoption of Act No 37/2016 on the treatment of króna-denominated assets subject to special restrictions (*lög um*

meðferð krónueigna sem háðar eru sérstökum takmörkunum). According to the applicants, the conditions for derogating from the free movement of capital were not fulfilled. They maintained that the provisions of the act were discriminatory, and that the restrictions imposed were not necessary, reasonable or proportionate.

- 2 The defendant received the complaint on 9 June 2016. On that day, the defendant invited the Icelandic Government to comment on the substance of the complaint. Such comments were submitted by letter dated 8 July 2016. On 23 August 2016, the applicants submitted observations on that letter. The same day, the defendant's Internal Market Affairs Directorate informed the applicants that it intended to propose that the case be closed. By letter of 23 September 2016, the applicants contested that proposal.
- 3 On 23 November 2016, the defendant adopted Decision No 207/16/COL ("the contested decision") concluding that Iceland had correctly applied Article 43(4) EEA, which allows for measures derogating from Article 40 EEA on the free movement of capital. There were therefore no grounds for pursuing the case further.
- 4 By an application registered at the Court on 20 December 2016, the applicants brought an action seeking the annulment of the contested decision. The applicants request the Court to:
 - a. *Annul the EFTA Surveillance Authority's Decision No 207/16/COL of 23 November 2016, to close the Applicants' complaint against Iceland in relation to the treatment of holders of offshore krona assets under Act No. 37/2016.*
 - b. *Order the EFTA Surveillance Authority to bear the costs of these proceedings.*
- 5 On 3 February 2017, the defendant submitted a preliminary objection of inadmissibility pursuant to Article 87(1) of the Rules of Procedure ("RoP"). The defendant argued that the application was inadmissible because its decision not to initiate the procedure laid down in Article 31(1) of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("SCA") was wholly within the discretion of ESA. Therefore, the defendant asserted that the Court should:
 - (1) *dismiss the application as inadmissible; and*
 - (2) *order the applicant to pay the costs.*
- 6 On 7 April 2017, the applicants informed the Court that "the parties have agreed that the case should be discontinued with no order as to the costs. Accordingly, we write to formally request that the Court order that the applicants' claim be

discontinued under Article 74 of the Rules of Procedure with no order as to costs under Article 66(5) or otherwise.”

- 7 Further, the applicants informed the Court, with great regret, that Halldór Backman hrl. had recently passed away.

II Findings

- 8 Pursuant to Article 74 RoP, “[i]f the applicant informs the Court in writing that he wishes to discontinue the proceedings, the President shall order the case to be removed from the register and shall give a decision as to costs in accordance with Article 66(5)”. On 7 April 2017, the applicants submitted such an application to discontinue proceedings in writing.
- 9 The President finds that the conditions for discontinuance of the proceedings according to Article 74 RoP are met and that he shall give a decision as to costs in accordance with Article 66(5) RoP.
- 10 Pursuant to Article 66(5) RoP, “[a] party who discontinues or withdraws from proceedings shall be ordered to pay the costs if they have been applied for in the other party’s pleadings. However, upon application by the party who discontinues or withdraws from proceedings, the costs shall be borne by the other party if this appears justified by the conduct of that party. Where the parties have come to an agreement on costs, the decision as to costs shall be in accordance with that agreement. If costs are not claimed, the parties shall bear their own costs”.
- 11 The applicants have not provided the Court with any evidence as to the alleged agreement of the parties or its content.
- 12 Therefore, in light of the above, the applicants, as the discontinuing party, shall be ordered to bear the costs of the proceedings.

On those grounds,

THE PRESIDENT


Hereby orders:

1. **Case E-20/16 is removed from the Register.**
2. **The applicants are to bear the costs of the proceedings.**

Luxembourg, 24 April 2017.



Gunnar Selvik
Registrar



Carl Baudenbacher
President