EEA LAW IN THE NORWEGIAN NATIONAL INSURANCE COURT – A SELECTION FROM RECENT CASE LAW

DAG SØRLIE LUND*

The National Insurance Court of Norway (NIC) occupies a unique position within the Norwegian legal system, as a specialized court for social security and pension disputes. This article examines how the NIC adjudicates cases involving EEA law, focusing on selected cases from 2023 and 2024. It explores the NIC's engagement with the jurisprudence of the Court of Justice of the European Union (CJEU), the EFTA Court, and the Norwegian Supreme Court. At stake is not merely the resolution of individual disputes but the broader question of how national courts function as decentralized enforcers of EEA law. The analysis underscores the NIC's evolving role in ensuring legal certainty, fostering judicial dialogue, and upholding the rule of law. In doing so, it sheds light on the intersection of national and European legal orders, illustrating how a specialized court contributes to the integrity of the EEA legal framework.

1 INTRODUCTION

Before presenting a selection of EEA-related rulings from the National Insurance Court (NIC), it is useful to provide a brief introduction of this institution,[1] and some context regarding its application of EEA law. Despite its English name, the NIC is not formally a 'court' as defined by Article 87 of the Constitution of the Kingdom of Norway.[2] A more accurate translation would arguably be 'the National Insurance Tribunal'. A proposal to include the National Insurance Court among the ordinary courts of justice, is currently being reviewed, cf. Official Norwegian Reports (NOU) 2023: 11.

The NIC is an independent judicial agency under the Ministry of Labour and Social Inclusion, established by law in 1967.[3] It was established primarily to promote the rule of law in social security and pension cases and adjudicates disputes related to such issues. It handles appeals concerning rights and duties under various Norwegian statutes, including the National Insurance Act (NIA), the Family Allowance Act, and the War Pensions Act, as well as public occupational pension schemes. The NIC replaces the district court in the judicial hierarchy, and its rulings are reviewed by the ordinary Courts of Appeal in the appellant's jurisdiction. Unlike the ordinary district courts that only have regional jurisdiction, the NIC has a national jurisdiction, receiving appeals from all parts of Norway. The permanent

* Judge, National Insurance Court of Norway. LL.M Universitat Pompeu Fabra, LL.M University of Oslo.

[1] I have not been able to find presentations of the NIC in any academic journals in English. There is, however, a brief description in English of the NIC on its official website, see: <https://trygderetten.no/en/about-national-insurance-court> accessed 5 March 2025.

[2] 'The ordinary courts of justice are the Supreme Court, the courts of appeal and the district courts. They hear and make decisions in civil cases and criminal cases'.

[3] *Lov om anke til Trygderetten (trygderettsloven)* (LOV-1966-12-16-9) s.9.

members of the NIC are appointed by the King in Council, and are fully independent.[4] These members, commonly referred to as 'social security judges', possess expertise in law, medicine, or vocational rehabilitation. The NIC also employs deputy judges and temporary acting judges.[5]

In 2023, the NIC achieved a record high case resolution rate, the highest since 2004.[6] It received 3108 new appeals, primarily from the Norwegian Labour and Welfare Administration (NAV) Appeals Management Unit (*Nav klageinstans*), which accounted for about 92% of the total appeals.[7] The NIC resolved a total of 5 149 appeals.[8] A search in the Norwegian *Lovdata* database found 197 cases that involved EEA law for 2023 alone. Considering the average in the ordinary courts of 26 cases per year that raised substantial EEA law related questions, this is a very high number, making the NIC something of a national champion in settling EEA related cases.[9]

The NIC has applied EEA law ever since the entry into force of the EEA Agreement. However, the NIC was criticised by the Expert Commission mandated to investigate the so-called Norwegian social security scandal (or NAV scandal), essentially for failing to realize the consequences of EEA law for social security rights.[10] As pointed out by Bekkedal, however, this is not the only possible account of the matter.[11] He notes that the NIC had issued 'at least nine decisions that Norwegian law or practice was not compliant with Regulation 883/2004'.[12] Moreover, as noted by Ikdahl and Eriksen, the NIC had concluded

[4] All the permanent members of the NIC have to be appointed according to the procedure in Article 21 of the Constitution of the Kingdom of Norway: 'The King shall choose and appoint, after consultation with his Council of State, all senior civil and military officials. These officials shall have a duty of obedience and allegiance to the Constitution and the King. […]'. Judges in the ordinary courts were up until recently also appointed by the procedure in Article 21, but now have a slightly different procedure laid down in Article 90, adopted in 2024: 'Judges are appointed by the King on the recommendation of an independent council. Specific provisions concerning the appointment of judges shall be laid down by law'.

[5] In 2023, the NIC had a total of 45 judges, 14 deputy judges and 2 temporary acting judges, cf. the National Insurance Court, 'Annual report for 2023' (2023) 9 <https://trygderetten.no/sites/default/files/2024-06/%C3%85rsrapport%202023_Trygderetten_0.pdf?v=845> accessed 5 March 2025.

[6] ibid 4.

[7] ibid 15.

[8] ibid 17.

[9] See Halvard Haukeland Fredriksen, 'EU/EØS-rett i norske domstoler' (2011) 22 <https://bora.uib.no/bora-xmlui/bitstream/handle/1956/8056/E%C3%98S-rett%20i%20norske%20domstoler.pdf?sequence=1&isAllowed=y> accessed 5 March 2025.

[10] Cf. Norwegian Official Report, *Blindsonen: Gransking av feilpraktiseringen av folketrygdlovens oppholdskrav ved reiser i EØS-området* (NOU 2020: 9) 26: 'Whilst NAV bears primary responsibility for the misapplication, the Ministry of Labour and Social Affairs, the National Insurance Court, the Norwegian Prosecuting Authority, lawyers, courts and academia carry a considerable responsibility as well. A common denominator is that none of them has devoted sufficient attention to the consequences of EEA law, particularly after the incorporation of the new social security regulation into the EEA Agreement'. The NIC was also mentioned in a Reasoned Opinion from 2022 in which the EFTA Surveillance Authority *inter alia* examined the practice of the NIC, which disclose[d] that the NIC '[did] not correctly apply Article 20 of Regulation 883/2004,118 nor [did] it apply Article 36 EEA in inpatient treatment cases' (para 106). The matter is pending before the EFTA Court as Case E-9/23 *EFTA Surveillance Authority* v *The Kingdom of Norway*. The Reasoned Opinion is available here: <https://www.eftasurv.int/cms/sites/default/files/documents/gopro/Supplementary%20Reasoned%20opinion%20-%20Own-initiative%20case%20concerning%20access%20to%20in-patient%20treatment%20in%20other%20EEA%20States%20.pdf> accessed 5 March 2025.

[11] Tarjei Bekkedal, 'The Internal, Systemic and Constitutional Integrity of EU Regulation 883/2004 on the Coordination of Social Security Systems: Lessons from a Scandal' (2020) 7(3) Oslo Law Review 145, 151.

[12] ibid. One early example is TRR-2016-2497, where the NIC pointed out that Article 21 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social

that the 'stay-in-Norway' requirement for unemployment benefits in the NIA was in breach of EEA law as early as 2010.[13] This demonstrates the central role of the NIC in upholding the EEA social security rights in Norway. As recently emphasized by president of the EFTA Court, Páll Hreinsson, '[t]he contribution of national judges should be recognised, as their awareness and dedication to their role as EEA law judges is instrumental in ensuring the effectiveness of the Agreement'.[14]

Notwithstanding the fairness of the critique from the Expert Committee, the social security scandal has certainly raised the awareness of EEA law within the NIC. And I believe its dedication is firmly demonstrated by the following selection of cases.

2 TRR-2022-1588 | COVID-STRANDED IN SPAIN

The first case concerns the entitlement to unemployment benefits for an individual who was stranded in Spain due to COVID-19 travel restrictions. The claimant, the managing director of a Norwegian company, was in Spain in March 2020 to set up a subsidiary. While in Spain, several COVID-19 measures were introduced both nationally and regionally, making it impossible for him to return to Norway. Due to the economic shutdown in Norway, the claimant decided to lay off the entire staff, including himself. His application for unemployment benefits was denied by NAV due to a requirement under § 4-2 of the NIA of being physically present in Norway in order to qualify for unemployment benefits.[15] The question before the NIC was whether this requirement to stay in Norway was compatible with EEA law in the exceptional circumstances of the COVID-19 pandemic that made it impossible to return to Norway.

The Norwegian Supreme Court had previously held that the 'stay-in-Norway' requirement was compatible with EEA law.[16] The Supreme Court relied on two Advisory Opinions from the EFTA Court, concluding that EEA states are allowed to require those receiving unemployment benefits to stay in Norway in situations other than those specifically stated in Articles 64-65a of Regulation 883/2004 on the coordination of social security systems,[17] and that the EEA Agreement's general rules on free movement are not applicable.[18]

---

security systems [2004] OJ L166/1, provides the insured person a right to reside or stay in other EEA States whist receiving a cash benefit from the competent state.

[13] Christoffer Conrad Eriksen and Ingunn Ikdahl, 'God forvaltning i EØS-rettens grenseland – Lærdommer fra trygdeskandalen' (2024) 63(6) Lov og Rett 369, 373, with reference to TRR-2009-2265.

[14] Páll Hreinsson, 'The EFTA Court – Past, Present, Future' (2023) 62(2) Lov og Rett 77, 78.

[15] *Lov om folketrygd (folketrygdloven)* (LOV-1997-02-28) s.4-2 , headed 'Stay in Norway', reads as follows: 'In order to be entitled to unemployment benefits, the member must stay in Norway. The Ministry may issue regulations providing for exemptions from the requirement to stay in Norway'.

[16] See HR-2023-301-A. The judgment has not been translated into Norwegian, but an English summary can be found here: <https://www.domstol.no/en/supremecourt/rulings/2023/supreme-court-criminal-cases/HR-2023-301-A/> accessed 5 March 2025.

[17] Regulation 883/2004 (n 12).

[18] Case E-13/20 *O v Arbeids- og velferdsdirektoratet* [2021] EFTA Court judgement of 30 June 2021, and Case E-15/20 *Criminal Proceedings Against P* [2021] EFTA Court judgement of 30 June 2021. These advisory opinions have been criticized for not being in line with the case law from the CJEU, see e.g. Mads Andenæs, 'Two Opinions on free movement and unemployment benefits in the EFTA Court: A Bit of a Dog's Breakfast' (*EU Law Live*, 9 July 2021) EU Law Live <https://eulawlive.com/op-ed-two-opinions-on-free-movement-and-unemployment-benefits-in-the-efta-court-a-bit-of-a-dogs-breakfast-by-mads-andenaes/> accessed 5 March 2025, and Mads Andenæs and Tarjei Bekkedal, 'The reach of jobseeker rights to free

The NIC noted that the Supreme Court in HR-2023-301-A found the 'stay-in-Norway' requirement in § 4-2 NIA compatible with EEA law under normal circumstances, but acknowledged that free movement rules could apply in situations falling outside Regulation 883/2004.

Referring to these provisos in the Supreme Court's ruling, the NIC distinguished the case from the one decided by the Supreme Court, citing the extraordinary circumstances of the COVID-19 pandemic. These circumstances were outside the normal situations referred to by the Supreme Court. The NIC emphasized that the appellant was involuntarily stranded in Spain due to a national lockdown and had no means of returning to Norway. The NIC also referred to guidelines from the Administrative Commission during COVID-19, which suggested flexibility in applying residency and stay requirements due to travel restrictions.[19]

The NIC found that the 'stay-in-Norway' requirement constituted a disproportionate restriction on the appellant's right to free movement under the EEA Agreement and reversed the decision. The appellant was thus granted unemployment benefits for the period he had been stranded in Spain.

3 TRR-2023-2125 | COVID-STRANDED DUE TO ENTRY RESTRICTIONS

The second case concerns the validity of a decision by NAV to recover unemployment benefits granted to an appellant who was staying in another EEA state for medical treatment. The applicant initially received sickness benefits, which were later replaced by unemployment benefits. Once NAV discovered that the appellant was not staying in Norway, as required by § 4-2 NIA, his payments were stopped. NAV then sought recovery of the benefits he had received while staying in the other EEA state.

The NIC partially reversed NAV's decision, finding that the 'stay-in-Norway' requirement could not be enforced during periods in which strict entry restrictions were in place in Norway. The NIC relied on the ruling in TRR-2022-1588, and held that the same applied with respect to the appellant who stayed involuntarily in another EEA state due to the *entry restrictions* imposed by Norway. This distinguished the case from the normal situations referred to by the Norwegian Supreme Court in HR-2023-301-A. The NIC found that the 'stay-in-Norway' requirement constituted a disproportionate restriction on the appellant's right to receive services in other EEA states, cf. Article 36 of the EEA Agreement.

In its application of the proportionality test, the NIC analysed the various entry restrictions in place during the period in question, and ruled that for the periods in which the most restrictive measures were in place, the appellant had no practical way to enter Norway. Consequently, NAV could not recover the unemployment benefits the appellant had received during these periods. However, the NIC also found that an amendment to the entry restrictions had made it possible to enter Norway. Therefore, unemployment benefits received after these amendments entered into force could be recovered.

---

movement: On the complementary relationship between primary and secondary law' (2022) 9(1) Oslo Law Review 4.

[19] Guidance note on Covid-19 pandemic (AC 074/20REV3). Included as Annex I to the Administrative Commission for the Coordination of Social Security Systems Decision No H14 of 21 June 2023, available at: Decision - 2024/594 - EN - EUR-Lex (accessed 5 March 2025).

4 TRR-2022-1437 | UNEMPLOYMENT BENEFITS TO A LAID-OFF WORKER RESIDING IN ANOTHER EEA STATE

The third case concerns an appeal against the denial of unemployment benefits due to the appellant's failure to meet the requirement of being a genuine job seeker whilst residing in another EEA State.

In order to be eligible for unemployment benefits, a claimant must be considered a genuine job-seeker, as defined by § 4-5 NIA. This provision defines a genuine job seeker as someone who is capable of work, willing to actively seek work, willing and able to accept any job full-time or part-time, anywhere in Norway, and to participate in work training programs.

The appellant had not accepted all these conditions unconditionally, mainly due to the fact that he resided in another EEA State, and also his particular situation as laid off from his Norwegian employer while residing in another EEA State. The NIC found that NAV had not sufficiently considered the specific circumstances of the appellant's layoff in its assessment of his eligibility for unemployment benefits. The NIC emphasized that the appellant was covered by Article 65(1) of Regulation 883/2004, which should have been taken into account.[20] The NIC recalled that for situations regulated by Article 65(1), the 'stay-in-Norway' requirement cannot be applied.[21]

The NIC further noted that applying the genuine job seeker requirement for someone regulated by Article 65(1) too strictly would undermine the effectiveness of that provision. This requirement had to be seen in light of the other criteria for unemployment benefits, particularly the objective of returning the unemployed to the labour market in Norway as soon as possible. The NIC held that this cannot apply equally to workers covered by Article 65 of Regulation 883/2004. According to the NIC, this also explained why the 'stay-in-Norway' requirement does not apply in these situations. This was particularly so for laid-off workers, which empirical studies had shown are not prioritized by NAV and, in practice, do not get job offers or get invited to work training by NAV.[22]

5 TRR-2022-3184 | UNEMPLOYMENT BENEFITS TO A FREELANCER RESIDING IN ANOTHER EEA STATE

The fourth case concerns an appeal against the denial of unemployment benefits to a freelance translator who was residing in another EEA state and providing translation services to Norwegian courts and hospitals.

---

[20] Regulation 883/2004 (n 12) Article 65(1) reads as follows: 'A person who is partially or intermittently unemployed and who, during his last activity as an employed or self-employed person, resided in a Member State other than the competent Member State shall make himself available to his employer or to the employment services in the competent Member State. He shall receive benefits in accordance with the legislation of the competent Member State as if he were residing in that Member State. These benefits shall be provided by the institution of the competent Member State'.

[21] The NIC referred to the ruling by the Norwegian Supreme Court in HR-2023-301-A, paras 80-83.

[22] Ragnhild Haugli Bråten et al, ' Virkninger av endringer i permitteringsregelverket' (2018) Report 1/2018 31 <https://www.frisch.uio.no/publikasjoner/pdf/rapp18_01.pdf> accessed 5 March 2025, and Kåre Hansen and Henrik Kvadsheim, 'Permitteringsordningen – en gjøkunge i NAV-systemet?' (2008) International Research Institute of Stavanger 39 <https://norceresearch.brage.unit.no/norceresearch-xmlui/bitstream/handle/11250/2632870/IRIS%202008-005.pdf?sequence=1&isAllowed=y> accessed 5 March 2025.

The appellant had applied for unemployment benefits after experiencing a reduction in her freelance work due to the COVID-19 pandemic. Her claim was rejected since she was not considered 'partially or intermittently unemployed', as required by Article 65(1) of Regulation 883/2004. Rather NAV deemed her as 'wholly unemployed', meaning the EEA state of residence was the competent state, cf. Article 65(2).[23]

The NIC fully reversed NAV's decision, granting the appellant unemployment benefits. The NIC found that NAV had erred in law with respect to its assessment of freelancers' connection to an employment relationship and in finding the appellant wholly unemployed. It was noted that freelance work is included in the basis for unemployment benefits if the income is reported in the State Register of Employers and Employees.[24] The NIC also emphasized that an administrative practice making it harder for freelancers residing in other EEA countries to receive unemployment benefits compared to those residing in Norway would violate the principle of equal treatment under Article 4 of the Regulation.[25]

Finally, it was noted that for someone to be considered 'wholly unemployed', case law from the CJEU requires that 'the worker concerned has completely stopped working',[26] and 'no longer has any link with the competent Member State'.[27] Since the appellant had merely experienced a *reduction* in her freelance work, but continued to get new translation assignments via telephone and video link throughout the period in question, the NIC considered her as 'partially unemployed' and her situation thus regulated by Article 65(1) of Regulation 883/2004, not 65(2).

NAV had relied on a decision by the Administrative Commission for the Coordination of Social Security Systems in its rejection of the appellant's application.[28] The NIC therefore found it appropriate to recall the EFTA Court's finding in *Maitz*:[29]

> Although an Administrative Commission decision may provide aid to social security institutions responsible for applying EEA law, such decisions are not of such a

[23] Regulation 883/2004 (n 12) Article 65(2) reads as follows: 'A wholly unemployed person who, during his last activity as an employed or self-employed person, resided in a Member State other than the competent Member State and who continues to reside in that Member State or returns to that Member State shall make himself available to the employment services in the Member State of residence. Without prejudice to Article 64, a wholly unemployed person may, as a supplementary step, make himself available to the employment services of the Member State in which he pursued his last activity as an employed or self-employed person. An unemployed person, other than a frontier worker, who does not return to his Member State of residence, shall make himself available to the employment services in the Member State to whose legislation he was last subject'.

[24] For a description of the State Register of Employers and Employees, reference is made to: <https://www.skatteetaten.no/en/business-and-organisation/employer/the-a-melding/about-the-a-ordning/the_State_Register_of_Employers_and_Employees/> accessed 5 March 2025.

[25] Regulation 883/2004 (n 12) Article 4 reads as follows: 'Unless otherwise provided for by this Regulation, persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof'.

[26] Case C-444/98 *R. J. de Laat* v *Bestuur van het Landelijk instituut sociale verzekeringen* EU:C:2001:165 para 36.

[27] Case C-655/13 *H.J. Mertens* v *Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen* EU:C:2015:62 para 26.

[28] Decision No U3 of 12 June 2009 concerning the scope of the concept of 'partial unemployment' applicable to the unemployed persons referred to in Article 65(1) of Regulation (EC) No 883/2004 of the European Parliament and of the Council [2009] OJ C106/45.

[29] Case E-5/22 *Christian Maitz* v *AHV-IV-FAK* [2023] EFTA Court judgement of 24 January 2023, para 57. Reference was also made to an LL.M thesis by Per Silnes Tandberg, 'Én nøkkel, mange dører. En analyse av trygdeforordningens enstatsprinsipp og lovvalgsreglene som gjelder for EØS-arbeidstakere' (2024).

> nature so as to require those institutions to use certain methods or adopt certain interpretations when they come to apply the relevant EEA rules in a particular field (compare the judgment in *Knoch*, C-102/91, EU:C:1992:303, paragraph 52 and case law cited).

6 TRR-2024-1496 | SICKNESS BENEFITS TO A CIVIL SERVANT WITH ACTIVITY IN TWO EEA STATES

The fifth case concerns a nurse residing in Sweden and working both in Norway and the country of residence. The nurse applied for sickness benefits in Norway after contracting COVID-19 while working in Norway, which made him severely ill. The application was denied with reference to the nurse's status as a 'civil servant' in Sweden, according to Article 13(4) of Regulation 883/2004.

This status meant that Sweden was the competent state according to Article 13(4) of Regulation 883/2004:

> A person who is employed as a civil servant by one Member State and who pursues an activity as an employed person and/or as a self-employed person in one or more other Member States shall be subject to the legislation of the Member State to which the administration employing him is subject.

Since he was no longer working in Sweden at the time due to being severely ill from COVID-19, he was only eligible for sickness benefits there for a short period of time. The appellant was therefore effectively left without sickness benefits from either country.

The NIC reversed the decision and instructed NAV to initiate contact with Swedish social security authorities in order to endeavour to conclude a so-called Article 16 Agreement.[30] NAV's administrative circular on the EEA Agreement's provisions on social security mentions that Article 16 agreements may be considered where the result following from the application of the main rules for determining the applicable legislation are unintended and unfortunate, and in breach of the right to free movement.[31] The result of determining Sweden as the competent state was considered a severe restriction on the appellant's right to free movement. The NIC held that Article 16 is not excluded in such situations.[32] The only condition for using Article 16 is that such an agreement is 'in the interest of certain persons or categories of persons'.[33] The NIC also held that it was immaterial that the worker had not himself requested an Article 16 agreement.

---

[30] Regulation 883/2004 (n 12) Article 16 allows for exemptions to the rules for determining the applicable legislation in Articles 11 to 13. Article 16(1) reads as follows: 'Two or more Member States, the competent authorities of these Member States or the bodies designated by these authorities may by common agreement provide for exceptions to Articles 11 to 15 in the interest of certain persons or categories of persons'.

[31] NAV, Hovednr.45- 'Rundskriv til EØS-avtalens bestemmelser om trygd ' (R45-00 2025), chapter 2.18. Available at: <https://lovdata.no/nav/rundskriv/r45-00> accessed 5 March 2025.

[32] cf. Case C-101/83 *Raad van Arbeid* v *P.B. Brüsse* EU:C:1984:187.

[33] The CJEU rejected a narrow reading of Article 16, stating in para 25: '[…] that provision makes no reference to the reasons or circumstances which might lead the Member States to derogate from Articles 13 to 16. It follows that, in that respect, the Member States enjoy a wide discretion to which the only limitation is regard for the interests of the worker'.

7 TRR-2022-2987 | ADAPTATION TEXT AND THE PRINCIPLE OF LEGALITY

The sixth case concerns an appeal against the determination of the effective date for when the appellant was to be considered disabled regarding her entitlement to disability benefits.[34] The appellant had moved to Norway from another EEA State, where she had completed several periods of insurance. NAV initially set the date of disablement to 1 October 2015.

However, she had applied for disability benefits as early as 26 October 2011. According to settled administrative practice within NAV, periods of insurance from other EEA States were not aggregated when applying § 12-2(3) NIA, which regulates the entitlement to disability benefits. This practice was based on an adaptation text to Regulation 1408/71, included in Annex VI to the EEA Agreement, that was applicable up until 1 June 2012.[35] The relevant parts of the adaptation text reads as follows:

> The provisions of the Regulation shall, for the purposes of the present Agreement, be read with the following adaptations:
> [...]
> 3. In so far as Norwegian survivors' or disability pension is payable under the Regulation, calculated in accordance with Article 46(2) and by applying Article 45, the provisions of Articles 8-1 section 3, 10-1 section 3 and 10-11 section 3 of the National Insurance Act by which a pension may be granted by making an exception from the general requirement of having been insured under the National Insurance Act during the last 12 months up to the contingency, shall not apply.

The NIC reversed the decision and granted the appellant disability benefits from the earlier date. It held that NAV had erred in law by not aggregating the periods of insurance from the other EEA State. The NIC noted that the adaptation text only refers to the revoked NIA of 1966, and not the NIA of 1997, which is currently in force.

The NIC further noted that the adaptation text makes an exemption from one of the main principles of coordination of social security schemes (the aggregation of insurance periods), and thus limits the rights that migrating workers have according to the Regulation. The NIC considered that an exemption from a main principle of coordination required a clear legal basis. This meant that the adaptation text could not be interpreted as also applying to the NIA of 1997. An exemption for provisions of the NIA of 1997 would have required a decision by the EEA Joint Committee, as per Article 98 of the EEA Agreement.[36] The NIC

---

[34] The case was supposed to be reviewed by Gulating Court of Appeal on 18 August 2025, cf. case 24-189404FØR-GULA/AVD2, but the lawsuit from the government has been withdrawn. NAV has, however, expressed disagreement with the NIC in point 12.4.2 of Circular R45-00, and that it will continue its settled administrative practice from the years 1994 to 2012 despite the result in this case.

[35] Adaptation text (t) litra ZC, subparagraph 3 in the former Annex VI to the EEA Agreement. For more on adaptation texts in general, see fact sheet from the EFTA Secretariat, 'Adaptations to EU acts in the EEA Agreement', available here:
<https://www.efta.int/sites/default/files/publications/Fact%20Sheets/EEA_EFTA_Adaptations.pdf> accessed 5 March 2025.

[36] Article 98 of the EEA agreement reads as follows: 'The Annexes to this Agreement and Protocols 1 to 7, 9 to 11, 19 to 27, 30 to 32, 37, 39, 41 and 47, as appropriate, may be amended by a decision of the EEA Joint Committee in accordance with Articles 93 (2), 99, 100, 102 and 103', available here:

noted that the adaptation text had in fact been updated to include references to other provisions of the NIA of 1997.[37]

8 TRR-2022-3684 | ADAPTION TEXT, NORDIC CONVENTION ON SOCIAL SECURITY, AND THE CENTRE OF INTEREST TEST

The seventh case concerns a Norwegian citizen who had been residing and registered as residing in Sweden, where she studied naprapathy, an education not offered in Norway. She had been supported by loans and grants from the Norwegian State Educational Loan Fund. She worked part-time in Sweden and returned to Norway for summer jobs in 2010, 2011, and 2012. The appellant became permanently disabled in December 2014 and applied for a disability benefit. NAV initially granted her a 100% disability pension, calculated based on limited periods of membership in the Norwegian national insurance scheme. Essentially, she was considered a member of the Swedish social security scheme except for the periods she had worked in Norway during the summers.

The NIC overturned the decision and sent the case back to NAV for a new assessment. The facts of the case meant that the matter was regulated according to Regulation 1408/71. The NIC found that the appellant should be considered as a worker 'attached to several undertakings or several employers who have their registered offices or places of business in the territory of different Member States', according to Article 14(1)(c)(i).[38] For such workers, the applicable legislation is that of the territory where the worker 'resides', which in turn depends on where the worker's centre of interest is.[39]

NAV had argued that an adaptation text to Regulation 1408/71 made an exemption from the rules for determining the applicable legislation in the Regulation. The text reads as follows:

> Persons who are insured in Norway and covered by this regulation, and who receive loans or grants from the Norwegian State Educational Loan Fund and begin studying in another state where this regulation applies, are covered by the Norwegian National Insurance Scheme. With regard to studies in Denmark, Finland, Iceland, and Sweden, the student must also be registered in the Norwegian Population Register. The student's insurance coverage is independent of the duration of the studies. A student who takes up work in another state where this regulation applies loses their insurance coverage.[40]

<https://www.efta.int/sites/default/files/documents/legal-texts/eea/the-eea-agreement/Main%20Text%20of%20the%20Agreement/EEAagreement.pdf> accessed 5 March 2025.

[37] See inter alia subparagraph 4 in point 1 of adaptation text (t) point ZC, which was updated by Decision of the EEA Joint Committee No 8/2000 of 4 February 2000 amending Annex VI (Social security) to the EEA Agreement [2000] OJ L103/16, available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22000D0008&qid=1740614417116> accessed 5 March 2025.

[38] This provision corresponds to Regulation 883/2004 (n 12) Article 13(1)(a).

[39] Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems [2009] OJ L284/1, Article 11.

[40] Unofficial translation by the author. The text in Norwegian reads as follows: 'Personer som er trygdet i Norge og omfattet av denne forordning, og som mottar lån eller stipend fra Statens lånekasse for utdanning

The NIC rejected the argument that the adaptation text intended to deviate from the general rules for determining the applicable legislation and read it as an imprecise formulation of the *lex loci laboris* principle, which did not regulate a situation where a student worked in two EEA States. The NIC further relied on its own case law where registration in the population register in other Nordic countries does not necessarily result in the loss of membership in the Norwegian social security scheme.[41]

The NIC also rejected the argument that the Nordic Convention on Social Security,[42] which has a different definition of 'residence' than Regulation 883/2004, could result in the loss of rights under the Regulation. Article 1(6) of the Nordic Convention on Social Security defines 'residence' as '[…] residing in a Nordic country according to the country's population registration unless special reasons indicate otherwise'.[43]

The NIC considered that the appellant's centre of interest was Norway during the entire period in question. She was only residing in Sweden to study for a profession that was not offered in Norway. Her family also resided in Norway. The NIC noted that the appellant's part-time work in Sweden did not constitute a significant portion of her employment, and her primary income sources were loans and grants from Norway and her summer jobs in Norway. The requirement of being registered as residing in Sweden was a formality necessary to take her exams there and could not be decisive for the assessment of where she had her centre of interest. Furthermore, she stayed on in Sweden after her graduation to get her authorization as a naprapath, which is not possible in Norway.[44] Finally, the NIC also found that she intended to return to Norway after getting her authorization.

9 TRR-2021-1525 | MINIMUM BENEFIT

The eighth and last case concerns an appeal regarding the calculation of a disability benefit and the entitlement to a guarantee supplement under Article 58 of Regulation 883/2004.

The appellant was a Norwegian citizen who had insurance periods both from Norway and Ireland. He was granted a disability benefit in Norway in 2019 based on an 80% disability for work. He was denied a similar benefit from Ireland. The disability pension from Norway was calculated pro rata as stipulated by Article 52(1)(b) of Regulation 883/2004, which resulted in a lower amount than the minimum annual benefit specified in § 12-13 second paragraph NIA.

The appellant appealed, arguing that the benefit should be calculated based on him being 100% disabled for work, and that he should be awarded a guarantee supplement under Article 58 of Regulation 883/2004. The NIC had requested an Advisory Opinion from the EFTA Court concerning how the minimum annual benefit was to be considered with respect

---

og begynner å studere i en annen stat der denne forordning får anvendelse, er dekket av den norske folketrygden. Med hensyn til studier i Danmark, Finland, Island og Sverige må studenten også være oppført i det norske folkeregisteret. Studentens trygdedekning er uavhengig av studienes varighet. En student som tar arbeid i en annen stat der denne forordning får anvendelse, mister sin trygdedekning'.

[41] TRR-2022-2240.

[42] Nordic Convention on Social Security (adopted on 12 June 2012, entered into force 1 May 2014).

[43] Unofficial translation by the author. In Norwegian the wording reads as follows: '[…] bosatt i et nordisk land i henhold til landets folkeregistrering dersom ikke særlige grunner tilsier noe annet'.

[44] Naprapath is a protected title in Sweden, see: <https://naprapathogskolan.se/the-scandinavian-college-of-naprapathic-manual-medicine#preferenser> accessed 5 March 2025.

to Article 58.[45] The EFTA Court clarified that the minimum annual benefit was indeed a minimum benefit, even if it was reduced proportionally for shorter insurance periods.[46]

The NIC fully reversed NAV's decision, granting the appellant a guarantee supplement to ensure the disability pension meets the minimum annual benefit level. The NIC emphasized that the purpose of the minimum annual benefit is to ensure a minimum income level for recipients, aligning with the objectives of Article 58. Consequently, Article 58 guaranteed the appellant what he would have received as a minimum annual benefit if all his insurance periods had been spent in Norway, which was more than the maximum of 40 years. The NIC thus concluded that the appellant had a right to a full minimum annual benefit, and that insurance periods from Ireland also had to be aggregated when considering his right to the minimum benefit from Norway. The fact that Ireland had rejected his application for an Irish disability benefit was without relevance to this assessment. The NIC also concluded that the appellant's disability for work should be set at 100%, based on medical evidence and the appellant's limited income-earning capacity.

The NIC also concluded that a change in NAV's administrative practice that had taken place in 2013, in which NAV granted the minimum annual benefit as a minimum benefit, had been in breach of EEA law. The previous administrative practice had, however, also been in breach of EEA law, as account had been taken only of periods of insurance from other EEA States that had granted a pension or disability benefit.

10 CONCLUSION

The above sample of EEA related cases from 2023 and 2024 shows the wide range of EEA questions that end up before the NIC. They also demonstrate the NIC's commitment to upholding the rule of law and EEA law more generally. In doing so, the NIC engages with case law from the CJEU, the EFTA Court and the Norwegian Supreme Court, and have dealt with a number of novel issues that did not have a clear-cut solution in existing case law. This is only natural considering the number of rulings the NIC decides in a year. Although the NIC has applied EEA law since the very beginning of the EEA, the first request for an Advisory Opinion was not sent to the EFTA Court until 9 September 2020.[47] Since then, however, the NIC has requested Advisory Opinions in a total of four cases, fully embracing its central role in the EEA legal system.[48] As noted by Fredriksen: '[…] once a tribunal has become aware of the relevance of EEA law to its decision making, and discovered the benefits of leaving hard questions of EEA law to the EFTA Court, it might turn into a habit'.[49]

---

[45] See the National Insurance Court, 'Request for an Advisory Opinion in Appeal Case No 21/1525' (2023) <https://eftacourt.int/download/3-23-request-ao/?wpdmdl=8660> accessed 5 March 2025.
[46] Case E-3/23 *A* v *Arbeids- og velferdsdirektoratet* [2024] EFTA Court judgement of 18 April 2024.
[47] In what later became Case E-13/20 *O* v *Arbeids- og velferdsdirektoratet* (n 18).
[48] The other three are as follows: Case E-2/22 *A v Arbeids- og velferdsdirektoratet* [2022] EFTA Court judgement of 29 July 2022, Case E-3/23 A v *Arbeids- og velferdsdirektoratet* (n 46), and Case E-15/23 *K* v *Nasjonalt klageorgan for helsetjenesten (National Office for Health Service Appeals)* [2024] EFTA Court judgement of 5 December 2024.
[49] Halvard Haukeland Fredriksen, 'To refer or not to refer – Norwegian courts' engagement with the EFTA Court 2019-2023 ' (*EFTA-Studies.org*, 12 March 2024) <https://www.efta-studies.org/post/to-refer-or-not-to-refer-norwegian-courts-engagement-with-the-efta-court-2019-2023> accessed 5 March 2025.

This bodes well for the future of EEA law in the NIC. For as noted by Durant in his summary of Aristotle's psychology:

> […] we are what we repeatedly do. Excellence, then, is not an act, but a habit.[50]

[50] Will Durant, *The Story of Philosophy. The Lives and Opinions of the Greater Philosophers* (Special edition, Time Incorporated 1962) 74.

LIST OF REFERENCES

Andenæs M and Bekkedal T, 'The reach of jobseeker rights to free movement: On the complementary relationship between primary and secondary law' (2022) 9(1) Oslo Law Review 4
DOI: http://dx.doi.org/10.18261/olr.9.1.1

Andenæs M, 'Two Opinions on free movement and unemployment benefits in the EFTA Court: A Bit of a Dog's Breakfast' (EU Law Live 2021)

Bekkedal T, 'The Internal, Systemic and Constitutional Integrity of EU Regulation 883/2004 on the Coordination of Social Security Systems: Lessons from a Scandal' (2020) 7(3) Oslo Law Review 145
DOI: http://dx.doi.org/10.18261/ISSN.2387-3299-2020-03-02

Bråten RH et al, 'Virkninger av endringer i permitteringsregelverket' (2018)

Durant W, *The Story of Philosophy. The Lives and Opinions of the Greater Philosophers* (Special edition, Time Incorporated 1962)

Eriksen CC and Ikdahl I, 'God forvaltning i EØS-rettens grenseland – Lærdommer fra trygdeskandalen' (2024) 63(6) Lov og Rett 369
DOI: http://dx.doi.org/10.18261/lor.63.6.3

Fredriksen HH, 'EU/EØS-rett i norske domstoler' (2011)

Fredriksen HH, 'To refer or not to refer – Norwegian courts' engagement with the EFTA Court 2019-2023' (EFTA-Studies.org 2024)

Hansen K and Kvadsheim H, 'Permitteringsordningen – en gjøkunge i NAV-systemet?' (2008)

Hreinsson P, 'The EFTA Court – Past, Present, Future' (2023) 62(2) Lov og Rett 77
DOI: http://dx.doi.org/10.18261/lor.62.2.2

Tandberg PS, 'Én nøkkel, mange dører. En analyse av trygdeforordningens enstatsprinsipp og lovvalgsreglene som gjelder for EØS-arbeidstakere' (2024)