



**EEA LAW MOOT COURT
COMPETITION**
ICELAND, 9-10 NOVEMBER 2019



MOOT COURT PROBLEM

JOINED CASES E-23/19 AND E-24/19 *TEITUR TEITSSON AND ICEDOG V THE
REPUBLIC OF PANNONIA*

ICEDOG'S SERVICE PROVISION IN THE REPUBLIC OF PANNONIA

1. Teitur Teitsson is a millennial globetrotter and canine enthusiast with a keen interest in tiny houses and sustainable, zero waste living. Inspired by his travels around the world, and having finally returned to his home State, the Republic of Frón ("Frón"), an EEA EFTA State nicknamed the country of fire and ice - he had a vision.
2. One night, the idea of people travelling in a more minimalist way, sleeping in garden sheds and accommodation which is already readily available but perhaps not fully exploited by its rightful owners, came to Teitur. He imagined a platform on which people could put up their tree houses, gazebos, actual tiny houses, tents, yurts - even houses previously used as dog houses or other animal shelters of a sufficient size – for short term rent, the main common denominator being the minimalist nature of the rental as well as its environmentally friendly profile – turning unused but usable dwellings into an asset. Teitur felt that this would be a good way to contribute to the tourism industry in a sustainable way - having found it challenging to keep his carbon and environmental footprint to a minimum on all his globetrotting endeavours. He therefore founded the company *Icedog* in Frón for this very purpose on 25 December 2016, and took on the role as CEO.
3. Within a year, *Icedog* was up and running as a successful company providing services including but not limited to the rentals of tiny houses in Frón, referred to as *dog houses* on the *Icedog* app. The tiny houses offered for rent via the app were true to Teitur's vision and indeed offered all the types of housing indicated above – the common denominator being the simple and minimalist nature of the tiny house rental as well as its environmentally friendly profile. *Icedog's* online platform was designed to connect, on the one hand, hosts with tiny house accommodation available for rent, and, on the other hand, persons seeking that type of accommodation.
4. Within two years, *Icedog* had become so successful that it was decided to launch the platform EEA wide, including in the Republic of Pannonia ("Pannonia"), another EEA EFTA State.
5. However, not everyone in Pannonia was happy about this development, especially certain hotel developers. Following a complaint, on 15 June 2019 the Prosecutor's Office of Neapolis, the capital of Pannonia, initiated proceedings against *Icedog* and its CEO Teitur Teitsson for the handling of funds, for activities involving mediation and management of real estate (rental management) and business activities by a person not in possession of a professional real estate licence and notary licence, as required by Pannonian law.
6. Pannonian officials have maintained that being able to ensure that dwellings are in fact of a sufficiently high standard and that rental contracts are handled by notaries when required by other provisions of Pannonian law notably when exceeding week long rentals, is a consumer protection issue. *Icedog*, on the other hand, has denied acting as a real estate agent and notary, maintaining also that the relevant provisions of Pannonian law are incompatible with EEA law. Teitur has maintained that *Icedog's* users have waived the luxuries of modern life (and thereby the high level of consumer protection which the relevant Pannonian legislation seeks to attain) and prefer simple dwellings, or *dog houses*, whose extent of amenities and facilities are clearly outlined on the app and followed up on where inaccurate. In any case, Teitur has maintained, the dwellings on the app are merely part of existing dwellings, and the predominantly short term rental thereof facilitated by the *Icedog* app should not be problematic seeing as the terms thereof are made clear to the service user in advance, and would appear quite different from regular rental contracts.

7. *Icedog* has insisted that the Pannonian law is inapplicable on the grounds that it is incompatible with Directive 2000/31 and Directive 98/34, as amended, or alternatively, with Article 36 EEA. These arguments were in particular based on the following submissions:

- *Icedog* must be considered as an information society service provider within the meaning of Directive 2000/31.
- The restrictions under Pannonian law are notifiable under Directive 98/34 as amended, and cannot be relied upon against *Icedog* in the absence of such a notification.
- In the event that the Court should consider that the services in question must be assessed under Article 36 EEA, the restrictions under Pannonian law are not proportionate and go far beyond what is required for the purposes of consumer protection.

8. Pannonia, on the other hand, has argued the following:

- *Icedog* cannot be considered an information society service provider as the services offered by *Icedog* have a mixed nature, and the primary nature of the service should be seen as being mediating real estate rentals.
- The restrictions under Pannonian law are not notifiable under Directive 98/34, and can be relied on vis-à-vis service providers such as *Icedog*.
- Furthermore, the rules on real estate agent and notary licences are necessary in order to ensure a high level of consumer protection for tenants, and do not go beyond what is necessary to achieve the high level of consumer protection which Pannonia has opted for.

9. It was in those circumstances that the investigating judge of the District Court of Neapolis, by decision of 30 June 2019, decided to stay proceedings and to refer the following questions to the EFTA Court:

1. a) *Do the services provided in Pannonia by the company Icedog via an electronic platform managed from Frón fall within the scope of Directive 2000/31?*

b) *Are the requirements relating to inter alia real estate agent and notary licences pursuant to Pannonian law, for services such as the ones provided by Icedog, enforceable against Icedog?*

c) *In the event that Directive 2000/31 does not apply, would the aforementioned Pannonian rules be compatible with Article 36 EEA?*

WATCHDOG STREAMING APP AND ISSUES WITH GEOBLOCKING IN PANNONIA

10. Teitur has long wanted to start a streaming service due to his passion for high quality TV. After purchasing exclusive rights of streaming the world championship in handball taking place in Pannonia as concerns Frón, where handball is highly popular, Teitur therefore decided to launch his own streaming service and name it *Watchdog*, in order to align it with the brand name and his general canine enthusiasm. *Watchdog* was set up as a subsidiary of *Icedog*.

11. A large number of *Watchdog* users have travelled to Pannonia in order to watch some games live, and the rest via *Watchdog*. However, in Pannonia, the Pannonian broadcaster has secured the exclusive rights to stream and broadcast the world championship, and therefore, Pannonian authorities have blocked this part of *Watchdog's* content. Consequently Teitur, and other service users from Frón situated in Pannonia, cannot access the championship on their *Watchdog* app, although this was one of the most advertised and exclusive parts of *Watchdog* to users in Frón and beyond. The Pannonian broadcaster has decided to charge users to watch the world championship games online on Pannonian territory.
12. *Regulation (EU) No 2017/1128 on cross-border portability of online services in the internal market* (“the Portability Regulation”) has been pending entry into force in the EEA due to constitutional requirements for a while now. On 1 October 2019, Pannonia had not yet notified the EFTA Secretariat of the fulfilment of constitutional requirements in relation to the Portability Regulation. However, Pannonia also sent a letter explicitly underlining that in Pannonia’s view there should be no provisional application of the Regulation, without elaborating further.
13. Teitur, however, has stated that he believes that Pannonia is purposefully delaying the entry into force of the Regulation and that it should be provisionally applied in the absence of notification of fulfilment of constitutional requirements. Teitur, on behalf of *Watchdog*, therefore decided to challenge the blocking of *Watchdog* streaming services in relation to the above, before the District Court of Neapolis on 2 October 2019, claiming that it goes against EEA law and most notably the abovementioned Regulation.
14. Further, Teitur decided to seek damages for economic loss as a consequence of 20 000 users (each with a 1000 FISK subscription) terminating their *Watchdog* subscription, the majority of which seems linked to the issues of streaming of handball games in Pannonia.
15. Teitur has invoked the principle of state liability as a basis for his claim for damages. He has argued the following:
 - *Watchdog* has suffered a loss of 20 000 000 FISK due to Pannonia’s delay in incorporation of Regulation No 2017/1128. This delay benefitted the Pannonian broadcaster and thereby Pannonia.
 - In any case, Pannonia’s failure to lift the constitutional requirements within a six month period would constitute a sufficiently serious breach of Pannonia’s EEA law obligations.
 - There is no contentious content on *Watchdog* that would necessitate policing by the Pannonian Consumer Authority, contrary to Pannonia’s claims.
16. Pannonia has argued the following in response:
 - A delay in fulfilment of constitutional requirements is not a sufficiently serious breach.
 - Moreover, the EEA Agreement and its basic principles are different from EU law in this respect. There is no provisional application of the Regulation, or any state liability in the present circumstances.
 - The delay in incorporation of the Regulation was in part due to the delegation of legislative powers to the Pannonian Consumer Authority, which Pannonia has entrusted with the incorporation of the Regulation and other matters linked to streaming.

- It blocked *Watchdog's* service provision due to consumer protection. It would be too strenuous a burden to place on the Pannonian Consumer Authority to specifically follow up on the substantive content of streaming services such as *Watchdog*.
- *Watchdog's* loss has not been caused by Pannonia.

17. In those circumstances, the District Court of Neapolis decided to stay the proceedings and refer the following questions to the EFTA Court:

"1. a) Does Article 103(2) EEA provide for the provisional application of a piece of legislation, such as Regulation (EU) No 2017/1128 on cross-border portability of online services in the internal market (portability regulation), when the relevant constitutional requirements have not been fulfilled within six months, the specific reason for which has not been elaborated upon?"

b) If the answer to part (a) of this question is in the affirmative, is the State of Pannonia liable for the payment of damages vis-à-vis companies such as Icedog's subsidiary Watchdog for not having adapted national legislation ensuring that their service provision would be possible pursuant to the provisionally applicable Regulation?"

THE PROCEDURE BEFORE THE EFTA COURT

18. Given the connection between the factual background of the above mentioned preliminary references, the EFTA Court decided to examine the preliminary questions together in the following order:

1. *a) Do the services provided in Pannonia by the company Icedog via an electronic platform managed from Frón fall within the scope of Directive 2000/31?"*

b) Are the requirements relating to inter alia real estate agent and notary licences pursuant to Pannonian law, for services such as the ones provided by Icedog, enforceable against Icedog?"

c) In the event that Directive 2000/31 does not apply, would the aforementioned Pannonian rules be compatible with Article 36 EEA?"

2. *a) Does Article 103(2) EEA provide for the provisional application of a piece of legislation, such as Regulation (EU) No 2017/1128 on cross-border portability of online services in the internal market (portability regulation), when the relevant constitutional requirements have not been fulfilled within six months, the specific reason for which has not been elaborated upon?"*

b) If the answer to part (a) of this question is in the affirmative, is the State of Pannonia liable for the payment of damages vis-à-vis companies such as Icedog's subsidiary Watchdog for not having adapted national legislation ensuring that their service provision would be possible pursuant to the provisionally applicable Regulation?"
