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**EEA LAW MOOT COURT  
COMPETITION  
NORWAY, 10-11 MARCH 2018**



# **MOOT COURT PROBLEM**

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CASE E-1/18, *PETER AAS V. KINGDOM OF PETROLIA*

## THE FACTS

### THE BUSINESS ACTIVITIES OF A CONTROVERSIAL ROCK STAR

*Peter Aas* is a very popular rock star in his home state, the Republic of Batavia (an EU Member State) especially amongst teenagers. However, *Peter Aas* is also controversial. His activities are not limited to rock music: he is also connected with the sale of alcoholic beverages and the promotion of gambling.

#### *Alcoholic beverages*

To be specific, *Peter Aas* makes a living out of promoting and selling alcoholic beverages at his concerts. His latest successful creation is a sort of 'Calimocha' - a mixture of red wine and a cola like beverage (51% wine and 49% cola), both produced in Petrolia. The drink has been given the name "Beelzebub Brew," and is sold in bottles with a label of a Pentagram. Beelzebub Brew has become one of Batavia's most consumed drinks due to its sweet taste and its appearance being considered "cool" by younger people.

In order to appeal to his teenage audience, *Peter Aas* has begun marketing a version of Beelzebub Brew that can be consumed by people under the legal drinking age. It is called "Beelzebub Brew Lite", and is again made from cola and red wine. However, Beelzebub Brew Lite only has an alcoholic strength by volume of 0.5% abv – considered safe for consumption by teenagers in Batavia. Despite its lack of alcohol, taste tests by wine experts and the public have shown the taste of Beelzebub Brew Lite is indistinguishable from that of Beelzebub Brew. *Peter Aas* has attributed this to a secret combination of ingredients developed by his team of scientists.

#### *Gambling activities*

*Peter Aas* has also become an extremely profitable asset for *PlayMe* (a multinational company operating in the gambling industry and established in the EEA), with whom he has created a solid business partnership over the last ten years. The terms of this partnership require a number of musical performances in casinos and other places run by *PlayMe* across the countries where *PlayMe* is established. When giving concerts, *Peter Aas* has developed a signature look: a ripped t-shirt with the *PlayMe* logo clearly visible.

In addition, *Peter Aas*' Facebook, Instagram and Snapchat posts contain numerous references to gambling opportunities offered by *PlayMe*. These gambling opportunities take the form of conventional casinos, but also a recently created Internet-based platform, which allows a relatively uncomplicated system for the placement of bets. *PlayMe*'s platform is accessible from any Internet-enabled device

(including portable devices) with no other requirement for its use than the download of a specific application.

Due to Batavia's unique liberal culture, expressed also in its national legislation, *Peter Aas*' business activities are nowadays regarded by the authorities in that country as being in line with the law, despite the controversy he may have created in the past. His acquittal in three criminal court cases in connection with the alleged transgression of societal standards of decency (due to his rock'n'roll lifestyle) has been celebrated by his Batavian fans as a victory of Batavian values. Furthermore, with no criminal records other than a few administrative sanctions imposed on him for tax avoidance and one failure to notify personal bankruptcy, *Peter Aas*' business activities in Batavia and other EEA States have faced little in the way of adversity. Until now.

### **THE CONCERNS OF THE AUTHORITIES OF PETROLIA**

The *Kingdom of Petrolia* is an EEA EFTA State which is proud of its predominantly conservative societal values. *Peter Aas*' activities have not gone unnoticed in Petrolia. In particular, the Petrolian government and police have become aware of *Peter Aas*' intention to perform at a concert organised by *PlayMe* in Petrolia's capital city.

*PlayMe* aims to collaborate with Peter Aas through his concert, in order to promote its newly-launched online gambling application, which may be downloaded in the territory of Petrolia. The concert is the first step in an ambitious plan for *PlayMe* to tap into profitable new market of millions of consumers, which (due to Petrolia's conservative values) has so far been relatively closed to influence from other EEA States.

Petrolia's authorities are very concerned about the concert and the attached promotional activities. First, they see a risk to teenagers, who might be exposed to a new and perhaps unknown alcoholic drink (*Beelzebub Brew*) and to the offensive imagery on the bottles. They are particularly concerned about its sweet taste, which they consider to deceive consumers as to the drink's true alcoholic volume. Furthermore, they consider that although *Beelzebub Brew Lite* can be legally consumed by minors, it may function as a 'gateway drink', as it tastes exactly the same as the alcoholic *Beelzebub Brew*.

For that reason, the Petrolian authorities adopt an administrative decision banning the advertisement, production and sale of both *Beelzebub Brew* and *Beelzebub Brew Lite* in Petrolia.

Second, as regards *PlayMe*'s online gambling activity, Petrolia's authorities consider that it violates the Petrolian Gambling Act.

The Petrolian Gambling Act entered into force a few years before Petrolia became a party to the EEA Agreement, and has remained essentially unaltered since then. Its wording is wide enough to cover online gambling activities. It aims at combatting organised crime (such as drug trafficking, fraud and extortion) which is considered by Petrolia's authorities to be typically associated with the gambling sector. The Petrolian Gambling Act restricts gambling activity in Petrolia to the State-run monopoly, which was supposed to ensure an effective control of this sector by the State. Moreover, the Petrolian Gambling Act lays down a pecuniary penalty on any activity by natural or legal persons aimed at competing with the monopoly.

Following their assessment, Petrolia's authorities adopt a decision banning any advertisement made by *Peter Aas* or *PlayMe* to promote the concert. The Petrolian police enforce the ban by removing every single sign announcing the event. In this they were spontaneously supported by a group of enthusiastic civilians. At the same time, Petrolia launches a massive advertisement campaign in all major cities to promote the State-run monopoly, offering a brand new array of gambling opportunities, including some games which they considered might appeal to younger customers.

### **THE ARTIST'S HOSTILE RECEPTION IN PETROLIA**

Despite the authorities' bans, *Peter Aas* and *PlayMe* continue work to organise their concert in Petrolia – an event at which they expect to make a formidable profit out of ticket sales, the conclusion of bets and the sale of Beelzebub Brew among the young audience at the concert. Peter Aas announces his intention to make, bottle and sell Beelzebub Brew and Beelzebub Brew Lite at the concert venue despite the ban – after all, the Brew is a mixture of cola and red wine, both of which can be legally obtained in Petrolia, and the Petrolian authorities have not banned the import of empty labelled bottles.

As *Peter Aas* arrives in Petrolia, the airport is surrounded by a group of angry activists, calling themselves 'concerned parents', who fear for the preservation of health and morality among their children. This group of activists have organised numerous public demonstrations condemning Peter Aas' plan to perform in Petrolia.

Since the announcement of the concert, Petrolia has seen demonstrations which have evolved from a spontaneous initiative – helping the police to take down the concert's advertisements – to a well-organised movement of several hundred individuals. The activist movement has rallied around a charismatic ultra-conservative leader – the theology professor *Jacobine Savonarola*. Dissatisfied with the perceived passivity of Petrolia's authorities, the group of activists has decided to “*take the law in their own hands and prevent perdition*”. They have used social media to coordinate sporadic raids against several shops and transport vehicles across Petrolia, and have destroyed several consignments of music CDs and empty Beelzebub Brew and Beelzebub Brew Lite bottles, worth roughly USD 10 000.

At the airport, the group of activists ‘welcome’ *Peter Aas* by violently shaking the airport’s fences, attacking staff, shouting insults directed at Aas and his plans to perform in Petrolia, and urging him to leave the country on the next flight to Batavia. The rock star nonetheless takes advantage of the chaotic situation, managing to escape through a VIP facility. He eventually reaches the concert venue to begin his musical performance.

At the venue, an audience of mostly teenagers are enjoying the opportunity to buy freshly-made and bottled Beelzebub Brew and Beelzebub Brew Lite for the first time - beverages they have heard about from advertisements and the rock star’s shows on Batavian TV (which can be received in Petrolia).

As *Peter Aas* starts his musical performance on stage, a group of activists overcomes the venue’s private security guards. They break into the venue and smash most of the bottles of Beelzebub Brew and Beelzebub Brew Lite.

The rock star and his team escape the scene while the rioters are still doing serious damage to the concert venue. Petrolia’s police force arrives several hours after the start of the incident, despite repeated calls for help from the venue. During this time, however, the Police do manage to arrest Peter Aas. A duty judge orders his deportation from Petrolia to Batavia, on the grounds that he represents a “*danger for public order*”, and imposes a fine “*for supporting illegal gambling activities in Petrolia*”. In a statement of reasons given to him at the moment of his deportation the next morning, the Petrolian Public Prosecutor refers to “*the chaos created by him across the country*”, the alleged risks emanating from his “*dubious business activities, possibly connected with organised crime*”, and to his criminal record.

## **THE AFTERMATH OF THE RIOTS**

The next day, on Batavian TV, *Peter Aas* and *PlayMe* complain about their hostile reception in Petrolia, and the insufficient protection offered by the authorities, vowing to make the “*responsible people accountable for the damages suffered*” after consulting legal counsel.

In an interview on Petrolian TV, Prof. *Jacobine Savonarola* expresses satisfaction, calling the actions a “*day of victory for the protection of fundamental rights in Petrolia*”. She sees the activist’s actions as fully justified by freedom of speech and the right to demonstrate; arguing that these rights are guaranteed by both the Constitution of Petrolia and EEA law. Moreover, she considers that her activist movement has achieved its goal “*to protect the youth of the country against harmful foreign influence*”, a duty the government of Petrolia should have taken care of.

The Petrolian Government publicly endorses “*Professor Savonarola’s noble cause*” while at the same time regretting “*the unnecessary use of violence by certain lone wolves*”. The Government and Police also announce their intention to counter any attempt by *Peter Aas* to challenge Petrolia’s decisions in court.

Finally, the Batavian Government condemns the attack against one of Batavia’s most talented citizens. It sees the Petrolian State as responsible for the riots, through a failure to guarantee effective protection. It sees the reason for the riots in Petrolia’s “*bigotry and repressive legislation*”. Highlighting its longstanding tradition as a liberal nation, the government of Batavia urges Petrolia to repeal its ban on drinks such as *Beelzebub Brew* and *Beelzebub Brew Lite*, and to reform its legislation on gambling. The Petrolian government dismisses this call, stressing this nation’s “*unhindered sovereignty*”, especially in public health and morality matters, as recognised by EEA law.

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## **JUDICIAL PROCEEDINGS BEFORE THE COMPETENT NATIONAL COURT**

### **THE APPLICANT’S SUBMISSIONS**

Following the advice of his lawyers, *Peter Aas* brings a legal action against Petrolia in the Petrolian competent national court. He alleges breaches of EEA law concerning the free movement of goods and persons, as well as the freedom to provide services, as a result of the following measures:

- (1) a) the *de jure* ban to advertise, produce and sell *Beelzebub Brew* and *Beelzebub Brew Lite* in Petrolia. In *Peter Aas*’ view, this measure cannot be justified objectively, as it is based on irrational fears. The success his drink is having on the market proves that young people are keen on trying something new;
- (2) the ban to advertise *PlayMe*’s online gambling activities and its enforcement by Petrolia’s police forces. In his view, the provision of an online gambling opportunity is a conventional economic activity, lawful in his home State, Batavia. As regards Petrolia’s fears, he claims that the authorities have failed to prove his own connection with criminal circles. Furthermore, he claims that Petrolia’s monopoly has itself been making profit and is therefore jealous of his own success. He suspects that Petrolia’s monopoly is trying to eliminate a foreign competitor;
- (3) the violent boycott against him staged by the group of activists, for which, in *Peter Aas*’ opinion was attributable to the Petrolian State. He takes the view that even if the State was not responsible, it was still obliged to guarantee his protection. Professor *Jacobine Savonarola*, as a leader of a paramilitary group acting on behalf of the State, should be facing criminal charges;

- (4) his detention and deportation back to Batavia. *Peter Aas* is of the view that this was an unlawful measure. As an EEA national, he was entitled to travel to Petrolia, perform as a musician and carry out a business activity. He further takes the view that he cannot be blamed for the chaos in Petrolia's capital city. He refutes being called a danger to public order, and draws the court's attention to his acquittals from criminal charges, as well as to the merely administrative nature of the fines imposed on him as a result of his "*complicated financial situation*" as a striving young artist.

*Peter Aas* has asked the national court to establish these breaches of EEA law in order that he can make a claim for compensation, based on the principle of State liability.

### **THE RESPONDENT'S SUBMISSIONS**

The authorities of Petrolia challenge *Peter Aas*' claims before the national court, essentially arguing the following:

- (1) a) the ban to advertise, produce and sell *Beelzebub Brew* and *Beelzebub Brew Lite* is justified by the need to protect the youth of Petrolia. In particular, its sweet taste can mislead consumers about the true alcohol volume and ultimately lead to alcoholism. Moreover, *Beelzebub Brew Lite* can function as a "gateway drink" due to its similar taste as the alcoholic *Beelzebub Brew*. The authorities of Petrolia further observe that the label used on the bottles is of very bad taste and shows a bizarre connection with occultism, detrimental to the mental health of young people. They take the view that the label was rightly considered offensive to Petrolian society;
- (2) the ban to promote *PlayMe*'s online gambling activities is justified by the need to protect young people against criminal activities and the risk of gambling addiction. As the authorities of Petrolia explain, a monopoly in gambling was put in place in order to effectively control this sector, creating legal channels for games of chance, and to limit the risk for the population.
- (3) The authorities of Petrolia deny that the actions of the activists are in any way attributable to the State. Indeed, this would not constitute a "boycott" by an organised movement at all. Instead, some of the actions appear to have been carried out by deranged individuals. Should the court conclude that the actions in question qualify as a "boycott", then they only appear to reflect the opinion of the proud people of Petrolia, who have exercised their right of free speech and to demonstrate for a cause they consider laudable. The authorities of Petrolia take the view that the boycott is lawful, as the fundamental rights in question are enshrined in EEA law. Otherwise, the authorities of Petrolia deny any formal connection between the activists and State authorities. The actions therefore cannot be regarded as attributable to the Kingdom of Petrolia. In any case, the authorities of Petrolia deem it important to stress that they do not condone the use of violence. Petrolia can therefore not be held accountable for any excess that

may have occurred. Furthermore, *Peter Aas* should have duly respected the conservative values of Petrolia's society, foreseeing the possible consequences of his actions.

- (4) The rock star's deportation was justified by the need to protect Petrolia's society against criminal elements and public unrest.

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### **THE PROCEDURE BEFORE THE EFTA COURT**

The competent national court in Petrolia notes that the present lawsuit raises a number of questions related to EEA law, to which the court needs an answer before giving judgment. It has therefore decided to request an Advisory Opinion from the EFTA Court pursuant to Article 34(2) of the Agreement between the EFTA States on the Establishment of a Surveillance and a Court of Justice, submitting the following questions:

1. a) Do *Beelzebub Brew* and *Beelzebub Brew Lite* fall within the scope of the provisions on the free movement of goods under the EEA Agreement?  
b) Does EEA law preclude an administrative decision banning the advertisement, production and sale of *Beelzebub Brew* and *Beelzebub Brew Lite*?
2. a) Is an administrative decision such as the ban on advertisement on *PlayMe*'s online gambling activities, and that ban's enforcement, compatible with EEA law?  
b) Does such a ban comply with EEA law's requirements of consistency and proportionality?
3. Does EEA law preclude the deportation of a musician by the authorities of Petrolia under the circumstances of the case at hand in line with EEA law?
4. Does EEA law oblige a State to prevent a demonstration of activists, such as in the case at hand, which is aimed at stopping a musician from performing and causing criminal damage to his property?

