

Prevalence of EEA law is constant practice of the State Court.⁶¹ This includes not only positive statutory EEA law but also its interpretation by the EFTA Court.⁶² However, it is the opinion of the State Court that the prevalence of EEA law reaches only as far as it does not "violate fundamental principles and core elements of the fundamental rights of the Liechtenstein Constitution".⁶³ However, such a constellation is conceivable only in stark exceptional cases, so that the constitutionality of a decision of the EFTA Court or of an EEA rule need not be examined in practice.⁶⁴

The State Court recognises the fundamental freedoms of the EEA as constitutionally guaranteed rights.⁶⁵ Therefore, the State Court has oriented its practice - as has been mentioned - also at the EFTA Court; this has become particularly evident in a series of decisions⁶⁶ in which the EEA-conformity of the (new)⁶⁷ rules of the Liechtenstein *Zivilprozessordnung* (ZPO, Code of Civil Procedure) was confirmed with regard to security deposits for legal costs (in particular § 57), making reference to decisions of the EFTA Court⁶⁸. As far as that practice is clear and/or the EEA law to be applied does not leave room for doubts, the State Court has refrained from submitting the case to the EFTA Court⁶⁹ to obtain an opinion.⁷⁰

⁶¹ Cf. StGH 1996/34 = LES 1998, p. 74 (80); StGH 2004/45, cons. 2.1.

⁶² StGH 2011/200, www.gerichtsentscheide.li, cons. 3.2; same content: StGH 2011/177, 2011/175, 2011/174, 2011/173, 2011/172, 2011/170, 2011/169, 2011/147, 2011/132, 2011/104, in all of them cons. 3.2.

⁶³ StGH 2008/36, cons. 2.1.

⁶⁴ See the above comments under I. 1..

⁶⁵ StGH 2004/45, cons. 2.1; StGH 2007/98, cons. 6.1;

⁶⁶ Cf. StGH 2011/200, www.gerichtsentscheide.li, cons. 3.2

⁶⁷ An earlier decision had been annulled by the State Court for non-compliance with the EEA (cf. StGH 2006/94, www.gerichtsentscheide.li, cons. 3).

⁶⁸ Decision of the EFTA Court of 17 December 2010, case E-5/10 = LES 2010, p. 5 with commentary from Manfred Walser; see also Philipp Lennert/Daniel Heilmann, Die Auslegung der aktorischen Kautio im Lichte des Allgemeinen Europäischen Diskriminierungsverbotes in Art. 4 des Abkommens zum Europäischen Wirtschaftsraum: Besprechung Urteil des EFTA-Gerichtshofes vom 17. Dezember 2010, *Rechtssache E-5/10*, LJZ 2011, 25 – 28; Christian Kohler, Liechtenstein, cautio iudicatum solvi und Lugano-Übereinkommen: No End of a Lesson?, *Jus & News* 2/2011, 153 et sqq.

⁶⁹ The Liechtenstein courts (only) have the power to ask the EFTA Court for an opinion if there are doubts on the interpretation of EEA law (cf. Art. 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, LGBl. 1995 no. 72).

⁷⁰ Cf. for example StGH 2006/76, cons. 5; StGH 2011/123, cons. 3.1; StGH 2011/177, cons. 5.