



Luxembourg, 9 February 2021

PRESS RELEASE 01/2021

Judgment in Case E-1/20 *Kerim v The Norwegian Government, represented by the Immigration Appeals Board*

“MARRIAGE OF CONVENIENCE” AND DERIVED RESIDENCE RIGHTS OF AN EEA NATIONAL’S THIRD-COUNTRY SPOUSE

In a judgment delivered today, the Court answered questions referred by the Supreme Court of Norway (*Norges Høyesterett*) regarding the interpretation of the Residency Directive 2004/38/EC (“the Directive”).

The case before the referring court concerns the rejection of Mr Kerim’s residence application under the national legal framework adopted on the basis of the Directive. Mr Kerim is originally from Afghanistan. His residence application was rejected as his marriage to a Romanian national was deemed to have been entered into with the main purpose of securing a right of residence. The marriage was therefore deemed to be a marriage of convenience.

The questions referred to the Court concern the concept of abuse under Article 35 of the Directive. In essence, the referring court asked for guidance as to what constitutes a marriage of convenience within the meaning of the Directive.

The Court held that marriage, for the purposes of the Directive, is between spouses or its equivalent between partners who have contracted a registered partnership. The Court observed that marriages may take many forms. Some are entered into in order to create or strengthen family life and are often characterised by the intention to create a durable family unit. Others are entered into spontaneously by the parties without a period of reflection.

The Court found that in order to determine whether a marriage of convenience exist in circumstances in which reasonable doubts exist as to whether the marriage in question is in fact genuine, it is necessary for the national authorities to establish on a case-by-case basis, that at least one spouse in the marriage has essentially entered into it for the purpose of improperly obtaining the right of free movement and residence by a third-country national spouse rather than for the establishment of a genuine marriage, that is, had it not been for the essential purpose of improperly obtaining derived rights of free movement and residence for the third-country national, the marriage would not have been entered into by at least one of the spouses.

The Court also held that it may be relevant to take account of, *inter alia*, the duration of the relationship measured at the time when the person applies for residence, whether the parties reside together, have children together or share parental responsibilities and have serious long-term commitments together which may be financial. The Court held that it is for the national court to verify whether the examination of the marriage in question complies with the requirements of EEA law.

Finally, the Court found that facts must be established and assessed in their entirety, which includes taking into account the subjective intention of an EEA national for entering into a marriage with a third-country national since a genuine marriage is predicated upon the good faith of both spouses.

The full text of the judgment may be found on the Court's website: www.eftacourt.int.

This press release is an unofficial document and is not binding upon the Court.