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Judgment in Case E-15/24 A v B

RELOCATION TO DENMARK WITH A CHILD

In a judgement delivered today, the Court answered questions referred to it by Borgarting Court of Appeal (*Borgarting lagmannsrett*), concerning Article 7 of the Free Movement Directive¹ and the freedom of movement for workers guaranteed under Article 28 of the EEA Agreement.

In the main proceedings between A and B, A is seeking permission from the court to relocate with C to Denmark. A and B are respectively the mother and father of C, a minor. The questions before the Court concerned whether a requirement under Norwegian law for a parent with sole custody, but joint parental responsibility, to obtain consent from the other parent or court permission before relocating abroad is compatible with EEA law when there is no such requirement when relocating within Norway.

The Court found that the fundamental principle of the best interests of the child is a general principle of EEA law. Hence, a restriction on a parent's freedom to relocate within the EEA under both the directive and the EEA Agreement can be justified if it is based on an objective that genuinely seeks to ensure the best interests of the child and is proportionate. The latter assessment implies that the objective must be sought in a consistent and systematic manner in Norwegian law.

In the case at hand, the Court observed that the contested rules do not seem to pursue the objective of ensuring that the child can maintain physical contact with both parents in a consistent and systematic manner. Similarly, the Court observed that a change of jurisdiction cannot *per se* justify the restriction, because decisions regarding a child will be upheld and enforced when a child relocates from Norway to Denmark. However, the Court noticed that under Norwegian law, relocation abroad is a decision that falls under the parental responsibility whereas relocation domestically is a decision that can be taken by the parent with sole custody. The Court recognized that this difference, in principle, could be justified by the best interests of the child.

The Court further observed that in the referring court's case-by-case assessment of whether a relocation abroad is in the best interests of a child, regard must be taken to the parent's freedom of movement under EEA law. The referring court cannot rely on a presumption that it is always in the best interest of the child to remain in Norway.

The advisory opinion is a step in the proceedings pending before Borgarting Court of Appeal, which will ultimately decide whether A can relocate with C to Denmark.

The full text of the judgment may be found on the Court's website: eftacourt.int/cases/e-1524/

¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

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