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Judgment in Case E-4/19 *Campbell v The Norwegian Government, represented by the Immigration Appeals Board (Utlendingsnemnda – UNE)*

DERIVED RIGHT OF RESIDENCE FOR THIRD-COUNTRY NATIONAL FAMILY MEMBERS

In a judgment delivered today, the Court answered questions referred by the Supreme Court of Norway (*Norges Høyesterett*) regarding the interpretation of 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 (“the Directive”), in light of the Court’s previous judgment in Case E-28/15 *Jabbi* [2016] EFTA Ct. Rep. 575.

The case concerned an action brought by Ms Campbell, a Canadian national, who has been married since June 2012 to Ms Gjengaar, a Norwegian national, for a right of residence in Norway as a family member of an EEA national. Ms Campbell had first applied for family reunification in Norway with Ms Gjengaar in 2012. After the application was rejected, the couple moved to Sweden. Ms Gjengaar later began working aboard the Hurtigruten coastal ships in Norway on the basis of fixed-term contracts in shifts of three weeks aboard and three weeks off. During her time off, Ms Gjengaar travelled back to Sweden, occasionally stayed in Norway and took holidays in other countries. In January 2014, Ms Gjengaar formally registered as having moved back to Norway.

On 5 June 2014, Ms Campbell applied for a right of residence in Norway as a family member of an EEA national. The Directorate of Immigration refused the application on 23 September 2014, and decided to reject her from Norway. Following an administrative complaints procedure, the decision was brought before the Norwegian courts. Upon appeal, the Supreme Court of Norway referred three questions to the Court regarding the interpretation of Article 7(1)(b) of the Directive, read in conjunction with Article 7(2).

In order to realise the purpose of judicial cooperation under Article 34 SCA, the Court addressed Article 28 EEA, as the case concerns the freedom of movement of workers, as indicated by the facts presented to the Court. The Court found that a derived right of residence in an EEA national’s State of origin for that national’s family member, who is a third-country national, will arise where the residence in the other EEA State has been sufficiently genuine so as to enable that worker to create or strengthen family life there.

By its first question, the Court was asked whether in the light of recent case law of the Court of Justice of the European Union, and the principle of homogeneity, the Directive is applicable by analogy to a situation where an EEA national returns to the EEA State of origin together with a family member. The Court found that the EEA legal context remains unaltered since *Jabbi*, and accordingly found no reason to depart from the understanding in that judgment of homogeneity

and effectiveness. With regard to an EEA national who has not pursued an economic activity, the Court found that Article 7(1)(b) and (2) of the Directive are applicable to the situation where that EEA national returns to the EEA State of origin together with a family member, such as a spouse who is a national of a third country.

By its second and third questions, guidance was sought on the words “continuous” and “genuine residence”, and the interrelation between genuine residence and abuse of rights. The Court held that any period of residence pursuant to and in conformity with the conditions set out in Article 7(1) and (2) of the Directive by an EEA national in an EEA State other than the EEA State of origin, during which the EEA national has created or strengthened family life with a third-country national, creates a derived right of residence for the third-country national family member upon the EEA national’s return to her EEA State of origin. The notion of residence must be interpreted as allowing reasonable periods of absence which may or may not be work-related, and which as to their duration do not contravene and are not inconsistent with the genuine residence. This is without prejudice to Article 35 of the Directive. However, that an EEA national consciously places himself or herself in a situation conferring a right of residence in another EEA State does not in itself constitute a sufficient basis for assuming abuse.

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

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