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Judgment in Case E-28/15 *Yankuba Jabbi v The Norwegian Government, represented by the Immigration Appeals Board*

DERIVED RIGHT OF RESIDENCE IN AN EEA NATIONAL'S HOME STATE

In a judgment delivered today, the Court answered a question referred to it by Oslo District Court (*Oslo tingrett*) on the interpretation of Directive 2004/38/EC 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”).

Mr Yankuba Jabbi (“the plaintiff”) is a Gambian national. In February 2012 he married Ms Inger Johanne Martinsen Amoh, a Norwegian citizen, in Spain. They stayed together in Spain from September 2011 to October 2012, after which Ms Amoh returned to Norway. In November 2012, the plaintiff applied for residence in Norway as the spouse of Ms Amoh. The application was dismissed by the immigration authorities. The plaintiff then instigated proceedings before Oslo District Court. He claims that he has a derived right of residence in Norway as a result of his wife’s stay in Spain and subsequent return to Norway. The District Court decided to refer to the Court the question whether Article 7(1)(b) in conjunction with Article 7(2) of the Directive confers a derived right of residence to a third country national who is a family member of an EEA national who, upon returning from another EEA State, is residing in the EEA State in which the EEA national is a citizen.

The Court pointed out that, pursuant to Article 7(1)(b) of the Directive, all EEA nationals shall have the right of residence on the territory of another EEA State for more than three months if they have (i) sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host State during the period of residence and (ii) comprehensive sickness insurance cover in the host State. Pursuant to Article 7(2), that right of residence shall extend to third country national family members accompanying or joining the EEA national in the host State.

The right of residence applies on the territory of another EEA State. Referring to its *Gunnarsson* judgment (Case E-26/13), the Court held that the home EEA State may not deter its nationals from moving to another EEA State in the exercise of the freedom of movement under EEA law. A right to move freely from the home EEA State to another EEA State pursuant to Article 7(1)(b) of the Directive cannot be fully achieved if the EEA national may be deterred from exercising the freedom by obstacles raised by the home State to the right of residence for a third country national spouse. Therefore, the provisions of the Directive will apply by analogy where the EEA national returns to his home State with a third country national family member.

However, a derived right of residence for a third country national in the spouse’s home State is conditional. In addition to the requirements of sufficient resources and health insurance, the EEA national must have resided in the host State for a continuous period exceeding three months before returning to the home State. Moreover, EEA States may deny a derived right in cases of abuse of rights or fraud, such as marriages of convenience. Finally, restrictions on rights granted by the Directive may be justified by reasons of public policy, public security or public health.

The full text of the judgment may be found on the Internet at: www.eftacourt.int.

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