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Judgment in Case E-2/20 *The Norwegian Government v L*

EXPULSION AND PERMANENT EXCLUSION ORDERS

In a judgment delivered today, the Court answered questions referred by Borgarting Court of Appeal (*Borgarting lagmannsrett*) concerning the interpretation of Directive 2004/38/EC (the “Directive”). The case in the main proceedings concerns the validity of an expulsion order in combination with a permanent exclusion order adopted against L – a Finnish national. L has been resident in Norway since 1998 and has a common-law partner and three children in Norway. He has on several occasions been convicted in Norway. In 2012, L was sentenced to 11 years’ imprisonment for illicit drug trafficking. In 2016 the orders in question were adopted and he was released on probation in 2019.

The referring court asked in essence whether an expulsion of an EEA national together with a permanent exclusion order is contrary to the Directive and how to interpret “material change” in Article 32(1) of the Directive and the principle of proportionality in regard to family life and good behaviour during imprisonment and on probation.

The Court held that a permanent exclusion order is not contrary to the Directive, if it satisfies the conditions in Articles 27 and 28 of the Directive and may be lifted in accordance with Article 32. Expulsions of EEA nationals residing in the host State for more than ten years may only be adopted on imperative grounds of public security, in circumstances in which the individual’s personal conduct poses an exceptionally serious threat. In addition, an expulsion measure must be necessary for the protection of the fundamental interests of society. The duration of any subsequent exclusion order must be necessary to safeguard this fundamental interest and proportionate.

Further, the Court found that good behaviour during imprisonment and under probation, together with evidence of re-integration into society mitigate against a present threat to public security. The impact on family life is an important consideration for the necessity of a restrictive measure in light of the principles of proportionality, the children’s best interests and fundamental rights. The consideration of any alternatives to expulsion is part of the overall assessment.

Finally, the Court held that a “material change” is linked to the initial circumstances which justified the exclusion order. A change is material if it removes the justification for the initial decision, which must be based on the individual’s personal conduct, rather than on what is assumed to be an unalterable personal characteristic. It cannot be assumed that a material change in personal conduct will not occur and each application to lift an exclusion order must be assessed on a case-by-case basis. Account must be taken of all factors which could provide evidence of such material change, which depend on the nature of the individual’s conduct and the threat to society it presented. Evidence showing that the individual is unlikely to revert to the type of activities that led to the expulsion must be taken into account.

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.