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Judgment in Case E-16/20 *Q and Others v the Norwegian Government, represented by the Immigration Appeals Board (Utlendingsnemnda – UNE)*

DERIVED RIGHTS OF RESIDENCE OF A STEPCHILD OF AN EEA NATIONAL WORKER AND THE CHILD'S THIRD-COUNTRY NATIONAL MOTHER

In a judgment delivered today, the Court answered questions referred by Oslo District Court (*Oslo tingrett*) concerning Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union ("Regulation 492/2011").

The case in the main proceedings concerns the validity of the Immigration Appeals Board's decision to reject the application for a Norwegian residence permit submitted by Ms Q, a third-country national, and her child A, an EEA national. Ms Q and her child A had previously been granted residence permit in Norway as family members of Mr C, a Greek national who worked in Norway. At the time of the request, Ms Q and Mr C were married and Mr C was A's stepfather. However, Mr C had filed for divorce in Greece.

The referring court asked first whether a child who is an EEA national enjoys an independent right of residence in another EEA State. If so, it further asked whether the child's primary carer, who is a third-country national, is entitled to reside with the child in the host EEA State. The Court held that the child of an EEA national who is a worker and the child's third-country national parent caring for that child, derive a right of residence on the basis of Article 10 of Regulation 492/2011. This applies regardless of whether the child is common to the EEA national and the third-country national spouse, or is the child of the spouse only.

In light of this answer, the Court considered that the second question had to be understood as concerning whether a divorce would have implications on the child's and third-country national's derived right of residence. The Court held that a child who is a descendant of the EEA national's third-country national spouse only, who was granted a right of residence on the basis of Article 10 of Regulation 492/2011 using the EEA national as a reference person, retains such right even if the EEA national has applied for divorce from the parent of that child.

Finally, the referring court asked whether a finding that the marriage between the EEA national and the third-country national was a marriage of convenience would impact on the right of residence where the marriage was perceived as genuine by the EEA national and the child. The Court found that if there is a marriage of convenience, the authorities of the EEA State may take any measures necessary to refuse, terminate or withdraw rights derived from such an abuse. Such measures must however be proportionate and subject to procedural safeguards.

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.