

## V

(Announcements)

## COURT PROCEEDINGS

## EFTA COURT

## JUDGMENT OF THE COURT

of 21 April 2021

in Case E-2/20

**The Norwegian Government, represented by the Immigration Appeals Board (*Utlendingsnemnda – UNE*) v L**

*(Directive 2004/38/EC – Freedom of movement and residence – Expulsion – Protection against expulsion – Genuine, present and sufficiently serious threat – Imperative grounds of public security – Exclusion orders – Applications for lifting of exclusion orders – Material change – Necessity – Proportionality – Fundamental rights – Right to family life)*

(2021/C 324/11)

In Case E-2/20, The Norwegian Government, represented by the Immigration Appeals Board (*Utlendingsnemnda – UNE*) v L – REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by Borgarting Court of Appeal (*Borgarting lagmannsrett*) concerning 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, as adapted to the Agreement on the European Economic Area, the Court, composed of Páll Hreinsson, President, Per Christiansen and Bernd Hammermann (Judge-Rapporteur), Judges, gave judgment on 21 April 2021, the operative part of which is as follows:

1. Permanent exclusion orders are, in principle, not contrary to EEA law, provided that they satisfy the conditions set out in Articles 27 and 28 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 and may be lifted in accordance with Article 32 thereof. An expulsion measure must be based on an individual examination. As regards EEA nationals who have legally resided for a period of more than 10 years in the host State, expulsions may only be adopted, pursuant to Articles 27 and 28(3) of Directive 2004/38/EC, on imperative grounds of public security, in circumstances where the personal conduct of the individual concerned poses an exceptionally serious threat that an expulsion measure is necessary for the protection of one of the fundamental interests of society. This is provided that such protection cannot be attained by less strict means, having regard to the length of residence of the EEA national in the host State, and in particular to the serious negative consequences such a measure may have for an EEA national and his/her family members who have become genuinely integrated into the host State. Any subsequent exclusion decision must be limited to what is necessary to safeguard the fundamental interest that the expulsion intended to protect. The exclusion decision must adhere to the principle of proportionality.
2. Social rehabilitation of an EEA national in the State in which he/she has become genuinely integrated is in the interest of the society in general. The good behaviour of the individual concerned during the period of imprisonment and subsequently, under probation, together with other evidence of re-integration into society mitigate against a present threat to public security. Family and children of the individual, including step-children, are an important consideration in the assessment of the necessity of a restrictive measure under Chapter VI of Directive 2004/38/EC in light of the principle of proportionality, of the child's best interests, and of fundamental rights. In assessing the necessity of the expulsion, consideration of any alternatives to the expulsion must be part of the overall assessment.

3. A material change for the purposes of Article 32 of Directive 2004/38/EC is one that removes the justification for the initial decision under Chapter VI of the directive to restrict freedom of movement based on the individual's conduct. It cannot be assumed that a material change in personal conduct will not occur and each application must be assessed on a case-by-case basis. Account must be taken of all factors which could provide evidence of a material change in personal conduct. This will depend on the nature of the individual's conduct and the threat to society it presented. Any evidence showing that the individual has engaged in positive and legal activities such that it is unlikely that he/she would revert to the type of activities that led to the expulsion must be taken into account. Such factors could include, but are not limited to, evidence that a person has refrained from engaging in further criminality, evidence of reintegration in the host society, starting and keeping up a stable economic activity, the results of psychological assessments, credible expressions of remorse, evidence of having engaged positively and constructively in society, and in particular the social rehabilitation of the EEA national in the State in which he/she has become genuinely integrated.
-