

COURT PROCEEDINGS

EFTA COURT

JUDGMENT OF THE COURT

of 23 November 2021

in Case E-16/20

**Q and Others v The Norwegian Government, represented by the Immigration Appeals Board
(Utlendingsnemnda – UNE)***(Continued right of residence – Stepchild, an EEA national – Derived rights for third-country national parent carer –
Abuse of rights – Marriage of convenience – Regulation (EU) No 492/2011 – Directive 2004/38/EC)*

(2022/C 69/11)

In Case E-16/20, Q and Others v The Norwegian Government, represented by the Immigration Appeals Board (*Utlendingsnemnda – UNE*) – 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 Oslo District Court (*Oslo tingrett*) 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 amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, and in particular Articles 7(1)(b), 12(3) and 35, the Court, composed of Páll Hreinsson, President (Judge-Rapporteur), Per Christiansen and Bernd Hammermann, Judges, gave judgment on 23 November 2021, the operative part of which is as follows:

1. The child of an EEA national who previously worked in another EEA State 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 (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. This applies regardless of whether the child is common to the EEA national and the spouse, or the child is of the spouse only.
 2. A child who is the 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 (EU) No 492/2011 using the EEA national as a reference person, retains such right of residence even if the EEA national has applied for divorce from the parent of that child.
 3. In the event that the authorities of an EEA State have established that a marriage between an EEA national and a third-country national amounts to a marriage of convenience, the EEA State may take any measures necessary to refuse, terminate or withdraw rights derived from such an abuse. Nevertheless, any such measures must be proportionate and subject to procedural safeguards.
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