

EU MOBILITY and MIGRATION LAW

1) Mrs Y is a **third country national legally** staying in the **EU Member State** of Hardwork, on the basis of a **two years residence permit** issued for **work**. While in Hardwork, she **adopts Z, a minor aged 16**. Following adoption, according to the national law on attribution of Hardworkian citizenship, **Z becomes a national** of Hardwork and - therefore an **EU citizen**. A few months after adoption, Z completes his compulsory **studies** and starts a paid **apprenticeship** in a local construction company. He continues to live with his mother, because he **cannot afford** a room for rent and - first and foremost - he needs **emotional support from his mother** to let some troubled past experiences go. However, **Mrs Y loses her job** and is **refused** the renewal of her **residence permit**. Subsequently, **she is ordered to leave** Hardwork.

In your view, is the Hardworkian authorities' decision compatible with EU law? Why?

In order to solve this case, we must look at the element of **nationality**, and I can notice that **Mrs Y** is a **third-country national**, whose situation could have been dealt with under the legal regime of **Directive 2003/109 concerning the status of third-country nationals who are long-term residents**.

Unlucky, due to the fact that Mrs Y has only been in Hardwork for two years, she cannot ask for a long-term residence permit, as she does not satisfy the requirements of **5 years of legal and continuous residence** (Art.4(1) Dir.2003/109) and **stable and regular resources** for them and their families. (Art.5(1)(a) Dir.2003/109)

Therefore, as Mrs Y is a TCN (third-country national) and his son **Z** - who is a **minor EU citizen** who is highly **dependent** on his mother, as he is a minor (16) and needs emotional support from his mother - is an EU citizen; we should look at the **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**.

In this context, this Directive “*apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members.*” (Art.3(1) Dir. 2004/38) and it is said that “*the host Member State shall undertake an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people.*”

In this case, the Handworkian authorities can not order Mrs Y and her son Z (who is a national) to leave the country on a general notion because they have to investigate and do an individual assessment of the case. Most specifically they have to take into consideration the right to family reunification as dictated in the Family Reunification Directive (**Directive 2003/86/EC**) we have to keep in mind that Z's right to live in Hardwork as an EU citizen is not immediately affected by Mrs Y's job loss, particularly if Z's primary reasons for living there are his apprenticeship and his mother's emotional support. Consequently, **it might not be in line with EU law for Mrs Y's residence visa to be denied on the basis of her job loss alone**.

2) Clarify whether you agree with the following statement or not and support your position with appropriate legal arguments:

“The Member States can resort to ordinary police activities as a means for eluding the abolition of control at internal borders in the Schengen Area”

In my opinion, this statement is **completely contrary to the basic principles of the EU** and its core values. Since the first step towards integration and free circulation of people and goods in 1984 between France and Germany, the EU institutions started to see the EU borders as obstacles to free movements inside Europe, and later in 1985 - *thanks to the Schengen Agreement* - and subsequently in 1997 with the communitarization of such competent, the idea of foreclosing identity checks prevailed.

After a comparison between **Regulation 2016/399** - *the so-called Schengen Borders Code* - and the situation as mentioned earlier, some discrepancies may appear, indeed the basis and fundamentals of this Regulation entail the abolition of controls at internal borders, therefore the use of ordinary police activities may result in a limitation of the right of free movement.

The only case in which the MSs can resort to such control would be a situation where there is a threat to public policy/security/health or to combat certain transnational crimes such as human trafficking, otherwise, it is up to the **external borders to filter** who can enter the EU and who can not.

In the final analysis, while if Member States are free to utilize routine police actions to uphold public safety and order, doing so should not be done in order to elude the removal of internal border controls inside the Schengen Area.