Parties to the main proceedings

Applicant: K.R.

Other party to the proceedings: Staatssecretaris van Justitie en Veiligheid

Questions referred

1. Must Article 16(4) of Directive 2004/38/EC ([1]) 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 be interpreted as meaning that any presence in the host Member State, however brief, of an EU citizen with a right of permanent residence, is sufficient to interrupt a period of absence exceeding two consecutive years?

2. If the answer to the first question is in the negative, what factors should be taken into account in determining whether a presence in the host Member State by such an EU citizen interrupts a period of absence from the host Member State exceeding two consecutive years? In that regard, is it relevant whether the EU citizen concerned relocated the centre of her interests to another Member State?

([1]) OJ 2004 L 158, p. 77.

Request for a preliminary ruling from the Rechtbank Den Haag, zittingsplaats 's-Hertogenbosch (Netherlands) lodged on 25 October 2021 — K, L v Staatssecretaris van Justitie en Veiligheid

(Case C-646/21)

(2022/C 24/26)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, zittingsplaats 's-Hertogenbosch

Parties to the main proceedings

Appellants: K, L

Respondent: Staatssecretaris van Justitie en Veiligheid

Questions referred

1. Must Article 10(1)(d) of the Qualification Directive ([1]) be interpreted as meaning that western norms, values and actual conduct which third-country nationals adopt while staying in the territory of the Member State and participating fully in society for a significant part of the phase of their lives in which they form their identity are to be regarded as a common background that cannot be changed or characteristics that are so fundamental to identity that a person should not be forced to renounce them?

2. If the answer to the first question is in the affirmative, are third-country nationals who, irrespective of the reasons, have adopted comparable western norms and values through actual residence in the Member State during the phase of their lives in which they form their identity to be regarded as 'members of a particular social group' within the meaning of Article 10(1)(d) of the Qualification Directive? Is the question of whether there is a 'particular social group that has a distinct identity in the relevant country' to be assessed from the perspective of the Member State or must this, read in conjunction with Article 10(2) of the Qualification Directive, be interpreted as meaning that decisive weight is given to the ability of the foreign national to demonstrate that he or she is regarded in the country of origin as belonging to a particular social group or, at any rate, that this is attributed to him or her? Is the requirement that Westernisation can lead to refugee status only if it stems from religious or political motives compatible with Article 10 of the Qualification Directive, read in conjunction with the prohibition on refoulement and the right to asylum?

3. Is a national legal practice whereby a decision-maker, when assessing an application for international protection, weighs up the best interests of the child without first concretely determining (in each procedure) the best interests of the child compatible with EU law and, in particular, with Article 24(2) of the Charter of Fundamental Rights of the European Union ('the Charter'), read in conjunction with Article 51(1) of the Charter? Is the answer to this question different if the Member State has to assess a request for the grant of residence on ordinary grounds and the best interests of the child must be taken into account in deciding on that request?

4. Having regard to Article 24(2) of the Charter, in which manner and at what stage of the assessment of an application for international protection must the best interests of the child, and, more specifically, the harm suffered by a minor as a result of his or her long residence in a Member State, be taken into account and weighed up? Is it relevant in that regard whether that actual residence was lawful? Is it relevant, when weighing up the best interests of the child in the above assessment, whether the Member State took a decision on the application for international protection within the time limits laid down in EU law, whether a previously imposed obligation to return was not complied with and whether the Member State did not effect removal after a return decision had been issued, as a result of which the minor's actual residence in the Member State was able to continue?

5. Is a national legal practice whereby a distinction is made between initial and subsequent applications for international protection, in the sense that ordinary grounds are disregarded in the case of subsequent applications for international protection, compatible with EU law, having regard to Article 7 of the Charter, read in conjunction with Article 24(2) thereof?

([1]) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (OJ 2011 L 337, p. 9).

Request for a preliminary ruling from the Tribunal correctionnel de Villefranche-sur-Saône (France) lodged on 29 October 2021 — Procureur de la République v K.B., F.S.

(Case C-660/21)

(2022/C 24/27)

Language of the case: French

Referring court

Tribunal correctionnel de Villefranche-sur-Saône

Parties to the main proceedings

Applicant: Procureur de la République

Defendants: K.B., F.S.

Question referred

Must Articles 3 (Right to information about rights) and 4 (Letter of Rights on arrest) of the Directive of the European Parliament of 22 May 2012 ([1]) and Article 7 (Right to remain silent) of the Directive of the European Parliament of 9 March 2016 ([2]) in conjunction with Article 48 (Presumption of innocence and right of defence) of the Charter of Fundamental Rights of the European Union be interpreted as precluding the prohibition on the national court raising of its own motion a violation of the rights of the defence as guaranteed by those directives, more specifically in so far as it is prohibited from raising of its own motion, with a view to the annulment of the procedure, a failure to give notification of the right to remain silent at the time of the arrest or a late notification of the right to remain silent?

([1]) Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ 2012 L 142, p. 1).

([2]) Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ 2016 L 65, p. 1).