



## Reports of Cases

### Case C-86/12

**Adzo Domenyo Alokpa and Others**  
v  
**Ministre du Travail, de l'Emploi et de l'Immigration**

(Request for a preliminary ruling from the Cour administrative (Luxembourg))

(Citizenship of the Union — Articles 20 TFEU and 21 TFEU — Directive 2004/38/EC — Right of residence of a third-country national who is a direct relative in the ascending line of Union citizens who are minor children — Union citizens born in a Member State other than that of which they are nationals and who have not made use of their right of freedom of movement — Fundamental rights)

Summary — Judgment of the Court (Second Chamber), 10 October 2013

1. *Citizenship of the Union — Provisions of the Treaty — Right to move and reside freely in the territory of the Member State — Directive 2004/38 — European Union citizens who are minors, have never exercised their right to freedom of movement, have always resided in their Member State of residence, and who benefit from the nationality of another Member State — Refusal by the Member State of residence to grant a right of residence to a third-country national who is a parent of such European Union citizens — Lawfulness — Obligation to satisfy the condition of having sufficient resources and comprehensive sickness insurance cover in the Member State of residence*

*(Arts 20 TFEU and 21 TFEU; European Parliament and Council Directive 2004/38, Art. 7(1))*

2. *Citizenship of the Union — Provisions of the Treaty — Right to move and reside freely on the territory of the Member State — European Union citizens who are minors, have never exercised their right to freedom of movement, who have always resided in their Member State of residence, and who benefit from the nationality of another Member State — Refusal by the Member State of residence to grant a right of residence to a third-country national, who is a parent of such European Union citizens — Lawfulness — Condition — Refusal not resulting, for those citizens, in the denial of the genuine enjoyment of the substance of European Union*

*(Art. 20 TFEU)*

1. Articles 20 TFEU and 21 TFEU must be interpreted as not precluding a Member State from refusing to allow a third-country national to reside in its territory, where that third-country national has sole responsibility for his minor children who are citizens of the European Union, and who have resided with him in that Member State since their birth, without possessing the nationality of that Member State and making use of their right to freedom of movement, in so far as those Union citizens do not satisfy the conditions set out in Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. Article 7(1)(b) of that directive, which provides that such citizens of the European Union must have sufficient resources and comprehensive sickness insurance cover, must indeed must be interpreted as

meaning that it suffices that such resources are available to the Union citizens, and that that provision lays down no requirement whatsoever as to their origin, since they could be provided, *inter alia*, by a national of a non-Member State who is the parent of the minors at issue. However, if the conditions set out in Article 7(1) of Directive 2004/38 are not satisfied, Article 21 TFEU must be interpreted as not precluding a right of residence in the Member State of residence from being refused to their parent.

(see paras 27, 29-31, 36, operative part)

2. Concerning Article 20 TFEU, there are very specific situations in which, despite the fact that the secondary law on the right of residence of third-country nationals does not apply and the Union citizen concerned has not made use of his freedom of movement, a right of residence cannot, exceptionally, without undermining the effectiveness of the Union citizenship that citizen enjoys, be refused to a third-country national who is a family member of his if, as a consequence of refusal, that citizen would be obliged in practice to leave the territory of the European Union altogether, thus denying him the genuine enjoyment of the substance of the rights conferred by virtue of the status of citizen of the European Union. However, a third-country national who is the sole carer of minor children who are citizens of the European Union, and who have resided with him in a Member State since their birth, without possessing the nationality of that State, could have the benefit of a derived right to accompany them and to reside with them in the territory of the Member State of which they are nationals. It follows that, in principle, the refusal by the authorities of the Member State of residence of those Union citizens to grant their parent a right of residence cannot result in his children being obliged to leave the territory of the European Union altogether.

(see paras 32, 34, 35)