

Request for an Advisory Opinion from the EFTA Court by Oslo tingrett dated 18 November 2020 in the case of Q and Others v The Norwegian Government

(Case E-16/20)

(2021/C 113/05)

A request has been made to the EFTA Court dated 18 November 2020 from Oslo tingrett (Oslo District Court), which was received at the Court Registry on 18 November 2020, for an Advisory Opinion in the case of Q and Others v The Norwegian Government on the following questions:

1. The EU Court of Justice has held that Article 21 TFEU and Directive 2004/38/EC grant a right to reside in a host State to a minor child who is a national of another EU State and who satisfies the conditions laid down in Article 7(1)(b), and that 'the same provisions' allow a parent who is that child's primary carer to reside with the child in the host Member State, see, for example Case C-86/12 Alokpa paragraph 29. At the same time, the EU Court of Justice has also held that such a parent does not come within the personal scope of the Directive as provided for in Article 3(1), see Alokpa paragraphs 24-26.

In a situation as described above, may the parent's right of residence be based on the Directive alone or in the light of the EEA Agreement, or does such a right presuppose that the Directive is to be applied together with Article 21 TFEU, or possibly that the Directive is to be given a broad interpretation in the light of Article 21 TFEU?

2. Article 12(3) of Directive 2004/38/EC confers a right to continued residence on a child of an EEA national who is enrolled at an approved educational establishment and the person who has parental responsibility (custody) of the child should the EEA national depart from the country. May a child who is the descendant of the EEA national's spouse only, who was granted a right of residence using the EEA national as a reference person, also derive such a right under the Directive alone or in the light of the EEA Agreement? Does this also hold true if the EEA national has applied for divorce from the parent of that child before departing from the country?
 3. If question 2 is answered in the affirmative, does this also hold true if the marriage of the child's mother or father was an abuse of rights under Article 35 of Directive 2004/38/EC, but was perceived as being genuine by the EEA national and the child?
-