

EFTA COURT

Request for an Advisory Opinion from the EFTA Court by Hæstiréttur Íslands dated 6 December 2012 in the case of Jan Anfinn Wahl v the Icelandic State

(Case E-15/12)

A request has been made to the EFTA Court by a letter of 6 December 2012 from Hæstiréttur Íslands (The Supreme Court of Iceland), which was received at the Court Registry on 6 December 2012, for an Advisory Opinion in the case of Jan Anfinn Wahl v the Icelandic State, on the following questions:

- 1. Do Member States which are parties to the Agreement on the European Economic Area have, with regard to Article 7 of the Agreement, the choice of form and method of implementation when making the provisions of Directive 2004/38/EC of the European Parliament and of the Council, on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, part of their internal legal order?**
- 2. Should paragraph 1 of Article 27 of Directive 2004/38/EC be interpreted as meaning that the mere fact, by itself, that the competent authorities in an EEA Member State consider, on the basis of a danger assessment, that an organisation to which the individual in question belongs, is connected with organised crime and the assessment is based on the view that where such organisations have managed to establish themselves, increased and organised crime has followed, is sufficient to consider a citizen of the Union to constitute a threat to public policy and public security in the state in question?**
- 3. For answering the second question, is it of significance whether the Member State has outlawed the organisation of which the individual in question is a member and membership of such organisation is prohibited in the state?**
- 4. Is it sufficient grounds for considering public policy and public security to be threatened in the sense of paragraph 1 of Article 27 of Directive 2004/38/EC that a EEA Member State, party to the Agreement on the European Economic Area, has in its legislation defined as punishable, conduct that consists of conniving with another person on the commission of an act, the commission of which is part of the activities of a criminal organisation, or is such legislation considered as general prevention in the sense of paragraph 2 of Article 27 of the Directive? This question is based on the fact that ‘organised crime’ in the sense of domestic law refers to an association of three or more persons, the principle objective of which is, for motives of gain, directly or indirectly,**

deliberately to commit a criminal act, or when a substantial part of the activities involves the commission of such an act.

- 5. Should paragraph 2 of Article 27 of Directive 2004/38/EC be understood meaning that a premise for the application of measures under paragraph 1 of Article 27 of the Directive against a specific individual is that the Member State must adduce a probability that the individual in question intends to indulge in activities comprising a certain action or actions, or refraining from a certain action or actions, in order for the individual's conduct to be considered as representing a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society?**