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BORGARTING COURT OF APPEAL

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EFTA Court
- Registry -
1, rue de Fort Thüngen
L-1499 Luxembourg
Luxembourg

Your reference	Our reference	Date
	24-05963 5ASD-BORG/01	27/06/2024

Request for advisory opinion

In accordance with Section 51a of the Norwegian Courts of Justice Act *(lov om domstolene)* and Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, Borgarting Court of Appeal *(Borgarting lagmannsrett)* hereby requests an advisory opinion from the EFTA Court in case no. 24-059635ASD-BORG/01.

In this referral letter, the parties have been anonymised; read more on this in section 1 below. The parties in the appeal before the court of appeal are as follows:

Appellant:	A
Counsel:	Advocate Nina Landø Irgens, repr. by Trainee Advocate Emilie Bergum Larsen Help Forsikring AS Postboks 1870 Vika 0124 Oslo
Respondent:	B
Counsel:	Advocate Harald Grape, repr. by Trainee Advocate Torbjørn Engebretsen Moldestad Advokatfirmaet Drevland & Grape DA Postboks 6664 St. Olavs plass 0129 Oslo

The case before the court of appeal concerns a dispute under the Norwegian Act relating to Children and Parents ("the Children Act"). The parties share parental responsibility for their joint child, C, and the child has its permanent residence with its mother, A. A wants to relocate to Denmark with C, to find employment and start a family there, with her new partner. C's father, B, has not consented to the move. In accordance with the Children Act, A must, in order to relocate to Denmark with C, initiate legal action against B, requesting that the court consent to the relocation. This is a different rule to the one that applies when parents relocate with children within Norway. In domestic relocations, the parent with whom the child has its permanent residence, may relocate with the child without the consent of the other parent sharing parental responsibility, or a court, being required.

A has initiated legal action, requesting the court's consent to her relocation to Denmark with the child,

C. The main question before the court of appeal is whether such consent is to be given. This context gives rise to a question of whether the Children Act's differentiation between relocating with children abroad to an EEA State and relocating with children within Norway is in conflict with EEA law.

The referral letter has been prepared in English. The Norwegian statutory provisions referenced in the referral letter have been translated into English, and have, in addition, been included in the original language in Annex 1 to the referral letter.

1 Freedom of information and the need for anonymisation of personal information in the referral letter and other case documents

The case before Borgarting Court of Appeal concerns a dispute under the Norwegian Act relating to Children and Parents (Children Act).

Hearings in this type of case will not normally be open to the public, in accordance with Norwegian law, cf. Section 125 (2) of the Courts of Justice Act. However, in special circumstances, the court may nevertheless decide that all or parts of the hearings shall be open to the public. Court decisions are public, insofar as there is no prohibition against publication, cf. Section 14-3 (1) of the Norwegian Dispute Act. In cases pursuant to the Children Act, rulings may only be disclosed to the public in redacted form, cf. Section 130 (3) of the courts of Justice Act. The public's right of access to key documents, beyond court records and court decisions, do not apply in such cases, cf. Section 14-4 (1) (b) of the Dispute Act. If special grounds exist, the court may nevertheless grant access, cf. Section 14-4 (1), second sentence.

In connection with this referral to the EFTA Courts, the parties agree that considerations of privacy for the parties and the child have been sufficiently taken into account in the preparation of this referral letter, among other things by not including the names of the parties and the child, and by not including detailed information about addresses and names of witnesses. The court of appeal also agrees.

On this basis, the names of the parties and the child have been anonymised in this referral letter, and they are identified as A (mother), B (father) and C (child), respectively.

The parties and the court of appeal understand that the referral letter and the information included in it will be publicly available, and have no objections to this. The parties and the court of appeal also do not have any objections to oral proceedings, if relevant, in the EFTA Court being open to the public. However, we request that the EFTA Court please maintain the need for anonymity that the parties and the child have.

The names and addresses of the parties have been included in Annex 2 to the referral letter. This is for the information of the EFTA Court only, so that the court will know who the parties to the case are. This annex must not be made available to any party outside of the court's staff.

2 Brief summary of the facts of the case

Parties A and B live in Oslo. They lived together from 2015. Their joint child, C, was born in 2016. The cohabitant relationship ended in 2022 with A moving out with C, to another home in the same district of Oslo.

A is originally from a third country outside of Europe, but moved to Norway ten years ago and is a Norwegian national. B was born in Norway and is a Norwegian national.

A and B have, since C was born, shared parental responsibility. In accordance with an agreement between A and B, C has, since the breakdown of the parents' relationship in 2022, had their permanent residence with A.

Since 2022, A has had a partner, who lives in Denmark. This partner has two children of his own, who live with him half the time. A now wants to relocate to Denmark with C. In Denmark, A wants to live with her partner and start a family with him.

A also wants to find employment in Denmark. A is currently employed in a multi-national company, which has offices and operations in Norway and Denmark, as well as other countries. A is currently employed in the Norwegian part of the operations, and she has her place of work in Oslo.
A's employer has offered her the opportunity to continue in the same role with her place of work in Denmark, transferring her employment to the Danish part of the operations. A plans to accept this offer if she is permitted to move to Denmark with C.

A filed a claim with Oslo District Court on 16 June 2023, with the claim that C have their place of residence with A and have contact with B as determined at the court's discretion, as well as the claim that A be permitted to relocate to Denmark with C. A also filed a claim for an interim decision permitting her to relocate to Denmark with C until a final ruling has been made in the case. B contested the claim and submitted a claim that A not be permitted to relocate to Denmark with C, and for B to have contact with C 50 percent of the time.

The case before Oslo District Court did not include parental responsibility, as the parties agreed that this would be joint. The parties also agreed that C would have her place of residence with A. A's claim for a judgment to establish the child's place of residence was therefore not maintained, and the district court did not include this issue in its adjudication.
As part of the case preparations, the district court appointed Specialist Psychologist Olav H. Bendiksby expert witness. Bendiksby evaluated the case, and his evaluation included interview with the child. The district court held a mediation meeting on 11 August 2023, but the parties could not agree on a final agreement.

The district court held main proceedings on 14 February 2024. On 27 February 2024, the district court rendered a judgment and issued an order with the following conclusion (translated and anonymised):

> *Both in the main case and in the interim decision until a final and enforceable judgement is available:*
>
> 1. A is not permitted to relocate to Denmark with C, born xx/xx/2016.
>
> 2. C, born xx/xx/2016, shall have contact with their father, B, as follows:
> - The father shall have contact alternate weekends, Friday–Sunday, in even-numbered weeks
> - The father shall have contact with C alternate Wednesday afternoons. The father shall pick C up from school and drop them off at the mother's home no later than 18:30.
> - C shall spend alternate autumn school breaks with their mother and father. In 2024, C shall spend their autumn break with their mother.
> - C shall spend alternate winter school breaks with their mother and father. In 2024, C shall spend their winter break with their father.
> - C shall spend alternate Christmas school breaks with their mother and father. In 2024, C shall spend their Christmas break with their mother.
> - C shall spend alternate Easter school breaks with their mother and father. In 2024, C shall spend their Easter break with their mother.
> - C shall spend a total of 4 weeks with their father during the summer school break and a total of 4 weeks with their mother during the summer school break.
>
> 3. Costs are not awarded.

In a notice of appeal dated 26 March 2024, A has appealed the district court's judgment to Borgarting Court of Appeal. In the appeal, A maintains the claim for the court's consent to her relocating to Denmark with C, and for contact between C and B to de determined at the court's discretion. B has submitted a respondent's notice, requesting that the appeal be dismissed.

As part of preparations for appellate proceedings, the court of appeal has decided to request an advisory opinion from the EFTA Court concerning the questions related to EEA law raised in this case.

3 Relevant Norwegian law

Chapters 5 and 6 of the Act relating to Children and Parents of 8 April 1981 no. 7 ("the Children Act") *(lov om barn og foreldre av 8. April 1981 nr. 7 (barneloven))* regulate matters related to parental responsibility, place of residence and contact.

Parental responsibility concerns the authority to make decisions for the child in important personal matters. The person or persons with parental responsibility are also the child's guardians, cf. Section 16 of the Guardianship Act. Parental responsibility also covers decisions relating to such things as medical treatment, a right to access medical information about the child, registering the child as a member of a religious community, and consent to adoption.

The norm is for parents who live together when the child is born to have joint parental responsibility, cf. Section 35 of the Children Act. When parents with joint parental responsibility separate, one parent may initiate legal action to request sole parental responsibility. In the present case, however, the parents have agreed on joint parental responsibility.

As for the child's place of residence, Sections 36 and 37 of the Children Act read as follows:

> *Section 36. The child's place of residence (custody)*
>
> The parents may jointly decide that the child shall reside either with both of them (joint custody) or with one of them (sole custody).
>
> If the parents fail to agree, the court must decide that one of the parents shall have custody of the child. When there are special reasons for doing so, the court may nonetheless decide that both parents shall have custody of the child.
>
> *Section 37. Decisions that may be taken by the person with custody of the child*
>
> If the parents have joint parental responsibility, but only one of the parents has custody of the child, the other parent may not object to the parent with sole custody of the child making decisions concerning important aspects of the child's care, such as the question of whether the child shall attend a day-care centre, where in Norway the child shall live and other major decisions concerning everyday life.

For a child to have their "place of residence", as defined by the Children Act, with one parent, therefore both means that the child is presumed to actually reside with this parent, and that this parent has the authority to make some important decisions concerning the child that are not part of the parental responsibility. From Section 37 it expressly follows that a custodial parent can make decisions concerning where the child is to live – i.e concerning relocation. One practical consequence of this is that if the non-custodial parent wants to prevent the custodial parent from relocating with the child, this parent must initiate legal action claiming a change in the child's place of residence or request that the court issue an interim order to this effect. When Section 37 is interpreted in context of Section 40, which is included below, it becomes clear that the right of the custodial parent to relocate with the

child without the other parent's consent in cases where the parents have joint parental responsibility, only applies to relocations within Norway.

For relocations, both within Norway and abroad, a duty to notify and a duty to request mediation in accordance with Section 42a of the Children Act apply. The provision reads:

> *Section 42 a. Notification of and mediation prior to relocation*
>
> If one of the parents intends to relocate within Norway or abroad, and access has been determined by agreement or decision, the parent who intends to move shall notify the other parent no later than three months prior to relocation.
>
> If the parents disagree regarding relocation, the parent who intends to relocate with the child must request mediation pursuant to section 51.

Furthermore, it follows from Section 51 (4) of the Children Act that parents who disagree on a child's relocation must attend mediation.

In the present case, the parties agree that C has their place of residence with A. It has been established that the parties have been in compliance with the duty to notify and the duty to attend mediation.

Section 40 of the Children Act lays down special rules for relocations abroad:

> *Section 40. Children relocating or staying abroad*
>
> If one of the parents has sole parental responsibility, the other parent may not object to the child relocating abroad.
>
> If the parents have joint parental responsibility, both of them must consent to the child relocating or staying abroad other than for short trips; see section 41. This also applies in cases where an agreed stay is prolonged or altered, for instance where the child is left behind abroad.
>
> Children who have reached the age of 12 must consent to any decision according to the first and second paragraphs concerning relocating or staying abroad without a parent with parental responsibility.
>
> If the parents disagree as to who shall have parental responsibility, or on international relocation or custody, the child must not relocate abroad until the matter has been decided.

From this provision it follows that, in cases where the parents have joint parental responsibility and the non-custodial parent does not consent to a relocation abroad, the custodial parent cannot relocate abroad with the child without the court's permission. Such permission may only be granted by the parent wanting to relocate initiating legal action and the court deciding the issue by rendering a judgment. While the court may also issue an interim order concerning relocation abroad pursuant to Section 60 of the Children Act, this rarely happens in practice, and it will in any case only be temporary, until a final judgment has been rendered in the case.

Under Section 48 (1) of the Children Act, decisions on parental responsibility, international relocation, custody and access, and procedure in such matters, shall "first and foremost" have regard for the best interests of the child. This provision must be seen in the context of Article 104 (2) of the Norwegian Constitution, which provides that "for actions and decisions that affect children, the best interests of the child shall be a fundamental consideration." From the preparatory works to the Act and Supreme Court practices, it follows that the court, under Section 48 (1) of the Children Act, must perform an overall assessment of the specific circumstances, taking into account the best interests of the child. In a

case to decide whether a mother would be permitted to relocate to Italy with her two children, HR-2019-1230-A, the Supreme Court summarised the issue as follows (paragraph 39, translated into English):

> The decision as to what is in the child's best interest will, based on the above, have to be made on the basis of which of the alternatives available would best support the children's childhoods and development, following a specific assessment of all relevant factors in the case.

In that case, the Supreme Court performed a specific assessment of whether the children's interest would be better served by living with their mother in Italy or if it would be better for the children to continue living with her in Norway (paragraph 53 et seq).

The court of appeal's clear assessment – and this has also not been contested by the parties – that if the provisions of the Children Act were to be applied in the present case, the court must perform a similar specific assessment of whether it will be better for C to relocate to Denmark with A, or if it will be better for C and A to remain in Oslo. A's claim can only succeed if the court of appeal concludes that it would be better for C to relocate to Denmark with A.

Finally, the court of appeal refers to the Agreement on the European Economic Area (EEA Agreement) having been implemented as Norwegian law pursuant to Section 1 of the Act Relating to the Implementation into Norwegian Law the Main Part of the Agreement on the European Economic Area, etc. of 27 November 1992 no. 109 (EEA Act). Under Section 2 of the EEA Act, the EEA Agreement is a step above Norwegian general Acts. In case of conflict between the provisions of the Children Act and the EEA Agreement, the EEA Agreement therefore takes precedence.

4 Reasoning behind requesting an advisory opinion

The account in the above sections show that the Children Act provides for a different rule to be applied to relocations abroad, including to EEA states, than to relocations within Norway. In cases where the parents have joint parental responsibility, a parent who is the custodial parent according to the Children Act, has a duty to notify the other and to attend mediation before the relocation can take place, regardless of whether the relocation is domestic or international. Once these duties have been fulfilled, the custodial parent has the right, even if the other parent does not consent, to relocate with the child within Norway, regardless of the travel distance. In cases involving a relocation abroad, the custodial parent must initiate legal action, requesting the court to assess whether the relocation abroad with the custodial parent will be in the best interest of the child, or whether it will be in the best interest of the child to remain in Norway with the custodial parent. The custodial parent will only be able to move abroad with the child if the court grants permission.

The central question of this case is whether this difference in treatment, between situations where the relocation is to other EEA states and situations where the relocation is within Norway, is in conflict with the EEA Agreement.

One major consideration is whether the EEA Agreement and secondary legislation, especially Directive 2004/38/EC 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, which grants to EEA citizens the extensive right to move and reside freely, and to take up employment, within the territory of the EEA states, is to be interpreted to also extend to national provisions regulating a parent's right to relocate to another EEA state with a minor child without the other parent's consent.

More specifically, the court of appeal is requesting that the EFTA Court consider whether the difference in treatment established by the Norwegian Children Act is compatible with A's rights, and potentially, the child's rights, pursuant to Directive 2004/38/EC. In particular, reference is made to Article 4 on the right of exit, as well as the right of residence pursuant to Article 7. The question is

whether it is compatible with EEA law to require permission from a court when the relocation is to another EEA state, and such permission is not required for domestic relocations. Another question is whether EEA law would prevent the national court from exclusively basing its assessment on whether the relocation would be in the child's best interest, and whether EEA law would require the court to provide its reasoning if a claim for relocating with the child to another EEA state does not succeed. The court of appeal deems it appropriate to phrase its question to the EFTA Court more openly. The request is for the EFTA Court to give its opinion on whether, and if so, under which circumstances, a rule where permission from a court is required for relocations to another EEA state, would be in line with the Directive.

The second question the court of appeal would like the EFTA Court to give its opinion on, is whether the difference in treatment is compatible with the right to freedom of movement for workers, cf. Article 28 of the EEA Agreement, when the relocating parent is also planning to take up employment in the EEA state where she plans to relocate with the child. In this context, too, the request is for the EFTA Court to give its opinion on whether, and if so, under which circumstances, the arrangement where permission from a court is required for relocations to another EEA state, when no such permission is required for domestic relocations, is in line with EEA law.

A third question would be whether the difference in treatment could be in conflict with other provisions of the EEA Agreement or secondary EEA law. The court of appeal urges the EFTA Court to give its opinion on this as well, even though it has not been phrased as a separate question.

From what the court of appeal is aware, there is limited precedent from the European Court of Justice (ECJ) to shed light on the specific issues raised in this referral letter. The ECJ's judgment in case C-454/19 appears to be relevant. This ruling, however, is based on provisions in Article 21 of the Treaty on the Functioning of the European Union (TFEU), equivalents to which are not present in the EEA Agreement. The court of appeal is aware that the significance of this difference, as well as which rights established by Article 21 of the TFEU can also be deduced from Directive 2004/38/EC and thus nevertheless are part of the EEA Agreement, already has been covered, to some degree, in EFTA Court practice.

One question, which the parties to this case touch on in their submissions, is whether the difference in treatment outlined by the Children Act is necessary on grounds of public policy, public security or public health, cf. Article 27 of Directive 2004/38/EC and Article 28 (3) of the EEA Agreement's Main Part, or whether the difference in treatment can be justified with reference to the non-statutory principle of overriding reasons in the public interest. In this context, the court of appeal presumes it could be of interest to the EFTA Court to clarify which considerations have been emphasised in the preparatory works to the relevant provisions of the Children Act in order to explain the reason for a different rule for international relocations. The court of appeal will therefore briefly summarise these.

The primary purpose of the provisions of the Children Act concerning relocations within Norway and abroad is to facilitate for the child being able to maintain contact with both parents. Contact with both parents is presumed to be in the child's best interest. Considerations of the child's best interest is a fundamental consideration in actions involving children under both Norwegian and international law, cf. e.g. Article 3 of the UN Convention on the Rights of the Child. The right to contact with both parents is protected by Article 8 of the European Convention on Human Rights (ECHR), which has been implemented into Norwegian law, cf. Section 2 of the Human Rights Act.

Section 8.5.1.4 of the preparatory works in Prop. 102 LS (2014–2015) argue that the provisions concerning relocations abroad align well with the 1996 Hague Convention[1] and preserves this Convention's purpose. The Convention's primary purpose is to protect children in international

[1] Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children

situations. Among other things, the Convention aims to prevent conflict between the legal systems of different states in matters involving parental authority and protection measures for children, as well as to establish cooperation in this area between states and between the states' competent authorities. The preparatory works also point out that the provisions can help prevent child abduction. If a parent relocates abroad with the child against Section 40 (1), second sentence, or (2), the other parent can exercise their right using the provisions of the Child Abduction Act based on the 180 Hague Convention[2] and the Act Relating to the Recognition and Enforcement of Foreign Decisions Concerning Custody of Children, etc. and on the Return of Children of 8 July 1980 no. 72 (Child Abduction Act).

The court does not find these interpretations of EEA law clear-cut, and has therefore decided to request an advisory opinion from the EFTA Court.

5 The submissions of the parties on EEA law

5.1 A's submissions, in brief

A submits that the rule laid down by the Children Act, on which the district court has based its conclusion, constitutes a disproportionate intervention that violates her freedoms under the EEA Agreement. Section 40 of the Children Act establishes a clear difference in treatment between relocations abroad to an EEA state, compared to domestic relocations. This is in conflict both with Directive 2004/38/EC and the right to freedom of movement for workers, cf. Article 28 of the EEA Agreement.

In A's view, there are no relevant and satisfactory grounds on which to justify such difference in treatment. The rule established by the Children Act is disproportionate, and this case is a clear example of that. A wants to relocate with C to Denmark, to a city that is significantly shorter, in terms of travel distance, from Oslo than many other places in Norway, to which she and the child freely could have moved. Contact with B will not be made significantly more difficult by A living in Denmark with C. Furthermore, a well-functioning cooperation has been established between the competent authorities of the two states.

Based on this, A believes that the provisions of the Children Act are incompatible with EEA law. Insofar as the requirement of permission to relocate, either from the court or from the other parent, in itself is not in conflict with EEA law, EEA law must, in any event, impose requirements on the court's assessment of whether to grant such permission, as well as on the court's reasoning for withholding permission.

5.2 B's submissions, in brief

B contests the idea that the provisions of the Children Act are in conflict with EEA law.

Article 4 of Directive 2004/38/EC requires a right of exit from a member state's territory to travel to another member state. It is not contested that A and C have the right to travel to Denmark, e.g. on holiday. Relocating to another state is not covered by this provision.

Article 7 (1) (d), cf. Article 7 (1) (a), of Directive 2004/38/EC grants right of residence, even for family members.

Furthermore, it has been cited that Article 28 of the EEA Agreement grants the right of free movement for workers between EEA states, for the purposes of taking up employment and relocating to another EEA state.

These freedoms, however, only apply if considerations of public policy, public security or public health

[2] Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

indicate no restrictions should apply, cf. Article 28 (3) of the EEA Agreement. Considerations of public health indicate that it must be possible to impose restrictions on the right of one parent to relocate to a different country with a child when the other parent has not consented to the relocation. The absence of such restrictions could subject non-custodial parents to considerable psychological stress related to concerns for what the other parent might do, and limit or rob the parent in question's opportunity to have contact with the child. It cannot be left up to one parent alone to determine which country the child is to reside in, allowing that parent to relocate with the child at their discretion.

Exceptions from freedom of movement can also be justified by other objective and relevant general considerations, provided they are not discriminatory. The provisions of the Children Act, however, are not discriminatory; they are the same for everyone, regardless of nationality. There are central considerations of public policy behind Section 40 of the Children Act, as well as the arrangement where the custodial parent, if the other does not consent to a relocation abroad, must initiate legal action to get the court's agreement that a relocation abroad would be in the child's best interest. Especially important are considerations of not splitting up a family, considerations of as much close family contact as possible, and, not least, considerations of the child.

The restriction is necessary and not too invasive, considering the purpose one seeks to achieve. It is pointed out that the only way to preserve considerations of family life and the best interests of the child is to establish a rule that prevents one parents from relocating abroad with the child without the other parent's consent.

An interpretation of EEA law that entails this particular provision in the Norwegian Children Act be set aside, will constitute a violation of the child C's and B's right to a family life pursuant to Article 8 of the European Convention on Human Rights (ECHR). Such an interpretation of EEA law in the present case would split the family up and weaken the relationship between father and child.

In case of a conflict between EEA law and the ECHR, the principles of the ECHR should take precedence. It is pointed out that the ECHR is an older treaty and that the EEA Agreement in any event must be interpreted in such a way that it does not violate the member states' human rights commitments under the ECHR.

6 Request for urgent consideration of the case

Considerations of the child C, which this case concerns, indicates that the hearing of the case is urgent.

In this context, we refer to the case's total process time before the courts. The action was initiated before Oslo District Court on 16 June 2023. The district court rendered its judgment on 27 February 2024. This judgment was then appealed to Borgarting Court of Appeal. Once the EFTA Court's opinion is ready, one must expect a further three months until the court of appeal is able to hold proceedings and render its judgment. The total process time – which for the child C entails that the question of them relocating with their mother to Denmark remains unsettled – is already long and should be kept as brief as possible.

It follows from Section 59 of the Children Act, which concerns court proceedings, that the case, pursuant to Section 59 of the Children Act, should be expedited "as far as possible". Furthermore, Section 48 of the Children Act provides that procedure first and foremost shall have regard for the best interests of the child. Article 102 (2) of the Constitution provides that the best interests of the child shall be a fundamental consideration in all actions involving children. In line with these provisions, the court of appeal is obligated to ensure expeditious progress in cases involving, inter alia, children's place of residence. In practice, this means that cases pursuant to the Children Act are given priority over other types of cases when proceedings are scheduled.

Article 6 (1) of the European Convention on Human Rights (ECHR) on the right to a hearing with a

"reasonable time", compared with the right to a family life under Article 8, also underpins the fact that the courts should strive to expedite the hearing of cases concerning matters involving children, see e.g. the judgment of the European Court of Human Rights in case 32842796 (Nuutinen v. Finland), paragraph 10.

We also refer to the duty to protect the rights of the child pursuant to EU law, cf. Article 24 of the Charter of Fundamental Rights of the European Union and Article 3 (3) of the TFEU.

On this basis, we ask that the EFTA Court expedite the hearing of this case within the framework of an ordinary referral procedure.

7 Questions concerning interpretation to the EFTA Court

Based on the facts and legal assumptions in this case, and taking into consideration that the EFTA Court does not decide on questions concerning facts nor settle disputes concerning interpretation or application of national law, Borgarting Court of Appeal requests that the EFTA Court provide an advisory opinion on the following questions:

Firstly, is it, and if so, under which circumstances is it, compatible with the rights of the parents and the child under Directive 2004/38/EC that national legislation on the relationship between a child and its parents stipulates that a custodial parent, in situations where the parents have joint parental responsibility and the non-custodial parent does not consent to the relocation, cannot relocate to another EEA state with the child without initiating legal action and getting the court's permission to relocate, when the same parent would have the right to relocate domestically with the child without obtaining the non-custodial parent's consent or permission from the court?

Secondly, is it, and if so, under which circumstances is it, compatible with Article 28 of the EEA Agreement that national legislation on the relationship between a child and its parents stipulates that a custodial parent, in situations where the parents have joint parental responsibility and the non-custodial parent does not consent to the relocation, cannot relocate to another EEA state with the child to take up employment there without initiating legal action and getting the court's permission to relocate, when the same parent would have the right to relocate domestically with the child without obtaining the non-custodial parent's consent or permission from the court?

Borgarting Court of Appeal

Henrik Westborg Smiseth
Court of Appeal Judge