

# FAMILY REUNIFICATION FOR REFUGEE AND MIGRANT CHILDREN



Standards and promising practices

COUNCIL OF EUROPE



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# **FAMILY REUNIFICATION FOR REFUGEE AND MIGRANT CHILDREN**

Standards and  
promising practices

French edition:

*Regroupement familial pour les enfants  
réfugiés et migrants – Normes juridiques  
et pratiques prometteuses*

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The review process of this compilation relied on contributions from Ms Rebecca O'Donnell, Child Circle and colleagues in the team of the Children's Rights division of the Council of Europe.



# List of acronyms

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CCPR	United Nations Human Rights Committee
CJEU	Court of Justice of the European Union
EASO	European Asylum Support Office
FRA	European Union Agency for Fundamental Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
IOM	International Organisation for Migration
PACE	Parliamentary Assembly of the Council of Europe
UDHR	Universal Declaration of Human Rights
UNCRC	United Nations Convention on the Rights of the Child
UNHCR	United Nations High Commissioner for Refugees

# Introduction

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In recent years, following the sharp increase of refugee and migrant population since 2013, many children and their families have experienced family separation. Some families have become separated during journeys to or within Europe. In some cases, only certain members travelled to Europe from countries of origin or countries of transit to seek protection, or economic or educational opportunities. Some unaccompanied children have been separated from family members for years and have lost contact with their family. In some instances, family members are scattered across states in Europe, while some are in countries of transit or origin.

At the same time, the practical reunification of refugee and migrant children with their family members has proved complex, due to specific restrictions concerning legal definitions of those eligible for family reunification, insufficient provision of timely and proper information, and limited access to legal advice and legal aid, combined with strict timelines for applications, administrative fees, and financial and housing requirements.<sup>1</sup> Asylum seekers who wish to join their family members by virtue of the EU Dublin Regulation may also face delays in the examination of the take-charge request and difficulties in accessing legal remedies. Insufficient co-operation between member states to determine the best interests of children in transfer cases may also prevent or delay family reunification. Addressing these challenges, many national, international and civil society organisations have developed practices which promote procedural safeguards and support beneficiaries throughout family reunification procedures.

A key area of concern for the Council of Europe is the situation of children separated from their families who are particularly vulnerable and may be exposed to numerous risks such as human trafficking, sexual and labour exploitation, violence or other human rights violations. Moreover, without the support and protection of families, their welfare and development, as well as their integration in the host countries, is

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1. European Council on Refugees and Exiles and Red Cross EU Office (November 2014), *Disrupted Flight: the realities of separated refugee families in the EU*, <https://bit.ly/2MYBLRe>; European Union Agency for Fundamental Rights (September 2016) *Regular overviews of migration-related fundamental rights concerns. Thematic focus: Family tracing and family reunification*, <https://bit.ly/2MvhDHB>; Council of Europe Commissioner for Human Rights (2017), *Realising the right to family reunification of refugees in Europe*, <https://bit.ly/2rYAToh> ("Council of Europe, Commissioner for Human Rights, Issue Paper (2017)").

endangered and may be affected.<sup>2</sup> In 2016, the Secretary General of the Council of Europe identified a series of immediate, priority actions to protect children affected by the refugee crisis<sup>3</sup> and appointed a Special Representative on Migration and Refugees with a special mandate for the protection of refugee and migrant children. In 2017, based on the findings of the Special Representative of the Secretary General on Migration and Refugees<sup>4</sup>, the Committee of Ministers of the Council of Europe adopted an organisation-wide Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019), with the purpose of improving children's access to their rights and to child-friendly procedures, providing children with effective protection from different forms of violence, and enhancing the integration of children who are to remain in Europe.<sup>5</sup>

This Council of Europe handbook contributes to the objectives of the Action Plan by providing a practical guide both to key legal standards and to promising practices in the field of family reunification and restoring family links. The handbook was conceived as a possible resource for those designing and applying law and as a point of reference for capacity-building material, technical assistance, co-operation projects and new practices for and with relevant authorities and institutions. It can also serve as a basis for the common understanding that should underlie co-operation and co-ordination between the many actors involved. Its purpose is also to encourage discussions regarding potential or already-existing solutions for obstacles and challenges (practical or legal) to restoring family links.

## Scope of the handbook

The handbook focuses on the reunification of families with children in the context of international migration, with a particular focus on family reunification possibilities for unaccompanied and separated, refugee and migrant children in the member states of the Council of Europe. It covers children who are alone or with one parent trying to reunite with another parent in Europe and who cannot enjoy family life by returning to their country of origin due to risk of persecution or harm. General principles covered by the handbook apply also to refugee and migrant adults with international protection needs. The publication does not cover migrant adults without any protection needs who wish to be reunited with their family.

The scope of the handbook includes only reunion taking place in Council of Europe member states and reunification in application of the EU Dublin Regulation. It does not extend to returns and outbound family reunification outside Council of Europe member states, although the cross-cutting principles of the best interests of the

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2. Council of Europe, Special Representative of the Secretary General on Migration and Refugees, *Thematic Report on migrant and refugee children*, SG/Inf(2017)13, 10 March 2017.
  3. Council of Europe, Secretary General's proposals for priority actions *Protecting children affected by the refugee crisis: a shared responsibility*, SG/Inf (2016) 9 final, 4 March 2017.
  4. Council of Europe, Special Representative of the Secretary General on Migration and Refugees, *Thematic Report on migrant and refugee children*, SG/Inf(2017)13, 10 March 2017.
  5. Council of Europe, Committee of Ministers (19 May 2017) *Action Plan on Protecting Refugee and Migrant Children in Europe*, CM(2017)54-final. Details on the implementation available at <https://bit.ly/2tdkFG8>.

child and of human rights law remain pertinent in that respect too. Any effort to explore family reunification may first require tracing family members, where this is not contrary to the best interests of the child and is safe for family members, and then proceed to restoring family links, including through exploring family reunification, where it is in the best interests of the child. The handbook does not focus on family tracing practices but rather on the family reunification procedures which may follow in cases where family is traced.

## Methodology

The methodology followed was twofold. First, desk research was undertaken to identify international and European standards relevant to family reunification, including aspects of human rights law, children's rights law, migration law, refugee law, and EU law. This helped to shape an understanding of the different bodies of law and, implicitly, of different safeguards which may be applicable simultaneously for the purpose of family reunification and restoring family links.

Second, the Council of Europe issued a call for practices from member states, civil society organisations and others working in the area of migration and asylum, seeking information on good or promising practices, methods and tools used with respect to family reunification. According to the terms of the call, the practices could relate to the procedures used by institutions or organisations covering legal provisions, policies, or implementation examples related to all stages of the family reunification process. In total, there were around 40 submissions, from Council of Europe member states, non-European countries, and worldwide practice of international organisations. A literature review completed the replies received.

The process to select the practices to be included sought to determine those that appeared to align most closely with the following elements: the child's best interests; respect for the right to family life; positive, humane and expeditious family reunification procedures; child-friendly procedures; strengthening co-operation and co-ordination between the many actors involved; addressing existing practical or legal obstacles; enhancing integration, etc. The selected examples were identified as promising because they contribute to realising the right to respect for family life through effective family reunification processes. While every care was taken to ensure that the examples included were accurately described, it was not always possible to verify entirely the practice in question. In this respect, the authors take no responsibility for any errors or omissions. At the same time, their selection does not entail assessment of all the effects and consequences of the broader policy or context of these examples.

The replication of these examples may require that certain preconditions are met, such as adequate funding and the involvement of properly qualified and trained actors. Some examples may not yet have demonstrable effects but have been selected here because they are worthy of attention.

Many examples cite lessons learned from the contributors' experience. The contributors kindly provided their contact details, which have been presented in the selected examples to enable peer exchanges or facilitate access to further information.

## Structure of the handbook

The handbook is divided into two main parts: Part I presents an overview of legal principles of human rights, children's rights, refugee law and EU law relevant to family reunification and Part II provides key examples of promising practices. Part I focuses on central legal concepts relating to family reunification for policy makers and practitioners. It first explores family reunification from the perspective of the general right to respect for family life in specific Council of Europe and United Nations instruments. It then reflects briefly on the provisions concerning family reunification in international refugee law. The section discussing family reunification in European Union instruments provides an illustration of how family reunification provisions are addressed in the context of immigration. The last chapter of this part focuses on cross-cutting principles concerning children in the field of family reunification. Part II discusses key features of family reunification procedures, with promising examples of law and practice and relevant applicable standards. These are grouped thematically with a view to better assist member states in their responsibility to effectively implement the right to family reunification, as follows:

1. Scope of the application for family reunification (definition of the family, definition of the sponsor, including the distinction between refugees and beneficiaries of subsidiary protection)
2. Requirements for family reunification applications (substantive and procedural)
3. Procedural safeguards in family reunification procedures
4. Support to overcome practical barriers in the process of family reunification
5. Specific safeguards for unaccompanied and separated children
6. Support to integration and to living reunited
7. Co-operation

For the reader's reference, the handbook includes an appendix providing an overview of the most relevant legal provisions on family reunification.

## Key findings

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**V**arious obligations relating to family reunification can be identified in international human rights law, either explicitly or derived from the general right to respect for family life. The European Convention on Human Rights does not protect the right to family reunification directly. However, the right to respect for family life is an important source of inspiration for family reunification law and provides a minimum level of protection. In a limited number of cases, the European Court of Human Rights has established that a member state is under a positive obligation to allow for family reunification on its territory. The Court has also set important procedural safeguards that must be respected in the implementation of the right to family life at the domestic level, including in family reunification policies.

It must be noted that not all member states of the Council of Europe are member states of the European Union. Also, EU law on family reunification does not apply to the same extent in all EU member states, with some member states having opted out from the application of certain directives. However, harmonisation on the right to family reunification is well-developed in EU law and provides more guidance on how the member states of the Council of Europe could design their domestic family reunification laws. In the search for promising practices among member states, the harmonisation achieved at the level of the EU can be instrumental for defining best practices in general. The different forms of EU law could also function as a source of inspiration for the Council of Europe member states in which EU law does not apply.

Regarding children in particular, the general principles of children's rights law, such as the principle of the best interests of the child and the right to be heard, should equally be respected in the context of family reunification. Moreover, the UN Committee on the Rights of the Child and the UN Committee on Migrant Workers have developed specific recommendations as to family reunification involving children. International guidance increasingly emphasises the need for a multidisciplinary approach to examining the individual circumstances of the child, including in the context of family reunification processes, with the involvement of child protection actors and inter-agency co-operation mechanisms, and the essential nature of co-operation across borders.

The publication illustrates a number of promising practices that implement the standards outlined.<sup>6</sup> The selected examples of law and practice focus on making sure beneficiaries understand the process and receive legal counselling and advice, and free legal aid in particular cases. They also include examples of administrative and practical support in dealing with family reunification and visa applications, collecting and translating required documents, as well as covering related financial costs. Certain initiatives, such as specialised help desks and training activities, aim to increase the capacity of service providers such as guardianship services or legal aid providers, to respond to the increased requests for supporting beneficiaries of family reunification. Finally, multiple advocacy programmes targeting policy makers aim to contribute to developing national legal and policy frameworks and procedures in line with international and European standards, to promote and ensure the right to family life.

A reflection on the issues involved and selected practices in the field confirms that the following questions need to be considered in the framework of the national process related to family reunification:

- ▶ establishing clarity in the law and procedures on family reunification on the interaction between immigration law and family law;
- ▶ developing effective procedures to ensure an assessment of the best interests of the child, given that much depends on the individual circumstances in each case, and ensuring that these interests are given high priority;
- ▶ ensuring a multidisciplinary approach to assessing the situation of children and their best interests, through protocols of co-operation or guidance between professionals;
- ▶ in particular, involving child welfare professionals in support and assistance for families, assessment of the family situations, co-operation with other countries and decision making on the best interests of the child;
- ▶ significantly improving cross-border co-operation;
- ▶ supporting good case management through more support services for sponsors or potential beneficiaries, in particular, through timely and accurate information on the procedures and legal information on them;
- ▶ finding innovative ways to remove obstacles to family reunification (for example, Miles4Refugees, making better use of technology to restore family links and contact among families who have been separated);
- ▶ ensuring specific and child-centred procedures exist and function well, with the support of guardianship authorities;
- ▶ taking a holistic view of the process and ensuring measures which support re-establishment of family life.

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6. For other examples of practices, see Eurochild and SOS Children's Villages International (2017) *Let children be children: lessons from the field on the protection and integration of refugee and migrant children in Europe*, <https://bit.ly/2WTbfMi>; UNICEF (2019), *Building on promising practices to protect children in migration across the European Union*, <https://uni.cf/3bICfGF>; UNHCR (2018), *Families Together: family reunification in Europe for refugees*, <https://bit.ly/2BsJ3Y4>.

# Definitions

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For the purposes of this handbook, the following definitions are used:

- ▶ Child: “every human being below the age of 18 years unless under the law applicable to the child majority is attained earlier”.<sup>7</sup>
- ▶ Migrant children: children having crossed borders for whatever reason.
- ▶ Refugee children: children entitled to international protection.
- ▶ Asylum seekers: “individuals who are seeking international protection”.<sup>8</sup>
- ▶ Unaccompanied children: “children ...who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so”.<sup>9</sup>
- ▶ Separated children: “children ... who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members”.<sup>10</sup>
- ▶ International protection: refugee status or subsidiary protection.
- ▶ Family reunification: the process of re-forming in the host state of a family previously existing elsewhere, including a range of legal processes and a variety of forms.
- ▶ Sponsor: the family member in a host state, who wants to be reunited with his or her family members.
- ▶ Beneficiary: the family member who wants to join the sponsor in the host state for the purpose of family reunification.

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7. United Nations Convention on the Rights of the Child (“UNCRC”) (20 November 1989), Article 1. In EU law, a similar interpretation is applied under Article 2(l) EU Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.
  8. Convention relating to the Status of Refugees (adopted 28 July 1951) 189 UNTS 137 and Protocol relating to the Status of Refugees (adopted 31 January 1967) 606 UNTS 267 (“1951 Refugee Convention”).
  9. UN Committee on the Rights of the Child (“CRC Committee”), *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, (“General Comment 6”), paragraph 7. See also UNHCR, *Guidelines on policies and procedures in dealing with unaccompanied children seeking asylum*, February 1997, p. 1; UNHCR, *Refugee children: guidelines on protection and care*, February 1994, p. 121.
  10. CRC Committee, General Comment 6, paragraph 8.





## Part I

# Relevant legal principles and provisions concerning family life and family reunification

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**T**his part provides an overview of the legal principles concerning family reunification issues, in particular as regards children in the context of international migration and adults with international protection needs. It will assist policy makers and practitioners by identifying key sources of law and guidance at a regional level, including provisions of the European Convention on Human Rights<sup>11</sup> and the United Nations Convention on the Rights of the Child, as well as reviewing family reunification provisions in specific migration instruments.

This part of the handbook does not aim to provide a comprehensive analysis of all relevant international and regional legal standards, nor does it provide a detailed technical explanation for specialist actors of the full range of issues that arise in this complex field. Instead, it focuses on introducing the central legal concepts relating to family reunification to a general audience of policy makers and practitioners. It acknowledges how a state's immigration law and human rights responsibilities may be seen to compete in this area, and explores how this question has been examined by the European Court of Human Rights and addressed in specific legal provisions in defined circumstances (such as family reunification in the case of a refugee child).

Traditionally, immigration law is a discipline in which the state has the sovereign right to control the entry and residence of foreign nationals in its territory. However, this sovereign right to control immigration is conditioned by international and European human rights law, where family reunification is linked to the general right to respect for family life, a human right covering a wide range of topics. In certain circumstances, the right to respect for family life may require states to allow entry and residence based on family ties. Chapter 1 discusses family reunification from the perspective of the right to respect for family life and the extensive jurisprudence concerning the precise circumstances in which host states are under the obligation to allow

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11. Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 5 (1950) and its Protocols.

for the entry and residence of foreign nationals based on family ties. As the right to respect for family life does not offer absolute protection, host states may condition the entitlement to family reunification by defining which family members are eligible and the procedural and substantive rules to apply for family reunification. Chapter 1 therefore also discusses the extent to which the host state may impose procedural and substantive requirements for family reunification and the various definitions of family which determine the circle of persons entitled to family reunification under human rights law.

While there is no explicit provision on family reunification in the 1951 Refugee Convention, Chapter 2 focuses on the international guidance on refugees which promotes the principle of family unity. Chapter 3 elaborates on the EU law pertinent to family reunification, reflecting on the substantive right to family reunification provided under the EU Family Reunification Directive and on related issues in the EU Dublin Regulation and other legal texts.

Against the growing international recognition of the need to fully respect the principle of the best interests of the child, Chapter 4 considers the implications of the cross-cutting principles on both decision making and procedural safeguards for family reunification concerning refugee and migrant children. This chapter highlights the need for a proper assessment of the individual circumstances of the child and for child participation, and provides specific guidance for family reunification from the perspective of children. This chapter also points to the need for the involvement of child protection services and the underlying importance of effective cross-border and inter-agency multidisciplinary approaches in such cases. It should equally be stressed that all cited legal instruments should not be interpreted and applied in isolation from one another, but in conjunction.

## Chapter 1.

# Family reunification in human rights law

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**T**he right to respect for family life is enshrined in numerous international and regional human rights treaties<sup>12</sup> and typically includes, on the one hand, a positive obligation of states to protect the family and, on the other hand, a negative obligation prohibiting any unlawful or arbitrary interference with the exercise of the right to family life. Each type of obligation has been interpreted by human rights monitoring bodies as implying, in certain circumstances, obligations relating to family reunification.

The European Convention on Human Rights does not contain a right to family reunification as such, but through interpretation of Article 8 of the Convention, the right to respect for family life includes aspects of family reunification. The International Covenant on Civil and Political Rights (ICCPR) does not provide for an explicit right to family reunification either: Article 17 provides for a general right to respect for family life and Article 23 refers to the protection of the family, which read jointly have been applied in family reunification contexts. The United Nations Convention on the Rights of the Child (UNCRC) also does not provide for a substantive right to family reunification, but contains specific provisions on family reunification such as those in Article 10, which call for the expeditious examination of family reunification applications.<sup>13</sup> The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPMW) and the European Social Charter explicitly refer to family reunification for foreign workers.

This chapter examines states' obligations relating to family reunification from the perspective of their obligations to respect the right to family life. This chapter also discusses the circle of persons considered to represent one's family, as seen from the perspective of international and European human rights law.

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12. Universal Declaration of Human Rights ("UDHR"), Articles 12 and 16(3); International Covenant on Civil and Political Rights ("ICCPR"), Articles 17 and 23(1); International Covenant on Economic, Social and Cultural Rights ("ICESCR"), Articles 10(1); UNCRC preamble, Articles 9, 16; International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families ("ICPMW") Articles 14 and 44(1); European Social Charter (revised) ("RESC"), ETS No. 163 (1996) Part 1, principle 16 and Part 2, Article 16; European Convention on Human Rights, Article 8; EU Fundamental Rights Charter ("EU Charter"), Article 7.

13. See Chapter 4 on the specific guidance concerning family reunification involving children.

## 1.1. State obligations relating to the right to family life

**Balance with territorial sovereignty and migration control.** Although not explicitly mentioned in the text of the European Convention on Human Rights, the European Court of Human Rights has held that in decisions concerning immigration, states must respect the right to family life, within the meaning of Article 8 of the Convention.<sup>14</sup> Immigration law is traditionally a field in which states have a wide margin of appreciation in determining whether an immigration decision is in accordance with the right to respect for private and family life. In every case concerning immigration and Article 8 of the Convention, the Court refers to the assertion that it is a matter of well-established international law that a state is entitled to control the entry of aliens into its territory and their residence there.<sup>15</sup>

In testing compliance with Article 8 of the Convention, the European Court of Human Rights balances the competing individual interest to preserve family life with the state interest to maintain immigration control. The extent of the margin of appreciation states have depends on the circumstances of the case. Generally, it can be held that the margin of appreciation is wider in cases which involve the admission and entry of newly arriving immigrants. This means that states have broad discretion to determine eligibility for family reunification. Therefore, in cases involving admission and entry, generally it must be ascertained whether the state is under a positive obligation to allow for residence.<sup>16</sup> By contrast, in cases involving settled migrants whose residence is revoked or not renewed, an interference with the right to family life is assumed and the relevant question to be addressed is whether there is a justification for the interference following the test of Article 8(2) of the Convention.<sup>17</sup>

In some immigration cases, it is difficult to make a sharp distinction between admission and the termination of residence. For instance in a case concerning the expiration of lawful residence followed by an extended period of unlawful residence, it is unclear whether a removal decision would amount to an interference with the right to respect for family life, or whether the host state is under a positive obligation to allow for residence. In such cases, the European Court of Human Rights has established that in all cases, a fair balance must be struck between the competing interests involved.

Article 8 of the European Convention on Human Rights provides for the right to family life, but does not protect the right to choose in which country family life is exercised: it does not imply a right to choose the country of domicile.<sup>18</sup> The fact that the applicants wish to reside in the host state is generally not a decisive factor in the balancing of interests.<sup>19</sup> When considering family reunification in the host country, the European Court of Human Rights generally takes into account the extent to which family life is effectively ruptured, the extent of the ties in the host state, and whether there are insurmountable obstacles in the way of the family living in the country of

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14. *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, (28 May 1985), Series A No. 94.

15. See, among others, *Jeunesse v. the Netherlands* [GC], No. 12738/10, 3 October 2014.

16. *Gül v. Switzerland*, 19 February 1996, Reports 1996-I.

17. See *Boultif v. Switzerland*, No. 57273/00, ECHR 2001-IX, paragraph 39.

18. See *Rodrigues da Silva and Hoogkamer v. the Netherlands*, No. 50435/99, ECHR 2006-I, paragraph 39.

19. In *Jeunesse v. the Netherlands* (2014), the Court however considered that – despite there being no objective obstacles to exercise family life in Suriname – the children would experience “a certain degree of hardship” were they to continue family life with their mother in Suriname.

origin of one or more of them.<sup>20</sup> Other elements include whether there are factors of immigration control (for example, a history of breaches of immigration law) or considerations of public order weighing in favour of exclusion, elements relating to the best interests of a child and whether the separation was voluntary or lawful.<sup>21</sup>

Similarly, the ICCPR does not recognise a right for migrants to enter or reside in the territory of a state party. However, “in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of [...] respect for family life arise”.<sup>22</sup> Once persons are allowed to enter the territory, they “may not be subjected to arbitrary or unlawful interference with their ... family”.<sup>23</sup> Thus, in certain circumstances “a refusal of family reunification can be considered an arbitrary or unlawful interference with the right to family life under Article 17 ICCPR”.<sup>24</sup>

**Positive obligation to protect the family.** Multiple international and European human rights instruments recognise the family as the “natural and fundamental group unit of society,” which is “entitled to protection by society and the State”.<sup>25</sup> Since the right to found a family implies, in principle, the possibility to live together, appropriate measures should be adopted “to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons.”<sup>26</sup>

#### Positive obligation to allow for family reunification derived from the right to family life

In *El-Hichou v. Denmark*, the author, aged 14 at the time of the events, entered Denmark irregularly, seeking to reunite with his father who resided lawfully there and was the primary caregiver of the author. The Danish authorities rejected the request for family reunification and ordered the author to leave the territory. The UN Human Rights Committee (CCPR) considered that the decisions of the Danish authorities would, if implemented, entail a violation of Article 23 (protection of the family) and Article 24 (right of children to special protection measures) ICCPR. The CCPR observed that a child “cannot be held responsible for any decisions taken by his parents in relation to his custody, upbringing and residence”.<sup>27</sup>

20. *Rodrigues da Silva and Hoogkamer v. the Netherlands* (2006), paragraph 39.

21. *Solomon v. the Netherlands (dec.)*, No. 44328/98, 5 September 2000. See M.A.K. Klaassen (2019), “Between facts and norms: Testing compliance with Article 8 ECHR in immigration cases”, *Netherlands Quarterly of Human Rights*.

22. UN Human Rights Committee (“CCPR”) *General Comment No. 15: The Position of Aliens Under the Covenant*, 11 April 1986, paragraph 5.

23. *Ibid.*, paragraphs 6-7.

24. Chetail V. (2014), “The transnational movement of persons under general international law - Mapping the customary law foundations of international migration law” in Chetail V. and Bauloz C. (eds), *Research Handbook on International Law and Migration*, Edward Elgar Publishing, p.42.

25. UDHR Article 16(3); ICCPR Article 23(1); ICESCR Article 10(1); ICPMW Article 44(1); RESC Part 1, principle 16 and Part 2, Article 16; UNCRC Preamble. According to the ICESCR, “the widest possible protection and assistance” should be provided to the family.

26. CCPR, *General comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses*, 27 July 1990, (“General Comment 19”) paragraph 5.

27. CCPR, *El-Hichou v. Denmark*, Comm. No. 1554/2007, UN Doc. CCPR/C/99/D/1554/2007, 20 August 2010, paragraphs 7.4 and 8.

Moreover, every child has, “as far as possible, the right to know and be cared for by his or her parents.”<sup>28</sup> Article 9(1) UNCRC contains a general obligation not to separate a child “from his or her parents against their will, except when [...] such separation is necessary for the best interests of the child.” A child who is separated from one or both parents has the right “to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests” (art. 9(3) UNCRC). This right also applies to “any person holding custody rights, legal or customary primary caregivers, foster parents and persons with whom the child has a strong personal relationship.”<sup>29</sup>

There is a limited number of cases in which the European Court of Human Rights has held that a state was under an obligation to allow family reunification, due to a positive obligation for the state to admit a new immigrant based on family ties.

#### **Positive obligation to allow for family reunification derived from the right to family life**

In *Tuquabo-Tekle and Others v. the Netherlands* the European Court of Human Rights held that the Netherlands was under the positive obligation to allow for the entry and residence of a 15-year-old girl from Eritrea seeking to be reunited with her mother who had received international protection status in the Netherlands.<sup>30</sup> The Court held that there were exceptional circumstances in this case as the girl was removed from school by her caregiver in her country of origin and was facing an arranged marriage there.

#### **Positive obligation to allow for family reunification derived from the right to family life**

The case of *Şen v. the Netherlands* concerned the family reunion of the daughter of a Turkish family residing lawfully in the Netherlands.<sup>31</sup> The daughter remained in Turkey after her parents moved to the Netherlands. In the Netherlands, two further children were born who attended school there. The European Court of Human Rights held that it could not be expected from the entire family to give up their residence status in the Netherlands and that settling in the Netherlands was the most appropriate way to develop family life. The integration of the two children born in the Netherlands was an important factor in finding this conclusion.

28. UNCRC, Article 7(1).

29. CRC Committee, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration* (art. 3, paragraph 1), 29 May 2013, UN Doc. CRC/C/GC/14 (“General Comment 14”), paragraph 60.

30. *Tuquabo-Tekle and Others v. the Netherlands*, No. 60665/00, 1 December 2005.

31. *Şen v. the Netherlands*, No. 31465/96, 21 December 2001.

### No positive obligation to allow for family reunification derived from the right to family life

The case of *I.A.A. and Others v. the United Kingdom*<sup>32</sup> concerned eight Somali siblings seeking family reunification with their mother who resided in the United Kingdom due to marriage with a person granted international protection there. The European Court of Human Rights noted that it could not be held that the United Kingdom was under the positive obligation to allow for the entry and residence of the applicants, because neither the applicants nor their mother were refugees, had been separated for over 11 years and, despite existing hardship, there were no insurmountable obstacles for the mother to relocate to Ethiopia to enjoy family life with them there.

**Negative obligation prohibiting unlawful or arbitrary interference.** Article 17 ICCPR, Article 16 UNCRC and Article 8 of the European Convention on Human Rights prohibit unlawful or arbitrary interference with one's family life. The term "unlawful" indicates that interference authorised by states can only take place on the basis of law. For CCPR, the expression "arbitrary interference" guarantees that even interferences provided for by law "should be in accordance with the provisions, aims and objectives of the [ICCPR] and should be, in any event, reasonable in the particular circumstances".<sup>33</sup> The CCPR has interpreted the concept of "reasonableness" as requiring that any interference "must be proportional to the end sought and be necessary in the circumstances of any given case".<sup>34</sup>

In *Faraq El Dernawi v. Libya*, the Libyan authorities confiscated the passports of a woman and children who had been granted family reunification with their husband/father, recognised as a refugee in Switzerland.<sup>35</sup> According to the CCPR, the actions of Libyan authorities "amounted to a definitive, and sole, barrier to the family being reunited in Switzerland". It could not reasonably be expected from a refugee to return to his country of origin. The CCPR concluded that Libya had violated Article 17 (arbitrary interference with family life), Article 23 (violation of obligation to respect the family unit) and Article 24 (right of children to special protection measures) ICCPR.

The European Court of Human Rights uses the same test to assess if the interference with the right to family life constituted a violation of Article 8 of the Convention. Any interference must be prescribed by law and pursue a legitimate aim. Measures interfering with the right to family life must not go beyond what is necessary to attain the legitimate aim pursued and must be necessary in a democratic society. In the latter context, the proportionality of the interference must be assessed.

32. *I.A.A. and Others v. the United Kingdom* (dec.), No. 25960/13, 8 March 2016.

33. CCPR, General Comment No. 16: Article 17 (Right to Privacy) *The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 8 April 1988, ("General Comment 16"), paragraph. 4.

34. CCPR, *Nicholas Toonen v. Australia*, Comm. No. 488/1992, UN Doc. CCPR/C/50/D/488/1992, 31 March 1994, paragraph 8.3.

35. CCPR, *Faraq El Dernawi v. Libya*, Comm. No. 1143/2002, UN Doc. CCPR/C/90/D/1143/2002, 31 August 2007.



Irregular entry and residence is a factor which the European Court of Human Rights takes into account in the balancing of interests.<sup>36</sup> The Court generally holds that family life which is established or strengthened in a time in which the applicants were aware of their precarious immigration status plays a limited role in the balancing exercise.<sup>37</sup> In cases involving fraud and abuse, the Court is particularly understanding of the states' interest not to allow residence based on family life.<sup>38</sup> The Court has held that children can be identified with the conduct of their parents in order to prevent parents from exploiting the immigration status of their children in order to obtain a right of residence for themselves.<sup>39</sup> This means that if parents, who caused the irregular residence of their children, can obtain a better residence status if their children would get regularised, states may use this as a reason to deny the children a residence status themselves.

**Procedural obligation to process family reunification requests expeditiously.**

Complementing the general obligation under Article 9(1) UNCRC not to separate a child from his or her parents against their will, Article 10(1) UNCRC provides that “applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner”. The European Court of Human Rights has established that family reunification applications where the sponsor is a refugee child should be assessed promptly, carefully and with particular diligence.<sup>40</sup>

In *Y.B. and N.S. v. Belgium* of 27 September 2018, the CRC Committee concluded on a violation of Article 10 UNCRC, because the Belgian authorities took more than 7 years to process a request for humanitarian visa – considered equivalent to a request for family reunification – for a child under a *kafalah* regime, and failed to take *de facto* family relations into account when rejecting the request.<sup>41</sup>

**Obligation to avoid adverse consequences for family members.** Article 10 of the UNCRC also requires that a family reunification request should not impact adversely on the applicants and their family members.

**Obligations to facilitate family reunification.** For migrant workers who are documented or in a regular situation, the ICPMW requires state parties to take measures “to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their dependent unmarried children.”<sup>42</sup> Moreover, on humanitarian grounds, states of employment shall also facilitate reunification of other family members of migrant workers.<sup>43</sup> According to

36. For instance, *Benamar v. the Netherlands (dec.)*, No. 43786/04, 5 April 2005.

37. *Nunez v. Norway*, No. 55597/09, 28 June 2011, paragraph 70.

38. *Antwi and Others v. Norway*, No. 26940/10, 14 February 2012.

39. *Butt v. Norway*, No. 47017/09, 4 December 2012.

40. See more on specific guidance on family reunification concerning children in Chapter 4 below.

41. CRC Committee, *Y.B. and N.S. v. Belgium*, Comm. No. 12/2017, 27 September 2018, UN Doc. CRC/C/79/D/12/2017.

42. ICPMW, Article 44(2).

43. *Ibid.*, Article 44(3).

Article 19 of the European Social Charter, states parties undertake “to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory”.

## 1.2. Definition of the family

This section discusses the definition of the family in human rights instruments, in the context of the right to respect for family life, in general, and family reunification implications, in particular.<sup>44</sup> The establishment of family life does not automatically require that states allow for entry and residence of the family member. As discussed in section 1.1 above, decisions regarding the right to family life always involve a balancing of the competing individual and state interests.

**Definition of family: general.** The term “family” in Article 17 ICCPR should be given “a broad interpretation to include all those comprising the family as understood in the society of the State party concerned”.<sup>45</sup> In Article 16 UNCRC, “family” must be interpreted “in a broad sense to include biological, adoptive or foster parents or, where applicable, the members of the extended family or community as provided for by local custom”, in accordance with Article 5 UNCRC.<sup>46</sup> Both the ICCPR and the UNCRC thus adopt a broad definition of the family, attaching importance to how family is understood in the specific local context.

According to the European Court of Human Rights, the existence or non-existence of family life within the meaning of Article 8 of the Convention is essentially a question of fact depending on the real existence in practice of close personal ties.<sup>47</sup> Still, the Court provides guidance on specific forms of family life, e.g. between spouses, unmarried partners, and parents with children.

### 1.2.1. European Convention on Human Rights

**Spouses and unmarried partners.** The European Court of Human Rights uses an inclusive definition of the family which includes spouses and persons in a duly attested relationship.<sup>48</sup> The Court has previously held that for a spousal relationship to amount to family life, the marriage must be recognised according to the private international law of the contracting party involved.<sup>49</sup> In this context, the Court held that there was no family life between child spouses as the marriage was not recognised under Swiss private international law.<sup>50</sup> With regard to unmarried partnerships, the Court has established a non-exhaustive list of factors that might be taken into account in establishing the genuineness of a partnership relation. These factors are the cohabitation of the partners, the length of their relationship, the presence of

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44. See more on the personal scope of family reunification and notable elements of national law in Chapter 5 below.

45. CCPR, General Comment 16, paragraph 5.

46. CRC Committee, General Comment 14, paragraph 59.

47. *K. and T. v Finland* [GC], No. 25702/94, ECHR 2001-VII, paragraph 150.

48. *Al-Nashif v. Bulgaria*, No. 50963/99, 20 June 2002, paragraph 112.

49. *Z.H. and R.H. v. Switzerland*, No. 60119/12, 8 December 2015.

50. *Ibid.*, paragraph 44.

children and other factors that demonstrate the commitment between the partners.<sup>51</sup> In case member states recognise heterosexual partnerships for the purpose of family reunification, they are obliged to acknowledge that same-sex partners are also eligible for family reunification.<sup>52</sup>

**Parents and children.** As a rule, there is always family life between parents and children born from a marriage-based relationship.<sup>53</sup> The existence of family life continues when parent and child no longer cohabit.<sup>54</sup> Only in exceptional circumstances can the family life between parent and child be considered not to exist.<sup>55</sup> The demonstrable interest in and commitment by a parent to the child are factors to be taken into account to establish family life.<sup>56</sup>

**Adopted children and foster children.** The relations between an adoptive parent and an adopted child are as a rule of the same nature as the family relations protected by Article 8 of the European Convention on Human Rights.<sup>57</sup> However, states enjoy a wide margin of appreciation in the area of adoption and there is no obligation resulting from the Convention for a state to grant recognition to all forms of guardianship as adoption, such as “kafala”.<sup>58</sup> The Court has stated that the obligations imposed by Article 8 in the field of adoption and the effects of adoption on the relationship between adopters and those being adopted must be interpreted in light of the Hague Convention of 29 May 1993 on the Protection of Children and Cooperation in respect of Intercountry Adoption, the United Nations Convention of 20 November 1989 on the Rights of the Child and the European Convention on the Adoption of Children.<sup>59</sup>

Even in the absence of a biological tie and of a parental relationship legally recognised by the respondent state, the European Court of Human Rights found that there existed family life between the foster parents who had cared for a child on a temporary basis and the child in question, on account of the close personal ties between them, the role played by the adults vis-à-vis the child, and the time spent together.<sup>60</sup>

**Other family members.** For the relationship between family members outside the “core family” to be considered family life, the European Court of Human Rights has held that there should be established further elements of dependency, involving “more than the normal emotional ties”. This is the case for adult descendants<sup>61</sup>, nephews and nieces<sup>62</sup>, and family members in the ascending line.<sup>63</sup> The requirement of more than normal emotional ties implies a high threshold as the Court has estab-

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51. *Al-Nashif v. Bulgaria* (2002), paragraph 112.

52. *Pajić v. Croatia*, No. 68453/13, 23 February 2016.

53. *Ciliz v. the Netherlands*, No. 29192/95, ECHR 2000-VIII, paragraph 59.

54. *Berrehab v. the Netherlands*, 21 June 1988, Series A No. 138, paragraph 21.

55. *Boughanemi v. France*, No. 22070/93, 24 April 1996, paragraph 35.

56. *L v. the Netherlands*, No. 45582/99, ECHR 2004 IV, paragraph 36.

57. *Kurochkin v. Ukraine*, No. 42276/08, 20 May 2010.

58. *Harroudj v. France*, No. 43631/09, 4 October 2012, paragraph 51; *Chbihi Loudoudi and Others v. Belgium*, No. 52265/10, 16 December 2014.

59. *Pini and Others v. Romania*, nos. 78028/01 and 78030/01, ECHR 2004-V (extracts), paragraphs 139-140.

60. *Moretti and Benedetti v. Italy*, No. 16318/07, 27 April 2010, paragraph 48; and *Kopf and Liberda v. Austria*, No. 1598/06, 17 January 2012, paragraph 37.

61. *A.W. Khan v. the United Kingdom*, No. 47486/06, 12 January 2010, paragraph 32.

62. *Javeed v. the Netherlands (dec.)*, No. 47390/99, 3 July 2001.

63. *Senchishak v. Finland*, No. 5049/12, 18 November 2014.

lished that care for the family member in the host state must be the only option.<sup>64</sup> The relationship between a grandparent and a child is considered to be family life if it can be established that there are close personal ties between the child and the grandparent.<sup>65</sup> The same applies to siblings who have taken the role of a parent in taking care of each other.

### 1.2.2. United Nations Convention on the Rights of the Child

In the UNCRC, the family reunification provisions concern parents and their children. The term “parents” should be interpreted broadly, as including biological, adoptive or foster parents or other members of the extended family or community.<sup>66</sup> This definition appears broader than the approach of the European Court of Human Rights, which requires more than normal emotional ties for members of the extended family, as described above. The CRC Committee and the UN Committee on Migrant Workers also refer to family reunification of children with their siblings in their Joint General Comment No. 4/23.<sup>67</sup>

In *Y.B. and N.S. v. Belgium*, the CRC Committee held that Article 10 UNCRC does not oblige a state party to recognise the right to family reunification of children who are taken charge of under a *kafalah* regime. However, when assessing the best interests of the child, the state party has to take into consideration the existing *de facto* relations between the child and the applicants, developed on the basis of *kafalah*. In assessing the preservation of the family environment and the maintenance of ties as factors that need taking into account when considering the child’s best interests, “the term ‘family’ must be interpreted in a broad sense to include biological, adoptive or foster parents or, where applicable, the members of the extended family or community as provided for by local custom (art. 5)”.<sup>68</sup>

### 1.2.3. International Convention on the protection of migrant workers

In Article 44(2) ICPMW, the protection relating to family reunification applies to spouses or persons who have with the migrant worker a relationship equivalent to marriage, as well as their dependent unmarried children.<sup>69</sup> The ICPMW does not define “family” in the context of the right to respect for family life.

64. Ibid., paragraph 57.

65. *Marckx v Belgium*, 13 June 1979, Series A No. 31.

66. CRC Committee, General Comment 14, paragraph 59. See UNCRC, Article 5.

67. UN Committee on Migrant Workers and CRC Committee, *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, 16 November 2017, UN Doc. CMW/C/GC/4-CRC/C/GC/23 (“CRC Committee General Comment 23”), paragraphs 32, 37 and 38. See more guidance on family reunification for refugee and migrant children in Chapter 4 below.

68. CRC Committee, *Y.B. and N.S. v. Belgium* (2017).

69. ICPMW, Article 44(2).

## Chapter 2.

# Family reunification in international refugee law and in the United Nations Global Compacts

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**P** **inciple of family unity.** The 1951 Refugee Convention does not contain provisions on family reunification. Nevertheless, the Final Act of the UN Conference of Plenipotentiaries states that the “unity of the family ... is an essential right of the refugee”. Governments are recommended to take the necessary measures to protect the refugee’s family, especially when the head of family has fulfilled the necessary conditions for admission to a certain country. Particular emphasis is also put on the protection of children.<sup>70</sup> Moreover, various soft law instruments, such as the New York Declaration for Refugees and Migrants, the Global Compact for Safe, Orderly and Regular Migration (GCM) and the Global Compact on Refugees (GCR), incorporate a political commitment to facilitate family reunification.

**Derivative refugee status.** The UNHCR suggests that one way of maintaining family unity is granting derivative refugee status to family members of a recognised refugee who do not qualify for refugee status in their own right – unless this is incompatible with the personal status of these family members (e.g. because he or she is a national of the country of asylum).<sup>71</sup>

**Definition of the family.** At the minimum, the UNHCR considers that the spouse and children should benefit from the principle of family unity; “other dependants, such as aged parents of refugees, are normally considered if they are living in the same household”.<sup>72</sup> The principle of family unity can only work in favour of dependants, not against them: dependants can always apply for recognition as refugees themselves.<sup>73</sup>

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70. UNHCR, “Final Act of the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons”, 25 July 1951, UN Doc. A/CONF.2/108/Rev.1. According to UNHCR, this recommendation is “observed by the majority of States, whether or not parties to the 1951 Convention or to the 1967 Protocol. See UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, UN Doc. HCR/1P/4/ENG/REV. 3, paragraph 183 (“UNHCR Handbook”). See also UNHCR, *The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied*, January 2018, 2nd edition; UNHCR, *The “Essential Right” to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, January 2018, 2nd edition.

71. UNHCR Handbook, paragraph 184. See also UNHCR, *RSD Procedural Standards - Processing Claims Based on the Right to Family Unity*, 2016.

72. UNHCR Handbook, paragraph 185.

73. Ibid.

**Best interests of the child.** The UNHCR advocates that where feasible, family reunification should generally be regarded as being in the best interests of the child.<sup>74</sup> Prior to reunification, an assessment should be carried out in order to confirm that such a decision is in fact in the best interests of the child (see more on cross-cutting principles concerning children in Chapter 4 below). This should be prompt so as to avoid delay in reunification. The UNHCR has advised caution with respect to the assessment of a child's feelings towards family reunification, taking special account of any reluctance on the part of the child to be reunited. Painful memories of the separation, feelings of anger at abandonment, or fear of having to live with persons with whom the child is not familiar (where a parent has remarried, for instance) should be given careful consideration.<sup>75</sup>

**Commitments to facilitate family reunification: general.** As part of the commitments for migrants within the 2016 New York Declaration for Refugees and Migrants, States "will consider facilitating opportunities for safe, orderly and regular migration, including, as appropriate, ... family reunification".<sup>76</sup> The GCM includes as one of the actions in order to expand and diversify pathways for regular migration: "Facilitate access to procedures for family reunification for migrants *at all skills levels* through appropriate measures that promote the realization of the right to family life and the best interests of the child, including by reviewing and revising applicable requirements, such as on income, language proficiency, length of stay, work authorization, and access to social security and services."<sup>77</sup> Even though the GCM is not legally binding, it constitutes the first, inter-governmentally negotiated, cooperative framework on migration at the international level.<sup>78</sup>

**Commitments to facilitate family reunification: refugees.** Regarding refugees specifically, states commit in the New York Declaration to consider "flexible arrangements to assist family reunification".<sup>79</sup> The declaration encourages states to consider making available or expanding complementary pathways for admission of refugees, including through family reunification.<sup>80</sup> The GCR also promotes family reunification as a complementary pathway for admission.<sup>81</sup>

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74. UNHCR, *Guidelines on Assessing and Determining the Best Interests of the Child*, November 2018 ("UNHCR Guidelines 2018"), p. 74.

75. *Ibid.*, p. 68.

76. UN General Assembly, *New York Declaration for Refugees and Migrants: resolution / adopted by the General Assembly*, 3 October 2016, UN Doc. A/RES/71/1, paragraph 79.

77. Emphasis added. UN General Assembly, *Global Compact for Safe, Orderly and Regular Migration*, Objective 5: Enhance availability and flexibility of pathways for regular migration, paragraph 21, i), Resolution 73/195, UN Doc. A/RES/73/195, 11 January 2019.

78. *Ibid.*, paragraph 7.

79. UN General Assembly, *New York Declaration for Refugees and Migrants: resolution / adopted by the General Assembly*, 3 October 2016, UN Doc. A/RES/71/1, paragraph 79.

80. *Ibid.*, Annex 1. Comprehensive refugee response framework, paragraph 14 (a).

81. UN General Assembly, *Report of the United Nations High Commissioner. Part II. Global compact on refugees*. UN Doc. A/73/12 (Part II) (2018), paragraph 95.

## Chapter 3.

# Family reunification in EU law

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### 3.1. Charter of Fundamental Rights

In EU law, the right to family life and the best interests of the child are codified in Articles 7 and 24 of the Charter of Fundamental Rights of the EU (the Charter). The Charter only binds the institutions of the EU and its member states when they implement or apply EU law.<sup>82</sup> The rights laid down in the Charter that are similar to a right from the European Convention on Human Rights should be interpreted accordingly, meaning that Article 7 of the Charter should be interpreted in the same manner as Article 8 of the Convention.<sup>83</sup>

### 3.2. EU Family Reunification Directive

The EU Family Reunification Directive is the most relevant legal instrument for family reunification for persons entitled to international protection and for unaccompanied children as sponsors.<sup>84</sup> It provides for a substantive right to family reunification to members of the nuclear family, i.e. the spouse and children, including adopted children of either the sponsor or the spouse. In order to produce legal effect, the Directive needs to be transposed in the domestic law of the EU member states,<sup>85</sup> which are free to determine in secondary legislation further conditions for the exercise of the substantive right to family reunification.<sup>86</sup> The Directive provides for general conditions for family reunification but also calls for more favourable conditions for family reunification for refugees, containing exemptions for refugees from requirements concerning income, health insurance and accommodation.<sup>87</sup>

**Best interests of the child.** The Directive prescribes that the member states shall have due regard to the best interests of the child in the individual examination of applications for family reunification.<sup>88</sup> The European Commission has noted that the member states must take the child's well-being and the family's situation into consideration and must ensure that a child shall not be separated against their will.

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82. EU Charter, Article 51(1).

83. Ibid., Article 52(3).

84. European Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification ("EU Family Reunification Directive"), Article 4.

85. The EU Family Reunification Directive does not apply in Denmark, Ireland and the United Kingdom, as these Member States have opted out of the Directive.

86. See CJEU 4 March 2010, Case C-578/08 (*Chakroun*), paragraph 42.

87. EU Family Reunification Directive, Chapter V "Family reunification for refugees".

88. Ibid., Articles 5(5) and 17.



In line with the member states' obligation under Article 10 UNCRC, applications for family reunification shall be dealt with in a positive, humane and expeditious manner.<sup>89</sup>

**Individual proportionality test.** Furthermore, the member states shall take due account of the nature and solidity of the person's family relationships and the duration of the residence in the member state and of the existence of family, cultural and social ties with the country of origin in rejecting, withdrawing or refusing to renew a residence permit based on family reunification.<sup>90</sup> This obligation goes further than considering whether there are insurmountable obstacles to exercise the right to family life in the country of origin of the sponsor or the family member, which is the approach followed by the European Court of Human Rights.<sup>91</sup>

Other relevant provisions of the EU Family Reunification Directive are discussed in the respective sections of Part II on this handbook (Chapter 5 and 6).

### 3.3. EU Dublin Regulation

The EU Dublin Regulation<sup>92</sup> does not grant an individual the right to family reunification. The Dublin Regulation sets out the criteria to determine which member state of the EU is responsible for handling an application for international protection. Therefore, family members who are already in the European Union but in different member states may reunite in the state which is determined as being responsible for examining the application(s) for international protection. In order of priority of the Dublin criteria, the state responsible is the one (a) where a family member of an unaccompanied child is legally present;<sup>93</sup> (b) where resides a family member who is a beneficiary of international protection;<sup>94</sup> (c) where resides a family member whose asylum application is pending.<sup>95</sup> The other criteria do not relate to the family links, but to the state that issued residence documents or a visa, or the state through which the asylum applicant has entered or has resided in.

A member state is responsible for reuniting the unaccompanied child with the relative, provided that such reunification is in the best interests of the child, established through an individual examination assessing whether the relative can take care of the child.<sup>96</sup> Under the Regulation, the persons concerned must express their desire to join the family member in the other member state in writing before these criteria are applicable. At the same time, it is for the concerned member state to make a take-charge or a take-back request, in application of the criteria mentioned above.

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89. European Commission, "Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification", COM(2014) 210 final, pp. 25-26.

90. EU Family Reunification Directive, Article 17.

91. See section 3.3 above.

92. Regulation No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) ("EU Dublin Regulation").

93. Ibid., Article 8.

94. Ibid., Article 9.

95. Ibid., Article 10.

96. Ibid., Article 8(2).



Individuals who are subjected to either a take-charge or take-back request from another member state have the right to an effective remedy against the transfer to that member state. But they do not have any legal remedy to seek such a transfer.<sup>97</sup>

### 3.4. Other EU legal texts

In addition to this specialised legal framework, the EU Reception Conditions Directive highlights the requirement for member states to take the best interests of the child into account including having regard to family reunification possibilities and to start tracing the members of the unaccompanied child's family, as soon as possible after an application for international protection is made.<sup>98</sup> The EU Qualification Directive provides unaccompanied children who have been granted international protection with the right to have a guardian or representative appointed, to have their family traced and, if their family members are present in the same member state but do not qualify for international protection, to have such family members granted residence permits and other benefits.<sup>99</sup>

Although outside the scope of this handbook, it should be noted that family reunification can also occur either by returning the child to the country of origin or by allowing the child's family to join him in a third country. In this respect, the EU Return Directive provides for certain safeguards with regard to return decisions and encourages the use of voluntary departures over forced removals and requires that states take due account of the best interests of the child, family life and the principle of *non-refoulement*.<sup>100</sup> Unaccompanied children can only be returned to family members, a nominated guardian or to adequate reception facilities.

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97. For further discussion on the application of the EU Dublin Regulation, see Council of Europe, Commissioner for Human Rights, Issue Paper (2017), pp. 29-31.

98. Directive 2013/33/EU of the European Parliament and the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), Article 23(2) and 24 (3).

99. Directive 2011/95/EU of the European Parliament and the 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), Article 23 and 31.

100. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Articles 5, 6, 7, 12 and 13.

## Chapter 4.

# Cross-cutting principles concerning refugee and migrant children

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In all cases concerning children, including administrative or judicial processes, there is growing international recognition of the need to fully respect the UNCRC, through both decision making and procedural safeguards in the field. In particular, the case law and international guidance highlight the need for a proper assessment of the individual circumstances of the child.

This chapter focuses on the general principles of non-discrimination; best interests of the child; the right to life, survival and development; and participation, and their implications in family reunification processes. With the CRC Committee and the UN Committee on Migrant Workers referring to the child's "right to family reunification", this chapter also discusses specific guidance on family reunification involving children.

International law and guidance also points to the need for the involvement of child protection services and not only immigration authorities, the importance of inter-agency multidisciplinary approaches to assessing the best interests of the child and the need for effective cross-border co-operation in cases involving children in migration. The last section of this chapter outlines the procedural aspects which are essential for the effective reunion of refugee and migrant children with their families.

### 4.1. General legal principles

The CRC Committee has identified four articles of the UNCRC as general principles: best interests of the child; non-discrimination; the right to life, survival and development; and respect for the views of the child. These principles should be applied when implementing all the other provisions of the UNCRC.<sup>101</sup> They are complemented by a discussion on the right to effective remedy.

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101. CRC Committee, *General Guidelines Regarding the Form and Content of Initial Reports to be submitted by States Parties under Article 44, Paragraph 1(a) of the Convention*, UN Doc. CRC/C/5, 1991, paragraphs 13-14.

Principle of the best interests of the child. In all actions concerning children, the best interests of the child shall be a primary consideration.<sup>102</sup> According to the CRC Committee, the best interests of the child are a threefold concept: a substantive right, an interpretative legal principle, and a rule of procedure. It concerns actions relating to both individual children and children as a group. The principle applies both to actions and to failure to take action in respect of children. It concerns measures directly concerning a child and measures that have an indirect effect on the child, that is to say when they are not the direct targets of the measure. The obligation to duly consider the child's best interests lies upon a wide range of actors: all public and private social welfare institutions, courts of law, administrative authorities and legislative bodies involving or concerning children, including authorities taking decisions in the realm of asylum and migration. The child's best interests should be considered in all cases.

The content of the best interests of the child must be determined on a case-by-case basis, according to the specific situation of the child, taking into account his or her personal context, situation and needs. The CRC Committee identified the child's views, the child's identity, care, protection and safety of the child, and the preservation of the family environment among the elements to be taken into account when assessing the best interests of the child. After the best interests of the child have been assessed, they must be weighed against other interests, for instance those of other children, parents, or other caretakers. According to the CRC Committee, the best interests of the child should have a "high priority" and not be just one of several considerations. As a consequence, "a larger weight must be attached to what serves the child best".<sup>103</sup>

## Art. 3(1) UNCRC



102. UNCRC, Article 3(1); Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies) ("Guidelines on child-friendly justice"), Section III; EU Charter, Article 24(2); See more on best interests of the child in section 10.2 below.

103. CRC Committee, General Comment 14, paragraphs 6; 17-20; 22-32; 36; 37; 39; 52-79.

In its case law, the European Court of Human Rights has highlighted the importance of taking the best interests of the child into account and has found violations of the Convention where insufficient attention was given to the child's best interests. For instance, in *El Ghatet v. Switzerland*, the Court found a violation of Article 8 of the Convention as the best interests of the child had not been sufficiently placed at the centre of the domestic court's reasoning in respect of family reunification.<sup>104</sup> The European Court of Human Rights consistently holds that the best interests of the child should be a primary<sup>105</sup> or even paramount<sup>106</sup> consideration in the balancing of interests, but it also stresses that children cannot be used as a "trump card" to get lawful residence in the host state.<sup>107</sup>

To conduct the balancing exercise between the competing individual interest to family life with the state interest to maintain immigration control, the European Court of Human Rights has analysed, among others, the existence of substantial family ties, obstacles in returning to the country of origin, the possible hardship to exercise family life in the country of origin, the age of children, the legal status or level of integration of the family members in the host country.<sup>108</sup> In such cases, the state has a wide margin of appreciation to determine eligibility for family reunification.<sup>109</sup> The Court held that when children are granted international protection and apply for family reunification, it is essential that their application is assessed promptly, carefully and with particular diligence ("*[...] rapidement, attentivement et avec une diligence particulière.*").<sup>110</sup> In a number of cases currently pending before the Court, the applicants claim that the excessive length of family reunification procedures amounted to a violation of Article 8 of the Convention.<sup>111</sup>

As noted above, EU law incorporates due regard for the best interests of the child in all decision processes, including those directly or indirectly concerning applications for family reunification.<sup>112</sup>

For UNHCR, whenever feasible, family reunification should generally be regarded as being in the best interests of the child.<sup>113</sup> Prior to reunification, an assessment should be carried out in order to confirm that such a decision is in fact in the best interests of the child. This should be prompt so as to avoid delay in reunification. In some circumstances, the tracing of and reunification with the family or relatives is not possible or not in the child's best interests. Where information becomes available to suggest that tracing or reunification could put the parents or other family members in danger, where it risks exposing or actually exposes the child to harm (for example, because the child has been subjected to abuse or neglect, and/or

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104. *El Ghatet v. Switzerland*, No. 56971/10, 8 November 2016, paragraph 53.

105. *X. v. Latvia* [GC], No. 27853/09, paragraph 95, ECHR 2013.

106. *Neulinger and Shuruk v. Switzerland* [GC], No. 41615/07, paragraph 135, ECHR 2010.

107. *El Ghatet v. Switzerland* (2016), paragraph 46.

108. *Şen v. the Netherlands* (2001); *Tuquabo-Tekle and Others v. the Netherlands* (2005); *Jeunesse v. the Netherlands* (2014); *I.A.A. and Others v. the United Kingdom* (2016).

109. *Gül v. Switzerland* (1996).

110. *Mugenzi v. France*, No. 52701/09, 10 July 2014, paragraph 52.

111. *Al H. and others v. Greece* (nos. 4892/18 and 4920/18), *Mimbenga v. Belgium* (No. 54634/18), *Totopa v. Spain* (No. 74048/17).

112. See Chapter 3 above.

113. UNHCR Guidelines 2018, p. 74.

where parents or family members may be implicated or have been involved in their persecution), or when it is opposed by the child or the parents, then great care and additional safeguards should be taken with this process.<sup>114</sup>

**Principle of non-discrimination.** Pursuant to the principle of non-discrimination, states should respect and ensure the rights enshrined in human rights instruments to all individuals subject to their jurisdiction, without distinction of any kind, such as “race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”.<sup>115</sup> As such, the right to protection of family life should be realised for every child “without any kind of discrimination, regardless of their residency or nationality status”, or of the status of their parents, legal guardians or family members.<sup>116</sup>

The prohibition of discrimination as enshrined in Article 14 of the European Convention on Human rights must always be invoked in combination with another substantive provision of the Convention – e.g. Article 8 of the Convention in cases relating to family reunification – and does not provide absolute protection. The contracting parties may derogate from the prohibition of discrimination provided that they offer a legitimate justification for doing so. For particular grounds of discrimination, the intensity of the scrutiny of such justification is stricter than for others. In cases involving discrimination grounds, such as sex and race, very weighty reasons must be brought forward for the differential treatment to be justified.<sup>117</sup> For the discrimination ground “other status”, which includes discrimination based on immigration status,<sup>118</sup> such strict scrutiny does not apply. To justify different treatment, a state needs to establish a reasonable relationship of proportionality between the means employed and the aim sought to be realised. A number of cases currently pending before the European Court of Human Rights discuss the different treatment in the family reunification policies between beneficiaries of refugee status and of subsidiary forms of international protection in several states.<sup>119</sup>

**Right of the child to be heard.** Each child who is capable of forming his or her own views has the right to express those views freely in all matters affecting them, including family reunification. These views should be given due weight in accordance with the age and maturity of the child.<sup>120</sup> Children should be heard separately from their parents, and their individual circumstances must be considered when deciding on

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114. Ibid., p. 74-75, 80-81, 83; UNCHR, *Guidelines on international protection: Child Asylum Claims under Articles 1 (A) 2 and 1 (F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, Geneva: 22 December 2009, (“UNHCR Guidelines 2009”), paragraph 68.

115. UNCRC, Article 2, ICCPR, Article 2(1); ICESCR, Article 2(2); European Convention on Human Rights, Article 14 and Protocol No. 12 to the Convention; 1951 Refugee Convention, Article 3.

116. UN Committee on Migrant Workers and CRC Committee, *Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration*, 16 November 2017, UN Doc. CMW/C/GC/3-CRC/C/GC/22 (“CRC Committee, General Comment 22”), paragraph 21.

117. See, for instance, *Biao v. Denmark* [GC], No. 38590/10, ECHR 2016.

118. *Bah v. the United Kingdom*, No. 56328/07, ECHR 2011; *Hode and Abdi v. the United Kingdom*, No. 22341/09, 6 November 2012.

119. See more on the different treatment between refugees and beneficiaries of subsidiary forms of protection in Chapters 5 and 6 below.

120. UNCRC, Article 12.

the family's case.<sup>121</sup> To be able to exercise their right to be heard in the context of family reunification, children have to be provided, in their own language, with all relevant information on their rights, services available, and the family reunification procedure.<sup>122</sup> Providing information about family reunification and family reunion early on is essential for the identification of possibilities for the child to be reunited with family members in another state without the need to make an asylum claim in the country of arrival.<sup>123</sup>

UNHCR has advised caution with respect to the assessment of a child's feelings towards family reunification taking special account of any reluctance on the part of the child to be reunited. Painful memories of the separation, feelings of anger at abandonment, or fear of having to live with persons with whom the child is not familiar (where a parent has remarried, for instance) should be addressed through counselling and social services, rather than interpreted as the child's definitive preference.<sup>124</sup>

**Right to life, survival and development.** The UNCRC requires states to establish an environment that ensures the holistic development of every child.<sup>125</sup> One of the risks of migration processes is family separation.<sup>126</sup> The lack of timely family reunification opportunities may expose unaccompanied and separated children to various risks, such as trafficking, sexual abuse and sexual exploitation, other forms of exploitation, or involvement in criminal activities which could result in additional harm.<sup>127</sup>

**Right to an effective remedy.** The European Convention on Human Rights provides for a right to an effective remedy (Article 13) when there is an arguable claim that the right to family life may have been violated. The remedy that is offered at the national level should be effective both in law and in practice.<sup>128</sup> In cases concerning the right to respect for family life, the right to an effective remedy requires that applicants have the ability to challenge a negative decision affecting entry and residence with sufficient procedural safeguards and thoroughness before an independent and impartial domestic court.<sup>129</sup> Article 47 of the EU Charter also provides for the right to an effective remedy for everyone whose rights and freedoms guaranteed by EU law are violated.

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121. CRC Committee General Comment 22, paragraph 37. See also more generally, CRC Committee, *General comment No. 12 (2009): The right of the child to be heard*, 20 July 2009, UN Doc. CRC/C/GC/12 ("CRC Committee, General Comment 12").

122. Ibid.

123. Council of Europe, *How to convey child-friendly information for children in migration*, A handbook for frontline professionals, (2018), <https://bit.ly/2MY8ki7>. See more on child-friendly information in the context of family reunification in Chapter 8 below.

124. UNHCR Guidelines 2018, p. 101.

125. UNCRC, Article 6.

126. CRC Committee, General Comment 22, paragraph 40.

127. Ibid., paragraph 41; CRC Committee, General Comment 6; Council of Europe, Group of Experts on Action against Trafficking in Human Beings ("GRETA"), 6th General Report on GRETA's activities (2017), Thematic section on trafficking in children; Council of Europe Lanzarote Committee, Special report *Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse* (3 March 2017).

128. *De Souza Ribeiro v. France*, [GC], No. 22689/07, ECHR 2012, paragraph 78.

129. Ibid., paragraph 83; *Al-Nashif v. Bulgaria* (2002), paragraph 121; *Liu v. Russia*, No. 42086/05, 6 December 2007, paragraph 59.

When family reunification is refused to a child and/or to his or her family, the child should be provided with child-friendly and age-appropriate information on the reasons of the decision and the right to appeal.<sup>130</sup> According to the CRC Committee and the Council of Europe Guidelines on Child-friendly justice, an effective remedy requires effective, child-sensitive procedures and in the context of migration, administrative and judicial proceedings affecting the child's own situation or that of their parents should be adapted to the needs and development of children.<sup>131</sup> Children must also have access to appeals mechanisms. And in the context of refugees and migration, children should be notified of the existence of a proceeding, any decision made and of the possibilities and implications of appeal.

## 4.2. Specific guidance on family reunification involving children

The UNHCR, the CRC Committee and the UN Committee on Migrant Workers have provided additional guidance on family reunification involving children.<sup>132</sup>

**Children as sponsors.** The decision as to whether a child should be reunited with his or her family should be based on a robust assessment in which the child's best interests are upheld as a primary consideration, and the child should be able to participate in this process.<sup>133</sup> Durable, rights-based solutions, including the possibility of family reunification, must be implemented without delay.

Family reunification in the country of origin cannot be pursued when there is a "reasonable risk" that it would amount to *refoulement*, that the child's human rights would be violated upon return, that the child would not be safe or provided with proper care and enjoyment of rights.<sup>134</sup> When family reunification in the country of origin is not in the child's best interests or not possible, measures for parents to reunify with their children and/or regularise their status should be put in place, in line with Articles 9 and 10 UNCRC.

In the case of undocumented children as sponsors of family reunification, states are advised to adopt guidelines in order to ensure that time limits, discretionary powers and/or lack of procedural transparency do not hinder the child's right to family reunification.<sup>135</sup> The Global Compact for Migration also provides that unaccompanied and separated children should be protected at all stages of migration, among others measures through the establishment of specialised procedures for family reunification.<sup>136</sup>

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130. CRC Committee, General Comment 23, paragraph 36.

131. *Ibid.*, paragraph 16; Guidelines on child-friendly justice, Section IV.

132. CRC Committee, General Comment 23, paragraphs 32- 38. See also in general CRC Committee, General Comment 6, paragraphs 79 – 83; UNHCR Guidelines 2009.

133. CRC Committee, General Comment 23, paragraph 34. See more on the principle of best interests of the child in section 4.1. above.

134. CRC Committee, General Comment 22, paragraph 33 and CRC Committee, General Comment 23, paragraph 35.

135. CRC Committee, General Comment 23, paragraph 33.

136. UN Global Compact for Safe, Orderly and Regular Migration, Objective 7: Address and reduce vulnerabilities in migration, paragraph 23, f).



For unaccompanied and separated children seeking asylum, tracing their parents and reuniting them with their family members is a priority, unless it becomes known that tracing or reunification could put family members in danger or that reunification would not be in the child's best interests (due to abuse, neglect or persecution).<sup>137</sup> The CRC Committee has urged states to expedite refugee status determination procedures in urgent cases of family tracing and reunification<sup>138</sup> and to establish mechanisms for family tracing.<sup>139</sup>

It is not uncommon for unaccompanied and separated children to reach the age of majority pending the outcome of the asylum or family reunification procedure. This entails the risk of their application for family reunification being rejected because as adult descendants, under certain national laws, they may no longer be entitled to family reunification or to the same additional guarantees they had as unaccompanied children.<sup>140</sup> On 12 April 2018, the CJEU ruled on case *A and S* that a person who is below the age of 18 at the time of his or her entry into the territory of a member state and the introduction of an asylum application, but who, in the course of the asylum procedure, attains the age of majority and is thereafter granted refugee status, must be regarded as a "minor" for the purposes of enjoying the child-specific provisions under the EU Family Reunification Directive.<sup>141</sup> The European Court of Justice has established, however, that an application for family reunification in such cases must be made within a reasonable time: in principle, within three months of the date on which the child is granted refugee status.

**Children as beneficiaries.** States of destination and transit are encouraged to develop "effective and accessible family reunification procedures", in order to avoid irregular and unsafe migration of children who remained in the country of origin and want to be reunited with their parents and/or siblings. States of origin are also encouraged to adopt measures to facilitate family reunification.<sup>142</sup>

**Overcoming financial and practical barriers.** To overcome financial barriers in family reunification procedures, states are encouraged to provide adequate financial support and other social services to the concerned children, parent(s), siblings and, where applicable, other relatives.<sup>143</sup>

### 4.3. Procedural principles

When children are involved, international guidance increasingly emphasises the importance of the following procedural principles: (i) the involvement of child

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137. UNCRC, Article 22(2). See also UNHCR Guidelines 2009, paragraph 68, and UNHCR, *Child protection Issue Brief: Family Tracing and Reunification*, January 2017.

138. CRC Committee, *Concluding observations on the combined fifth and sixth periodic reports of Spain*, 5 March 2018, UN Doc. CRC/C/ESP/CO/5-6, paragraph 43.

139. CRC Committee, *Concluding observations on the combined third to fifth periodic reports of Slovakia*, 20 July 2016, UN Doc. CRC/C/SVK/CO/3-5, paragraph 55.

140. For more details about the consequences of "aging-out" in EU member states see ECRE/ELENA *Legal note on aging out and family reunification*, June 2018.

141. CJEU, Case C-550/16 *A and S*, 12 April 2018.

142. CRC Committee, General Comment 23, paragraph 37.

143. *Ibid.*, paragraph 38.



protection actors next to migration authorities; (ii) a multidisciplinary and multi-agency approach; and (iii) cross-border co-operation.

**Involvement of child protection actors.** Authorities responsible for children's rights are encouraged to have a leading role in policies, practices and decision making when the rights of children in the context of international migration are concerned. Moreover, comprehensive child protection systems should mainstream the situation of these children in their programmes. The migration authorities "should also systematically assess and address the impacts on and needs of children in the context of international migration at every stage of policymaking and implementation."<sup>144</sup>

**Multidisciplinary approach.** When assessing the best interests of the child, a multidisciplinary team of qualified professionals should, as far as possible, be involved.<sup>145</sup> A multidisciplinary approach is also one of the general elements of child-friendly justice, identified in the Council of Europe Guidelines. This implies close co-operation between various professionals (such as lawyers, psychologists, immigration officials and social workers) in order to arrive at "a comprehensive understanding of the child, and an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation." While implementing a multidisciplinary approach, the child's right to private and family life as well as professional rules on confidentiality should be respected.<sup>146</sup>

**Cross-border co-operation.** The CRC Committee has recognised the importance of co-ordination among countries of origin, transit, and destination in addressing the needs of children in the context of international migration and in safeguarding their rights.<sup>147</sup> The EU Dublin Regulation also requires member states to closely co-operate when assessing the best interests of the child in transfer cases, thereby taking due account of family reunification possibilities, the child's well-being and social development, safety and security considerations, and the views of the child.<sup>148</sup> In cases of family reunification of unaccompanied and separated children, it may be difficult to provide the necessary co-operation framework for the implementation of protective solutions with cross-border elements. The 1996 Hague Convention on parental responsibility<sup>149</sup> can be an important instrument to realise cross-border co-operation, given that this convention aims "to build the structure for effective international co-operation in child protection matters" between different legal systems.<sup>150</sup>

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144. CRC Committee General Comment 22, paragraph 14.

145. CRC Committee, General Comment 14, paragraph 94.

146. Guidelines on child-friendly justice, paragraphs 16-18.

147. CRC Committee, General Comment 22, paragraph 49.

148. EU Dublin Regulation, Article 6(3).

149. The Hague 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.

150. The Seventh Meeting of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention – October 2017, "The application of the 1996 Hague Child Protection Convention to unaccompanied and separated children", Preliminary document No. 7 of July 2017, paragraph 31. On cross-border cooperation mechanisms in private international law to protect unaccompanied children, see also Corneloup S. et al., "Children on the move: a private international law perspective", 2017, pp. 26-32.

## Part II

# Promising examples of practice and law

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**T**his part sets out promising examples of law and practices in relation to family reunification procedures, grouped under seven headings, namely scope of the application, requirements, procedural safeguards, support to overcome various barriers, specific safeguards for unaccompanied children, support for integration, and co-operation. They draw from different types of measures and actions, from legal provisions to programmatic responses. Some are led by the action of authorities; others are led by NGOs or other stakeholders. These examples serve to encourage member states and other stakeholders involved to draw inspiration in order to improve family reunification processes to the benefit of both children and states themselves.

Some of these examples relate to the scope, substance and procedure of family reunification processes. In these cases, the description of selected examples of policy and legal provisions are followed by a summary of the elements which make these examples notable. Other examples relate to more practical dimensions of family reunification. Most examples provide where further information may be obtained.

## Chapter 5.

# Scope of the application for family reunification

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### 5.1. Definition of the beneficiary

In most states the right to family reunification of unaccompanied child refugees only extends to their parents.<sup>151</sup> The EU Family Reunification Directive extends the scope of the right to family reunification to the nuclear family (spouse and children, including adopted children).<sup>152</sup> The Directive, however, does provide for the family reunification of parents with their descendants if they are over 18, or of siblings, but leaves it to the discretion of member states to authorise family reunification to other family members. Despite the absence of a binding legal obligation to allow for family reunification outside the nuclear family, there is a need for a more inclusive definition of the family in order to provide for an effective protection of the right to respect for family life to fit the diversity of family situations (dependency, tradition or custom).<sup>153</sup> If adult descendants and siblings cannot be reunited, this might have a chilling effect on family reunification, including for unaccompanied children, with delays in the processing of their applications until they become adults or with parents being forced to choose between reunion with one child in Europe and abandoning another child in the country of origin, for example. The Council of Europe Commissioner for Human Rights recommended member states ensure that the definition of family members eligible for family reunification is appropriately broad.<sup>154</sup>

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151. Council of Europe, Commissioner for Human Rights, Issue Paper (2017), p. 36.

152. EU Family Reunification Directive, Articles 4(1) and 10(3).

153. UNHCR, *Families together: Family reunification in Europe for refugees*, 2019.

154. Council of Europe, Commissioner for Human Rights, Issue Paper (2017), p. 7.

**Adult descendants.** In the Netherlands, adult descendants who belonged to the family of the sponsor in the country of origin are also eligible for family reunification.<sup>155</sup> In the Dutch policy, an adult descendant is, however, excluded from family reunification if he or she did not live with his or her parents, provides for him- or herself, is married or in a stable relationship, or if he or she takes care of a child. The EU Family Reunification Directive leaves it to the discretion of the EU member states to allow for the family reunification of adult descendants where they are objectively unable to provide for their own needs on account of their state of health.<sup>156</sup> The European Commission has reported that 15 other EU member states have implemented this option in their domestic legislation.<sup>157</sup>

**Siblings.** In the Netherlands, unaccompanied children who have received international protection can apply for reunification with their parents and as well as with their siblings.<sup>158</sup> Where the legal basis for the family reunification of parents is the EU Family Reunification Directive, siblings are afforded the right to family reunification with the unaccompanied child sponsor on the basis of Article 8 of the European Convention on Human Rights.<sup>159</sup> The two procedures are handled by the caseworker of the Dutch Immigration and Naturalisation Service together, so the applications are processed as one family. Even though the procedures are different, the timeline for family reunification is the same. It must be noted that where an application for the family reunification of the parents of an unaccompanied child sponsor is free of charge, an administrative fee is charged for the application of siblings.

**Other family members.** Romanian legislation provides for family reunification of any other relative of an unaccompanied child sponsor in case first-degree relatives in the ascending line or legal guardians do not exist or cannot be identified.<sup>160</sup> As the EU Family Reunification Directive does not prevent member states from adopting or maintaining more favourable provisions,<sup>161</sup> EU member states are allowed to have a broader definition of the family than that prescribed by the Directive.

**To be noted:** A broadly formulated definition of the family to include adult descendants, siblings and other family members in order to restore the unity of the family, specifically in the context of family reunification of sponsors with international protection.

155. See Dutch Aliens Circular 2000, Article C2/4.1, containing guidelines for case workers. The Dutch Council of State has held that when a family member started living independently after the departure of his family members, this does not mean that the family member may be excluded from family reunification. See Council of State, 23 August 2019, ECLI:NL:RVS:2019:2863.

156. EU Family Reunification Directive, Article 4(2).

157. See European Commission, Report of the European Commission to the Parliament and the Council on the implementation of Directive 2003/86/EC on the right to family reunification, COM(2019) 162 final, p. 7.

158. Applicants must make an application for family reunification based on Article 3.13 of the Dutch Aliens Decree, which is the legal basis for applications for family reunification where the sponsor is not a refugee. That is why an administrative fee is levied for applications of siblings, but not for spouses, children and parents (in case of unaccompanied children).

159. For more details on the scope of “family life” under human rights law see Section 1.2. above.

160. Article 46(3) Government Emergency Ordinance No. 194/2002 regarding the regime of foreigners in Romania.

161. EU Family Reunification Directive, Article 3(2).

## 5.2. Definition of the sponsor: the distinction between refugees and beneficiaries of subsidiary protection

The EU Family Reunification Directive explicitly excludes beneficiaries of subsidiary forms of protection as sponsors.<sup>162</sup> At the same time, in its Guidelines for the application of the EU Family Reunification Directive, the European Commission noted that “the humanitarian protection needs of persons benefiting from subsidiary protection do not differ from those of refugees”, and encouraged member states to grant similar rights to both groups.<sup>163</sup> Seventeen member states do not differentiate conditions for family reunification between those with refugee status and beneficiaries of subsidiary protection or other forms of complementary protection, while 15 states do provide for such a distinction.<sup>164</sup> The distinction can take various forms: mandatory waiting periods before a beneficiary of subsidiary protection can lodge an application for family reunification, temporary suspension of the right to family reunification, removing any entitlement to family reunification for beneficiaries of subsidiary protection, or excluding beneficiaries of subsidiary protection from more favourable provisions applicable to refugees.<sup>165</sup>

Such distinctions raise arguable claims concerning violations of the right to respect for family life (Article 8 of the European Convention on Human Rights) and the prohibition of discrimination (Article 14 of the Convention), as well as concerns related to the best interests of the child (Article 3(1) UNCRC). A number of cases concerning the right to family reunification of sponsors with subsidiary protection status are currently pending before the European Court of Human Rights.<sup>166</sup> Central questions to be answered by the Court are to what extent limitations or refusals of the right to family reunification lead to a violation of the right to respect for family life under Article 8 of the Convention and whether the distinction that is made between refugees and beneficiaries of subsidiary protection amounts to discrimination under Article 14 of the Convention read in conjunction with Article 8.<sup>167</sup>

In 2018, the Parliamentary Assembly of the Council of Europe reiterated that subsidiary or temporary protection status must not be considered as an “alternative refugee status” with fewer rights, and called on states to refrain from substituting subsidiary or temporary protection status for refugee status, in order to limit family reunification due to the temporary and personal nature of this subsidiary status.<sup>168</sup>

In the Netherlands, the persons eligible for international protection receive a uniform status which encompasses both refugees and beneficiaries of international

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162. Ibid., Article 3(2)(c).

163. European Commission, Communication from the Commission to the European Parliament and the Council on Guidance for application for Directive 2003/86/EC on the right to family reunification, COM(2014) 210 final, pp. 24-25.

164. UNHCR, *Families Together: Family Reunification in Europe for Refugees*, 2019, p. 28.

165. Ibid.

166. See *M.A. v. Denmark* (No. 6697/18) pending before the Grand Chamber; *M.T. and Others v. Sweden* (No. 22105/18); *B.F. and D.E. v. Switzerland* (No. 13258/18). The Council of Europe Commissioner for Human Rights has submitted a third-party intervention in the *M.A. v Denmark* case, <https://bit.ly/2HdZexw>.

167. See Section 4.1. on the prohibition of discrimination.

168. Council of Europe Parliamentary Assembly (PACE), Resolution 2243 (2018) Family reunification of refugees and migrants in the Council of Europe member States, paragraph 6.

protection.<sup>169</sup> Dutch asylum law provides for different grounds for obtaining international protection, but when it is determined that an asylum seeker is eligible for international protection, a uniform status is awarded. Both refugees and beneficiaries of subsidiary protection therefore receive the same residence permit, the same conditions and rights. For the purpose of family reunification, refugees and beneficiaries of subsidiary protection are treated the same. According to the Dutch Immigration and Naturalisation Service, the “one-status system” has helped to simplify the asylum procedure, to reduce administrative burdens and to prevent delays caused by continued legal proceedings.

**To be noted:** Use of a “one-status system” in which beneficiaries of subsidiary protection and refugees are treated equally for the purpose of family reunification.

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169. Dutch Aliens Act, Article 29(2).

## Chapter 6.

# Requirements for family reunification applications

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**S**tates can and sometimes do impose on applicants for family reunification either certain substantive requirements, such as requiring certain financial conditions to be met, or procedural requirements, such as time limits for making applications, or both. This chapter outlines briefly the relevant legal standards applicable to such requirements and notable examples of law which waives such requirements in certain circumstances and for certain groups of people.

### 6.1. Substantive requirements

Pursuant to the general rules under the EU Family Reunification Directive, EU member states may require that the sponsor disposes of accommodation and sickness insurance for him- or herself and his or her family, as well as regular resources which are sufficient to maintain the family without recourse to the member state's social assistance system. In addition, the member states may require third country nationals to comply with integration measures. Finally, they may impose a waiting period, requiring that the sponsor has a lawful residence for a period not exceeding two years, before having his or her family members join him or her.<sup>170</sup>

The member states may impose such conditions but are not under obligation to do so. In implementing these conditions, the member states must ensure that family reunification is not made impossible or excessively difficult. With regard to the stable and regular resources requirement, the CJEU has consistently held that this may not be implemented in a manner that goes further than necessary to prevent applicants from becoming a burden to the social assistance system.<sup>171</sup>

The member states may not impose any further substantive requirements that are not listed in the EU Family Reunification Directive. The Directive does not contain any provision on administrative fees charged by the member states for making an application for family reunification. Even though the CJEU has never ruled on this issue for this specific Directive, it has held that the imposition of administrative fees

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170. EU Family Reunification Directive, Articles 7(1), 7(2) and 8.

171. CJEU 4 March 2010, Case C-578/08 (*Chakroun*); CJEU 21 April 2016, Case C-558/14 (*Khachab*), CJEU 6 December 2012, Joined Cases C-356/11 and C-357/11 (*O., S. & L.*).

in the context of the Long-Term Residents Directive<sup>172</sup> may not lead to a situation where the levying of administrative fees makes the exercise of the rights under this Directive excessively difficult.<sup>173</sup> There is no reason to assume that the same reasoning does not apply to the EU Family Reunification Directive.<sup>174</sup>

With respect to family reunification of refugees, the EU Family Reunification Directive includes more lenient provisions, in order to facilitate this type of family reunification. For family reunification with one's spouse and/or the children of the sponsor and/or spouse,<sup>175</sup> member states shall not require that a refugee fulfils the requirements as to accommodation, sickness insurance, and stable and regular resources. There are two exceptions possible to this rule: (i) when family reunification is possible in a third country with which the sponsor and/or family member has special links, and (ii) when the family reunification application is not submitted within three months after the granting of refugee status.<sup>176</sup> Moreover, with regard to refugees, and their spouse and children, integration measures may only be applied once the persons concerned have been granted family reunification.<sup>177</sup> Furthermore, EU member states are prohibited to impose a residence requirement on refugees: they shall not require the refugee to have resided in their territory for a certain period of time, before having his or her family members join him or her (no waiting period).<sup>178</sup>

Many member states do not require refugees and/or beneficiaries of subsidiary protection to comply with the requirement of regular and stable resources.<sup>179</sup> However, only a few states extend the preferential treatment beyond the three-month period provided for in the EU Family Reunification Directive for refugees to submit their family reunification applications or do not provide for such a deadline.<sup>180</sup> In Greece, Norway and the United Kingdom, resource and accommodation requirements are not imposed to be reunited with core family members, but they do apply to other family members.<sup>181</sup>

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172. Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

173. CJEU 26 April 2012, Case C-508/10 (*Commission v. the Netherlands*).

174. European Commission, "Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification", COM(2014) 210 final, p. 9. The European Commission further comments that it encourages member states to exempt children from administrative fees, in order to promote the best interests of the child.

175. See more on the "definition of the family" in the Sections 1.2. and 5.1. above.

176. EU Family Reunification Directive, Article 12(1).

177. *Ibid.*, Article 8(2).

178. *Ibid.*, Article 12(2).

179. Austria, Belgium, Bulgaria, Germany, Estonia, Spain, Finland, France, Hungary, Lithuania, Luxembourg, Latvia, Sweden, Slovenia, Slovakia and the Netherlands, according to European Commission, Report from the Commission to the European Parliament and the Council on the implementation of Directive 2003/86/EC on the right to family reunification, 29 March 2019, COM(2019) 162 final, p. 7.

180. Bulgaria, Croatia, France, Iceland, Italy, the Netherlands, Romania and Spain. See more in UNHCR, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, 2018, 2nd edition, pp. 93, 102.

181. In Greece, requirements apply to adult refugees wishing to reunite with dependent parents; in Norway, requirements apply to recognised refugees (under the 1951 Refugee Convention or on art. 3 of the Convention grounds) wishing to be joined by non-close family members; in the United Kingdom, it concerns refugees and persons with humanitarian protection. *Ibid.*, p. 100.



**Unaccompanied children as sponsors.** No resource requirement is asked for minor siblings to be reunited with an unaccompanied child in Finland, if they have previously lived together and if their parents have passed away or it is not known where they are.<sup>182</sup>

In a number of cases currently pending before the European Court of Human Rights, the applicants, recognised refugees or beneficiaries of subsidiary protection, claim a violation of their right to respect for family life (Article 8 of the Convention), because their family members were refused residence permits on the ground that they did not comply with the minimum requirements as to income, or income and accommodation.<sup>183</sup> These cases may provide further guidance on the balance to be struck between the competing interests of best interests of the child and family's interest to be reunited, and the public interest represented by immigration law requirements for family reunification.

**To be noted:** No resources, accommodation and insurance requirements for beneficiaries of international protection.

EU member states who are bound by the EU Family Reunification Directive cannot impose a waiting period (required period of legal residence) upon refugees before these can apply for family reunification.<sup>184</sup> In Denmark, which is not bound by the EU Family Reunification Directive, unaccompanied children with temporary protection status may apply immediately to be reunited with their parents and siblings – unlike adults with such a status, who have to wait for three years.<sup>185</sup>

**To be noted:** No waiting period for submitting family reunification applications.

## 6.2. Procedural requirements

In addition to substantive requirements, the EU Family Reunification Directive also contains a number of procedural rules. In line with the case law of the CJEU on substantive requirements, the application of procedural rules may not hinder the effectiveness of the realisation of the right to family reunification. These requirements refer to whoever is entitled to make the application in view of family reunification (the sponsor or the beneficiary), to the burden of proof of family relations, to the location of the family member to be reunited, and to the time limit within which an application should be submitted to benefit from the exemption of requirements as a refugee.

The EU Family Reunification Directive leaves it to the discretion of member states whether it is the sponsor or the family member that must make the application

182. Ibid., p. 96.

183. *J.K. v. Switzerland* (No. 15500/18), *Omar Mohamud v. the Netherlands* (No. 42922/18), *Mahamuud Muse Shire and Others v. the Netherlands* (No. 9933/18); *Dabo v. Sweden* (No. 12510/18). For more on different treatment between refugees and beneficiaries of subsidiary protection, see also Section 5.1 above.

184. EU Family Reunification Directive, Article 12(2).

185. UNHCR, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, 2018, 2nd edition, p. 197.

for family reunification.<sup>186</sup> The burden to provide documentary evidence on the family relationship and compliance with the substantive requirements rests on the applicant.<sup>187</sup> The application for family reunification must be submitted when the family member is residing outside the host member state. However, in exceptional circumstances the member states may accept applications when the family members are already in their territory.<sup>188</sup> Family members of refugee sponsors will usually still be abroad.

Family members usually face considerable challenges when they are required to submit the application for family reunification, for instance because of the absence of an embassy in their country of residence, visa requirements to travel to an embassy in another country and the associated risks of such travel, in particular for women travelling alone, children or any vulnerable persons, and/or requirements of legal residence in the country where one submits the application for family reunification.<sup>189</sup> It has been suggested that enabling family reunification applications to be presented in the country of asylum would avoid the need for families to make dangerous and costly journeys to embassies.<sup>190</sup>

Bulgaria, Cyprus, Greece, Spain, France, Poland and Slovenia allow the sponsor to lodge the application for family reunification in the country of asylum.<sup>191</sup> In addition, in Italy, Latvia, Lithuania, the Netherlands, Portugal and Romania, both the sponsor and the family member can submit an application for family reunification.<sup>192</sup>

**To be noted:** The application for family reunification can be submitted by the sponsor in the country of asylum.

Article 12(1) of the EU Family Reunification Directive allows member states to require a refugee to comply with the requirements of stable and regular resources, accommodation and sickness insurance, if the family reunification application is not submitted within three months after the granting of refugee status. A limited timeframe poses substantial challenges, since it may be too short for refugees to collect the necessary documents or for their family members to access embassies.

The CJEU clarified that rejecting a family reunification application lodged more than three months after the sponsor was granted refugee status, while providing the possibility of submitting a new application under the regular rules, is only allowed under certain conditions. First, such a late submission cannot be refused when particular circumstances render the delay “objectively excusable”. Second, the persons concerned need to be fully informed on how they can exercise their rights to family reunification effectively. Moreover, the legislation must ensure that sponsors recognised

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186. EU Family Reunification Directive, Article 5(1).

187. *Ibid.*, Article 5(2).

188. *Ibid.*, Article 5(3).

189. See also UNHCR, *Families Together. Family Reunification for Refugees in the European Union*, 2019, p. 17.

190. Council of Europe, Commissioner for Human Rights, Issue Paper (2017), p. 7.

191. European Commission, Report from the Commission to the European Parliament and the Council on the implementation of Directive 2003/86/EC on the right to family reunification, 29 March 2019, COM(2019) 162 final, p. 10.

192. *Ibid.*

as refugees continue to benefit from the more favourable conditions for refugees, specified in Articles 10 (definition of the family), 11 (submission and examination of application) and 12(2) (no waiting period) of the EU Family Reunification Directive.<sup>193</sup>

Bulgaria, France, Iceland, Italy, Romania, Spain and the United Kingdom do not establish a deadline within which refugees must lodge a family reunification application, in order to be exempt from the requirements of stable and regular resources, accommodation and sickness insurance. In Finland, the three-month timeframe does not apply when the delay is due to the Finnish authorities.<sup>194</sup>

In Germany, recognised refugees have the possibility to make a timely notification, which offers a simplified family reunification procedure.<sup>195</sup> If such a timely notification is submitted within three months after the granting of refugee status, it allows refugees to be reunified with their spouse and children without being required to fulfil the resources and accommodation requirements. German law, however, does not require any time limit for an application of family reunification between refugee children and their parents (as long as the case is processed and entry in the country of asylum can take place before the child reaches the age of 18) nor for applying for family reunification with a beneficiary of subsidiary protection.<sup>196</sup>

Estonia and Poland apply a time limit of six months, while Belgium, Ireland and Norway apply a time limit of 12 months within which applications for family reunification must be lodged to be exempt from the requirements of stable and regular resources, accommodation and sickness insurance.<sup>197</sup>

**To be noted:** No time limit for refugees to lodge family reunification application with exemption of resources, accommodation and sickness insurance requirements.

193. CJEU 7 November 2018, Case C-380/17, (*K, B v. Staatssecretaris van Veiligheid en Justitie*).

194. UNHCR, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, (2018), pp. 93, 97-98.

195. Federal Foreign Office, Welcome to Germany, <https://fap.diplo.de/webportal/desktop/index.html> German Residence Act, Section 29 (2) No. 1. See also UNHCR, *Families Together. Family Reunification for Refugees in the European Union*, 2019, p. 16.

196. Ibid.

197. UNHCR, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, (2018), pp.91-92.

## Chapter 7.

# Procedural safeguards in family reunification procedures

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**I**n the context of family reunification procedures for persons under international protection, safeguards should be in place to facilitate access and ensure a fair procedure, realising the right to family life. Among these safeguards are timely provision of accurate information in a language they understand about their rights and obligations, access to legal advice and counselling, a personal interview and individual assessment of the application, notice in a reasonable time of the decision by the determining authority, and effective legal remedies.

When member states reject an application for family reunification or renewal of a residence permit, similar to the cases when a residence permit is withdrawn or expulsion is ordered, the sponsor or the family member has the right to mount a legal challenge against that decision.<sup>198</sup> The EU Family Reunification Directive prescribes that the procedure and the competence of the right to challenge the decision should be laid down in national law. At the same time, the national law should comply with the right to an effective remedy as laid down in Article 13 of the European Convention on Human Rights and Article 47 of the EU Charter. Free legal assistance and legal representation shall also be granted upon request in the appeals procedures.

The best interests of the child shall be a primary consideration in all cases concerning children. Child-friendly procedures, including provision of information in an age-appropriate manner and legal support, along with guardianship and legal representation services for unaccompanied children are essential in ensuring and protecting children's rights in the procedure.

This chapter presents selected examples of promising examples in two broad categories: provision of information, and legal counselling and legal aid. Practices focusing on providing tailored services to children are also highlighted in these categories.<sup>199</sup>

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198. EU Family Reunification Directive, Article 18. For more on the right to an effective remedy, see Section 4.1. above.

199. Additional specific examples concerning unaccompanied and separated children are provided in Chapter 9 below.

## 7.1. Information provision in an age, gender and culturally appropriate manner

Provision of information on family reunification entitlements and related procedures is an essential safeguard and a legal requirement for realising the right to family life. Information provision shall be primarily the responsibility of state authorities and should be provided promptly upon arrival, in an appropriate language and manner. Other actors, such as civil society organisations and service providers, can also provide relevant information and/or refer concerned persons to the relevant authorities.

Such information should be provided orally, also in the context of individual legal counselling, in writing through leaflets and brochures in a language spoken by the concerned persons and, in addition, could be made available online (dedicated websites and social media). Relevant information material should be regularly updated to include accurate developments in national legal and policy frameworks.

There are numerous examples of information leaflets, brochures and websites developed across member states by national authorities and/or civil society organisations, often in partnership with international organisations and/or other actors.<sup>200</sup> At the same time, national practices on the dissemination of information on family reunification differ, while multiple studies report on the gaps and challenges in providing such information in an appropriate and efficient manner. On many occasions, the information provided is not tailored to the specificities and complexity of individual cases and does not address the specific rules, procedures and documentary requirements.

As a good practice, dissemination of information material should go hand in hand with individual counselling and information sessions, and be tailored to the needs of the persons concerned. Specific information should especially be provided on essential requirements and elements of the procedure, including the timelines, age limitations, required documents, and fees, that may result in restricting access to the procedure. Furthermore, for information provision to be effective, it should become available constantly, and upon request, throughout the various stages of related asylum and migration procedures that the person is involved in, with an emphasis on explaining how the possible outcome of the procedures can impact on the person's entitlements and family reunification procedures. Moreover, information provision could be complemented by the dissemination of relevant documents and application forms in a language known by the applicants, preferably their native language, along with proper explanations, guidance and support to fill in the applications. Finally, as a good practice, information provision, along with guidance and practical support, should be available to both the sponsor of the procedure and the family members that reside in another country, irrespective of who can or should submit the application for family reunification.

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200. In addition to those selected below, see also *Family reunification and family reunion*, Information leaflet for persons with international protection in Romania, produced within the UNHCR-funded Project "Refugee integration in Romania" – 2017, <https://bit.ly/33LjD4i>; Dedicated website developed by Austrian Red Cross, addressing potential beneficiaries, in multiple languages, available at: <http://meinefamilie.rotekreuz.at/en/>

### Hotline on family reunification

The Swedish Red Cross has set up a telephone service to facilitate information provision on international protection, including on family reunification entitlements and procedures in Sweden, to refugee and immigrant populations. Information is provided by expert lawyers and experienced migration advisors. Beneficiaries include adult persons and families with refugee status; persons with subsidiary protection; unaccompanied children; migrants, irrespective of their legal status; and family members residing in Sweden who want to reunite with family members abroad.

Due to limited resources, the telephone service is open only three days a week for a total time of 9,5 hours per week, and information is provided only in English and Swedish language.

The telephone service complements other project activities related to information provision on family reunification, including legal representation, individual legal counselling and advice, referrals to relevant state services and online information provision through the official website of the organisation.

**Name of project:** Telephone and other family reunification services provided by the Swedish Red Cross

**Partner organisations:** Swedish Red Cross, UNHCR, Swedish Refugee Advice Centre, IOM

**Funding:** Swedish Red Cross (50%), Swedish authorities – including Ministry of Justice, Ministry of Social Affairs and the National Board on Health and Welfare (50%)

**Beneficiaries:** refugee and immigrant population regardless of legal status

**Timeline:** Ongoing

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**Telephone:** + 46 8 452 47 32 and + 46 8 452 47 05

**Website:** <https://www.redcross.se/behover-du-var-hjalp/flyktingar-och-migranter/familjeaterforening/>

### Practical guide – Step-by-step process in relevant languages

Following the withdrawal of legal aid for refugee family reunion in the United Kingdom, the British Red Cross has published the practical guide “Applying for Refugee Family Reunion, A guide to the family reunion process” drafted by qualified caseworkers. The guide has already been revised once to ensure it reflected the changes in the legal framework and will continue to be updated on an *ad hoc* basis to integrate significant legal and policy changes.

Its purpose is to provide a step-by-step explanation of how to apply for family reunion in the United Kingdom, including where to find the relevant forms and which supporting documents to include in the application. Though the guide stresses that it cannot replace legal advice as each case is different, it has helped both refugees and advisors to understand and undertake the process. The

British Red Cross is in the process of translating the guide to make it available in Arabic, Farsi and Tigrinya to reflect the main nationalities supported by the family reunion service.

The practical guide is primarily addressed to persons with refugee status or humanitarian (subsidiary) protection who are entitled to apply for reunification with their pre-flight spouse/partner and dependent children and who under current British Immigration Rules can sponsor their family members for reunion in the United Kingdom. The guide makes a clear recommendation to all applicants whose situation does not fall within the scope of the UK Immigration Rules, but who wish to apply for family reunion based on their right to family life (Article 8 of the European Convention on Human Rights) to seek further legal advice.

Additionally, the project has recently published a practical guide to joining a family under the EU Dublin III regulations drafted by the qualified Dublin caseworker. Its purpose is to provide information on the regulations, the eligibility criteria, how to apply, the process and top tips in applying for a Dublin transfer.

The practical guides complement other project activities on family reunification including provision of legal counselling and advice and travel assistance.

**Name of project:** Family reunion support project by the British Red Cross

**Organisation:** British Red Cross

**Funding:** Core funding of the British Red Cross, as well as trusts and foundations

**Beneficiaries:** Adult persons and families with refugee status, persons with subsidiary protection; and unaccompanied children.

**Timeline:** on going

**Contact Person:** Emily Knox

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**Telephone:** +4407738944630

**Website:** <https://www.redcross.org.uk/get-help/get-help-as-a-refugee>

### Individual counselling and information provision at an early stage

In the Netherlands, the Dutch Council for Refugees (DCR) provides information on family reunification and supports the procedure across the country through trained volunteers supervised and supported by professional staff; information and individual counselling is provided for free in the local offices of the organisation and reception centres. The DCR is based in all the reception centres because of their formal role providing information about the asylum procedure. The DCR is also active in supporting integration of status holders. In total, the DCR has around 250 local offices throughout the country, of which 50 are based at reception centres.

The DCR provides information to status holders in the reception centres about which family members are eligible for family reunification, the time limitations

and deadlines, and other requirements. Although asylum seekers do not qualify for family reunification under Dutch law, they are also provided with information and encouraged to collect required documentation in order to be able to substantiate their application at a later stage in a timely and efficient way.

The activities of DCR are largely supported by volunteers. The quality of services is ensured through proper training and professional supervision of volunteers. One of the main challenges of the practice is the recruitment, training and supervision of volunteers. Volunteers are supervised by team leaders (paid staff). Each team leader is responsible for 10 to 25 volunteers, but this can vary according to the number of volunteers or the financial resources available. Once recruited, volunteers receive a three-day induction course on DCR and cultural communication, a two-day course on refugee law and a two-day course on family reunification. Additional training on legislation and jurisprudence on family reunification is provided on an annual basis. Further training is available and accessible through the organisation's training portal website and intranet website. Furthermore, volunteers may receive more information via the "helpdesk" service that is available, daily from 10am-1pm by telephone or by e-mail.

**Name of project:** Support service for family reunification

**Organisations:** Dutch Council for Refugees (DCR); Immigration and Naturalisation Service (INS)

**Funding:** National Postcode Lottery, Ministry of Justice and Security, Ministry of Social Affairs and Employment, Municipalities and private donations

**Beneficiaries:** Persons with international protection i.e. refugee status or subsidiary protection

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**Telephone:** +31-20-3467200

**Website:** <https://www.vluchtelingenwerk.nl/forrefugees/gezinshereniging?language=en>

### Practical handbook for beneficiaries of family reunification

The Norwegian Red Cross has published a handbook on the family reunification procedure in Norway and its requirements in six languages (Arabic, English, Farsi, Norwegian, Somali and Tigrinya). The handbook outlines the process of family reunification step by step and includes information specific for certain types of applications, such as reunification with a spouse, an unmarried partner, a child, an adult descendant, parents, siblings and other family members. There is no child-friendly version of the handbook. However, the employees and volunteers of the Norwegian Red Cross in the main cities are trained to provide information to children in a child-friendly manner and to ensure that children understand its content.

The handbook is available online and in print copy. Print copies are distributed by volunteers at reception centres. The online version is shared with local



authorities and other organisations which provide legal aid and/or work with refugees. The Norwegian Red Cross refer persons entitled to family reunification to other organisations such as the *Selvhjelp for innvandre og flyktninger* (SEIF), Jussbuss and Noas that provide legal aid, for further support notably due to the short deadlines provided for applying for family reunification in the country.

**Name of project:** Handbook on family reunification by the Norwegian Red Cross

**Organisation:** Norwegian Red Cross,

**Funding:** Core funding of the Red Cross, as well as trusts and foundations

**Beneficiaries:** Adult persons and families with refugee status, person with subsidiary protection; and unaccompanied children.

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## Child-friendly information

Language, cultural and other barriers make communication and provision of information challenging, especially with children who, due to their age and maturity, may face additional barriers to understanding and processing certain information. Children, whether they are unaccompanied, separated or accompanied, all have the right to receive information that is adapted to a child's age, maturity, language, gender and culture, irrespective of their immigration status.<sup>201</sup>

In the context of family reunification procedures, children may face difficulties in understanding the type of documents that they should collect to support their application. For this reason, children require not only advice about the existence of family reunion rights, but also practical information about how such rights can be accessed, the time limits involved, and the effect that family reunion may have on their own immigration status in their host country. It is vital that children understand that the information they have provided in the context of their immigration applications may be relevant to the prospects of succeeding in being reunited with family. At the same time, providing information about family reunification and family reunion early on is essential for the identification of possibilities for the child to be reunited with family members in another state without the need to make an asylum claim in the country of arrival.<sup>202</sup> Information should be provided by specially trained staff who are able to provide age-appropriate information in a way that is understandable to the child.<sup>203</sup>

Child-friendly information brochures and leaflets and services need to be developed to support children throughout the procedure. The Council of Europe handbook for

201. Guidelines on child-friendly justice, guideline 2.

202. Council of Europe, *How to convey child-friendly information for children in migration*, A handbook for frontline professionals, (2018), pp. 89, 99, 104; <https://bit.ly/2MY8ki7>.

203. CRC Committee, General Comment 12, paragraphs 34, 49, 134 (a), 134 (g).

frontline professionals *How to convey child-friendly information to children in migration* includes guidance, tips and good practice examples on how to inform and communicate with refugee and migrant children about various migration procedures and about family reunification processes.

The role of guardianship services in providing support and information to unaccompanied and separated children is essential to ensuring children's rights, including the right to participation and the best interests of the child, throughout the process of family reunification.<sup>204</sup>

## **7.2. Legal counselling, advice and legal aid to access family reunification**

In most European countries, provision of legal aid for the purpose of family reunification is not available or is restricted and provided only under certain conditions (for example, only to persons with refugee status). Moreover, availability and access to free legal advice and legal assistance services for family reunification, outside legal aid schemes, is limited. When available, in most cases, legal aid is only provided at the stage of appeal against a negative decision from the responsible authorities.

Legal counselling and assistance are important to facilitate access and support the applicant throughout the family reunification process, by providing information and ensuring adequate legal representation and respect of procedural safeguards, such as the individual assessment of the application and the right to obtain a decision within specific timeframes, the right to mount a legal challenge against a decision, and consideration for the best interests of the child when children are involved. In particular, access to legal aid is important for vulnerable persons that may face additional challenges, including unaccompanied children, to ensure access and safeguard their rights in the procedure.

In the context of complex family reunification procedures, a number of organisations offer legal aid and legal counselling services on family reunification focusing on persons with international protection and/or vulnerable cases. Other organisations, taking into consideration the financial constraints faced by legal aid projects, aim to optimise impact by strengthening the capacity of legal aid and other service providers to offer qualified legal assistance and counselling and to reach out to as many cases as possible. Advocacy projects through strategic litigations are also developed.

As a good practice, legal aid and legal counselling and support services should become available at the initial stage of the procedure; ensure provision of qualified legal aid and advice; address all family members, both sponsors and beneficiaries; and address the potential changes in the status and circumstances of the concerned person over time. Furthermore, as a good practice, they should foster co-operation with responsible authorities and service providers in other member states or third countries to support potential beneficiaries to collect required documents and go through the procedures. In addition, legal aid providers need to

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<sup>204</sup>. For more details and promising examples on the role of guardians in family reunification processes, see Chapter 9 below.

work closely with the other actors and service providers involved, such as social services, to optimise and co-ordinate support.

The selected examples of legal aid, legal counselling and support services on family reunification across Europe are provided below to underline their importance in protecting the right to family life and to enhance the protection of persons entitled to/requesting reunification with their family members. The selected examples are notable for the support they provide to mitigate the absence of legal aid to applicants for family reunification.

### **Legal advice, individual counselling and tailored support for refugees**

Since 2013, legal aid (governmental scheme) for refugees who cannot meet the financial costs of consulting a lawyer for their family reunification cases in the UK was only granted on an exceptional basis under the “Exceptional case funding” (ECF) system and is difficult to access due to a lengthy application process.

In this context the British Red Cross developed a team of five qualified immigration advisors across the country that work in partnership with lawyers of legal aid providers and law clinics in universities to provide individual counselling and information on family reunification and practical support to persons who are eligible for family reunification. Their support helps eligible persons:

- ▶ to understand which family members are eligible for family reunion;
- ▶ to gather the necessary documents to support their application;
- ▶ to complete witness statements to explain any missing documentation;
- ▶ to fill in application forms and submit application;
- ▶ to book an appointment at the nearest application centre to their family members;
- ▶ to refer cases for further legal advice if their case is refused.

Information and advice regarding family reunification procedures as well as visa application support currently takes place in five locations in the UK. Information regarding family reunification under the Dublin III Regulation is provided through a national enquiry line.

The British Red Cross does not provide legal aid services, but certain cases may be referred to partner lawyers for legal aid. Moreover, the British Red Cross supports families whose application for family reunion has been rejected to apply to the UK government’s Legal Aid Agency under the ECF system. If granted, applicants are referred to legal aid providers who are contracted by the UK Government to provide legal advice.

The project is supported by five partner lawyers, four in England and one in Scotland, members of private law firms, voluntary organisations or University law clinics who are either funded by the British Red Cross or through external donors under a partnership agreement, aiming to ensure a high quality of services.

The British Red Cross caseworkers also provide support with emotional and practical issues during the application process, addressing the holistic needs of separated families. Free travel assistance is also offered in selected cases if the family's application is successful.

Further funding is needed to scale up project activities in more locations across the country and ensure availability of legal support when necessary at the initial application stage and to all refused cases going to appeal process.

**Name of project:** Family reunion support project by the British Red Cross

**Organisation:** British Red Cross

**Funding:** Core funding of the British Red Cross, as well as trusts and foundations

**Beneficiaries:** Adult persons and families with refugee status, persons with subsidiary protection; and unaccompanied children.

**Timeline:** ongoing

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**Website:** <https://www.redcross.org.uk/get-help/get-help-as-a-refugee>

### Strengthening capacity of legal aid providers

The legal aid programme on family reunification of the Belgian Federal Migration Centre (Myria) facilitates family reunification for beneficiaries of international protection. It focuses on supporting and empowering frontline (legal) aid actors and lawyers. In this context Myria supports a network of frontline actors that work regularly on family reunification cases through a helpdesk service (telephone/e-mail), development of information tools (brochures, leaflets and Q&A lists), and regular consultation meetings with these actors (twice a year), and with the authorities (once a year).

The dedicated helpdesk on family reunification functions twice a week by telephone and by e-mail on a daily basis. It supports frontline actors and legal aid providers such as guardians, social assistants, lawyers, legal practitioners, and NGO staff and volunteers. Furthermore, the organisation also supports a general helpdesk service operated by two staff members on general migration issues that addresses both frontline professionals and individual beneficiaries of international protection.

The human resources are limited to one expert supported by the Myria staff, who runs the helpdesk services as part of their general responsibilities in the organisation not specifically on family reunification.

The advocacy and policy activities on family reunification make up an essential part of a joint project with UNHCR. The helpdesk service and consultation meetings serve to identify the challenges in law and policies that are brought

forward in Myria's advocacy and policy activities, aiming to promote positive change and improve the quality of family reunification procedures.

**Project:** Legal assistance to beneficiaries of international protection in Belgium, on family reunification and humanitarian visa.

**Organizations:** Federal Migration Centre (Myria) and UNHCR Belgium

**Funding:** UNHCR Belgium

**Beneficiaries:** Beneficiaries of international protection (refugee status and subsidiary protection) including unaccompanied children with an international protection status.

**Timeline:** 2017 - 2019 (possible extension)

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## Legal services tailored to children

Children may have limited understanding and experiences of engaging in legal processes and therefore it is important that all children, including those in parental care, be appointed a legal representative to ensure representation at all stages in the proceedings and with whom they can communicate freely.<sup>205</sup> In line with the Guidelines on child-friendly justice, legal representation provided to children in migration proceedings must be accessible, age-appropriate, multidisciplinary, effective and responsive to the legal and other needs of the child.<sup>206</sup> Working with children and explaining in an age-appropriate manner complex legal procedures or issues that relate to their family reunification case may be particularly challenging. As cases can take a very long time to be resolved, legal professionals need to carefully manage children's expectations, who are very likely to be concerned for their parents left behind in refugee camps or war zones and who may be anxious for cases to be dealt with quickly.

Especially in cases of unaccompanied and separated children, access to legal aid should be guaranteed, to ensure their rights and safeguards throughout the procedure and consideration for their best interests. To this end the legal aid providers and assigned lawyers need to work closely with the guardians/guardianship authority and the children themselves, in accordance with the national legal framework that determines legal representation and consent rules for children. Lawyers assigned to the cases of unaccompanied and separated children should have specialised knowledge on children's rights and skills in communication with children.

205. CRC Committee, General Comment 23, paragraph 17(f).

206. Guidelines on child-friendly justice, Section III, Fundamental principles and Section IV, paragraphs 1 and 17.

### Legal representation and free legal aid for unaccompanied children in family reunification procedures

SOS Children's Villages in Greece provides free legal aid and advice to all children residing in its home for unaccompanied children, in order to support them in family reunification procedures.

Legal aid is provided to support unaccompanied children in all legal procedures, including family reunification, applying for asylum in Greece and in some cases repatriation. The legal assistance is offered by specialised lawyers who are members of SOS Children's Villages staff and who participate in all interdisciplinary staff meetings.

Each child receives individual support and legal aid as required throughout the procedure, including support to prepare for interview with the authorities. Assigned lawyers establish co-operation with public authorities and other stakeholders to ensure that children and families are appropriately supported throughout the process and that their vulnerabilities are taken into consideration.

All actions are provided in the context of a supportive environment (a SOS Children's Villages' programme providing children with accommodation as well as psychosocial, educational and health support) which enables children to trust the team supporting them and to stay engaged in the procedures. This contributes to discouraging children from moving on irregularly to other countries, and therefore decreases the risk of abuse and exploitation.

**Name of project:** SOS Children's Villages International Emergency Response Program

**Organisation:** SOS Children's Villages Greece

**Funding:** SOS Children's Villages International – EU Asylum, Migration and Integration Fund (AMIF)

**Beneficiaries:** Unaccompanied Children hosted at SOS Children's Villages' Shelter

**Timeline:** October 2016 – 2019

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### Legal services tailored to children's needs

In Ireland, state legal aid is available for international protection applications but not for family reunification. The Law Centre of the Immigrant Council of Ireland (ICI) provides free legal representation to migrants and their families living in Ireland, in particular those identified as particularly vulnerable, such as unaccompanied refugee children and migrant youth in care/aftercare, including those who "age out" during migration and asylum procedures. The organisation employs two full-time lawyers (practicing solicitors) who provide legal support and representation for a range of issues, including but not limited to family reunification.

The Law Centre provides specialised legal services and legal representation to children and young persons, regardless of their migration status, building on and actively promoting multi-agency co-operation among legal and child protection services and practitioners. The ICI Law Centre also delivers training to external lawyers and social workers dealing with children to improve access to justice for migrant children in Ireland.

Most cases are referred to the ICI Law Centre by the organisation's own Information Helpline or by "gatekeepers", mainly professionals working directly with the client in another capacity (medical, social work, youth advocacy, etc.). Unaccompanied and separated children are primarily referred by TUSLA Child and Family Agency and the Separated Children Unit who are responsible for the accommodation and care of unaccompanied children. The Law Centre also provides legal services to migrant children who are in care following child protective interventions.

The legal services provided include:

- ▶ one-off legal advice appointment;
- ▶ legal representation at administrative level during immigration related application (usually residence permit, family reunion, proposed deportation, citizenship);
- ▶ legal proceedings before the superior courts.

The main challenge in providing this service are the limited resources that restrict the Law Centre's capacity to scale up its activities across the country and develop and deliver the services to more individuals.

**Name of project:** Child-friendly legal services and advocacy for migrant children and young people

**Organisation:** Immigrant Council of Ireland, Independent Law Centre

**Funding:** 100% fundraised from small grants and donations

**Beneficiaries:** Refugee and immigrant children

**Timeline:** 2016-ongoing

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## Chapter 8.

# Support to overcome practical barriers in the process of family reunification

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**F**amily reunification applicants often face practical and financial barriers that limit their access to family reunification procedures. The overall costs of the process are substantial, at times as high as several thousand euros. The costs can include administrative and visa fees, costs of translating the submitted documents, and costs of travel to the respective embassy/consulate, which may not even be in the country of origin of the family members. Family members often need to cover additional accommodation and subsistence costs in the location of the embassy/consulate. It is not uncommon for the applicants and beneficiaries also to cover the cost of DNA tests.

There are also other practical barriers. For some beneficiaries, it is not possible to cross the borders and travel to a third country for interviews with the embassy or make visa applications due to issues related to their travel documents, security and safety issues, among others. Additional practical barriers are created by visa requirements, onerous evidential requirements and documentation, and short deadlines. The selected practices in this chapter provide various forms of support to overcome such barriers.

### Miles4Migrants

Miles4Migrants is a non-profit organisation formed in September 2016, which aims to fund airplane tickets for family members who have already obtained a visa for family reunification. Miles4Migrants collects travel miles in airline loyalty programmes, donated by private persons. The organisation's activities are primarily supported by volunteers.

Miles4Migrants is committed to fostering relationships with other non-profit organisations that are "on the ground" serving refugees directly and supporting family reunification cases. In co-operation and partnership with different organisations all over the world that support persons with their family reunification procedures, these donated miles are given to family members of those who have difficulties paying the airplane tickets to reunify with their family.

Partner organisations are the "Together Now" charity in the United Kingdom, Caritas International Belgium, the International Rescue Committee and the "MORE Italia" organisation, which is a member of a network supporting refugee



integration in 10 countries. At the end of June 2019, the organisation reported 1 063 people and has reunited 478 families through the programme. Caritas International Belgium alone has flown 197 people and reunited 60 families.

**Organisation:** Miles4migrants, Caritas International Belgium, Together Now, International Rescue Committee, MORE Italia

**Funding:** Private donors

**Beneficiaries:** Individuals and families granted family reunification visas

**Timeline:** ongoing

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### Information and support to beneficiaries in the country of origin or third countries

The Family Assistance Programme (FAP), launched in March 2016, is funded by the German Federal Foreign Office and is implemented by the International Organisation for Migration (IOM). The FAP is addressed to recognised refugees and beneficiaries of subsidiary protection in Germany and their respective family members (vulnerable migrants), regardless of their status in their residing country (country of origin or third country) and aims to support them to reunite in Germany by assisting them with the family reunification and visa application process. It dissuades families from seeking unsafe, irregular migration channels and protecting them from misinformation and exploitation by visa brokers and smuggling networks.

With facilities in ten countries (Germany-Berlin; Turkey-Istanbul; Iraq-Erbil; Afghanistan- Kabul; Lebanon-Beirut; Jordan-Amman; Egypt-Cairo; Sudan-Khartoum; Ethiopia-Addis Ababa; Kenya-Nairobi), the FAP offers both in-person and remote assistance by providing timely, trusted and accurate information and visa-related support services in native languages.

Support services include assistance with visa application form-filling and application completeness checks, facilitation of appointment scheduling, biometric data enrolment, health assessments, facilitation of DNA testing, escorting of unaccompanied children and cases with serious medical needs, delivery of integration classes and distribution of integration handbooks.

Services are provided in a child-friendly manner. Specific guidelines relating to the assistance of children and training on interviewing children are provided. In each support centre there are focal persons for children (staff with backgrounds in social work) who can be consulted, as required. In the case of unaccompanied children applying to be reunified with a family member in Germany, additional safeguards are being put in place such as the facilitation of their exit permits, travel assistance as well as fast-tracking of their appointment with the embassy, when possible. The centres are accessible for people with disabilities, include

child-friendly spaces, prayer rooms and private spaces for mothers with infants. As over 83% of principal applicants are women, a gender sensitive approach is at the core of the service support offered.

Financial costs related to the family reunification process are covered by applicants themselves. However, when applicants lack the necessary financial means, the IOM refers them to NGOs and organisations (depending on the local context), who can provide assistance accordingly.

The programme has contributed to considerably reducing the waiting time periods in many locations. However, the length of the visa application process still varies from 2 to 12 months, depending on nationality, location of the visa submission and type of status of the sponsor in Germany.

Among the challenges of the programme are the changes in national law on family reunification requirements and procedures that impact the status and number of beneficiaries in the countries of origin, as well as quota policies that result in prolonged waiting periods.

**Name of project:** Family Assistance Programme (FAP)

**Organisations:** German Federal Foreign Office, International Organization for Migration

**Funding:** the German Federal Foreign Office

**Beneficiaries:** Recognised refugees and beneficiaries of subsidiary protection in Germany and their respective family members, regardless of their status in their residing country.

**Timeline:** March 2016- December 2019 (possible extension)

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**Website:** <https://www.facebook.com/IOM.Family.Assistance.Programme/>; <https://fap.diplo.de>

### Remove financial barriers related to travel costs

The Swedish Migration Agency (SMA) facilitates family reunification travel to Sweden for the nuclear family members when the sponsor has been granted refugee status and fulfils conditions such as submitting their family reunification application within a year after receiving refugee status and/or income requirements. Travel is arranged by the IOM and covers only the cost of regular flight tickets (visa-related costs, for example, are not covered).

The Swedish Red Cross (SRC) complements this state programme with the provision of financial support to large families that have been granted family reunification and do not receive support from the SMA or social services. The SRC arranges for the travel of selected families through the IOM. Around 950 persons a year travel with the help of the SRC to Sweden to reunify with their families.

**Name of project:** Family reunification services

**Partner organisations:** Swedish Red Cross, UNHCR, Swedish Refugee Advice Centre, IOM

**Funding:** Swedish Red Cross (50%), Swedish authorities – including Ministry of Justice, Ministry of Social Affairs and the National Board on Health and Welfare (50%)

**Beneficiaries:** refugee and immigrant population regardless of legal status

**Timeline:** Ongoing

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### Comprehensive support services to persons entitled to family reunification

In the Netherlands, legal aid for family reunification cases is available only at the appeals stage, once the application has been rejected. The legal aid scheme is funded by the Legal Aid Board and the Ministry of Justice and Security, but applicants have to pay an income-related contribution of EUR 199 per single person. The applicants may on their own initiative – or with the help of Dutch Council for Refugees (DCR) – approach a lawyer who is a member of the Legal Aid Board to request legal aid support.

In this context the DCR supports all adults with international protection status entitled to family reunification under Dutch law in the family reunification process. The DCR provides them with legal and practical support, counselling and advice on filling in the application form(s), combined with provision of information, assistance with the collection and translation of official and other relevant documents, with drafting accompanying letters, and with contacts in the Dutch embassies abroad. The DCR helps applicants whose application was rejected to find a lawyer to assist with their case in the appeal process through the legal aid scheme funded by the Dutch Government. The DCR continues to support the applicant with the collection of documents or with appointments for an interview at the embassy in the appeals stage if the lawyer agrees to it.

Moreover, DCR personnel actively monitors the process, maintains contact on behalf of the applicant with the Immigration and Naturalization Service (INS) and the embassy during the procedure, supports the applicants in providing additional information (by interviewing them about their family ties or by collecting evidence), and intervenes in case deadlines are not respected by the INS.

In selected cases, the DCR can partially cover the travel expenses to the Netherlands for the family members and support family members upon arrival on practical matters, such as applying for welfare benefits and allowances, taking out healthcare insurance, and registering with a family doctor, dentist,

and school. Selected cases are referred for financial support to the Refugee Fund on family reunification purposes, which is funded by the DCR and a number of social welfare funds. The Refugee Fund is managed at regional level and may cover travel expenses for family reunification, based on the request of persons with international protection status who have insufficient financial resources. However, the financial aid will not cover the full cost and a certain amount of self-funding is required.

**Name of project:** Support service for family reunification

**Organisations:** Dutch Council for Refugees (DCR); Immigration and Naturalisation Service (INS)

**Funding:** National Postcode Lottery, Ministry of Justice and Security, Ministry of Social Affairs and Employment, Municipalities and private donations

**Beneficiaries:** Persons with refugee status or subsidiary protection

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**Telephone:** +31-20-3467200

**Website:** <https://www.vluchtelingenwerk.nl/feiten-cijfers/procedures-wetten-beleid/gezinshereniging>; Legal aid scheme: <https://www.rvr.org/english>.

## Chapter 9.

# Specific safeguards for unaccompanied and separated children

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**T**he best interests of the child must be a primary consideration in all decisions and aspects related to family reunification.<sup>207</sup> In this regard, children's rights and child protection are essential elements of family reunification policies and practices.

Chapter 4 above discussed cross-cutting principles concerning refugee and migrant children, while Chapter 6 explored general procedural safeguards, such as information provision and legal assistance, that should be also tailored to the needs of children.

In addition to those, specific safeguards should be in place for unaccompanied and separated children to address their needs and vulnerabilities. This chapter looks into safeguards such as the best interests determination in the context of family reunification for unaccompanied and separated children and the appointment of independent and qualified guardians. The next chapter continues with a reflection of child-friendly elements of integration for children after family reunification.

### 9.1. The best interests of the child in family reunification

Ensuring the best interests of the child in all decisions related to family reunification requires responsible authorities to establish a procedure to determine the child's best interests when deciding on family reunification cases.<sup>208</sup> Authorities need to provide reasons for their decision (positive or negative) and explain how the best interests of the child were taken into consideration in the decision process; such reasons need to be reflected in the written reply to the family reunification application.

The CRC Committee has developed authoritative guidance on the implementation of Article 3 of the UNCRC and the operationalisation of the principle of the best interests of the child and on the protection of children in the context of migration.<sup>209</sup> For individual decisions, the child's best interests must be assessed and determined in light of the specific circumstances of the particular child.<sup>210</sup> The CRC Committee considers that in the situation of separation in different countries, only the child's best interests could represent an obstacle to family reunification of an unaccompanied

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207. UNCRC, Article 3(1).

208. For more on the principle of the best interests of the child, see Section 4.1 above.

209. CRC Committee, General Comments 6, 14 and 23.

210. CRC Committee, General Comment 14, paragraph 32.

or separated child with his or her parents and/or legal guardians.<sup>211</sup> Furthermore, it underlines that “where a decision will have a major impact on a child”, as in cases of family reunification, a greater level of protection and detailed procedures to consider their best interests are appropriate.<sup>212</sup> Therefore, a full and formal process of assessing and determining the best interests of the child needs to be incorporated in all decision making.

Practical guidance on the best interests determination procedure for unaccompanied children, endorsing the guidance provided by CRC Committee, has been developed by actors such as UNHCR and UNICEF.<sup>213</sup>

**Key elements of an efficient best interests determination (BID) procedure** are considered to be the following:

- ▶ The BID procedure is established as part of family reunification decision-making process.
- ▶ Standard operation procedures (SOPs) and guidance are developed on each step of the procedure, clarifying the role and responsibilities of the relevant actors (for example, of the guardianship, child protection, migration and asylum authorities, or health, housing and education actors), with child protection and guardianship authorities having a principal role.<sup>214</sup>
- ▶ It ensures that children’s views and opinions are given due weight according to their age, maturity and evolving capacities.
- ▶ The responsible authority for the BID is clearly defined in the national legal and policy framework.
- ▶ The BID involves a multidisciplinary team of experts (both social and legal experts).
- ▶ The BID provides a more comprehensive assessment for the situation of the individual child, covers the full spectrum of the child’s situation, needs, and vulnerabilities and considers both short- and longer-term impacts.
- ▶ Guidance on the type of information to be collected and assessed, in addition to the views of the child, is available along with assessment tools and guidelines for the experts involved.

UNHCR Guidelines on assessing and determining  
the best interests of the child (2018)

Nevertheless, despite existing guidance, the practical implementation of best interests determination procedures is challenging and may not include all elements listed above. It is not uncommon for the BID process and outcomes to remain formally undocumented, with limited possibilities to appeal / request re-assessment, or for

211. CRC Committee, General Comment 6, paragraph 81.

212. CRC Committee, General Comment 14, paragraph 20.

213. UNHCR, *Guidelines on Assessing and Determining the Best Interests of the Child*, November 2018, <https://bit.ly/2W1pVbr>; UNHCR- UNICEF, *Safe & Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, October 2014, <https://bit.ly/2MXgXd0>.

214. See more on the role of the guardian in family reunification in Section 9.2 below.

family reunification decisions to omit an explanation of how the results of the BID were taken into consideration and how they have impacted the final decision.<sup>215</sup>

The following examples reflect initiatives taken to establish and/or strengthen existing processes with the purpose of operationalising the principle of the best interests of the child in the decision-making process on family reunification and to ensure the child's protection.

### **Developing Best Interests Assessment and Determination tools for the purpose of family reunification in the context of the EU Dublin III Regulation**

The Greek Asylum Service has developed, in co-operation with the UNHCR, European Asylum Support Office (EASO) and other relevant actors, a best interest assessment (BIA) Form and a checklist to facilitate the BID procedure in the context of the EU Dublin III Regulation and family reunification of unaccompanied children that seek international protection in Greece with relatives that reside in another EU member state, when in the best interests of the child.

The BIA Form was developed to facilitate proper implementation of the EU Dublin III Regulation. It serves as a tool to assist child protection actors but also Dublin Units in safeguarding the best interests of the child and facilitates operational co-operation among related actors in order to accelerate Dublin procedures.

The BIA Form seeks to collect and assist in assessing information that is required for the satisfaction of the criteria set forth in the EU Dublin III Regulation (for example on the presence of family members and on their residence status in other EU member state, their actual relationship with the child and their capacity to undertake the child's care). For this purpose, interviews are carried out with all relevant actors, including the child him- or herself. The information obtained is to be supported by necessary documents, including identification documents. The child protection actors/service providers taking care of the child are called to fill in and submit the BIA Form to the Dublin Unit along with the checklist which has been developed for the purpose of monitoring the assessors' practice. The Dublin Unit then evaluates the information provided through the submitted form: if it is deemed that it is in the best interests of the child to be (re)united with a family member/relative who is legally present in another member state, it requests that the said member state accept the transfer of the unaccompanied child.

The child protection actors involved in the process report that despite the usefulness of the form, the transfer of the child is denied by the requested member state often without any explanation of how the best interests of the child were taken into consideration and how the BID performed in Greece weighed in on this decision. Therefore, further clarity on the role of the actors involved in the determination process and the assessment procedures carried

215. Irish Refugee Council, *Durable Solutions for Separated Children in Europe*, 2015; House of Lords, European Union Committee, 2nd Report of Session 2016–17 (2016): *Children in crisis: unaccompanied migrant children in the EU*, <https://bit.ly/2m2nc37>.

out by the competent authorities in the concerned members states, as well as an enhanced role for national child protection authorities in the determination process is needed.

**Name of project:** Compilation of Best Interests Assessment Form for Unaccompanied Minors

**Organisations:** Greek Asylum Service (in co-operation with UNHCR, EASO, IOM and UNICEF)

**Beneficiaries:** Unaccompanied and separated children with family members in other EU member states

**Timeline:** since August 2018

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**Link to the BIA Form and Checklist:** [http://asylo.gov.gr/en/?page\\_id=81](http://asylo.gov.gr/en/?page_id=81)

In the context of family reunification procedures, children, including unaccompanied children, often get in contact with actors and authorities that do not always have the requisite expertise and skills to interact with children, for example diplomatic and consular services. Guidance and training to persons that are in contact with children is essential to ensure that communication is child-friendly, that children are treated in an appropriate manner and that the best interests of the child are respected.

#### **Guidelines to staff of embassies and consular services for interviewing children in the context of family reunification procedures**

In the Dutch asylum system, an interview may be carried out with the purpose of confirming family ties, sometimes in addition to supporting documents and/or DNA tests. In principle, only children older than 12 can be interviewed in this context. Such interviews take place at embassies or diplomatic missions abroad. On 14 April 2015, in response to the report and recommendations of the Dutch Ombudsman for Children, the Immigration and Naturalisation Service issued guidelines to ensure these interviews are conducted in respect of the rights of children and that they meet the specific needs of children. All interviews with children that take place at embassies or diplomatic missions apply the same uniform safeguards.

The guidelines cover aspects related to information, scope, process, place and setting of the interview. Prior to an interview, a child is introduced to every person attending the interview and is informed about:

- ▶ the duration of the interview;
- ▶ the aim of the interview;
- ▶ that the interviewer is not the one making the decision;



- ▶ that the interpreter is independent and has no influence on the decision being made;
- ▶ confidentiality of all attendees;
- ▶ that all information provided by the child will be taken into account;
- ▶ that the medical condition of the child is taken into account.

During these interviews, the interviewer applies techniques that match the child's experience. Pressure is not put on the child, questions are adapted and take the age of the child into consideration and the interview is carried out in a child-friendly manner.

One of the challenges in implementing the guidance is the lack of training of embassy personnel in conducting child-friendly interviews and the absence of a monitoring framework on the application of the respective guidelines in an efficient and quality manner.

**Title:** Child-friendly Interviews at the Embassy

**Organisation:** The Dutch Government – diplomatic services

**Funding:** The Dutch Government

**Beneficiaries:** Children above 12 years old interviewed for family reunification purposes in consular services /embassies

**Timeline:** Since 14 April 2015

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## 9.2. The role of national guardianship systems in realising children's right to family life

Effective guardianship systems are essential in safeguarding, protecting and promoting the rights of unaccompanied and separated children in the context of asylum and migration and in supporting them in exercising their right to family life. The role of the guardian is vital in ensuring legal representation of the child and the right of the child to be heard in family reunification procedures, and in guaranteeing that the best interests of the child are a primary consideration and that procedural safeguards are respected.<sup>216</sup> The guardian is central in securing access to information and to legal aid, in ensuring the well-being of the child throughout the family reunification process and in requesting family tracing when necessary. Without a

216. Council of Europe Recommendation CM/Rec(2019)11 of the Committee of Ministers to member States on effective guardianship for unaccompanied and separated children in the context of migration ("Council of Europe Recommendation CM/Rec(2019)11"). See also FRA, *Handbook on guardianship systems for children deprived of parental care, with a special focus on child victims of trafficking*, 2014, <https://bit.ly/31sZvIO>.

guardian, a child may be prevented from exercising his or her procedural rights, such as seeking family reunification in violation of Article 8 of the European Convention on Human Rights.<sup>217</sup>

According to the Council of Europe, state parties should have an effective system of guardianship in place that takes into account the specific needs and circumstances of unaccompanied and separated children in migration in order to protect and promote their rights and secure their best interests. An appropriate legislative and regulatory framework should be in place to ensure such provision and steps should be taken to ensure that a guardian is appointed to a child without delay and with the necessary resources and powers to safeguard the rights and interests of the child.<sup>218</sup> The co-operation of guardians with responsible authorities and legal aid providers is essential in safeguarding children's rights. Guardians shall facilitate access of unaccompanied and separated children to free legal advice and legal aid at all stages of the procedures.<sup>219</sup>

The national guardianship systems and appointed guardians often face significant challenges in providing high quality services, including in relation to family reunification. Appointed guardians do not always have the knowledge, professional experience and capacity to respond to their role and responsibilities related to the family reunification of unaccompanied children, ensure their rights in the procedures and effectively support them.<sup>220</sup>

The selected examples in this section showcase how national guardianship systems can increase their capacity and support individual guardians to respond to the needs of unaccompanied children in family reunification procedures.

#### **Developing guidance on the role of the guardian in family reunification cases**

The Belgian Guardianship Service has developed guidelines on the role of the guardian in the family reunification procedure. According to these guidelines, the role of the guardian includes the following:

- ▶ to inform the child about the possibilities to apply for family reunification at the latest when the child is granted international protection, even if the child has never spoken about reuniting with his or her family;
- ▶ to provide information on the legal framework, the length of the procedure, the financial cost for him or her and his or her parents/legal guardians and to discuss the impact of family reunification for the child, for instance related to the change of the child's status (from unaccompanied to a child in the care of the family);
- ▶ to facilitate the child's communication with responsible authorities and services and to ensure that the child receives the necessary information on the

217. *Rahimi v. Greece*, No. 8687/08, 5 April 2011, paragraphs 88-94 and 120.

218. Council of Europe Recommendation CM/Rec(2019)11, Section III.

219. For more details on legal services tailored to children, see section 7.2. above.

220. On the role of guardians in providing support to children after reunification, see Chapter 10.

procedure, once the parents/legal guardians have applied for a visa for family reunification in Belgium;

- ▶ to get in contact with the parents /family members (with the child's consent) to inform them of the procedures;
- ▶ to support the child and his or her parents/legal guardians in receiving financial, practical or other support, for example through referral to competent authorities and service providers;
- ▶ to inform the Guardianship Service of the arrival of parents/legal guardians, transfer the guardianship responsibility for the child back to them and ensure that they are fully aware of the legal and social conditions and individual situation of the child in Belgium (provide information and counselling).

**Title:** Guidance on the role of guardians in family reunification

**Organisations:** Federal Public Service Justice, Guardianship Service

**Funding:** Guardianship Service (regular budget) – Ministry of Justice

**Beneficiaries:** Unaccompanied children under Guardianship Service

**Timeline:** Ongoing

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### Coaching and training activities for guardians to enhance knowledge and support practice on family reunification

The Belgian Guardianship Service supports guardians in their role regarding family reunification in various ways, including provision of training, a helpdesk and a coaching programme.

- a. Annual training on family reunification: the training provides information and guidance on the procedure for family reunification in Belgium and the role of the guardian throughout the procedure. The annual training also provides a forum for the guardians to exchange their experience in the field.
- b. Helpdesk for guardians: guardians can call or e-mail the helpdesk to seek information and support on both legal and practical aspects in the family reunification process.
- c. Individual coaching: guardians (including volunteers or self-employed) are assigned with experts employed by the Guardianship Service, who can provide the advice and support on individual family reunification cases.
- d. Access to legal advice: legal experts of the Guardianship Service provide legal advice and support guardians in complex family reunification procedures as required.

The Guardianship Service provides these services in co-operation with NGOs that work with volunteer and self-employed guardians, such as Caritas International for the French-speaking guardians and the Flemish Red Cross for the Dutch-speaking guardians. All activities are funded by the Guardianship Service.

**Title:** Support of Guardians

**Partner Organisations:** Federal Public Service Justice, Guardianship Service, Caritas International, Flemish Red Cross

**Funding:** Guardianship Service (regular budget) – Ministry of Justice

**Beneficiaries:** Guardians appointed by the Guardianship Service

**Timeline:** Ongoing

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### Dedicated family reunification officers for unaccompanied children

In the Netherlands, the guardianship authority for unaccompanied and separated children, Nidos, appoints dedicated officers to assist children in the process of family reunification and support guardians. The dedicated officers have expert knowledge on the family reunification framework and procedure.

Dedicated officers:

- a. Fill out the application for family reunification, including providing argumentation on why certain things cannot be organised, in close co-operation with the child and their family;
- b. Work closely with legal advisors within Nidos and individual guardians;
- c. Inform guardians on family reunification procedures and requirements to enhance guardians' capacity to support children;
- d. Have access to interpretation and translation services as required throughout the family reunification process (related costs are covered by Nidos);
- e. Hold regular meetings with family reunification officers assigned by national authorities on the case and follow up the process of the application;
- f. Meet regularly with the child to inform him or her on the progress of his or her application;
- g. Establish communication with the beneficiaries (family members of the child) in the home country or other country of residence (EU member state or third country) and provide support as required (information, practical support in the

form of arranging meetings with embassies, exploring possibilities for covering related costs such as tickets);

h. Establish regular co-operation with responsible national authorities such as the Immigration and Naturalisation Service.

The guardian works closely with the dedicated officers and legal advisors throughout the family reunification procedure, supports the child in collecting the required documents, provides information and facilitates communication with the dedicated officer and responsible authorities.

The dedicated officer is introduced to the child by the guardian. It is made clear to the child what the role of the officer is. The officer has the lead during the process of reunification, but the guardian is kept informed and engaged throughout the process. The officer administers all actions in the Nidos client system. The child needs to contact the dedicated officer directly concerning any aspect of his or her reunification process.

The number of children assigned to each officer varies from 40-50 and currently six persons are assigned with such tasks.

**Implementation partner:** The Dutch national guardianship institution for refugees (NIDOS)

**Where:** The Netherlands

**Timeline:** Ongoing

**Funding:** Ministry of Justice of the Netherlands

**Beneficiaries:** Unaccompanied and separated children under the responsibility of Nidos

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## Chapter 10.

# Support to integration and to living reunited

**P**reserving family unity involves the provision of adequate support to all family members, and a similar status and entitlements once the family is reunited.<sup>221</sup> The principle of the best interests of the child requires the establishment of a safe environment which contributes to the development of the child.<sup>222</sup>

The Council of Europe encourages member states to ensure the successful integration of refugees by sharing valuable experience in integrating new arrivals and promoting their integration as a public asset worth investing in.<sup>223</sup> The EU Family Reunification Directive foresees measures supporting integration of holders of international protection such as access to education, access to employment and self-employed activity, access to vocational guidance, initial and further training and retraining.<sup>224</sup>

To facilitate the integration of the reunited family, various measures could be put in place already during family reunification procedures, as well as once families have been reunited. This chapter provides examples of integration measures before arrival, support measures upon arrival, and specific support for children and for ensuring their best interests and well-being.

### Pre-integration measures in third countries and countries of origin before the arrival

The Family Assistance Programme (FAP) initiated in March 2016 by the International Organization for Migration (IOM) in collaboration with the German Federal Foreign Office was set up as a response to the increase of family reunification requests initially from Syrian and Iraqi nationals recognised as refugees or beneficiaries of subsidiary protection in Germany. It has since been expanded to integrate all persons entitled to family reunification in Germany. FAP offers in-person assistance with a view to preparing families for arrival and integration into German society.

221. UNHCR, Executive Committee (ExCom) Conclusion No. 24 (XXXII) 1981, Family Reunification, UNGA Doc No. 12A (A/36/12/Add1); Council of Europe Committee of Ministers, Recommendation Rec(2002)4 on the legal status of persons admitted for family reunification, paragraph II.1; PACE, Resolution 2243 (2018) on family reunification of refugees and migrants in the Council of Europe member States.

222. More details on the best interests of the child in Sections 4.1 and 9.1 above.

223. PACE, Resolution 2176 (2017) "Integration of refugees in times of critical pressure: learning from recent experience and examples of best practice."

224. EU Family Reunification Directive, Article 14.

Support centres are set up in various third countries and countries of origin (Turkey, Lebanon, Jordan, Iraq, Egypt, Afghanistan, Sudan, Kenya and Ethiopia) and are accessible for people with disabilities. The services provided follow an age, gender and culturally sensitive approach with child-friendly spaces, prayer rooms and private spaces for mothers with infants.

Integration classes running till September 2018 were provided by intercultural mediators who had lived in Germany. They focused on various topics, such as how to integrate in Germany, learning German, knowing and protecting your rights, living together, children, health, integrating into the German labour market, moving around Germany, shopping and waste management in Germany, religion, becoming an active member of German society, German society and migrants, emergency contact details, medical assistance contacts, family support contacts, and integration support contacts. In addition, IOM provides a comprehensive integration handbook available in Arabic.

Among the challenges met during the implementation phase are the insecurity in certain operational contexts, initial difficulties in reaching families, change of the German legal framework restricting family reunification for beneficiaries of subsidiary protection, and the introduction of quotas for beneficiaries.

This programme, operated by about 130 staff, has contributed to the reduction of delays in the visa application process. According to the IOM, more than 250 000 beneficiaries have been assisted since June 2016. An estimated 65 000 families have been supported in submitting a complete application for family reunification.

**Name of the project:** The Family Assistance Programme (FAP)

**Implementation partner:** International Organization for Migration (IOM)

**Where:** Third countries and countries of origin

**Timeline:** March 2016 - December 2019 with a possible extension

**Funding:** The German Federal Foreign Office

**Beneficiaries:** Recognised refugees and beneficiaries of subsidiary protection in Germany and their respective family members in vulnerable situations, regardless of their status in their country of country.

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### Integration measures upon arrival

To better support families once reunited, in 2013 the British Red Cross developed the “Family Reunion Integration Service” as an integration programme started in Glasgow, Scotland. It has been rolled out to eight cities in England, Scotland, Wales and Northern Ireland thanks to the EU Asylum, Migration and Integration Fund (AMIF). The programme promotes a cross-sectoral approach and starts

effectively on the day of arrival of the family members. Around 90% of the families reunited in Scotland are referred to this service through the Restoring Family Links programme of the Red Cross in a preventive and early integration approach. This referral through the Restoring Family Links programme enables the Family Integration Service to undertake preventive work with the sponsors in preparation for the arrival of family members. All travel arrangements and the preparation of the arrival are to be made in a 30-day period corresponding to the family reunion visa validity. Prior to arrival, information is also provided to the Family Reunion Integration Service on family composition, the needs of the family and their arrival date. This communication facilitates casework during the initial support phase of the family. Other families may be referred to the Family Reunion Integration Service via lawyers, or be self-referred.

The Family Reunion Integration Service provides several kinds of services: individual support based on casework, group work support and English language learning. It builds on three key pillars of the integration practice and policy in Scotland: learning and influencing, self-support, and casework.

Individual support involves a vulnerability assessment which is conducted to further explore the family needs considering the family composition, health needs, protection issues and length of separation. A caseworker works with the family on an Integration Plan including a gender sensitive approach in particular in the support of survivors of female genital mutilation. This Integration Plan is also tailored to include safeguarding and welfare concerns, physical and health issues.

Operational Referral Protocols with the local authority Housing Departments, the Department of Work and Pensions and the Scottish Government ensure that families are safe, engaged in health services and have access to children's education, welfare, and housing services.

Other social integration measures are offered as a second step via group work support such as language learning and building up social networks. Three models of social integration support are implemented and focused on: bonds within the family, bonds within the peer community and bridges with the host community. In addition, the cultural orientation sessions provided include various topics such as public transport, parenting, healthy eating, education systems, law, community safety, and managing finances. Mixed-gender and separate group sessions are organised with particular attention on well-being. Exchanges of cultures between the reunited families and the local host communities are organised, for example through a 3-day language holiday, giving the opportunity to the participants to learn a new language and skills. The preventive and early integration approach, the individual casework and the group work support enhance integration in the host country.

Under this programme, different partnerships have been developed with government agencies and local authorities to improve access to welfare benefits such as:

- ▶ a Fast Track Protocol developed by the Department for Work and Pensions,
- ▶ a Reunited Family Crisis Grant introduced in April 2018 and available on arrival.



Around 300 people over the last two years have benefited from this integration programme. Families with children represent about 50% of the beneficiaries.

Challenges have included managing workflow and dealing with the 30-day period during which all travel arrangements and the preparation of the arrival need to be made. The building of family unity depends on the extent and nature of family separation. It is also important to involve the whole family in decision making, considering the legal and social reliance of the family on the refugee sponsor. Particular challenges may arise in situations of domestic abuse or family breakdown that can jeopardise the administrative status of family members. Delays to access housing can impact the overall integration outcomes and there is a need to have equal access to learning opportunities for the whole family.

**Name of the project:** The Family Reunion Integration Service

**Implementation partner:** British Red Cross

**Where:** United Kingdom

**Timeline:** From 2013 to 2020

**Funding:** The European Integration Fund, the Big Lottery, the EU Asylum Migration and Integration Fund

**Beneficiaries:** All refugee families

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**Additional information:** [www.redcross.org.uk/family-reunion-integration-service](http://www.redcross.org.uk/family-reunion-integration-service);

Voices of Strength and Pain: impacts of separation, loss and trauma on reuniting refugee families, [www.redcross.org.uk/-/media/documents/about-us/research-publications/refugee-support/british-red-cross-voices-of-strength-and-pain.pdf](http://www.redcross.org.uk/-/media/documents/about-us/research-publications/refugee-support/british-red-cross-voices-of-strength-and-pain.pdf)

**We Started Life Again:** integration experiences of refugee families reuniting in Glasgow, Research report, 2015, [www.refworld.org/pdfid/560cde294.pdf](http://www.refworld.org/pdfid/560cde294.pdf).

## Support for children

Guardians have an essential role to play in preparing and supporting the reintegration of the child in the family, following the reunification with his or her parents/legal guardians.<sup>225</sup> The newly arrived members of the family will certainly need information on the new country and support for integration. They will also need information on the child and the child's life in the country, for instance their school, goals, relationships.

It should also be taken into consideration that unaccompanied children and their parents/legal guardians may have been separated for prolonged periods and within this time they may have both changed because of their experience or age; these changes have an impact on the relationship with their family members. Moreover, very often newly arrived parents/legal guardians face challenges in integrating into

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<sup>225</sup>. For more details on the role of guardians in the family reunification process, see Section 9.2 above.

the new society and this may have an impact on their behaviour towards the child and their ability to understand and respond to his or her needs. Possible history of domestic violence and abuse should also be carefully examined. In this regard, guardians could:

- a. prepare the child and the parents/legal guardians with respect to the family reunification (for example by talking to them about possible challenges);
- b. support parents upon arrival (provide information on the child and the child's needs; provide counselling on their parental role and responsibilities; provide practical support on integration, that is to say referral to relevant authorities or service providers);
- c. supervise and support the family for a certain time, in co-operation with responsible social services, to ensure that parents can effectively respond to their role in taking care of the child and minimise risks of neglect, violence or abuse. Such practice will also help the child to, with the support of his or her appointed guardian, gradually engage in a trustful and secure relationship with his or her parents/legal guardians.

### **Support children and ensure child's best interests and well-being**

In the Netherlands, the guardianship authority for unaccompanied and separated children Nidos supports children once the family has arrived and ensures that the parental responsibility can be given back to the parents in the best conditions. Reception conditions of the family are also foreseen upon arrival.

Following the arrival of the child's family members in the Netherlands, they are orientated to a reception centre ("AZC"). The child will be living with his or her parents in this centre. Under Dutch law, there is a legal obligation for the child and their family to live together for at least one year after the family arrival, except when the child goes to school far from where the family lives. The whole family stays in the reception centre until a municipality provides them with accommodation.

The guardianship provided by Nidos still continues for at least a three-month period. During this period, Nidos monitors the well-being of the child and the family situation to ensure that the responsibility can be transferred to the parents according to the best interest of the child and, if necessary, by consulting a behavioural scientist. Information is also provided to the family on the process of family reunion and meetings are set up (at least once a month) with the family, the child and both the child and parents.

Once the responsibility can be transferred, a request containing the opinion of two other persons (such as a doctor, a teacher or a social worker) is lodged by Nidos and a court order dismissing Nidos from guardianship will be issued within three months. Overall, the average length before transferring the responsibility back to the parents is six months (including monitoring and the procedure for dismissal).

In 2018, 400 decisions were taken on providing parents with parental responsibility again. The majority of these decisions concerned family reunification. The continuity of Nidos' guardianship enables them to provide support to the parents

and to inform them on the child and the child's needs as well as their parental role and responsibilities. Such practice helps the child to, with the support of his or her appointed guardian, gradually engage in a trustful and secure relationship with his or her parents/legal guardians.

**Implementation partner:** Nidos - the Dutch national guardianship institution for refugees

**Where:** The Netherlands

**Timeline:** Ongoing

**Funding:** Ministry of Justice of the Netherlands

**Beneficiaries:** Unaccompanied and separated children under the responsibility of Nidos

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## Chapter 11.

# Co-operation

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**C**o-ordination is essential for the effective implementation of family reunification. In fact, co-operation between different actors is among the notable elements of the various examples selected in this handbook. The Council of Europe defines cross-sectoral co-operation as a complementary co-operation which includes representatives from different sectors, such as governments, government institutions, civil society, businesses, and the media. Its purpose is to co-ordinate activities between partners, to reach aims in a more efficient, coherent, synergistic and co-ordinated way.<sup>226</sup>

This chapter highlights some of the characteristics, strengths and challenges of co-operation identified in the area of family reunification. Overall, various types of collaboration were reported, for instance, between state institutions and international organisations/NGOs, between various NGOs, and between a greater diversity of actors (“multi-stakeholder”). The areas in which co-operation was identified include family tracing, overcoming practical obstacles and best interests determinations. Key features of successful co-operation seem to include clear structures combined with flexibility, as well as complementarity between the various partners in that each partner may possess different skills and infrastructure that complement one another.

### Collaboration between state institutions and international organisations

These collaborations may relate to funding and/or operational co-operation on the ground. For instance, the IOM Family Assistance Programme is funded by the German Federal Foreign Office (see examples in Chapters 8 and 10). Moreover, the IOM also provides practical support on the ground, via support centres close to the relevant German Consular Offices, bus services from the relevant German Consular Offices and support prior to the interview by IOM representatives based with the relevant German Consular Offices. An initial challenge to overcome in organising this co-operation concerned the large number of German visa sections involved due to the various countries in which the Family Assistance Programme was being implemented. This required flexibility and increased co-ordination between the two partners, to achieve efficient and effective work processes. An

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226. Partnership between the European Commission and the Council of Europe in the field of youth, *Guidelines on working with young refugees and migrants. Fostering cross-sectoral co-operation*, 2018, p.14: <https://bit.ly/2o7Y4vA>.

important strength reported is that the co-operation between the various visa sections within one programme led to a streamlining of procedures.

In Belgium, the Federal Migration Centre – Myria and UNHCR have been carrying out a partnership project on the facilitation of family reunification with beneficiaries of international protection since 2017 (see example in Chapter 7). In addition to the funding provided by UNHCR to Myria, both partners work together in drafting policy recommendations in a joint analysis note.

In Greece, for the search of unaccompanied children Law No. 4540 envisages co-operation between the responsible governmental authorities and certified bodies, such as the Greek Red Cross and the IOM. In particular, the Directorate for Search works with the International Committee of the Red Cross (ICRC), the International Network of Search Services, as well as with international organisations and state or private organisations abroad. The collaboration with the IOM is particularly relevant in cases where the family of the unaccompanied child is likely to be in his or her country of origin. The co-operation of the state with certified entities has not been formalised.

The Georgian Law on International Protection establishes a co-operation mechanism between the State Ministry and the International Committee of the Red Cross (ICRC) with respect to family reunification for holders of international protection. Whereas this mechanism can be activated upon request of an international protection holder, to date no such case has been identified since the entry into force of the law.

### **Collaboration between non-governmental organisations**

In Belgium, a partnership between Caritas International Belgium and Miles4Migrants helps fund airplane tickets with donated “Miles” from private persons, when visa for family reunification of family members of refugees in Belgium are obtained (see example in Chapter 8). It is reported that ideally, more organisations should be open to this kind of partnership with Miles4Migrants, as the capacity of Caritas is limited.

### **Multi-stakeholder collaboration**

In various countries, multi-stakeholder collaborations are in place including state institutions, international organisations as well as NGOs.

In Georgia, the State Commission on Migration Issues (SCMI) has established working groups with a mixed composition, namely including representatives of NGOs and international organisations when their expertise is relevant. These working groups have discussed various issues in relation to family reunification, such as its incorporation in the laws on citizenship and international protection. These spaces of dialogue have the potential of preventing overlap and miscommunication between the various stakeholders.

The International Red Cross and Red Crescent Movement (RCRC Movement) consists of the International Committee of the Red Cross (ICRC), the International Federation of the Red Cross and Red Crescent Societies and the 191 National Red Cross and Red Crescent Societies. An important asset of the RCRC Movement lies with its worldwide operational network. The ICRC provides support and technical advice to assist authorities and other entities in their work on family reunification, thereby paying attention to the presence and capacity of other actors. It establishes collaborations with organisations that have experience in working with migrant populations. For instance, in the case of refugees, the UNHCR, the IOM and relevant embassies may assist in family reunification, working together, if needed, with the National Red Cross and Red Crescent Societies. Each National Society has the flexibility to determine its degree of involvement in family reunification, which may range from directly facilitating family reunification to referring people to the relevant entities. For instance, the Croatian Red Cross is involved in tracing family members in the territory of the European Union and in this way supports the Croatian Dublin Unit.

# APPENDIX: Overview of most relevant provisions on family reunification

## Relevant legal instruments

### Human rights and children’s rights principles

<b>Best interests of the child</b> In all actions relating to children, the child’s best interests must be a primary consideration.	Article 3 UNCRC Article 24(2) EU Charter
<b>Prohibition of discrimination</b> States shall respect and ensure all rights and freedoms recognised in respective relevant instruments without distinction of any kind.	Article 14 Convention Article 2 UDHR Article 2(1) ICCPR Article 2(2) ICESCR Article 2 UNCRC
<b>Right of the child to be heard</b> State Parties shall assure to the child the right to express his or her own views freely in all matters affecting the child.	Article 12 UNCRC
<b>Right to life, survival and development</b> Recognition of the inherent right to life of the child and ensure to the maximum extent possible the survival and development of the child.	Article 6 UNCRC
<b>Right to an effective remedy</b> Access to effective remedies for individuals that allege that their rights have been violated is essential.	Article 13 Convention Article 2 ICCPR Article 47 EU Charter

## Family Life

<b>Right to respect for family life</b> No one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence.	Article 8 Convention Article 12 UDHR Article 17 ICCPR Article 16 UNCRC Article 14 ICPMW Article 7 EU Charter
<b>Family as fundamental unit of society</b> Family is the natural and fundamental group unit of society and is entitled to protection.  ▶ Right to marry and found a family ▶ Right to know and be cared for by one's parents ▶ Right not to be separated from parents against their will ▶ Right to maintain personal relations with parents if separated	Principle 16 and Article 16 RESC Article 16(3) UDHR Article 23 ICCPR Article 10(1) ICESCR Article 44(1) ICPMW  Article 16(1) UDHR, 23(2) ICCPR Article 7 UNCRC  Article 9(1) UNCRC  Article 9(3) UNCRC

## Family Reunification

Human Rights Law	
<b>United Nations Convention on the Rights of the Child</b> Procedural obligation to process family reunification requests expeditiously Obligation to avoid adverse consequences for family members Specific obligations in relation to refugee and asylum-seeking children  <b>Revised European Social Charter</b> Obligation to facilitate family reunification of foreign workers  <b>International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families</b> Obligation to facilitate family reunification	Article 10(1)  Article 10(1)  Article 22  Article 19(1)(6)   Article 44(2)
International Refugee Law	
<b>Final Act of the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951</b>  Ensuring that the unity of the refugee's family is maintained, particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country, and ensuring that those refugees who are minors, in particular unaccompanied children and girls, are protected.	Recommendations, B ("principle of unity of the family")



European Union Law	
<b>EU Family Reunification Directive</b>	
Definition of the family (beneficiaries)	Article 4
Application assessment procedure	Article 5
Substantive requirements for family reunification	Article 7
Family reunification of refugees	Article 12
<b>EU Dublin III Regulation</b>	
Criteria relating to:	
Unaccompanied minors	Article 8
Family members who are beneficiaries of international protection	Article 9
Family members who are applicants for international protection	Article 10

As a result of the sharp increase in the refugee and migrant population in recent years, many children and their families have experienced family separation. Member states are bound by various obligations related to family reunification, and the practical reunification of refugee and migrant children with their family members has proved complex. This handbook is a practical guide both to key legal standards and to promising practices in the field of family reunification and restoring family links.

This publication is addressed to those who design and apply laws and is conceived as a point of reference for capacity-building material, technical assistance, co-operation projects and new practices for and with relevant authorities and institutions. It focuses on the reunification of families with children in the context of international migration, and in particular on reunification possibilities for unaccompanied and separated refugee and migrant children. It presents an overview of legal principles of human rights, children's rights, refugee law and EU law relevant to family reunification and then discusses key features of family reunification procedures, with promising examples of law and practice and relevant applicable standards.

The handbook contributes to achieving the objectives of the Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019).

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