

## FAMILY REUNIFICATION IN EUROPE

### UNHCR AND FAMILY REUNIFICATION

It is a generally agreed fact that the family is the fundamental group unit of society entitled to protection by society and the State.<sup>1</sup> Following separation caused by forced displacement, such as from persecution and war, family reunification is often the only way to ensure respect for a refugee's right to family unity. Separation of family members can have devastating consequences on peoples' well-being and their ability to rebuild their lives. Family reunification is therefore a fundamental aspect of bringing normality back to the lives of persons who have fled persecution or serious harm and have lost family during forced displacement and flight.

While the 1951 Refugee Convention does not address family reunification and family unity specifically, the Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons recommends that Member States "take the necessary measures for the protection of the refugee's family, especially with a view to (...) [E]nsuring 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."<sup>2</sup>

Furthermore, UNHCR's Executive Committee ("ExCom") has adopted a series of conclusions that reiterate the fundamental importance of family unity and reunification, and call for facilitated entry on the basis of liberal criteria for family members of persons recognized as being in need of international protection.<sup>3</sup> In addition, UNHCR has emphasized that family reunification is an important element for the integration of beneficiaries of international protection in their host societies. ExCom Conclusion No. 104 in particular notes the potential role of family members in promoting the smoother and more rapid integration of refugee families given that they can reinforce the social support system of refugees.<sup>4</sup>

In this regard, family separation can affect refugees' ability to engage in many aspects of the integration process, from education and employment, to putting down roots, while it also impacts negatively on their physical and emotional health. Indeed, in most cases, family reunification is the first priority for refugees upon receiving status.<sup>5</sup> UNHCR therefore advocates for family reunification mechanisms that are swift and efficient in order to bring families together as early as possible. Moreover, the concept of the family should be interpreted flexibly by States, which could reflect strong and continuous social, emotional or economic dependency between family members, though which does not require complete dependence (for example, as in the case of spouses or elderly parents).

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<sup>1</sup> See, UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Article 16(3) available at: <http://www.unhcr.org/refworld/docid/3ae6b3712c.html>; and UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Article 23(1), available at: <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html>.

<sup>2</sup> United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Final Act and Convention Relating to the Status of Refugees, July 1951, available at: <http://www.refworld.org/docid/40a8a7394.html>.

<sup>3</sup> See in particular, *ExCom Conclusions on Family Reunion*, No. 9 (XXVIII), 1997 and No. 24 (XXXII), 1981; *ExCom Conclusion on Refugee Children and Adolescents*, No. 84 (XLVIII), 1997; and *ExCom Conclusion on the Protection of the Refugee's Family*, No. 88 (L), 1999. All ExCom Conclusions are compiled by UNHCR under, *Thematic Compilation of Executive Committee Conclusions*, June 2011, Sixth edition, available at: <http://www.unhcr.org/refworld/docid/4e8006a62.html>.

<sup>4</sup> UNHCR, *ExCom Conclusion No. 104 on Local Integration*, 7 October 2005, available at: <http://www.unhcr.org/4357a91b2.html>.

<sup>5</sup> UNHCR, *A New Beginning: Refugee Integration in Europe*, September 2013, available at: <http://www.refworld.org/docid/522980604.html>.

## THE RIGHT TO FAMILY REUNIFICATION IN EUROPE

Twenty-five of the 28 EU Member States are subject to the EU's Family Reunification Directive,<sup>6</sup> while a number of other European countries not subject to its provisions permit family reunification for refugees along similar lines, though some incorporate additional requirements. These include, for example, [Denmark](#), [Iceland](#), [Ireland](#), [Norway](#), [Switzerland](#) and the [United Kingdom](#).

The Directive provides more favourable rules for refugees under **Chapter V, Articles 9 through 12**, which takes into account their specific situation, while the definition of **Family members** is contained under **Chapter II, Article 4**.

Once in the EU, eligible family members are entitled to a residence permit of at least one year (renewable) and have access to education, employment and vocational training. Moreover, as made clear by the European Court of Justice,<sup>7</sup> EU States must apply the Directive's rules in a manner consistent with the protection of fundamental rights, notably regarding family life and the principle of the best interests of the child.<sup>8</sup>

The following reflects the primary aspects of the relevant provisions on family reunification for refugees under the Family Reunification Directive:

### ➤ Chapter II, Article 4: *Family members*

The Directive recognises the following categories of family members:

- The sponsor's spouse.
- Minor children of the sponsor and of his/her spouse, including adopted children.
- Minor children, including adopted children of the sponsor where the sponsor has custody and the children are dependent on him or her.
- Minor children, including adopted children of the spouse where the spouse has custody and the children are dependent on him or her.
- Minor children must be below the age of majority set by the law of the Member State concerned and must not be married.

*The following categories are subject to the "may" clause, whereby Member States have the discretion to decide whether they wish to include them in their definition of family members:*

- First-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin.
- Adult unmarried children of the sponsor or his or her spouse, where they are objectively unable to provide for their own needs on account of their state of health.

<sup>6</sup> European Union, *Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification*, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:EN:PDF>.

<sup>7</sup> Judgment of the Court (Grand Chamber) of 27 June 2006, *European Parliament v Council of the European Union, Immigration policy - Right to family reunification of minor children of third country nationals - Directive 2003/86/EC*, Case C-540/03, available at: <http://curia.europa.eu/juris/liste.jsf?pro=&nat=or&oqp=&dates=&lg=&language=en&jur=C%2CT%2CF&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&num=540%252F03&td=%3BALL&pcs=Oor&avg=&page=1&mat=or&jge=&for=&cid=228550>.

<sup>8</sup> 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, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52014DC0210>.

- An unmarried partner, being a third country national, with whom the sponsor is in a duly attested stable long-term relationship, or of a third country national who is bound to the sponsor by a registered partnership.
- In the event of a polygamous marriage, where the sponsor already has a spouse living with him in the territory of a Member State, the Member State concerned shall not authorise the family reunification of a further spouse.

➤ **Chapter V, Articles 9-12: Family reunification of refugees**

Under this Chapter, the following parameters apply:

- Member States may authorise family reunification of other family members not referred to in Article 4 (above) if they are dependent on the refugee.
- If the refugee is an unaccompanied minor, Member States shall authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line; his/her legal guardian; or any other member of the family where the refugee has no relatives in the direct ascending line or such relatives cannot be traced.
- Where a refugee cannot provide official documentary evidence of the family relationship, the Member State shall take into account other evidence.
- Under Article 7, to be eligible for family reunification, third country nationals are required to provide evidence that they have accommodation, health insurance and resources that can support newly arrived family members. However, refugees and/or their family member(s) are not required to provide such evidence that they fulfil these requirements.<sup>9</sup>
- Member States shall not require the refugee to have resided in their territory for a certain period of time before having his/her family members join him/her.

## PRACTICAL REALISATION OF THE RIGHT TO FAMILY REUNIFICATION

UNHCR welcomed the adoption of more favourable rules for refugees under the Family Reunification Directive, and in particular the possibility for refugees to reunite with their family as soon as they have been granted international protection status, as well as the exemption from meeting the requirements for accommodation, health insurance and resources. Despite these more favourable provisions, UNHCR observes many practical obstacles throughout Europe in the family reunification process, leading to prolonged separation, significant procedural costs and no realistic possibility of success. Moreover, practitioners report that family reunification procedures for beneficiaries of international protection are extremely lengthy, often lasting several years.<sup>10</sup> Anecdotal evidence from Greece also indicates that such delays can induce dangerous irregular sea movements.<sup>11</sup>

UNHCR has identified nine areas where current practice leads to real obstacles, at least in some Member States. They concern: restrictions in scope and time; limited family definition; difficulty in tracing relatives; insufficient information about the procedure; difficulties accessing embassies to lodge an application; difficulties documenting family links and dependency; problems securing travel documents and visas from remote and/or insecure areas; financing travel; and meeting integration

<sup>9</sup> Some Member States may request this evidence if the application for family reunification is not made within three months of recognition of refugee status. Beneficiaries of subsidiary protection may also be required to prove sufficient accommodation, sickness insurance and stable and regular resources.

<sup>10</sup> See Red Cross EU & ECRE, *Disrupted Flight: The Realities of Separated Refugee Families in the EU*, November 2014, p. 12, available at: [http://www.redcross.eu/en/upload/documents/pdf/2014/Asylum\\_Migration/RCEU%20ECRE%20-%20Family\\_Reunification%20Report%20Final\\_HR.pdf](http://www.redcross.eu/en/upload/documents/pdf/2014/Asylum_Migration/RCEU%20ECRE%20-%20Family_Reunification%20Report%20Final_HR.pdf).

<sup>11</sup> UNHCR Greece, *Interim Survey Results on the Profile of Persons from Syria arriving at the Greek borders*, June 2015 (issue date, 15 September 2015), available at: <http://data.unhcr.org/syrianrefugees/documents.php?page=8&view=grid>.

requirements. Based on these observations, UNHCR subsequently issued a number of recommendations for better implementation of the Family Reunification Directive,<sup>12</sup> which can be found under Annex 1.

More generally, a better and more protection-oriented implementation of the Directive could be achieved through the provision of guidance on specific issues, better Member State cooperation, and the provision of European and national funding to facilitate family reunification for beneficiaries of international protection.

## **FACILITATING FAMILY REUNIFICATION**

An increasing number of people are seeking safety in countries beyond their immediate region, with many embarking on long and dangerous journeys to reach Europe, whether by land or by sea. At least half of these are persons fleeing war, conflict, and persecution. These mixed migratory movements of unprecedented numbers of persons of concern are from sub-Saharan Africa and the East and Horn of Africa, as well as from the Middle East. They embark on difficult journeys through Turkey, the Horn and North of Africa, and the Mediterranean. Irregular arrival by sea has, in particular, witnessed an alarming increase, and with it, deaths at sea.

In light of such trends, increasing the availability of legal avenues, and making more effective use of existing legal avenues so that vulnerable people do not feel compelled to embark on risky irregular travel, is paramount. In this regard, UNHCR has consistently advocated for a range of measures including, in particular, enhanced family reunification.

Programmes to admit relatives of those already residing in a third country can facilitate the use of existing family reunification mechanisms through streamlined procedures, or through the provision of support in countries where family members are located. This could include, for example, facilitated access to embassies, visa waivers, issuance of humanitarian visas, or assistance with documentation.

It should be a priority for European States to ensure that those who remain behind in countries of asylum or countries of origin can join family members who are residing as beneficiaries of international protection in Europe through the Family Reunification Directive. UNHCR calls on States to facilitate family reunification by simplifying and expediting the family reunification process where a right exists. In addition, States should exercise flexibility in the definition of family members and assist family reunification with extended family and relatives. Member States should also consider pooling their capacity to process family reunification cases and operate a common information booth in countries of asylum, including Regional Development and Protection Programme (RDPP) countries, to provide information, counselling and referrals. This would be particularly advantageous in instances where the embassy of the corresponding EU Member State does not exist in a given country of asylum.

Those who do not have the option of family reunification, either because they do not fulfil the requirements or they are not included in the scope of existing family reunification legislation, could be admitted under other mechanisms, such as resettlement, humanitarian admission, humanitarian visas, or private sponsorship programmes. For example, a number of European States have provided opportunities for the admission of Syrian relatives beyond the confines of the relevant legislation, including Austria, Germany, Ireland, and Switzerland. UNHCR would encourage other European countries to consider similar approaches to facilitate family reunification for beneficiaries of international protection when this is not possible under the Directive.

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<sup>12</sup> UNHCR, Refugee Family Reunification. *UNHCR's Response to the European Commission Green Paper on the Right to Family Reunification of Third Country Nationals Living in the European Union* (Directive 2003/86/EC), February 2012, available at: <http://www.refworld.org/docid/4f55e1cf2.html>.

## ANNEX 1

### UNHCR Recommendations on Family Reunification Based on the Family Reunification Directive

#### 1. Application of more favourable clauses for beneficiaries of international protection

- ✓ All Member States should provide beneficiaries of subsidiary protection access to family reunification under the same favourable rules as those applied to refugees.
- ✓ Member States are encouraged to not apply time limits on the use of the more favourable conditions granted to refugees in recognition of their specific situation.

#### 2. Definition of Family members

- ✓ Member States are encouraged to apply liberal criteria in identifying family members in order to promote the comprehensive reunification of families, including with extended family members when dependency is shown between such family members.
- ✓ Guidelines should be adopted defining clearly what is understood as dependency in relation to a sponsor for the purposes of family reunification.
- ✓ Where the family is formed after the entry into a Member State, beneficiaries of international protection should be afforded the same treatment as other legally residing third-country nationals.

#### 3. Tracing

- ✓ Tracing is of particular importance in the case of unaccompanied minors for whom every effort should be made to trace parents and other relatives as soon as possible where it is in their best interests.
- ✓ UNHCR recommends that where time limits are applied, these only apply to the initial application and do not include the time needed to trace family members.

#### 4. Information on Family Reunification

- ✓ Member States are encouraged to ensure that beneficiaries of international protection receive appropriate information on family reunification in a timely manner and in a way that they understand, including on the favourable conditions enumerated.

#### 5. Access to Family Reunification

- ✓ Member States are invited to facilitate refugees' access to family reunification by providing for the possibility for the sponsor to apply in his/her country of asylum.
- ✓ Member States should make available specific family reunification application forms adapted to the specific needs of beneficiaries of international protection.

#### 6. Documenting Family Links

- ✓ The European Commission and Member States should ensure that, in law and in practice, family reunification requests for beneficiaries of international protection are not rejected based solely on the lack of documentary evidence.
- ✓ Guidelines on the evidence required to establish family links should be developed and training for decision-makers should be provided.

- ✓ Member States and the European Commission should consider and implement UNHCR's guidance on the use of DNA testing for the purpose of documenting family links.<sup>13</sup>

## 7. Travel Documents and Visas

- ✓ All Member States are urged, at a minimum, to put in place, in law and in practice, alternative regimes when national travel documents are not accepted or available, including the use of Convention Travel Documents or emergency ICRC travel documents.
- ✓ Member States are encouraged to issue a one-way laissez-passer to family members who do not have the possibility to obtain national travel documents.
- ✓ Member States are invited to provide the possibility for visas for family members of beneficiaries of international protection to be issued in the country of asylum upon presentation of a valid travel document.
- ✓ Member States are encouraged to use the possibility for consular representation offered by EU legislation for the issuance of visas for the purpose of family reunification where there is no embassy in the country of asylum in the family member's country of residence.

## 8. Financial Assistance

- ✓ Member States should consider reducing or waiving administrative and visa fees for beneficiaries of international protection where such costs may otherwise prevent family reunification.
- ✓ The maximum costs for DNA testing for family reunification should be regulated, and Member States should consider covering such costs where the family relationship is subsequently confirmed.
- ✓ The European Commission and Member States could support financial aid schemes for the family reunification of beneficiaries of international protection who do not have sufficient resources to cover such costs.

## 9. Integration

- ✓ Efforts should be made to process family reunification applications as quickly as possible.
- ✓ Member States should grant the same status, rights and integration entitlements to family members as those granted to beneficiaries of international protection.
- ✓ In order to avoid dependency between family members, in particular for victims of domestic violence, the residence of the family member should be independent of those of the sponsor.

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<sup>13</sup> UNHCR, *UNHCR Note on DNA Testing to Establish Family Relationships in the Refugee Context*, June 2008, available at: <http://www.unhcr.org/refworld/docid/48620c2d2.html>.