



**The Office of United Nations High Commissioner for Refugees ('UNHCR')
Statement on family reunification for beneficiaries of international protection**

Issued in the context of the preliminary ruling reference to the Court of Justice of the European Union in the case of CR, GF, TY v. Landeshauptmann von Wien (C-560/20)

1. Introduction

1.1. On 26 October 2020, the *Verwaltungsgericht Wien* (Administrative Court of Vienna) referred seven questions to the Court of Justice of the European Union (the 'Court'), concerning the interpretation of several provisions of Directive 2003/86/EC, more commonly referred to as the Family Reunification Directive (FRD).¹ The referring court's questions focus on four main issues: (1) the right to family reunification for children who have attained the age of majority during the family reunification procedure ('aged-out'); (2) time limits within which the family reunification request must be lodged; (3) the right to family reunification for adult siblings who are dependent; and (4) maintenance requirements.

1.2. The main proceedings concern a recently aged-out recognized refugee in Austria, RI, whose parents and adult sister (who suffers from cerebral palsy and is permanently dependent on a wheelchair and her parents' support)² applied for family reunification. All are Syrian nationals. According to the summary of the request for a preliminary ruling, RI was granted refugee status on 5 January 2017. His family lodged applications for family reunification on 6 April 2017. These applications were rejected on 29 May 2018 on grounds of RI having reached the age of majority in the meantime. A second set of family reunification applications, lodged on 11 July 2018, was rejected on 20 April 2020 on grounds of late submission (beyond the three month time limit set out in Austrian law).

1.3. The present statement sets out the relevant legal principles regarding the family reunification of beneficiaries of international protection and provides UNHCR's positions on the issues arising in the case. UNHCR submits, firstly, that children who arrive unaccompanied and reach the age of majority during the family reunification procedure must be considered as children for the purposes of family reunification. Secondly, the assessment of whether an application was made in a reasonable time must allow a degree of flexibility, in consideration of the many obstacles refugees are likely to face meeting deadlines and other administrative requirements. Thirdly, the right to family reunification extends to adult siblings who are dependent. Lastly, maintenance requirements on beneficiaries of international protection should not be imposed on recently aged-out children, who are unlikely to have the necessary financial resources, and for whom such requirements would render the right to family reunification impossible in practice.

2. UNHCR's interest and expertise in the matter

2.1. UNHCR has been entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and together with governments to seek solutions for them.³ UNHCR fulfils its mandate, *inter alia*, by supervising the application of international conventions for the protection of refugees.⁴ State parties to the *1951 Convention relating to the Status of Refugees* and

¹ European Union: Council of the European Union, *Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification*, 3 October 2003, OJ L. 251/12-251/18; 3.10.2003, 2003/86/EC, <https://www.refworld.org/docid/3f8bb4a10.html>. For the questions referred see Summary of the request for a preliminary ruling – Case C-560/20, <https://curia.europa.eu/juris/showPdf.jsf?text=&docid=235441&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=6051702>.

² See, Summary of the request for a preliminary ruling – Case C-560/20, para 5.

³ UNGA, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), para. 1 ('UNHCR Statute'), <https://www.refworld.org/docid/3ae6b3628.html>.

⁴ UNHCR Statute, note 3 above, para. 8(a).

its *1967 Protocol*, (together, ‘1951 Convention’) including all EU Member States, are obliged to cooperate with UNHCR in the exercise of its mandate and to facilitate its supervisory role.⁵

2.2. UNHCR’s supervisory responsibility is also provided for under EU law, both in primary law and secondary legislation. Article 78(1) of the *Treaty on the Functioning of the European Union* stipulates that a common policy on asylum, subsidiary protection and temporary protection ‘must be in accordance with the [1951] Convention’⁶ and Article 18 of the *Charter of Fundamental Rights of the European Union* (‘the Charter’) states that ‘the right to asylum shall be guaranteed with due respect for the rules of the [1951] Convention.’⁷

2.3. This Court has confirmed that the 1951 Convention is the ‘cornerstone of the international legal regime for the protection of refugees’ and that the EU asylum system is based on the full and inclusive application of this convention.⁸ EU legislation and the Court have accordingly considered that UNHCR documents are ‘particularly relevant in the light of the role conferred on the UNHCR by the [1951] Convention’.⁹

3. General legal principles regarding family reunification

3.1. Family reunification as an essential right for international protection beneficiaries

3.1.1. The right to family life is recognized as an essential right under international human rights law. The Universal Declaration of Human Rights recognizes that ‘the family is the natural and fundamental group unit of society’, which is ‘entitled to protection by society and the State’.¹⁰ This fundamental principle is given binding effect by Article 23(1) of the *International Covenant on Civil and Political Rights* (ICCPR) to which all States of the European Union are parties.¹¹ Other international human rights instruments such as the *Convention on the Rights of the Child* (CRC), *Convention on Migrant Workers*, and *International Covenant on Economic, Social and Cultural Rights* (ICESCR) contain similar provisions.¹²

⁵ *Convention relating to the Status of Refugees* UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, <https://www.refworld.org/docid/3be01b964.html>, Article 35 and UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, <https://www.refworld.org/docid/3ae6b3ae4.html>, Article II.

⁶ European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, 2008/C 115/01, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>.

⁷ European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02, <https://www.refworld.org/docid/3ae6b3b70.html>.

⁸ Recitals 3, 4, 22, 23, and 24 Qualification Directive, as well as Recital 3 Asylum Procedures Directive. For CJEU cases, see *Alo and Osso* [GC], Joined Cases C-443/14 and C-444/14, 1 March 2016, <https://curia.europa.eu/juris/liste.jsf?num=C-443/14>, paras. 28, 30; restated in *Bilali*, C-720/17, 23 May 2019, <https://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-720/17>, para. 54. See also *M and X, X* [GC], Joined Cases C-391/16, C-77/17 and C-78/17, 14 May 2019, <https://curia.europa.eu/juris/liste.jsf?num=C-391/16>, paras. 80-83, and *Ahmed*, C-369/17, 13 September 2018, <https://curia.europa.eu/juris/liste.jsf?num=C-369/17>, para. 37. Where not otherwise indicated, case-law references refer to judgments of the CJEU.

⁹ For the latest restatement of this in CJEU case law, see *Commission v. Hungary*, C-808/18 [GC], 17 December 2020, <https://curia.europa.eu/juris/liste.jsf?num=C-808/18>, para. 115; for earlier instances, see also *Bilali*, note 8 above, para. 57, and *Halaf*, C-528/11, 30 May 2013, <https://curia.europa.eu/juris/liste.jsf?num=C-528/11&language=EN>, para. 44.

¹⁰ Article 16(3), UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III): <https://www.refworld.org/docid/3ae6b3712c.html>.

¹¹ Article 23(1), UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 <https://www.refworld.org/docid/3ae6b3aa0.html>.

¹² UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, <https://www.refworld.org/docid/3ae6b38f0.html>; UN General Assembly, *International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families : resolution / adopted by the General Assembly*, 18 December 1990, A/RES/45/158, <https://www.refworld.org/docid/3b00f2391c.html>; and UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3: <https://www.refworld.org/docid/3ae6b36c0.html>.

3.1.2. While the 1951 Convention does not specifically refer to family reunification, the Final Act of the UN Conference of Plenipotentiaries at which the Convention was adopted affirmed ‘that the unity of the family [...] is an essential right of the refugee’ and issued a specific recommendation that Governments ‘take the necessary measures for the protection of the refugee’s family, especially with a view to ensuring that the unity of the family is maintained.’¹³ UNHCR’s Executive Committee (ExCom) has repeatedly emphasized the ‘fundamental importance’ of family reunification and has adopted a series of Conclusions on this issue,¹⁴ underlining the need to protect the unity of the refugee’s family, *inter alia*, by ‘measures which ensure respect for the principle of family unity, including, those to reunify family members separated as a result of refugee flight.’¹⁵ ExCom has further recommended that ‘[i]n application of the Principle of the unity of the family and for obvious humanitarian reasons, *every effort should be made* to ensure the reunification of separated refugee families’, and that, ‘countries of asylum and countries of origin [...] ensure that the reunification of separated refugee families takes place *with the least possible delay*.’¹⁶ ExCom has also called on countries of asylum to ‘apply liberal criteria in identifying those family members who can be admitted with a view to promoting a comprehensive reunification of the family’.¹⁷

3.1.3. UNHCR has consistently held that family reunification is essential for refugees to enjoy the fundamental right to family life. As noted in the 2017 UNHCR Summary Conclusions on the Right to Family Life, ‘[w]hen refugees are separated from family members as a consequence of their flight, a prolonged separation can have devastating consequences on the wellbeing of the refugees and their families. The negative consequences impact on the refugees’ ability to integrate in their country of asylum, become active contributors to the society, and rebuild their lives.’¹⁸ By contrast, the restoration of the family unit can help to ease the sense of loss often experienced by refugees who have had to abandon their countries of origin, communities and previous ways of life. In UNHCR’s experience, the possibility of being reunited with one’s family is therefore vital for integration.¹⁹

3.1.4. UNHCR therefore encourages States to adopt a pragmatic and flexible approach to family reunification.²⁰ This is required given that family separation, in the case of refugees, is not a deliberate choice, but rather the result of forced displacement due to persecution and war. In their case, family reunification is often the only way to ensure respect for the right to family unity.²¹ This Court has stressed that the FRD’s objective is to *promote* family reunification,²² and that it must be implemented ‘in conformity with fundamental rights, in particular the right to respect for private and family life guaranteed by Article 7 of the Charter’.²³ Referring specifically to refugees, it held that ‘special

¹³ Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951, A/CONF.2/108/Rev.1, www.refworld.org/docid/40a8a7394.html; UNHCR Handbook, note 12 above, para. 183.

¹⁴ ExCom Conclusions are adopted by consensus by the States which are Members of ExCom and can therefore be considered as reflecting their understanding of legal standards regarding the protection of refugees. At present, 107 States are Members of the Executive Committee, including Austria which has been a member since 1951. See in particular, ExCom Conclusions No. 9 (XXVIII) on Family Reunion, 1977; No. 24 (XXXII) on Family Reunification, 1981; No. 84 (XLVIII) on Refugee Children and Adolescents, 1997; No. 88 (L), 1999 on the Protection of the Refugee’s Family; No. 104 (LVI), 2005 on Local Integration; and No. 107 (LVIII), 2007 on Children at Risk. See UNHCR, *Conclusions on International Protection Adopted by the Executive Committee of the UNHCR Programme 1975 – 2017 (Conclusion No. 1 – 114)*, October 2017, HCR/IP/3/Eng/REV. 2017, <https://www.refworld.org/docid/5a2ead6b4.html>.

¹⁵ ExCom Conclusion No. 88 (L), 1999 on the Protection of the Refugee’s Family, para. b(i).

¹⁶ UNHCR ExCom, Conclusion No. 24 on Family Reunification, note 14 above, para. 2.

¹⁷ UNHCR ExCom, Conclusion No. 24 on Family Reunification, note 14 above, para. 5.

¹⁸ UNHCR, *Summary Conclusions on the Right to Family Life and Family Unity in the Context of Family Reunification of Refugees and Other Persons In Need Of International Protection*, 4 December 2017, Expert Roundtable, www.refworld.org/docid/5b18f5774.html, para. 1.

¹⁹ UNHCR, *Note on the Integration of Refugees in the European Union* (‘UNHCR Note on Integration’), May 2007, www.refworld.org/docid/463b24d52.html, paras. 35-36.

²⁰ UNHCR, *Note on the Integration*, para. 36; UNHCR, *Families Together, Family Reunification for Refugees in the European Union* (‘UNHCR, Families Together’), <https://www.unhcr.org/uk/5f5743f84.pdf>, p. 35.

²¹ UNHCR, *No Family Torn Apart: Challenges refugees face securing family reunification in the Netherlands and recommendations for improvements* (‘UNHCR, No Family Torn Apart’), September 2019, <https://www.refworld.org/docid/60be2fd14.html>, p. 19.

²² Chakroun, C-578/08, 4 March 2010, <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-578/08>, para. 43.

²³ Y.Z. and Others, C-557/17, 14 March 2019, <https://curia.europa.eu/juris/liste.jsf?num=C-557/17>, para. 53.

attention should be paid to the situation of refugees, since they have been obliged to flee their country and cannot conceivably lead a normal family life there'.²⁴ This has also been recognised by the European Court of Human Rights (ECtHR) which has expressly recognized that family unity is an essential right for refugees, that the fact that they have received international protection is proof of their vulnerability, and that a broad consensus exists at the international and European level on the need for refugees to benefit from a more favourable family reunification regime than other foreigners.²⁵ States thus have an obligation not only to refrain from interfering with individuals' right to family life, but to facilitate access to this essential right.²⁶

3.2. Best interests of the child as a primary consideration

3.2.1. In any family reunification procedure involving children, including where they are the sponsor, their best interests must be a primary consideration. The *Convention on the Rights of the Child* (CRC) affirms the right of the child to have their best interests taken as a primary consideration in all legislative, administrative or judicial actions or decisions affecting them, directly or indirectly. ExCom has stressed that all action taken on behalf of refugee children must be guided by the principle of the best interests of the child as well as by the principle of family unity.²⁷ UNHCR considers that generally, the interests of the child are best met when children remain with or join their family. It follows that, for unaccompanied children, family reunification is normally considered as being in their best interests.²⁸ As the CRC Committee has held, '[f]amily reunification in the country of origin is not in the best interests of the child and should therefore not be pursued where there is a "reasonable risk" that such a return would lead to the violation of fundamental human rights of the child. Such risk is indisputably documented in the granting of refugee status' or where a State considers *non-refoulement* obligations to apply.²⁹ The CRC reiterates the importance of the family as 'the fundamental group of society and the natural environment for the growth and well-being of [...] children'³⁰ and specifies that children and parents separated from each other shall have their applications for family reunification dealt with 'in a positive, humane and expeditious manner.'³¹ The EU Charter as well as numerous secondary EU laws equally oblige Member States to take the best interests of the child into consideration.³²

3.2.2. These principles have also been affirmed in European case law. This Court has attached great importance to the best interests of the child, finding for example, that family reunification requests must be examined even where the family member of an EU citizen is subject to an entry ban, relying *inter alia* on the best interests of the child.³³ In the family reunification context, this Court has further held that the right to respect for private and family life under Article 7 of the Charter 'must also be read in conjunction with the obligation to have regard to the child's best interests, recognised in Article 24(2)

²⁴ *TB*, C-519/18, 12 December 2019, <https://curia.europa.eu/juris/liste.jsf?language=en&jur=C.T.F&num=c-519/18>, paras. 49-50. See also *K and B*, C-380/17, 7 November 2018, <https://curia.europa.eu/juris/liste.jsf?language=en&jur=C.T.F&num=c-380/17>, para. 53.

²⁵ *Tanda-Muzinga c. France*, Appl. no. 2260/10, ECtHR, 10 July 2014, www.refworld.org/cases/ECHR_53be80094.html, para. 75; *Mugenzi c. France*, Appl. no. 52701/09, ECtHR, 10 July 2014, www.refworld.org/cases/ECHR_53be81784.html, para. 54.

²⁶ *Tuquabo-Tekle and Others v. the Netherlands*, Appl. no. 60665/00, ECtHR, 1 December 2005, https://www.refworld.org/cases/ECHR_43a29e674.html, para. 42, and *Jeunesse v. the Netherlands*, Appl. no. 12738/10, ECtHR, 3 October 2014, https://www.refworld.org/cases/ECHR_584a96604.html, para. 106.

²⁷ ExCom Conclusion No. 47 (XXXVIII) on Refugee Children, 1987, paras. d and h(i).

²⁸ UNHCR, *2021 UNHCR Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child*, May 2021, <https://www.refworld.org/docid/5c18d7254.html>.

²⁹ CRC, *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, <https://www.refworld.org/docid/42dd174b4.html>, para. 82.

³⁰ Recital 5, UN General Assembly, *Convention on the Rights of the Child* ('CRC'), 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, <https://www.refworld.org/docid/3ae6b38f0.html>.

³¹ Article 10 CRC.

³² Article 24(2) and (3) Charter; Article 5(5) European Union: Council of the European Union, *Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification* ('FRD'), 3 October 2003, OJ L. 251/12-251/18; 3.10.2003, 2003/86/EC, <https://www.refworld.org/docid/3f8bb4a10.html>; Recitals 18 and 19 and Article 20(5) Qualification Directive; Recital 33 and Article 25(6) Asylum Procedures Directive; Recitals 9, 22 and Article 23 Reception Conditions Directive; Recitals 13 and 16 and Articles 6 and 8 Dublin III Regulation, and Recital 22 and Articles 5, 10(1) and 17(5) Return Directive.

³³ *K.A. and Others*, C-82/16, 8 May 2018, <https://curia.europa.eu/juris/liste.jsf?language=en&jur=C.T.F&num=c-82/16>, para. 72, and case law quoted there.

of the Charter, and with account being taken of the need, expressed in Article 24(3), for a child to maintain on a regular basis a personal relationship with his or her parents'.³⁴ In the Dublin context, this Court has found that 'respect for family life and, more specifically, preserving the unity of the family group is, as a general rule, in the best interests of the child.'³⁵ Numerous recent judgments by this Court in the asylum context have further confirmed the importance of the concept of the best interests of the child in European law.³⁶ The ECtHR has equally confirmed that 'in all decisions concerning children, their best interest must be paramount'³⁷ and has affirmed that the domestic courts must place the best interest of the child 'at the heart of their considerations and attach crucial weight to it.'³⁸ Where they had failed to undertake a 'thorough balancing of the interests in issue' that places the child's best interests 'sufficiently at the center of the balancing exercise and its reasoning' the ECtHR found a violation of Article 8 ECHR.³⁹ In light of this case law, a proper consideration of the best interest of the child may require States, depending on the specific facts and interests at stake, to apply some flexibility or discretion in relation to the definition of family members and time limits.

4. Specific issues relating to family reunification of beneficiaries of international protection

4.1. Children who attain the age of majority during family reunification procedures

4.1.1. UNHCR is concerned that in some States child beneficiaries of international protection who reach the age of majority during family reunification procedures lose their right to family reunification. This is disconcerting as asylum-seekers often wait for many months or even years until they receive a decision on their asylum claim and their subsequent family reunification application, and child asylum-seekers may 'age-out' in the meantime. Such delays, apart from profoundly affecting the child's well-being and ability to start integrating and rebuilding a new life,⁴⁰ may have the consequence of taking away the child's right to reunify with his or her family altogether.

4.1.2. UNHCR submits that under international and European law a different approach is required. In light of the general principles outlined above (see Section 3), States should continue to treat children who reach the age of majority during family reunification procedures as children for the purpose of

³⁴ *B.M. M. and Others*, Joined Cases C-133/19, C-136/19 and C-137/19, 16 July 2020, <https://curia.europa.eu/juris/liste.jsf?language=en&jur=C.T.F&num=c-133/19>, para. 34 and case law quoted there. Article 7 of the Charter states 'Respect for private and family life. Everyone has the right to respect for his or her private and family life, home and communications. Article 24(2) and (3) state: '2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. 3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.'

³⁵ *M.A. and Others*, C-661/17, 23 January 2019, <https://curia.europa.eu/juris/liste.jsf?num=C-661/17>, para. 89.

³⁶ *M. A. v État belge*, C-112/20, 11 March 2021, <https://curia.europa.eu/juris/liste.jsf?num=C-112/20>, paras. 26-27, 32-33, 36-38; *TQ*, C-441/19, 14 January 2021, <https://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-441/19>, paras. 44-48, 51-54, 64-65; *Haqbin*, C-233/18, 12 November 2019, <https://curia.europa.eu/juris/liste.jsf?language=en&jur=C.T.F&num=c-233/18>, para. 54; *A and S*, C-550/16, 12 April 2018, <https://curia.europa.eu/juris/liste.jsf?num=C-550/16&td>, para. 58; *M.A. and Others*, note 35 above, paras. 89-90. According to the European Commission's 2019 implementation report on the FRD, the majority of Member States comply with the obligation of taking into account the best interests of the child when implementing the FRD. See 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, COM(2019) 162 final ('European Commission 2019 FRD Implementation Report'), 29.03.2019, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019DC0162&from=en>, p. 12.

³⁷ *Neulinger and Shuruk v. Switzerland*, Appl. no. 41615/07, ECtHR, 6 July 2010, <https://www.refworld.org/cases.ECHR.5183e05d4.html>, para. 135; *Rahimi v. Greece*, Appl. no. 8687/08, ECtHR, 5 April 2011, <https://www.refworld.org/cases.ECHR.4d9c3e482.html>, para. 108; see also *H.A. et autres c. Grèce*, Appl. no. 19951/16, ECtHR, 28 February 2019, <https://www.refworld.org/cases.ECHR.5c780a0d7.html>, para. 205.

³⁸ *El Ghatet v. Switzerland*, Appl. no. 56971/10, ECtHR, 8 November 2016, <https://www.refworld.org/cases.ECHR.5836a1854.html>, para. 46.

³⁹ *El Ghatet v. Switzerland*, note 38 above, paras. 46-52.

⁴⁰ 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)* ('UNHCR Response to Green Paper'), February 2012, <https://www.refworld.org/docid/4f55e1cf2.html>, p. 13. UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of Abdi Ali Mahamud v. the Netherlands (Appl. no. 64534/19) before the European Court of Human Rights*, 8 April 2021, <https://www.refworld.org/docid/608146684.html>, para. 3.1.6.

family reunification. Otherwise, as this Court found in *A and S v Staatssecretaris van Veiligheid en Justitie*, this essential right would depend on how quickly or slowly the authorities act, a factor outside of the applicant's sphere of control. This 'would go against not only the aim of [the FRD], which is to promote family reunification and to grant in that regard a specific protection to refugees, in particular unaccompanied minors, but also the principles of equal treatment and legal certainty.'⁴¹ The Court further held that making the right to family reunification dependent on the decision date could, rather than incentivizing States to treat applications by unaccompanied children expeditiously, have the opposite effect, frustrating the objective of ensuring that the best interests of the child is in practice a primary consideration for Member States.⁴² Consequently, the relevant date for assessing the applicant's status as a child is the date that he or she applied for international protection, with the result that parents of a child who ages out during the procedure continue to benefit from the right to family reunification under the FRD.⁴³ The same conclusion is warranted under the right to respect for family life enshrined in Article 8 ECHR⁴⁴ and international legal guidance.⁴⁵

4.2. Time limits for refugees to benefit from more favourable treatment

4.2.1. Article 12 (1) third subparagraph of the FRD allows Member States to require refugees to apply for family reunification within three months of being granted international protection in order to benefit from the exemption to the 'maintenance requirements' regarding adequate accommodation, sickness insurance and stable and regular resources set out in Article 7 FRD. This provision is not mandatory and is not applied by all Member States. Some Member States require the application only to be lodged, but not all documents to be submitted or requirements to be fulfilled within the three months period (e.g. where the whereabouts of the family members are unknown, a personal interview may take place later).⁴⁶ In addition, certain Member States apply an 'excusability test' to assess whether the late family reunification application may be considered justified.⁴⁷ In other Member States, longer deadlines of 6 months (Estonia, Poland) or 12 months (Belgium, Ireland) apply, and several Member States do not impose a deadline at all (Bulgaria, France, Italy, Romania, Spain, Malta and Slovenia).⁴⁸

4.2.2. In UNHCR's view, the three month time limit does not take sufficiently into account the particularities of the situation of beneficiaries of international protection or the special circumstances that have led to the separation of refugee families.⁴⁹ In the majority of Member States, applications for family reunification have to be submitted by the family member at an embassy in their country of origin or residence. However, family members of refugees often face specific problems in accessing embassies. Where the family of a refugee is still in their country of origin, approaching a foreign

⁴¹ *A and S*, note 36 above, para. 55. The same principles were subsequently reiterated in *B. M. M. and Others*, note 34 above, and also reflected in national case law, see, for example, F-3045/2016, Swiss Federal Administrative Court, 25 July 2018, <https://www.refworld.org/cgi-bin/telexis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5b92817f4>.

⁴² *A and S*, note 36 above, paras. 55, 58. On the principle of non-discrimination see also UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of J. K. v. Switzerland (Appl. No. 15500/18) before the European Court of Human Rights* ('UNHCR intervention in *J.K. v. Switzerland*'), 28 May 2019, <https://www.refworld.org/docid/5dced8884.html>, para. 3.3.2.

⁴³ *A and S*, note 36 above, with the same principles further recalled in *B. M. M. and Others*, note 34 above.

⁴⁴ See, for example, the case of *Osman v. Denmark*, Appl. no. 38058/09, ECtHR, 14 June 2011, where the ECtHR recognized in a family reunification case involving a recently aged-out child that for young adults who had not yet founded a family of their own, their relationship with their parents and other close family members constituted 'family life' and Denmark had breached Article 8 ECHR by not allowing the child to reunify with her parents. For lengthy family reunification procedures breaching Article 8 ECHR, see the cases of *Tanda-Muzinga c. France* and *Mugenzi c. France*, both note 25 above.

⁴⁵ UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), *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* ('CMW/CRC Joint General Comment 4/23'), 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, <https://www.refworld.org/docid/5a12942a2b.html>, paras. 15 and 35.

⁴⁶ UNHCR, *No Family Torn Apart*, note 21 above, p. 65.

⁴⁷ UNHCR, *No Family Torn Apart*, note 21 above, p. 65, UNHCR, *Families Together*, pp. 14-15.

⁴⁸ UNHCR, *No Family Torn Apart*, note 21 above, p. 65. For non-EU Member States, the UK and Iceland equally do not impose a deadline.

⁴⁹ UNHCR Response to Green Paper, note 40 above, p. 6.

embassy can in some cases pose a risk to their safety.⁵⁰ In addition, family members may have to travel long distances at great cost, sometimes to another country, to reach an embassy and risking their personal security.⁵¹ Thus, meeting the requirements for family reunification is often difficult as it may require leaving a war zone, approaching sometimes hostile or non-functioning authorities, crossing borders, and securing required translations and certifications.⁵² Further, the sponsors may not be aware if their family members are still alive, or of their whereabouts if they were separated during flight. Tracing of family members is a lengthy process which often exceeds three months. Refugees also face more difficulties in providing the documentation required for family reunification as documents may have been lost or destroyed during flight, and family members may be unable to approach the authorities of their country of origin for documents due to risks of persecution.⁵³ Refugees may also simply lack information about applicable deadlines.⁵⁴ As such, a three month time limit may be a serious obstacle to family reunification.

4.2.3. UNHCR therefore encourages Member States not to apply time limits to more favourable conditions granted to refugees regarding family reunification, in recognition of their specific situation.⁵⁵ As a minimum, time limits should only apply for the *introduction* of an application for family reunification and should not require that the applicant and family members fulfil all administrative requirements or complete all formalities for family reunification within a strict time limit. The assessment of whether an application was made in a reasonable time should be conducted in a flexible manner, taking into account the specific circumstances of the case and the existence of practical obstacles which may make a delay objectively excusable.

4.2.4. The European Commission considers that, given the practical obstacles refugees often face, not applying Article 12 (1) third subparagraph FRD is ‘the most appropriate solution’.⁵⁶ If Member States nevertheless opt to apply this provision, the Commission suggests that they should take into account such practical obstacles and, ‘allow for the possibility of the sponsor submitting the application in the territory of the [Member State]’ rather than requiring the family member to submit the application.⁵⁷ Finally, where applicants are faced with objective practical obstacles to meeting the three month deadline, Member States ‘should allow them to make a partial application, to be completed as soon as documents become available or tracing is successfully completed.’⁵⁸

4.2.5. The same approach is required under the principle of effectiveness, which this Court has recalled on numerous occasions in family reunification cases, and which prescribes that any national procedural requirements (such as time limits) must not render impossible in practice or excessively difficult the exercise of rights conferred by the EU legal order, such as the right to family reunification under the FRD.⁵⁹

⁵⁰ See Recital 36 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011, which states that ‘Family members, merely due to their relation to the refugee, will normally be vulnerable to acts of persecution in such a manner that could be the basis for refugee status.’

⁵¹ UNHCR Response to Green Paper, note 40 above, p. 11. UNHCR has, however, also observed some important positive practices in the EU, with several Member States providing for the possibility of refugees to apply for family reunification on behalf of their family members who are outside Europe. For example, Estonia, Germany, Luxembourg, and the Netherlands provide for the possibility of applications either being lodged by the sponsor in the country of asylum or the intended beneficiaries abroad (including at Belgian Embassies for applicants seeking to reunify in Luxembourg). See UNHCR, *Families Together*, note 20 above, pp. 17-19.

⁵² Frances Nicholson, *The ‘Essential Right’ to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification* (‘Nicholson, The Essential Right’), January 2018, 2nd edition, <https://www.refworld.org/docid/5a902a9b4.html>, pp. 88-89. UNHCR Response to Green Paper, note 40 above, p. 6.

⁵³ UNHCR Response to Green Paper, note 40 above, p. 6.

⁵⁴ Nicholson, *The Essential Right*, note 52 above, p. 89, UNHCR Response to Green Paper, note 40 above, p. 11.

⁵⁵ UNHCR Response to Green Paper, note 40 above, p. 6.

⁵⁶ 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* (‘Commission Communication on FRD’), 3 April 2014, COM/2014/0210 final, www.refworld.org/docid/583d7d0b7.html, p. 23.

⁵⁷ Commission Communication on FRD, note 56 above, p. 24.

⁵⁸ Commission Communication on FRD, note 56 above, p. 24.

⁵⁹ *K and B*, note 24 above, para. 56.

4.2.6. A recent Council of Europe (CoE) study on family reunification recognized that 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.’⁶⁰ The CoE has accordingly recommended to States to ‘[a]llow refugees sufficient time to apply for family reunification’ and ‘[a]bolish short time limits for family reunification applications, unless they are adapted to permit a first provisional application to be made by the refugee him- or herself in the country of asylum, allowing documentation and details to be submitted later.’⁶¹

4.3. Time limits for applications by children who attain the age of majority during family reunification procedures

4.3.1. The time limit to benefit from an exemption to the maintenance requirements is to be distinguished from a time limit to exercise the right to family reunification altogether. As outlined in Section 3, States may not restrict the right to family life in a way that is incompatible with their international legal obligations. The crucial question is whether there is ‘family life’, as interpreted by international human rights bodies, rather than a strictly formal requirement such as age or statutory time limits. The concept of ‘family life’ under Article 8 ECHR, for example, is rooted in real personal ties, not formal considerations. As the ECtHR has held, whether family life exists ‘is essentially a question of fact depending on the real existence in practice of close personal ties’.⁶² Article 8 ECHR, and consequently Article 7 of the Charter and secondary EU law,⁶³ must therefore be interpreted with the necessary flexibility.

4.3.2. In line with these fundamental rights obligations, the FRD does not contain a time limit to exercise the right to family reunification. While late application can lead to more restrictive requirements (for example requiring the sponsor to fulfil the income requirement under Article 7(1)(c) FRD), it cannot, in itself, lead to the right to family reunification being denied altogether. As this Court has held, applications lodged beyond the three month time frame must still be processed under the ordinary rules that apply to all other third country nationals; late application alone is not a sufficient basis for rejection.⁶⁴ This Court has nevertheless indicated that in the case of children who attain the age of majority during the procedure, an application should be made ‘within a reasonable time’ as allowing reliance on this right without any time limits would be incompatible with the FRD’s aim.⁶⁵ For the purposes of determining such reasonable time, this Court noted that the time limit of three months that Member States may apply regarding the more beneficial rules for refugees under Article 12 (1) third subparagraph has ‘indicative worth’. As a result, this Court concluded that the aged-out youth must submit their application ‘in principle’ within three months after having been granted refugee status.⁶⁶

4.3.3. UNHCR recalls that Article 12 (1) third subparagraph is a permissive provision. It allows, but does not require, Member States to set a three month time limit. This Court’s nuanced language (‘indicative value’, ‘in principle’) suggests that no strict time limit can be derived from Article 12 (1) third subparagraph to be applied to the specific situation of aged-out children. Further, this Court made no mention of a time limit in the operative part of the judgment, underpinning the conclusion that this cannot be understood to be a mandatory criterion. Moreover, this Court ruled that any assessment of whether a family reunification application was made within the required time frame must take into

⁶⁰ Council of Europe, *Family Reunification for Refugee and Migrant Children, Standards and promising practices*, April 2020, <https://rm.coe.int/family-reunification-for-refugee-and-migrant-children-standards-and-pr/16809e8320>, pp. 49-50.

⁶¹ Council of Europe: Commissioner for Human Rights, *Realising the right to family reunification of refugees in Europe* (‘Council of Europe, Realising family reunification’), June 2017, www.refworld.org/docid/5a0d5eae4.html, p. 9.

⁶² *Kopf and Liberda v. Austria*, Appl. no. 1598/06, 17 January 2012, ECtHR, <http://hudoc.echr.coe.int/fre?i=001-108686>, para. 35. See also UNHCR, *Amicus curiae of the Office of the United Nations High Commissioner for Refugees in the case X and THE MINISTER FOR JUSTICE AND EQUALITY, IRELAND AND THE ATTORNEY GENERAL*, 11 December 2019, Record No. 2019/137, <https://www.refworld.org/docid/5e147e7c4.html>.

⁶³ Article 52(3) Charter. See also *Y.Z. and Others*, note 23 above, para. 53.

⁶⁴ *K and B*, note 24 above, para. 66.

⁶⁵ *A and S*, note 36 above, para. 61.

⁶⁶ *A and S*, note 36 above, para. 61.

consideration the particular circumstances of the individual case and whether such circumstances rendered a late submission ‘objectively excusable’.⁶⁷ Even the three month time limit to benefit from more favourable conditions cannot be applied without conditions, but requires, *inter alia*, exemptions in case of ‘objectively excusable’ delays and full information of the applicants on how to assert their right to family reunification.⁶⁸ This must, *a fortiori*, be the case where the right to family reunification as such is at stake and where recently aged-out children are concerned.

4.3.4. Accordingly, UNHCR’s position that States should not apply strict time limits applies all the more to the situation of aged-out young refugees and the question for how long they may be considered as children and thus have a right to family reunification under Article 10(3)(a) FRD. In their case, exceeding the time limit would lead not only to stricter requirements, but to the denial of family reunification in most cases, as the FRD does not oblige Member States to grant family reunification with parents of *adult* refugees. Member States should thus not apply any strict times limits and should conduct the assessment of reasonable timeliness in a flexible manner, taking into account any practical obstacles which might make a delay objectively excusable.

4.4. Dependent adult siblings

4.4.1. A further obstacle to family reunification frequently faced by refugees is a narrow interpretation of dependency. In UNHCR’s view, where the sponsor is an unaccompanied child, the right to family reunification should not only apply to the parents but also to other dependent family members, including adult siblings who are dependent on the parents for their essential care and assistance. In such cases, permitting only the parents and minor siblings of an unaccompanied child refugee to reunify may prevent the family’s reunification because the parents would be forced to decide whether to leave other children behind, thereby perpetuating family separation. Flexibility in the defining family members is therefore required with dependency used as the main criterion.

4.4.2. UNHCR defines dependency as follows:

*‘Dependency infers that a relationship or a bond exists between family members, whether this is social, emotional or economic. [T]he concept of dependant should be understood to be someone who depends for his or her existence substantially and directly on any other person, in particular for economic reasons, but also taking social or emotional dependency and cultural norms into consideration.’*⁶⁹

4.4.3. For UNHCR, this ‘relationship of social, emotional or economic dependency’ is presumed between close family members. For other family members, it must be established on a case-by-case basis. In particular, dependency of children may continue after they reach the age of majority if they remain within the family unit and retain economic, social and emotional bonds. Dependency should also be recognized if a person has a disability and is incapable of self-support, either permanently or for a period expected to be of long duration.⁷⁰

4.4.4. As mentioned above (see section 4.3.), the ECtHR adopts a flexible and fact-specific concept of family life. In cases concerning adult relatives or extended family members – including adult siblings – it has found family life to exist where there were further elements of dependency involving ‘more

⁶⁷ *K and B*, note 24 above, para. 66.

⁶⁸ *K and B*, note 24 above, para. 66. In this case, the Court ruled that the three months time limit may only be applied under four conditions: first, it must be possible to submit a new application under the regular rules for other third country nationals; second, where the delay is ‘objectively excusable’ an application cannot be rejected purely due to a late submission; third, applicants must be fully informed about the consequences of the rejection and of the measures which they can take to assert their rights to family reunification effectively; and fourth, the sponsors must continue to benefit from more favourable conditions applicable to refugees, other than the maintenance requirements (e.g. lighter standard for evidence of official documentation and no waiting period).

⁶⁹ UNHCR, *UNHCR Resettlement Handbook*, 2011, July 2011, <https://www.refworld.org/docid/4ecb973c2.html>, p. 178.

⁷⁰ UNHCR Response to Green Paper, note 40 above, pp. 7-8.

than emotional ties.⁷¹ *A fortiori*, where a dependent relative is ‘entirely incapacitate[d]’,⁷² the family enjoys protection under Article 8 ECHR. The ECtHR has also underlined that family reunification in the case of refugees should be applied with the necessary flexibility in order to pay specific attention to their ‘particularly difficult personal experience’.⁷³ Accordingly, the Council of Europe Commissioner for Human Rights (CoE CHR) has adopted a broad approach to dependency and has recommended that CoE Member States ensure that the concept ‘allows for a flexible assessment of the emotional, social, financial, and other ties and support between refugees and family members.’ In addition, the CoE CHR considers that ‘[i]f those ties have been disrupted due to factors related to flight, they should not be taken to signal that dependency has ceased.’⁷⁴

4.4.5. EU law broadly authorises family reunification of other family members where they are dependent and notes, in particular, that family reunification may be granted for adult unmarried children ‘where they are objectively unable to provide for their own needs on account of their state of health’.⁷⁵ This Court has ruled that the FRD must be applied ‘in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law’,⁷⁶ and the European Commission has encouraged Member States ‘to use their margin of appreciation in the most humanitarian way’.⁷⁷ By way of example, this Court has recognized the right to family life in a case concerning a sister dependent on her refugee brother due to her state of health,⁷⁸ and a daughter-in-law suffering from a serious illness.⁷⁹ Evidently, any decision on family reunification of dependent family members under Article 10(2) FRD must also be in line with fundamental rights, in particular the right to respect for family life enshrined in Article 7 of the Charter as well as the principle of proportionality, which is a general principle of EU law.⁸⁰ Consequently, as this Court held, ‘the discretion afforded to the Member States by Article 10(2) must [...] not be used by them in a manner which would undermine the objective of Directive 2003/86 and the effectiveness of that directive’.⁸¹ The provisions may thus not be interpreted in a way that renders impossible in practice or excessively difficult the exercise of rights conferred by the EU legal order (principle of effectiveness).⁸² If family reunification was only granted to the child’s parents but not to an adult dependent sibling who is unable to stay in the country of origin by themselves, the family would be faced with an impossible choice between leaving their dependent child behind or renouncing their right to family reunification, thus rendering the exercise of this right impossible in practice.

4.4.6. In light of the purpose of the FRD, which is to facilitate family reunification, coupled with the principle of effectiveness as a general principle of EU law and international and European human rights obligations, UNHCR submits that Member States have a positive obligation to admit to their territory an adult sibling who is dependent on their parents, including where the parents themselves are the subject of a family reunification application lodged by a refugee child.⁸³

⁷¹ *Mokrani c. France*, Appl. no. 52206/99, ECtHR, 15 July 2003, <http://hudoc.echr.coe.int/eng?i=001-65778>; *Slivenko v. Latvia*, Appl. no. 48321/99, ECtHR, 9 October 2003, <http://hudoc.echr.coe.int/eng?i=001-61334>.

⁷² *A.W. Khan v. the UK*, Appl. no. 47486/06, ECtHR, 12 January 2010, <http://hudoc.echr.coe.int/eng?i=001-96587>, para. 32.

⁷³ *Tanda-Muzinga c. France*, para. 75 and *Mugenzi c. France*, para. 55, both note 25 above.

⁷⁴ Council of Europe, Realising family reunification, note 61 above, p. 8.

⁷⁵ Articles 10(2) and 4(2)(b) FRD. See also the Dublin III Regulation which considers siblings to be family members for the purpose of ensuring family unity. See Recital 16, referring to the aim of ensuring full respect with the principle of family unity, as well as Articles 6(4) and (5), 8, 11 and 15 Dublin III Regulation; see also Article 31(4) Qualification Directive.

⁷⁶ *Chakroun*, note 22 above, para. 44.

⁷⁷ Commission Communication on FRD, note 56 above, p. 22.

⁷⁸ *TB*, note 24 above.

⁷⁹ *K*, C-245/11, 6 November 2012, <https://curia.europa.eu/juris/liste.jsf?num=C-245/11&language=EN>; this case concerns dependency in the Dublin context, where the Court ruled that in a situation of dependence, non-core family members should be kept together, see para. 44.

⁸⁰ *TB*, note 24 above, paras. 64-67.

⁸¹ *TB*, note 24 above, para. 62.

⁸² *K and B*, note 24 above, para. 56.

⁸³ UNHCR, *Secretary of State for the Home Department v ZAT (Syria) and Others: UNHCR's Intervention*, 13 June 2016, Appeal No. C2/2016/0712, <https://www.refworld.org/docid/57602e484.html>. See also CMW/CRC Joint General Comment 4/23, note 45 above, para. 27. See also paras. 32, 37-38.

4.5. Maintenance requirements

4.5.1. UNHCR recalls that imposing maintenance requirements on beneficiaries of international protection may keep families separate and does not take into account the particular circumstances of persons who have been forced to flee (see section 4.2.).⁸⁴ In practice, UNHCR has observed that imposing financial requirements often forces the parents to choose to only apply for family reunification with some of their children, leaving the other children behind, a practice which raises serious concerns.⁸⁵ Rather than reuniting families, this has the effect of dividing families.⁸⁶ Accordingly, ExCom has recommended that '[i]n appropriate cases family reunification should be facilitated by special measures of assistance to the head of family so that economic and housing difficulties in the country of asylum do not unduly delay the granting of permission for the entry of the family members.'⁸⁷ In particular, requiring young persons who have recently reached adulthood to prove sufficient financial resources to maintain their family would render family reunification impossible in practice, since they are unlikely to have such. In UNHCR's view, children who age-out during the family reunification procedure, should be treated as children for the purpose of family reunification, and cannot be expected to meet income or other maintenance requirements.

4.5.2. The CoE's Parliamentary Assembly has long recognised financial requirements as a particular obstacle to family reunification. In 2004, it considered that allowing states 'to make applications subject to financial and housing-related conditions, integration criteria or age limits could, if applied strictly, pose a threat to the right to respect for family life, particularly the rights granted to children'.⁸⁸ It therefore urged Member States 'to impose less strict conditions for applicants in respect of financial guarantees, health insurance and housing and, in particular, to avoid any discrimination against women migrants and refugees which could result from their imposition'.⁸⁹ In 2018, it 'particularly regretted that some States have high financial requirements' and underlined that 'family reunification should not be dependent on the financial situation of a parent who is a migrant or refugee'.⁹⁰

4.5.3. The ECtHR has also provided guidance on the issue of income requirements in family reunification procedures.⁹¹ It has ruled that while such requirements are not *per se* unreasonable, it is necessary to consider whether they are reasonable in the particular case, for which it needs to be considered, *inter alia*, 'whether there are any insurmountable obstacles for the exercise of the family life at issue outside' the Member State concerned.⁹² Evidently, in the case of refugees, persons who have been recognised to be unable to return to their country of origin, such obstacles typically exist. While the ECtHR normally examines whether family life could be exercised elsewhere, it considered this criterion to be unreasonable in the case of refugees who have fled their country of origin and are in a vulnerable situation,⁹³ and underlined that there is a broad consensus at the international and European

⁸⁴ UNHCR intervention in *J.K. v. Switzerland*, note 42 above, para. 3.2.5.

⁸⁵ UNHCR, *Access to Family Reunification for Beneficiaries of International Protection in Central Europe*, December 2012, <https://www.refworld.org/docid/588b4f164.html>, p. 12.

⁸⁶ Nicholson, *The Essential Right*, note 52 above, p. 95.

⁸⁷ UNHCR, Executive Committee Conclusion No. 24 (XXXII) on Family Reunification, 1981.

⁸⁸ Council of Europe: Parliamentary Assembly, *Recommendation 1686 (2004) Human mobility and the right to family reunion* ('CoE PACE 2004 Recommendation on Human Mobility'), 23 November 2004, <https://www.refworld.org/docid/583ed1c77.html>, para. 11. See also European Commission 2019 FRD Implementation Report, note 36 above, p. 15.

⁸⁹ CoE PACE 2004 Recommendation on Human Mobility, note 88 above, para. 12.3(d).

⁹⁰ Council of Europe: Parliamentary Assembly, *Family Reunification of Refugees and Migrants in the Council of Europe Member States*, 11 October 2018, Resolution 2243, <https://www.refworld.org/docid/5c5981284.html>, paras. 7 and 10.

⁹¹ In addition to the cases that follow, a number of cases are also currently pending before the ECtHR in which the applicants claim a violation of Article 8 ECHR because their family members were refused family reunification on the basis of not fulfilling income or accommodation requirements. See *J.K. v. Switzerland*, Appl. no. 15500/18; *Dabo v. Sweden*, Appl., no. 12510/18, *S.Y. v. Switzerland*, Appl. no. 57303/18.

⁹² *Konstatinov v. The Netherlands*, Appl. no. 16351/03, ECtHR, 26 April 2007, <https://www.refworld.org/cases.ECHR.4667da4a2.html>, paras. 50 and 52.

⁹³ *Tanda-Muzinga c. France*, para. 75 and *Mugenzi c. France*, para. 54, both note 25 above. See also the reasoning in *I.A.A. and Others v. the UK*, in which the Court refused family reunification because the applicants had not been granted refugee

level on the need for refugees to benefit from a more favorable family reunification regime than other foreigners.⁹⁴

4.5.4. Similarly, this Court has affirmed that ‘special attention should be paid to the situation of refugees, since they cannot conceivably lead a normal family life in their country of origin, they may have been separated from their family for a long period of time before being granted refugee status and satisfying the substantive conditions required by Article 7(1) of the directive may pose greater difficulties for them than for other third country nationals.’⁹⁵ Accordingly, the Court ruled that this provision ‘must be interpreted strictly’ and that ‘authorisation of family reunification is the general rule’.⁹⁶ This is also required due to the fact that the FRD must be interpreted and applied in light of Articles 7 and 24(2) and (3) of the Charter ‘which require the Member States to examine the applications for reunification in question in the interests of the children concerned and with a view to promoting family life’.⁹⁷

5. Conclusion

5.1. In conclusion, family unity is an essential right of refugees and special attention must be paid to their particular situation, since they cannot return to their country of origin to resume family life there. Thus, their family separation is not a deliberate choice, but the result of forced displacement due to persecution, war or other serious harm. Family reunification is usually the only way to ensure respect for their right to family unity, and States have an obligation to make every effort to facilitate access to this essential right. UNHCR submits that:

- Parents of children who attain the age of majority during the family reunification procedure must be able to exercise their right to family unity and benefit from family reunification as provided for under Article 10(3)(a) FRD.
- Time limits may not be applied in a way that make the exercise of the right to family reunification excessively difficult or impossible in practice. Given the numerous practical obstacles that refugees face in their family reunification applications, any time limits must be applied with flexibility and take into account any circumstances which make a delay objectively excusable. A strict and formalistic application which does not take into account the individual circumstances of the case would be inconsistent with States’ fundamental rights obligations under Article 7 of the Charter and Article 8 ECHR.
- Adult siblings are entitled to family reunification where they are dependent on the parents who themselves are the subject of a family reunification application. This is required as otherwise parents would *de facto* be forced to renounce their right to family reunification.
- Income requirements can have the effect of keeping families separate and may be incompatible with the right to family unity and the FRD’s goal of promoting family reunification. Where applied to young adults recently aged-out, they will typically render family reunification impossible, as such young adults are unlikely to have the necessary financial resources. In line with the principle of effectiveness, income requirements should thus not be applied to recently aged-out young adults.

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status or had ‘sought to argue that they would be at risk of ill-treatment were they to return to Somalia’. On the contrary, had she demonstrated that she was in need of international protection, different considerations would have applied: *I.A.A. and Others v. the UK*, Appl. no. 25960/13, ECtHR, 31 March 2016, https://www.refworld.org/cases/ECHR_5a2fa56f4.html, para. 45.

⁹⁴ *Mugenzi c. France*, para. 54; *Tanda-Muzinga c. France*, para. 75, both note 25 above.

⁹⁵ *K and B*, note 24 above, para. 53.

⁹⁶ *Chakroun*, note 22 above, para. 43.

⁹⁷ *O and S*, Joined Cases C-356/11 and C-357/11, 3 December 2012, <https://curia.europa.eu/juris/liste.jsf?num=C-356/11>, para. 80.