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Family reunification of refugees and migrants in the Council of Europe member States

Report¹

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Summary

Member States are committed to protecting the right to family life under Article 8 of the European Convention on Human Rights and should provide for safe and regular means of family reunification, thus reducing the use of smugglers and mitigating the risks associated with irregular migration. At the same time, national authorities should adopt an enabling approach to family reunification beyond the traditional definition of family which does not necessarily correspond to the multitude of ways in which people live together as a family today.

Council of Europe action on combating trafficking in child refugees should be reinforced and they should ensure the possibility for unaccompanied child refugees to be reunited with their parents.

In this context, the European Agreement on the Abolition of Visas for Refugees, the UN Convention on the Rights of the Child and the Hague Convention on the Civil Aspects of International Child Abduction should be given more attention.

¹ Reference to Committee: Doc. 14249, Reference 4281 of 10 March 2017.

A. Draft resolution²

1. The Parliamentary Assembly is deeply concerned by growing political discourse and action against foreigners, which are a real threat to the protection of refugees and in particular their family life. Families must not be torn apart and should not be prevented from reuniting after an often dangerous and challenging departure from their country of origin, in which their fundamental rights to safety and security have been threatened.
2. Recalling that member States are committed to protecting the right to family life under Article 8 of the European Convention on Human Rights (ECHR; ETS No. 5), the Assembly emphasises that this right applies to everyone, including refugees and migrants. Member States should provide for safe and regular means of family reunification, thus reducing the use of smugglers and mitigating the risks associated with irregular migration.
3. The Assembly points out that there is no common definition of family with respect to the right to family reunification. While member States may enjoy a broad margin of appreciation in matters concerning morals and religion, family rights require a higher level of protection under the ECHR. Therefore, national authorities should adopt an enabling approach to family reunification beyond the traditional definition of family which does not necessarily correspond to the multitude of ways in which people live together as a family today.
4. Children must not be discriminated against, because their parents are unmarried, divorced or remarried, because they live in rainbow families or because they have been adopted by another person or brought up by grandparents or siblings. National authorities should pay particular attention to vulnerable persons, such as young children and family members with special physical or mental needs, who depend to a larger degree on family reunification. Refugees must also be allowed to demonstrate their family links formed in exile or while fleeing.
5. Persons fleeing persecution or war have the right to international protection, and their separated family members have the right to the same protection in accordance with the UN Convention on the Status of Refugees. States should therefore ensure consistency in granting refugee status to the members of the same family and thereby ensure that family life is protected as required under Article 8 of the ECHR. Beneficiaries of international protection should have access to information about family reunification procedures, applications and legal assistance in a language they can understand.
6. The Assembly notes with concern that national law often refuses the delivery of visas to family members of individuals who have not been granted refugee status but have been given subsidiary or temporary protection on humanitarian grounds. The protection of family life and the requirements of the best interest of the child under Article 10 of the UN Convention on the Rights of the Child necessitate, however, that such persons should be able to maintain their family unity or to reunite with family members. Such subsidiary or temporary protection status must not be considered as an “alternative refugee status” with fewer rights. States should thus not substitute subsidiary or temporary protection status for refugee status instead, in order to limit in particular family reunification due to the temporary and personal nature of this status.
7. Regarding migrants, the Assembly emphasises that the protection of their family life and the best interest of the child require that visa requirements for family members of migrants must not be a de facto obstacle to maintaining family unity. The Assembly particularly regrets that some States have high financial requirements or long waiting periods for migrants who wish to apply for visas for their family members. Where States are member of the European Union, EU legislation on the freedom of movement of persons including family members must also be respected.
8. Under Article 10 (2) of the UN Convention on the Rights of the Child, a child whose parents reside in different States shall have the right to maintain, on a regular basis, personal relations and direct contacts with both parents. The Assembly regrets that this right is often disregarded in the case of refugees and migrants. National authorities should duly protect this right by ensuring that both parents of a child are identified and contacted and enjoy equal rights to family reunification with their children. No parent must be discriminated against and discriminatory foreign laws must not be implemented by member States if such laws grant more powers to one parent, for instance on gender or religious grounds.

² Draft resolution adopted unanimously by the Committee on 21 September 2018.

9. Regarding minors who apply for refugee status abroad, the Assembly calls on national authorities to respect the Hague Convention on the Civil Aspects of International Child Abduction, because abduction can also refer to trafficked or smuggled minors or minors accompanied by one parent only. As this convention applies to children until the age of 16 years, national authorities should have a distinct procedure for refugees and migrants below this age. This convention must also be respected where unaccompanied children are put under the guardianship of other persons, in order to ensure the protection of family life of those children.

10. The Assembly emphasises that child refugees and minors have rights under the Revised European Social Charter (CETS No. 163), including the right to financial and other support by the authorities of the States in which they reside. Therefore, family reunification should not be dependent on the financial situation of a parent who is a migrant or refugee. In this context, the Assembly notes also with concern that children are sometimes left behind in another country for financial reasons and the fact that child support payments are often paid irrespective of the actual residence of children under EU legislation and national laws. In accordance with the European Social Charter, responsibility rests with the national authorities where a child resides.

11. The Assembly also underlines that migrant and refugee children belong to the most vulnerable groups, especially those who are unaccompanied and separated from their families. They frequently suffer persistent violations of their human rights and fall through loopholes in child protection frameworks. One of the vital measures is that an effective guardianship is appointed.

12. Family reunification is often hindered by the fact that the whereabouts of family members are unknown. Therefore, national authorities must ensure that all refugees and migrants are registered upon arrival and that such data is shared with competent authorities in other member States, in particular through the Schengen Information System of the EU. This is particularly detrimental for unaccompanied minors for tracing and finding their parents and other family members. Without such data, family reunification might become a coincidental matter, which is in violation of the right to protection of family life. In this context, the Assembly welcomes the longstanding action by the International Committee of the Red Cross (ICRC) in tracing missing family members and encourages greater cooperation between the ICRC and national authorities.

13. Family reunification also requires adequate and functioning administrative procedures by competent authorities, including consular services abroad. Countries of origin must deliver or reissue identification documents without delay and receiving countries must issue refugee status documents or migrant visas, which allow the bearer to travel to family members and maintain family unity also across borders in accordance with the European Agreement on the Abolition of Visas for Refugees (ETS No. 31) and, where applicable, EU legislation.

14. The Assembly calls on all member States to develop and respect common guidelines for the implementation of the right to family reunification, in order to ensure that refugees and migrants are not forced to move to those countries where family reunification is enabled more easily. Hindrances to the protection of family life are not admissible under Article 8 of the ECHR as a means of deterring migrants or refugees and their family members.

B. Draft recommendation³

1. Referring to its Resolution (2018), the Assembly emphasises the importance of protecting family life under Article 8 of the European Convention on Human Rights and recommends that the Committee of Ministers:

1.1. develop guidelines for the application of the right to family reunification of refugees and migrants as well as mutual legal assistance and administrative co-operation between member States and with third countries in this field;

1.2. invite member states to establish bilateral arrangements to represent each other for the purposes of collecting visa applications and issuing visas;

1.3. invite member States that have not yet done so to join, or cooperate with, the Schengen Information System with a view to exchanging the data necessary for enabling more rapid family reunification;

1.4. cooperate with the International Committee of the Red Cross in promoting mechanisms and action for finding missing family members of refugees, in cooperation with national Red Cross Societies and national parliaments;

1.5. reinforce Council of Europe action on combating trafficking in child refugees and ensuring that unaccompanied child refugees be reunited with their parents, unless this is against the best interests of a child such as if parents participated in the trafficking of this child.

³ Draft recommendation adopted unanimously by the Committee on 21 September 2018.

C. Explanatory memorandum by Ms Ulla Sandbæk, rapporteur

1. Introduction

1. The motion for a resolution on family reunification in the Council of Europe member States ([Doc. 14249](#)) by Ms Sahiba Gafarova and others points to weaknesses in existing legal standards and their implementation with regard to family tracing and family reunification, as revealed by the recent refugee and migration crisis.

2. Family reunification has moved to the centre of public and political debates on immigration in Europe. Many member States' governments have put in place selective policies in order to limit the number of foreigners entering as family migrants. Because of the increasing numbers of incoming refugees and migrants, several member States have restricted their family reunification policies. This is a cause for concern, both for the families divided by the fact that a person was compelled to leave his or her home country and family, but also for the host country under various socio-political aspects.

3. The present report provides an overview of some of the most pertinent legal aspects of family reunification of persons under international protection as well as regular migrants and provides guidance on how provisions on family reunification should be interpreted in a manner that fully complies with international law and fundamental rights. It emphasises the importance of ensuring the right to family reunion of migrants and refugees and protecting individuals against any arbitrary decision by public authorities.

4. The Council of Europe strives to achieve greater unity among its members based on common values, in particular those enshrined in the European Convention on Human Rights, including the right to the protection of family life under its Article 8. This fundamental right applies to refugees and regular migrants alike.

5. It is important for the Council of Europe to address this subject through its various organs in a synergetic and coordinated manner. Therefore, I wish to thank the Commissioner for Human Rights of the Council of Europe for having invited me to the Round Table on family reunification for refugees with the European Network of Human Rights Institutions in Brussels on 18 October 2017. The present report should be read in conjunction with the Issue Paper published by the Commissioner on "Realising the right to family reunification of refugees in Europe", which examines family reunification for refugees as a pressing human rights issue.⁴

6. Finally, I wish to thank my parliamentary assistant at the Danish Parliament Ms Eva Saez Casado for her support throughout the preparation of this report, including during the period of my sick leave.

2. Relevant international standards and action

7. Respect for, and protection of, family life are recognised as fundamental human rights in many international texts such as Article 16 of the Universal Declaration of Human Rights, Articles 9 and 10 of the UN Convention on the Rights of the Child and Article 8 of the European Convention on Human Rights (ETS No. 5). In addition, the revised European Social Charter (ETS No. 163) stipulates rights of migrant workers including family rights. However, these international texts do not seek to regulate the status of refugees or persons under subsidiary protection. Therefore, they are silent as to whether and under which circumstances the rights of a child, a spouse or another family member require their entry into a particular country which has granted international protection to one family member.

8. In this context, the European Agreement on the Abolition of Visas for Refugees (ETS No. 31) should be given more attention. Under its Article 1, refugees lawfully resident in the territory of a Contracting Party shall be exempt from the obligation to obtain visas for entering or leaving the territory of another Party by any frontier, if their visit is of not more than three months' duration. If a person has received the status of refugee in one country, he or she would be able to visit family members in another country without a visa. This could facilitate that refugees can maintain family relations across borders, in particular with regard to extended family members who would not qualify for family reunification, but also for minor refugees who are 16 years or older and out of school and could thus work at a distance from their parents or siblings.

⁴ Cathryn Costello, Kees Groenendijk and Louise Halleskov Storgaard, Realising the right to family reunification of refugees in Europe (Commissioner for Human Rights, Council of Europe, June 2017), available at <https://rm.coe.int/prems-052917-gbr-1700-realising-refugees-160x240-web/1680724ba0>

9. The 1951 UN Convention on the Status of Refugees does not address the right to family reunification, as it presupposes that all members of a family are equally recognised as refugees by their country of residence. However, the UNHCR has developed expert guidelines on family reunification of refugees.⁵ 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 of family members of persons recognized in need of international protection.⁶
10. Mrs Sophie Magennis, UNHCR Regional Representative for EU Affairs *a.i.*, presented to our committee in Strasbourg on 27 June 2018 the legal and practical challenges faced by refugees wishing to reunify with family members in Europe and by outlining UNHCR's advocacy with the EU and its member states.
11. As EU law is determining relevant standards for EU member States, I highly appreciated the information provided to me during my fact-finding visit to Brussels on 18 and 19 October 2017⁷ by Ms Christine Roger, Director-General for Justice and Home Affairs, Council of the European Union, Ms Laura Corrado, Deputy Head of Unit, Directorate B "Migration, Mobility and Innovation", and Mr Stephen Ryan, Deputy Head of Unit, Directorate C "Migration and Protection", DG Migration and Home Affairs, European Commission as well as Mr Thomas Huddleston, Programme Director of the NGO Migration Policy Group, Brussels.⁸
12. For those member States of the Council of Europe, which are also members of the European Union, the EU Directive on the right to family reunification (2003/86/EC) is applicable. Regrettably, it leaves EU countries a wide margin of appreciation, for example with regard to requiring a certain residence duration or a certain level of financial resources. From the perspective of Article 8 of the European Convention on Human Rights, such requirements must not be a deterrent or an absolute obstacle to family reunification.
13. Regarding family reunification, there is a major difference between refugees and persons under subsidiary protection. While refugees have the right to family reunification under international law, the situation of persons with the status of subsidiary protection is determined by national law, because there is no specific international obligation regarding family reunification for these persons. The EU Directive on family reunification for refugees leaves it also to national legislation whether persons under subsidiary protection have the right to family reunification.
14. In view of the absence of legal clarity regarding a right to family reunification under international law, the UN and the Council of Europe have drafted complimentary texts which help in interpreting international law in a way which ensures the protection of family unity. While it is worth taking account of the following soft-law standards, it is obviously necessary to develop international law further, in order to have legal clarity and security for the benefit of refugees and persons under subsidiary or temporary protection.
15. The Parliamentary Assembly underlined in its Recommendations 1327 (1997) and 1686 (2004), that "the concept of 'family' underlying that of family reunion has not been defined at European level and varies in particular according to the value and importance attached to the principle of dependence", and also urged member states to "interpret the concept of 'families' as including de facto family members (natural family), for example [...] a partner or natural children as well as elderly, in firm or otherwise dependent relations". The Committee on Migration, Refugees and Displaced Persons strongly supported the right to respect and protection of family life in its "Position paper on family reunification" (AS/Mig (2012) 01, 2 February 2012).
16. Regarding the special needs and rights for unaccompanied minors, Resolution 1996 (2014) on "Migrant children: what rights at 18?" as well as Resolution 2020 (2014) on "The alternatives to immigration detention of children" are also of relevance for issues concerning family reunification.

⁵ <http://www.unhcr.org/protection/globalconsult/3bd0378f4/unhcr-guidelines-reunification-refugee-families.html>

⁶ See in particular, United Nations High Commissioner for Refugees (UNHCR), 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 in UNHCR, *Thematic Compilation of Executive Committee Conclusions*, June 2011, Sixth edition, available at: <http://www.unhcr.org/refworld/docid/4e8006a62.html>

⁷ See the programme of the visit, AS/Mig/Inf (2017) 29.

⁸ <http://www.migpolgroup.com/>

17. In its Recommendation No. R (99) 23 on family reunion for refugees and other persons in need of international protection (15 December 1999),⁹ the Committee of Ministers defined minimal standards to be respected by all member States. This Recommendation and the relevant Assembly Resolutions have been cited by the European Court of Human Rights when interpreting Article 8 of the European Convention on Human Rights.

18. Ms Kristiina Lilleorg, Thematic Specialist of the International Organization for Migration (IOM) presented the action of the IOM in this field to the Committee in Paris on 20 September 2017. The IOM's family reunification action at national level has been supported by programmes with Austria, Belgium, France, Germany, Finland, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Slovenia, Sweden, Switzerland and the United Kingdom. The largest programme exists with Germany, which has funded family reunification work by IOM for more than 55 000 beneficiaries since 2016, with a focus on vulnerable persons as well as unaccompanied children. The programme with Italy served 1700 beneficiaries, the one with Belgium 164 and the one with Hungary 50. The IOM focuses on visa support, pre-departure orientation and assistance as well as travel assistance for family members.

3. National law and practice

19. The European Council on Refugees and Exiles (ECRE) in Brussels publishes its European Database of Asylum Law,¹⁰ which is a useful piece of reference for legislative debates on family reunification of refugees and migrants. Therefore, I am grateful for the overview of the existing law and practice concerning family reunification, which was provided to the Committee on Migration, Refugees and Displaced Persons in Paris on 8 December 2017 by Ms Amanda Taylor, Coordinator of the European Database of Asylum Law of ECRE.

20. Although the EU has set some common standards in relation to asylum applications and applications for subsidiary protection status, EU member States have very different legislation in this field, because the issuance of visas remains a national competence. All EU member States are signatory to the 1951 United Nations Convention relating to the Status of Refugees and recognise in addition a subsidiary form of protection, which is of a temporary character and limited to the beneficiary him/herself. It is very regrettable that family reunification is often applicable for those with refugee status only, while beneficiaries of subsidiary protection generally do not have a right to reunite with their family in the country which has granted subsidiary protection.

21. France is one of the few EU countries with high numbers of asylum applicants which does not distinguish between refugees and persons under subsidiary protection and gives family members of both categories the possibility to apply for family reunification, generally through the French consular services abroad.¹¹ However, decisions on family reunification often take a considerable time and require documentary evidence to be submitted by applicants to the competent French Consulate. In 2017, 20479 visas have been issued for family members of refugees and stateless persons and 10779 visas for beneficiaries of subsidiary protection.¹²

22. In Germany, family reunification is possible for refugees and persons under subsidiary protection,¹³ but the latter category was excluded in 2016 due to the extremely high number of asylum seekers which has dropped since but still remains very high today.¹⁴ In cases of hardship, beneficiaries of subsidiary protection can also apply for family reunification, but only 160 visas have so far been issued for their family members. Altogether, 322 000 visas have been issued by Germany for family reunification since January 2015.¹⁵ As from July 2018, the German government provides again for the possibility of beneficiaries of subsidiary protection to bring their family. In view of the numbers of applications for international protection in Germany, this possibility is limited to 1000 persons per month, in order to ensure a proper functioning of the respective administrative procedures which take on average 10 to 11 months.

⁹ <http://www.refworld.org/docid/3ae6b39110.html>

¹⁰ <http://www.asylumlawdatabase.eu/en>

¹¹ <https://www.ofpra.gouv.fr/fr/protection-etat-civil/reunification-familiale>

¹² <https://www.immigration.interieur.gouv.fr/Info-ressources/Etudes-et-statistiques/Statistiques/Essentiel-de-l-immigration/Chiffres-cles>

¹³ <http://www.bamf.de/EN/Fluechtlingsschutz/Familienasyl/Familiennachzug/familienasyl-familiennachzug-node.html>

¹⁴ In June 2018, 13 251 persons applied for asylum in Germany, of whom were 3002 from Syria, 1252 from Iraq, 1009 from Afghanistan, 935 from Nigeria, 930 from Turkey and 740 from Iran.

See, <http://www.bamf.de/SharedDocs/Meldungen/DE/2018/20180710-asylgeschaeftsstatistik-juni.html>

¹⁵ <https://www.welt.de/politik/deutschland/article179017998/Aussenministerium-322-000-Visa-fuer-Familiennachzug-seit-2015-erteilt.html>

23. Other EU countries, which receive a high number of migrants, are even less open to family reunification. In Austria, beneficiaries of subsidiary protection can only apply for family reunification three years after having received subsidiary protection. Bosnia and Herzegovina only allows family reunification for refugees; beneficiaries of subsidiary protection cannot apply for family reunification. In Cyprus, beneficiaries of subsidiary protection have no right to family reunification, save for exceptional circumstances. Greece does not allow for family reunification of persons under subsidiary or temporary protection, but reserves family reunification to persons with refugee status only. Hungary allows for family reunification for both, refugees and persons under subsidiary protection, but the latter have to fulfil material requirements, such as subsistence, accommodation and health insurance. Italy requires that persons requesting family reunification must have a permit of stay for at least one year. Malta permits family reunification for refugees only, while beneficiaries of subsidiary protection are excluded from this provision.¹⁶

24. Family reunification for aliens legally residing in Spain is regulated under the Aliens Law (Articles 16 to 19) and Articles 52 to 61 of its Implementing Regulation, which set out conditions such as housing and financial requirements, inter alia. Article 40 of the Spanish Asylum Law establishes a more favourable family reunification framework for both refugees and beneficiaries of subsidiary protection, called “family extension of the right to asylum or subsidiary protection”. This law does not include the same requirements as the Aliens Law, and does not distinguish between refugees and beneficiaries of subsidiary protection. Since the legislative change of 2015, Sweden allows family reunification for refugees, while persons under subsidiary protection can reunite with their family in Sweden in exceptional circumstances only, for example if they do not have the possibility of being reunified in a country outside the EU.¹⁷

25. In accordance with Turkish law, persons under temporary protection do not have a right to family reunification, but they can apply to the discretion of the competent Turkish authorities which have currently suspended family reunification, unless the applicant has been accepted for resettlement in another country and the family will join him or her before departure.¹⁸

26. My own country, Denmark, provides family reunification for refugees, who have to apply within three months, but persons under subsidiary or temporary protection must normally have their temporary residence permit extended beyond the initial three-year period before they can apply. In exceptional cases, persons under subsidiary or temporary protection can apply for family reunification before the end of this three-year waiting period, if waiting three years could cause a hardship, for example if the applicant was the caretaker for a handicapped spouse in the home country, or if the applicant has a seriously ill minor child still living in the home country.¹⁹ In practice, these narrow exceptions leave out many persons under subsidiary protection and cause indeed suffering and hardship. A recent landmark decision is the Grand Chamber judgment in the case of *Biao v. Denmark* (Application no. 38590/10, 24 May 2016).²⁰ Denmark was hence criticised by the European Commission against Racism and Intolerance as well as the Secretary General of the Council of Europe.²¹

27. The huge differences between national law and practice regarding family reunification for refugees and, in particular, beneficiaries of subsidiary or temporary protection are a huge problem. It is incomprehensible how the protection of family life under Article 8 of the European Convention on Human Rights can be interpreted so differently among the signatory parties to this convention. The Council of Europe should do more to achieve a more harmonised approach which ensures more effectively the protection of family life through family reunification.

28. Irrespective of the status granted, the protection needs and flight experiences of refugees and beneficiaries of subsidiary protection are very similar. As with refugees, beneficiaries of subsidiary protection are

¹⁶ Family Reunification Regulations, LN 150 of 2007, Immigration Act Cap 217, 2007

¹⁷ <https://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/When-you-have-received-a-decision-on-your-asylum-application/If-you-are-allowed-to-stay/Family-reunification.html>

¹⁸ See, <http://www.asylumineurope.org/reports/country/turkey/family-reunification>

¹⁹ <https://www.nyidanmark.dk/en-GB/You-want-to-apply/Family/Family-reunification/Spouse-or-partner-of-refugee-in-Denmark>

²⁰ <http://www.refworld.org/cases,ECHR,574473374.html>

²¹ Press release - DC066(2017) of 16.05.2017

<https://wcd.coe.int/ViewDoc.jsp?p=&id=2458531&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE&direct=true>

temporarily unable to return to their countries of origin due to the risk of serious harm. There is therefore no reason to distinguish between the two statuses as regards their right to family life.

4. Key aspects of family reunification

29. It is important to ensure the right to family reunion and to protect individuals against any arbitrary decisions by public authorities, because of the societal drawbacks from isolating refugees from family members and the importance of family reunification in the creation of socio-cultural stability and facilitating the integration of third-country nationals, thus promoting economic and social cohesion.²²

30. Family reunification is 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 fleeing. It is particularly important to ensure that the unity of the migrant's family is maintained in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country.

4.1. Legislative barriers to family reunification

31. It is regrettable that there is limited harmonisation of national legislation concerning minimum standards on family reunification as well as relevant conditions, procedures and rights. This situation causes a negative competition among States, where a few States receive the majority of asylum and family reunification applications while others use their more restrictive laws as a dissuasive instrument against refugees and their family members. Within Europe, such discrepancies will create major problems, both for persons seeking asylum and their families as well as for the cohesion and cooperation among States in Europe.

32. In this regard, the European Court of Human Rights found in its judgment *Hode and Abdi v. the United Kingdom* (Application no. 22341/09) that "there was no obligation on a State under Article 8 of the [European Convention on Human Rights] to respect the choice by married couples of the country of their matrimonial residence and to accept the non-national spouses for settlement in that country."²³

33. The right to family reunification is, by itself, an indispensable instrument for integration. The European Commission²⁴ recognises the right to family reunification for third-country nationals holding a residence permit of one year or more who have reasonable prospects of obtaining permanent residence. Member States will be entitled to require, for the exercise of this right that third-country nationals comply with integration measures in accordance with national law. For EU citizens, the EU Family Reunification Directive²⁵ provides for a certain level of harmonisation in the rules guiding family reunification. However, it allows EU member States to impose higher requirements for family reunification, in particular regarding the financial situation of applicants. It applies to all EU Member States, except for Denmark, Ireland and the United Kingdom. Nevertheless, national practices differ within the EU²⁶ and create hence problems of cooperation among EU member States as well as, and this even more important, inhumane obstacles for family reunification of regular migrants within the EU.

34. The protection offered by asylum legislation covers both international protection – i.e. refugee status – and subsidiary protection in accordance with European Union requirements. Subsidiary protection is generally granted to persons under threat of the death penalty, torture or inhuman or degrading treatment or punishment, or indiscriminate violence in situation of international or internal armed conflict. Such subsidiary protection is sometimes called temporary protection or protection on humanitarian grounds.

35. Unlike persons entitled to asylum on the grounds of individual persecution under the 1951 United Nations Convention relating to the Status of Refugees, individuals in need of subsidiary protection are typically granted

²² See for example, Tineke Strik, Betty de Hart and Ellen Nissen, *Family Reunification: a Barrier or Facilitator of Integration? A Comparative Study* (Brussels, 2013), available at <https://emnbelgium.be/sites/default/files/publications/familyreunification-web.pdf>

²³ <http://hudoc.echr.coe.int/eng/?i=001-114244>

²⁴ Brussels, 3.6.2003 COM (2003) 336 final <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52003DC0336&from=EN>

²⁵ EU Directive 2003/86/EC 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>

²⁶ See, *Family Reunification of Third-Country Nationals in the EU plus Norway: National Practices* (Brussels, 2017), available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_family_reunification_synthesis_report_final_en_print_ready_0.pdf

the right of residency for one year. Apart from this, within the framework of the Common European Asylum System, subsidiary protection was widely adjusted to the 1951 United Nations Convention relating to the Status of Refugees in material aspects. In view of the recent increase in cases of subsidiary protection and the fact that persons under subsidiary protection are granted fewer rights including the right to family reunification, it can be questioned whether a distinction is actually desirable between refugees and persons under subsidiary protection, or whether one single refugee status should be applied – with full right to family reunification.

36. This diversity of legal standards within Europe is a reason for concern, and efforts should be undertaken to set common standards on family reunification.

4.2. Definition of family

37. When speaking of family reunification of refugees, it is necessary to define what means family for this purpose. Such definition is to be distinguished from general notions about a family, which may be determined differently depending on cultural, religious, philosophical or legal traditions. Traditionally, family means the refugee's married spouse and minor children.

38. However, this traditional definition of family does not necessarily correspond to the multitude of ways how persons live together as a family today. In Europe, the term patch-work family has been used in order to describe families where both spouses have children with other partners, typically from earlier marriages. Those children have their residence with one parent and visit rights with the other parent or they have a shared residence with both parents. In addition, unmarried couples may have children, who have legally recognised residence and visit rights with one or both parents. Likewise, children may have legally protected family relations with adults, who have adopted them, or with their grandparents, when the latter undertake the upbringing of those children.

39. Restrictive approaches to the eligibility of family members for family reunification constitute a major obstacle to reuniting families. For instance, in the European Union, only seven member States regularly allow family reunification of siblings, and even then, this is usually because one sibling is dependent on the other, a notion that is often applied narrowly. As a result, young adults who were the heads of their households in their country of origin are often prevented from reuniting with brothers or sisters who are dependent on them. Failing to provide for reunification with adult siblings may also create situations where parents are forced to decide whether to reunite with their minor child in Europe or stay with their adult children in the country of origin.

40. The circumstances of the forced displacement of persons might also have impacted their family situation, for example if a spouse or parent has died and another person has taken this position without having had the factual opportunity to have this position legally recognised through marriage or adoption. In the latter cases, the actual duration of such position might require being protected similarly to traditional core families, in particular where a marriage or adoption is being legalised once a refugee has reached a safe country.

41. While the European Court of Human Rights has repeatedly limited the right to family reunification to the core family comprising parents and minor children, for example in its judgment *Slivenko v. Latvia* (Application no. 48321/99), it must be noted that a wider approach was taken in the judgment *Maslov v. Austria* (Application no. 1638/03), where the European Court found that family life existed between parents and young adult children who were financially dependent on their parents. However, the European Court found in its judgment *Berisha v. Switzerland* (Application no. 948/12) that financial dependence between adult children and parents did not exclude financial support at a distance and thus without family unity.

42. In the latter cases, Article 10 (2) of the UN Convention on the Rights of the Child must be respected: "A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents."

43. Looking at this issue from a political point of view, the public debate is often paralysed through a diffuse fear of abusive practices by refugees as well as quantitative fears regarding the number of persons to be sustained as refugees. While there have been cases of marriages concluded for immigration visa purposes only, it must be noted that such cases are extremely rare in refugee situations. In addition, the right to protection as a refugee under the 1951 United Nations Convention relating to the Status of Refugees is not limited quantitatively

per se. A refugee cannot be refused protection because of the fact that he or she has a spouse or a certain number of children.

44. Therefore, this issue has to be addressed in more abstract terms: the right to family reunification obviously exists for married spouses and minor children, especially young children who do not have the legal capacity to be inscribed in a boarding school or to work at a place distant from their parents, for example. In addition, elderly parents with a disability, who are dependent on a person with refugee status, should have the right to family reunification.

4.3. Family tracing

45. Families who flee persecution or violence often get separated against their will. This is particularly tragic for unaccompanied minors. In such circumstances, family reunification requires that family members are found and identified.

46. Expressing my gratitude to Ms Frédérique Desgrais, Head of Restoring Family Links and Missing Persons Unit of the International Committee of the Red Cross (ICRC) in Geneva for her presentation to the Committee in Paris on 20 September 2017, I wish to pay tribute to the long-standing work of the ICRC. Together with national Red Cross and Red Crescent Societies, the ICRC is doing excellent work on re-establishing contacts between refugees or migrants and their families. The Restoring Family Links programme of the ICRC²⁷ has been a very laudable success story for decades. Through the use of new technologies, people can publish their photo and details on the Internet. Thus, the Trace the Face²⁸ project has helped many refugees to find family members. This action should be supported by all member States.

47. Under the ICRC's Restoring Family Links Strategy 2008-2018, support is given to family members separated by armed conflict, natural disasters or migration. In the context of migration, restoring family links is different from family reunification, because it includes clarifying the fate of missing family members and alleviating the suffering of people who have no news of their families. This work of the ICRC is distinct from asylum procedures and family reunification claims, as personal data about family members collected by ICRC is not used for family reunification applications and procedures.

48. The EU has included under its European Return Fund projects for family tracing and reunifying children with their parents.²⁹ In addition, progress in the registration of refugees and the EU-wide sharing of information are to be achieved through the EU's Visa Information System, which connects EU member States' consulates as well as external border crossing points and performs biometric matching, primarily of fingerprints, for identification and verification purposes.³⁰ In this respect, the data gained hereby should be used in order to facilitate family tracing and reunification.

49. Also beyond the EU, such identification and tracing of family members must be possible. Therefore, it is urgent for the Council of Europe to establish a centralised register for tracing families within Council of Europe member States.

4.4. Protecting children

50. The protection of children is the central aspect in protecting their family life. Articles 9 and 10 of the UN Convention on the Rights of the Child define a number of fundamental rights, which are important for family reunification:

- a child shall not be separated from his or her parents against their will,
- the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis,
- 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.

²⁷ <https://familylinks.icrc.org/en/pages/home.aspx>

²⁸ <https://familylinks.icrc.org/europe/en/pages/home.aspx>

²⁹ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/asylum/uam/uam_infographic_a4_en.pdf

³⁰ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20180516_regulation-proposal-european-parliament-council_en.pdf

Doc. ...

51. In this respect, national authorities must be guided by the child's best interest, if they have to decide on family reunification matters.

52. Unaccompanied minors abroad can fall under the Hague Convention on the Civil Aspects of International Child Abduction,³¹ as abduction can also refer to trafficked or smuggled minors or minors who were accompanying one parent only. This Convention is however rarely referred to in matters of family reunification of refugees and migrants. Ms Maud De Boer – Buquicchio, United Nations Special Rapporteur on the sale and sexual exploitation of children and President of Missing Children Europe, reported to our committee in Strasbourg on 28 June 2018 that a very high portion of child refugees were trafficked. It is therefore necessary to pay greater attention to the rights enshrined in the Hague Convention.³²

53. Within the European Union the protection of children in migration has been identified as priority.³³ It is essential to extend this protection to all member States of the Council of Europe and work on Europe-wide policies for family reunification for the benefit of child protection.

4.5. Protecting vulnerable persons

54. Family reunification must be a right for everybody. However, vulnerable persons will depend to a much higher degree on reunification with their family. This applies in particular to young children, but can also include persons with special physical or mental needs.

55. It is obvious, for instance, that traumatised refugees will need their family members for mental and social support in healing the wounds they suffered. Likewise, physically handicapped persons will depend on family members for their care.

56. Such higher vulnerability may also require that more distant family members be included in the family reunification, for example if they have been the prime carer of a refugee.

4.6. Reducing irregular migration

57. As the Commissioner for Human Rights of the Council of Europe has stated, denying family reunification also closes one of the much needed safe and legal routes to Europe and encourages irregular secondary migration.³⁴

58. Therefore, all Council of Europe member States must work together in order to ensure such safe and legal routes to family reunification.

5. Conclusions

59. Family life is one of the fundamental pillars of our cultures and societies. The absence of family life largely hinders the protection and wellbeing of individual human beings as well as of our societies as a whole. In particular children will suffer severely from being separated from their parents.

60. Bearing in mind that migration is inevitable and one of the main causes of family separation, that everyone has the right to respect for family life and that the family is the natural and fundamental unit of society entitled to protection by society and the State, families must be protected and measures be promoted which enhance such protection.

61. There is the need to preserve and defend the principle of family unity, while fully respecting the fundamental human rights and the human dignity of refugees and other persons in need of international

³¹ <https://assets.hcch.net/docs/e86d9f72-dc8d-46f3-b3bf-e102911c8532.pdf>

³² See also the Council of Europe's action under its Convention on Action against Trafficking in Human Beings (<https://www.coe.int/en/web/anti-human-trafficking>) and the work by the UN Special Rapporteur on trafficking in persons, especially women and children (<https://www.ohchr.org/EN/Issues/Trafficking/Pages/TraffickingIndex.aspx>)

³³ See the Conclusions of the Council of the European Union and the representatives of the governments of the Member States on the protection of children in migration adopted on 8 June 2017, <http://data.consilium.europa.eu/doc/document/ST-10085-2017-INIT/en/pdf>

³⁴ <https://rm.coe.int/prems-052917-gbr-1700-realising-refugees-160x240-web/1680724ba0>

protection, including the best interests of a child. In addition, there must be recognition that preserving the integrity of refugee families both enhances the protection of their members and facilitates appropriate long-term solutions for them.

62. The EU Family Reunification Directive³⁵ and the EU Qualification Directive³⁶ provide for higher standards on family reunification of refugees and persons under international protection. It is very regrettable that the UK has not agreed to these standards, that Denmark has opted out and that non-EU members which are members of the Council of Europe do not adhere to such standards. All Council of Europe member States should coordinate their efforts in this respect, in order to avoid a counterproductive diversity of legal standards within Europe.

63. As the traditional definition of family does not necessarily correspond to the multitude of ways how persons live together as a family today, the right to family reunification must be applied in a manner which includes such forms of family life.

64. Children have the fundamental right to live with their parents and not to be separated from them against their will. The UN Convention on the Rights of the Child has to be observed in this respect.

65. The distinction between refugees and persons under subsidiary or temporary protection should be abandoned as regards family reunification.

66. National legislation should provide for safe and legal routes to family reunification, for instance through consular services abroad or where consular services do not exist to allow the family member in the host country to apply with the line institution in the host country.

67. In addition it is recommended that Council of Europe member States establish bilateral arrangements to represent each other for the purposes of collecting visa applications and issuing visa.

68. A centralised register for tracing families should be established within Council of Europe member States. In this respect, Europe-wide cooperation should be sought with the ICRC and the Schengen Information System.

³⁵ EU Directive 2003/86/EC 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>

³⁶ EU Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:en:HTML>