

Disrupted Flight

The Realities of Separated Refugee Families in the EU

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INTRODUCTION

It is widely recognised that family life is essential for the well-being of individuals and societies. For people fleeing war and persecution being reunited with their family members is generally their first priority upon arrival in the host country.² On a daily basis practitioners witness the negative impact family separation has on people seeking protection in Europe, and how it affects their ability to engage in most aspects of the integration process. The constant worry people carry about their family left behind, as well as the absence of relatives who could support them, increase their vulnerability when they have already been exposed to traumatic experiences associated with forced migration. Fleeing for protection to Europe can be an isolating ordeal which often lasts years, from the journey to Europe, lengthy and stressful asylum procedures, to difficult reception conditions, including detention for some.

Available research shows that family separation tends to be associated with poor mental and physical health, which then has an impact on peoples' ability to learn a language, look for a job, re-train, or simply interact with others (including with officials and administrations).³ Long separation can also damage the family structure and cause conflict when the family is reunited.⁴ By way of contrast, various studies document the positive effect of family reunification, particularly on people's general well-being, but also on their employment prospects and on the educational achievement of their children.⁵

Family reunification is often considered as a precondition for rehabilitation and integration. The conditions for family reunification are therefore of particular importance both for individuals and for societies.



The road to this reunion has been arduous. When Mustafa arrived in Hungary, he was granted a one-year stay, which meant he couldn't apply for his family. He tried to move to Austria and then Sweden, but was returned to Hungary where he languished in a detention centre. "It was very difficult. There were times I thought my children would never see their father again." © UNHCR

Based on the experiences and expertise of the European Council on Refugees and Exiles (ECRE), the Red Cross EU⁶ and their member organisations, this report analyses the reality of family reunification in Europe for a particularly

- 2 UNHCR (September 2013), "A New Beginning: Refugee Integration in Europe", available at: <http://www.refworld.org/pdfid/522980604.pdf>.
- 3 McDonald-Wilmsen, B. and Gifford, S.M. (2009), Refugee Resettlement, family separation and Australia's humanitarian programme. New Issues in Refugee Research, Research Paper No. 178. Geneva: United Nations High Commissioner for Refugees.
- 4 Blanco, D. and Barou, J. (2011), Parcours de réfugiés: Le statut, et après?: Etude anthropologique menée auprès de réfugiés de l'agglomération lyonnaise, Réseau Samdarra.
- 5 Huddleston, T. and Dag Tjaden, J. (2012), Immigrant Citizens Survey – How immigrants experience integration in 15 European cities, Joint publication of the King Baudouin Foundation and the Migration Policy Group.
- 6 European Commission (Directorate-General for Research), Socio-Economic Research: Family Reunification Evaluation Project FARE, Final Report (2012), funded under the Targeted Socio-Economic Research Programme.
- 6 International Federation of Red Cross and Red Crescent Societies (IFRC) (November 2009), Policy on migration, endorsed by the 17th General Assembly of the International Federation of Red Cross and Red Crescent Societies in Nairobi, Kenya.

vulnerable group of migrants, people in need of international protection. It offers an overview from a practitioner's perspective of the national practices in relation to family reunification with regard to beneficiaries of international protection.

Given the fact that the European Union has entered the implementing phase of the asylum package, the information and recommendations gathered in this report only reflect current legal contexts, which may be subject to change.

An informal network of ECRE members and Red Cross offices working in the field of family reunification for beneficiaries of international protection has provided concrete information about the implementation across a selection of EU Member States of the right to family life in line with the corresponding EU legal framework. For this purpose, a questionnaire was sent to all ECRE and RCEU members in order to identify the main obstacles arising at the various stages, as well as cases they had come across in their daily work. Using information provided by 15 member organisations, the major problems encountered in 12 Member States have been mapped out to identify ways to promote the effective enjoyment of this human right by persons seeking protection in the EU.

Across EU Member States, the modalities for family reunification for people in need of international protection are governed by the Council Directive of 22 September 2003 on the right to family reunification⁷, and also indirectly by other legislation, such as the Dublin Regulation, which allocates the responsibility of Member States for the assessment of individual asylum applications within the EU.⁸ The European Commission has also published guidelines⁹ to support the correct implementation of the Directive and better practices in this domain following its 2011 public consultation on family reunification.¹⁰ These guidelines are also based on case law of the Court of Justice of the EU ('CJEU') which focused on incompatibilities between the right to family life and the national measures intended to give effect to this right across the EU. The Commission's guidelines clarify a number of issues that were highlighted in many responses to its Green Paper on this issue.¹¹ Based on CJEU judgments, the Commission insists on the fact that Member States cannot use their discretion to undermine the Directive's main purpose of facilitating family reunification. While these guidelines are welcome, their actual impact will very much depend on their implementation at national level, and in particular their use by the courts and national administrations.

All the organisations that have contributed to this report are particularly concerned about the inadequacy of the current family reunification procedures for beneficiaries of international protection across Member States. According to the Family Reunification Directive, more favourable rules should be applied to this target group to enable them to enjoy their right to family life. This should translate into exemptions and derogations to the rules set out in the Directive for refugees who apply for family reunification. From the experience of practitioners, it appears however that current national practices remain inadequate to address the situation and the specific needs of people benefiting from international protection in the EU.



⁷ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251/12, 3.10.2003 (hereinafter the Directive).

⁸ Regulation (EU) No. 604/2013 of the European Parliament and of the European Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) OJ 29.6.2013 (hereinafter the Dublin III Regulation).

⁹ European Commission, Communication on Guidance for Application of Directive 2003/86/EC on the Right to Family Reunification, COM (2014) 210 final, 3.04.2014 (hereinafter the guidelines).

¹⁰ European Commission, Green Paper on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC).

European Integration Forum (seventh meeting, 2012), Public Hearing on the Right to Family Reunification of Third-Country Nationals living in the EU, Brussels.

¹¹ ECRE (February 2012), Submission from the European Council on Refugees and Exiles in response to the Commission's Green Paper on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC).

Red Cross EU Office (February 2012), Red Cross response to the European Commission on the Green Paper on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC). For other answers, see: http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2012/consulting_0023_en.htm

This report intends to shed light on the specific problems faced by beneficiaries of international protection and their family members as per their personal circumstances. It does not provide an exhaustive picture as it focuses on the situation in 12 Member States: Austria, Belgium, Estonia, France, Finland, the United Kingdom, Hungary, Luxembourg, the Netherlands, Poland, Spain and Sweden.¹² The report describes the situation of sponsors,¹³ the regions they have fled, the situation of their family members, and contrasts them with the requirements of the procedure applied by Member States when considering applications for family reunification. Concrete examples are also included in order to illustrate the inadequacy of the procedure when compared to the realities of refugee flight. Finally, this report puts forward a number of recommendations to Member States to ensure that the right to family reunification is properly complied with.

The difference between tracing and family reunification

The International Red Cross and Red Crescent Movement has a long-standing commitment to restoring family links. Restoring family links refers to a range of activities that aim to prevent separation and disappearance, to restore and maintain contact between family members, and to clarify the fate of persons reported missing. They are initiated at the request of possible beneficiaries. With these activities, National Red Cross and Red Crescent Societies and the International Committee of the Red Cross, with the support of the International Federation of Red Cross and Red Crescent Societies, form a worldwide Family Links Network.

Positive results of family tracing allow separated family members to restore contact and in certain cases lead to family reunification. The decision to proceed with a family reunification is carried out, worldwide, in accordance with the laws and regulations of the receiving country. Additionally, if a child is involved, a decision must be made taking into account the best interest of the child. As auxiliaries to the public authorities in the humanitarian field, National Red Cross Societies of the Member States of the European Union re-establish family links as part of their mandate to assist and respond to humanitarian needs. In addition, some European Red Cross Societies also assist migrants to reunite with their families in their host country once they have been granted legal status. This service may include legal counseling, assistance in often very lengthy and technical processes, as well as in some cases, covering the travel costs of family members to come to the host country.

This report focuses chiefly on the EU Directive on Family reunification with regard to the situation for beneficiaries of international protection in the EU.

¹² The choice of countries corresponds to the voluntary contribution provided by ECRE and RCEU members.

¹³ As per the Directive, sponsor means a third country national residing lawfully in a Member State and who applies for or whose family members apply for family reunification to join them.

SECTION 1 | Obstacles encountered in the EU

When refugees are granted a protection status, several years might have passed since they last saw their relatives. Obtaining a protection status gives them the prospect of finally being reunited with their family and hope of a more stable life. For many, being granted protection is far from the end of the road. In practice, the procedure sponsors have to comply with shows that family reunification in the EU is a long and difficult process.

The following section highlights some of the complex issues people granted international protection in the EU have to deal with in order to be reunited with their family. It shows the consequences of the conditions as applied by Member States and considers the procedural aspects, including timing issues, and the need for clear information and legal advice, before highlighting the financial implications of the procedure.

1.1 | Conditions for family reunification

Chapter V of the Directive refers to the conditions which are specific to refugees seeking to be reunited with their families. The preamble to the Directive does acknowledge the need to pay “*special attention to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there*”¹⁴ through the establishment of more favourable conditions for the exercise of their right to family reunification. Member States should therefore impose lighter evidence and requirements from the usual conditions imposed on other migrants seeking to be reunited with their family members. These usually relate to requirements to prove sufficient stable and regular resources, accommodation regarded as normal for a comparable family in the same region, sickness insurance,¹⁵ and compliance with integration requirements.¹⁶

Member States may however limit the application of these more favourable rules in the following cases: if family relationships do not predate the refugee’s entry to their host country¹⁷, when the application for family reunification is not submitted within a period of three months after the granting of refugee status¹⁸, where family reunification is possible in a third country with which the sponsor and/or family member has “special links”¹⁹, and for beneficiaries of subsidiary protection. Practitioners report that some Member States use this margin of manoeuvre in such a way that it prevents beneficiaries of international protection from enjoying family reunification. In particular, the application of exemption deadlines on additional requirements and the differential treatment for beneficiaries of subsidiary protection are considered as major obstacles.

As regards the time period during which applicants should lodge their request, it varies from three months to a year depending on the Member State. However people’s ability to meet the deadline depends on a range of factors which are often beyond their control (locating family members, accessing accurate information and support, reaching the embassy, collecting necessary documents and resources, etc.). As a result, it is often the case that the deadline has lapsed and refugees are then subject to the same income and housing requirements as other migrants, even though their personal situation and needs have not changed.



¹⁴ Recital 8 of the Directive.

¹⁵ Article 7(1) of the Directive.

¹⁶ Article 12 of the Directive.

¹⁷ Article 9 (2) of the Directive.

¹⁸ Article 12 (1) subparagraph 3.

¹⁹ Article 12 (1) subparagraph 2.

Subsidiary protection status accounts for a large proportion of the total number of people granted protection in the EU.²⁰ Although several Member States apply the same rules to refugees and beneficiaries of subsidiary protection,²¹ the right of the latter to family reunification depends on the related national legislative framework with several Member States which requires beneficiaries of subsidiary protection to comply with the same conditions as other migrants.²² In the absence of objective justification as to why these groups should be treated differently with regards to their fundamental right to respect for their family life, such differential treatment between refugees and beneficiaries of subsidiary protection raises concerns. Furthermore, it is inconsistent with the EU asylum acquis that ensures equal treatment for all applicants and beneficiaries of international protection (see the Qualification Directive).²³

Finally, initial evidence collected suggests that some Member States use Article 12(1) of the Directive and the argument of “special links” in a third State, without a real assessment of the situation of any family remaining in third countries. As a result, many refugees are excluded from more favourable treatment.



Hungary: Hungary grants subsidiary protection status more often than refugee status.²⁴ From 2011 beneficiaries of subsidiary protection no longer have access to family reunification provided by the more favourable rules covering refugees.

Luxembourg: Beneficiaries of international protection have three months to benefit from the more favourable conditions, even if they are unable to locate their family. After this period, people need to fulfil health insurance, housing and stable resources conditions.

Austria: A man from Afghanistan who was a beneficiary of subsidiary protection wanted to be reunited with his wife and six children. Since fleeing Afghanistan in 2011 the family had been living illegally in Peshawar (Pakistan) and unable to regularise their stay. Their security was at risk as one of the children was kidnapped and his whereabouts remain unknown. Nevertheless the Austrian authorities rejected the reunification claim arguing that the man could also live together with his family in Pakistan.



Beneficiaries of international protection who do not benefit from more favourable conditions need to comply with the same requirements as other migrants, regardless of their situation, vulnerability or the socio-economic context. Member States tend to apply this rule very strictly, with no consideration for the individual situation of persons even vulnerable groups such as disabled or elderly people. Of the requirements with which people have to comply, practitioners are particularly concerned with the “stable and regular income” criteria that proves the most difficult to meet, and can even be considered discriminatory in view of the amounts required. This is consistent with existing evidence showing that refugees fare worse than other migrants regarding employment because of the specific barriers they face.²⁵

** Recommendations

- *Member States should not apply restrictions on more favourable rules for beneficiaries of international protection, in Chapter V of the Directive, as they risk undermining effective access to the right to family life.*²⁶
- *Member States must always assess cases individually and consider the personal circumstances both of the applicant and of their family members in third countries.*
- *Member States should not discriminate on the basis of different protection statuses when ensuring the right to family reunification.*

1.2 | Eligible family members

Article 4(1) of the Directive defines the obligation of Member States in respect of reunification of the nuclear family (spouse and minor children, parents of unaccompanied minor). Article 10(2) of the Directive also foresees family reunification of ‘other’ family members if they are dependent on the refugee. Yet Member States tend not to use this possibility, or they interpret the concept of “dependency” very strictly by limiting it to full financial dependency or physical dependency. Criteria for determining dependency²⁷ vary widely across Europe, creating a lottery for applicants who seek to be reunited with their family (beyond the nuclear family). As a result, reunification with ‘other’ family

²⁰ EASO (2014), *Annual Report on the Situation of Asylum in the European Union for 2013*.

²¹ This is the case for instance in Belgium, Luxembourg, Bulgaria, Romania and Slovenia, Poland.

²² Practices are therefore easily subject to changes. By way of example, in April 2014 Cyprus passed a new law excluding beneficiaries of subsidiary protection from a more favourable treatment as regard to family reunification.

²³ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection

²⁴ EASO (2014), *Annual Report on the Situation of Asylum in the European Union for 2013*.

²⁵ The recent study published by the UNHCR (2013), *A New Beginning: Refugee Integration in Europe*, shows that refugees have lower labour market participation due to specific challenges such as lack of official documents, non-acceptance of qualifications or educational attainment, trauma, anxiety over family separation, long period of inactivity in the asylum system, and limited social networks.

²⁶ See Preamble 2 of the Directive: “Measures concerning family reunification should be adopted in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law.”

²⁷ For the existing jurisprudence on the concept of dependency, see EC Communication on Guidance for Application of Directive 2003/86/EC on the Right to Family Reunification, p. 6. See also the Court of Justice of the European Union (CJEU), Case C-423/12 *Flora May Reyes v. Migrationsverket*, 16 January 2014.

members remains an exception. Adult children, foster children, parents of adults, non-officially married partners, siblings (even when the sponsor is an unaccompanied child), as well as family formed after departure from the country of origin are mostly denied family reunification.



Austria: A Somali man granted subsidiary protection fled to Eritrea and lived in a UNHCR refugee camp for years. He met his Somali spouse there, married her and they had a son. He then fled to Austria alone and applied for family reunification. His application was refused on the grounds that family was formed after his departure from Somalia.

France: A Pakistani refugee has been in charge of his disabled adult sister since their parents disappeared. However, the sister is not considered eligible for family reunification despite her dependency on her brother.

Poland: Polish authorities do not apply Article 10(2) that allows family reunification with “other” family members who are not part of the nuclear family. The reunification is therefore strictly limited to the nuclear family, i.e the spouse and underage children. There is no room for an individual assessment of a particular case when it comes to the definition of a family member.

A Syrian refugee granted status in Poland wanted to be joined by his wife and children. Two daughters were already adult so they could not benefit from the family reunification procedure. The family decided that they could not leave unmarried girls alone in Syria even though they were adults. The particular situation in Syria was not taken into account.

The UK: A Pakistani refugee was able to be reunited with his wife and younger child, but was refused the application to be reunited with the two older children who were over 18. They were thus left behind in Pakistan leading to a traumatic situation for the family.



By merely considering applications from the spouse/partner and children under 18, Member States overlook the reality of people in need of international protection. Beyond the fact that the nuclear family concept does not reflect how the family unit is constituted and evolving globally, including in European societies, such an understanding disregards the profound changes to the family structure which come about as a result of forced displacement. In regions of conflict and following severe crisis, it is not unusual for households to be composed of children whose parents are no longer alive or are missing as a result of the conflict. Furthermore, it is not rare that families are formed during flight, as people may spend years in transit countries or in camps before finally settling in the EU.

** Recommendations

- *Member States should systematically consider family reunification of family members beyond the nuclear family, particularly if they are dependent.*
- *Criteria to assess dependency should not only include financial and physical aspects, but also legal, emotional, social and security factors.*
- *Member States should make available up-to-date information regarding the criteria used to assess dependency.*

1.3 | When a child is involved

The United Nations Convention on the Rights of the Child sets out that the best interests of the child shall be a primary consideration in all actions concerning children. This means that applications for family reunification involving children should be dealt with in a positive, humane and expeditious manner.²⁸ Article 5(5) of the Directive obliges Member States to take this principle into account in all applications involving children. Article 10(3) of the Directive further provides that unaccompanied refugee children should be reunited with their parents, and where these cannot be traced, with a guardian or other member of the family. In this context, the best interests of the child should also be a prime consideration when identifying a durable solution, which includes integration in the host country but also return to the country of origin.²⁹

When examining Member State practices, a number of aspects undermine the effect of these clauses. The possibility of limiting family reunification of children to their parents or legal guardians results in siblings being separated and children left behind, while practices relating to age assessment have been recognised as problematic due both to their potentially grave consequences and to questionable accuracy. Age assessment practices also raise doubts as they tend to negatively impact the number of unaccompanied minors granted protection. Additionally, the fact that the rules and criteria applied change drastically once the child turns 18, lengthy family reunification and/or tracing procedures run counter to the best interests principle as they may result in disruption of the family reunification procedure.³⁰

²⁸ United Nations Convention on the Rights of the Child (1989), Article 10.

²⁹ European Commission (2011), Action Plan on Unaccompanied Minors (2010 – 2014), COM(2010) 213 final, 6 May 2010.

³⁰ UNHCR (March 2014), Unaccompanied and separated asylum-seeking and refugee children turning eighteen: what to celebrate?, available at: <http://www.refworld.org/docid/53281a864.html>.



Belgium: An Iraqi family fled their war torn country in 2006 with their son and daughter aged 11 and 17 years respectively. The mother arrived in Belgium at the end of 2007 and was granted subsidiary protection. The father and children applied for family reunification from Syria. Meanwhile, the daughter had reached the age of majority. Because the mother could not prove sufficient financial means, only the father and the son were granted a visa and arrived in Belgium in 2009. Although the daughter was still dependent and her file demonstrated that her personal circumstances were similar to those of her brother, her situation was dealt with in a different way.

France: Unaccompanied children recognised as refugees can be reunited with their parents, but not with their siblings. This restriction forces families to choose either to leave children behind or not to join the child in Europe. Furthermore, most unaccompanied children have reached the age of majority once their asylum applications are accepted. As a result, they are excluded from favourable conditions for family reunification.

Finland: It is very difficult for unaccompanied children to be reunited with their parents. According to the authorities, grounds for rejection include inconsistencies in interviews with family members and insufficient evidence of cohabitation or of forced separation. If the child turns 18 during the family reunification procedure, she/he is no longer eligible for family reunification. If however authorities delay in processing the application, this rule will not apply.

Poland: Unaccompanied minors who are recognised refugees can only be reunited with their parents. No specific circumstances are analysed which could allow for a family reunification with siblings or with adult children. Dependency criteria are not taken into account.



** Recommendations

- *The best interests of the child should be a primary consideration throughout the family reunification procedure involving children, which must be assessed in a positive, humane and expeditious manner.*
- *Procedures started before the age of majority should not be interrupted or modified for the sole reason that the child has turned 18.*
- *Unaccompanied refugee children should have the right to be reunited with both their parents and siblings.*
- *Age assessment determination procedures should take into consideration their consequences on the well-being of the child.*

1.4 | Lengthy procedures and waiting times

Article 5 (4) of the Directive states that the nine month limit in which a decision should be given to refugees may be extended under “*exceptional circumstances*”. The European Commission guidelines clarify the circumstances that can be considered as exceptional: the need to assess family relationships, difficulties in accessing the administration in a conflict zone, difficulties in organising hearings in third countries because of security issues, etc.³¹ Authorities should give this specific attention and assist with alternatives to facilitate the process as much as possible. Member States should also take into account the fact that their procedures are very complex and not always adequate, which can also create unnecessary delays for families.

Practitioners report that family reunification procedures for beneficiaries of international protection are extremely lengthy, often lasting several years. This may be caused by the fact that insufficient resources are allocated to embassies, particularly those based in countries which have the largest influx of refugees, and by the lack of accessible and up-to-date information and support provided to applicants.



Austria: Syrian refugees granted subsidiary protection have to wait for one year before they can apply for family reunification. As their family members sometimes still live in Syria or as refugees in a neighbouring country, this waiting period exposes people to greater vulnerability and additional threats.

Belgium: A decision on an application for a family reunification visa generally takes six months after submission of the file to the embassy. This is the legally fixed term within which a decision must be taken. This term can be prolonged twice by three months at a time if there is a need for DNA testing (which takes up to eight weeks), or a perceived need for investigating the authenticity of the marriage. The time needed to prepare the file prior to submission should also be considered (collection of documents, getting an appointment with the Embassy, reaching the Embassy, gathering the necessary funds, etc.). There is a different procedure for reunification with “other” family members, who must obtain a humanitarian visa for which there is no time limit on the decision. In addition, appeals against refusals may take several years.

31 European Commission, Communication on Guidance for Application of Directive 2003/86/EC on the Right to Family Reunification, COM(2014) 210 final, 3 April 2014, p 10.

France: A refugee waited four years for a decision relating to reunification with his wife and three children. Two years passed between presenting the application and its registration at the embassy. A year later the family still had no news about the progress of the file and it took a further year for the visas to be finally delivered. During those four years, the authorities did not reply to the applicant's request for information nor give any written explanation for the delay.

Spain: Family reunification procedures tend to be extremely lengthy. The procedure begins in Spain, where the sponsor applies to the Asylum Office for the extension of his/her international protection status to cover his/her family. After several weeks, the Asylum Office will require the family members to submit original documents (proof of bond, dependency, etc) to the Spanish Consulate/Embassy designated in the application. The documents are then sent to the Asylum Office by diplomatic bag. Once the Asylum Office receives the documents, it will decide on the case. If the decision is positive, the Consulate / Embassy will wait until they receive the order to issue the visas.

Sweden: An unaccompanied girl with refugee status will soon turn 18. Her mother and siblings applied to the Swedish embassy in Pakistan 16 months ago. The case was prioritised four months before the girl turned 18, but one month prior to her birthday there was still no caseworker assigned to the case. There will be no time for additional investigations or to obtain documents if needed.



Periods of long separation can take a heavy psychological toll on the entire family's well-being. Long delays increase the risks for family members overseas, who may be in conflict zones or refugee camps, and who often face the same danger of persecution that caused their spouse or parent to be granted international protection. Furthermore, poor living conditions may endanger the health of family members and affect children's education, leading to increased social costs when they finally come to Europe. Prolonged family separation has its most dramatic impact on children.³²

** Recommendations

- *Applications for family reunification should be dealt with in a prompt manner, while ensuring a thorough investigation of the individual circumstances of the applicants.*
- *Applications from people fleeing a humanitarian crisis and where assistance and shelter in neighbouring countries fall short should be dealt with as a priority.*
- *Member States must justify any extension of the nine-month time limit by demonstrating that the complexity of a particular case qualifies as exceptional circumstances. Lack of administrative capacity, or of information provided to applicants cannot be reasons for delaying the process.³³*
- *Member States should facilitate communication flows between asylum and immigration offices and diplomatic services, including through clear administrative instructions and the more efficient use of technology.*

1.5 The need for information and legal aid

The complexity of the procedure and the lack of clear, available information, as well as the difficulty for applicants to access free legal assistance are key factors that can hinder beneficiaries of international protection from exercising their family reunion rights. Access to clear and reliable information throughout the procedure seems particularly problematic in several Member States. In some states, information is simply unavailable. In others, such information is provided in a language which the sponsor cannot understand. Some practitioners also report inconsistencies between the information provided in Europe and in embassies based in third countries. Furthermore, legislative changes have been introduced in most Member States over the past years³⁴ and criteria for eligibility and favourable conditions are not clear to applicants nor to lawyers. As a consequence, it has become increasingly difficult to understand and interpret the rules governing family reunification.

In addition, evidence shows that people are often not able to exercise their family reunion rights without professional support.³⁵ Since in several Member States there is no right to free legal assistance when applying for family reunification, applicants therefore have to rely on possibly inaccurate information provided by their communities, or on civil society organisations and legal aid services, which are increasingly being affected by budget cuts. This situation leads to inconsistencies in applications that in turn have an impact on the final decision and on the fairness of the process.

³² T Strik, B. de Hart, E Nissen, (2013), Family Reunification: A Barrier or Facilitator of Integration? A Comparative Study.

³³ European Commission, Communication on Guidance for Application of Directive 2003/86/EC on the Right to Family Reunification, COM(2014) 210 final, 3 April 2014, p 10.

³⁴ See in particular, European Policy Centre (November 2011), Conditions for Family Reunification under Strain. British Council and Migration Policy Group (2011), MIPEX Index III. MIPEX shows for instance that more favourable conditions were undermined in six countries (Belgium, France, Germany, Italy, Netherlands, and Sweden), while conditions became even more restrictive in Austria and Malta. See MPG (November 2011), Right to family reunion: the dynamics between EU law and national policy change, MPG briefings for green paper on family reunion 2.

³⁵ See for instance: Glasgow Scottish Refugee Council, Connell, J., Mulvey, G., Brady, J., & Christie, G. (2010), One Day We Will Be Reunited: Experiences of Refugee Family Reunion in the UK. British Red Cross, J. White, L. Hendry (2011), Family reunion for refugees in the UK: Understanding support needs.



Hungary: Beneficiaries of international protection are not systematically informed about their right to family reunification when they receive a favourable decision. Furthermore, refugees report that the Immigration Office does not give them correct information about the more favourable rules, and particularly about the period during which these rules are applicable. Civil society organisations, which are the main source of information, are finding it increasingly difficult to provide support due to a lack of capacity.

Estonia: The information sheet handed out by the Police and Border Guard Board³⁶ does not include any information about family reunification with relatives left behind in third countries. The information sheet only covers the situation where family members are already in Estonia.

Austria: Since January 2014 the family reunification procedure is subject to appeal for the first time. However, no legal aid is provided for applicants for family reunification. Information regarding the procedure is provided through the counselling services of civil society organisations.

Poland: Beneficiaries of international protection are not provided with free legal assistance for the family reunification procedure. They have to rely on civil society organisations that provide free legal assistance.

The UK: Since 2013 refugees are no longer entitled to legal aid when applying for family reunification. This is very problematic given the complexity of the process. Those who cannot afford to pay for a lawyer (often at least €500) or DNA tests see their chances of family reunification dramatically reduced.



** Recommendations

- *Member States must provide accessible and accurate information about family reunification when notifying the decision granting international protection.*
- *Free and quality legal assistance should be made available for beneficiaries of international protection throughout the family reunification procedure.*
- *Funding to support and train the relevant institutions should be ensured to promote good knowledge of family reunification procedures and legislation. NGOs involved in family reunification should be consulted and funded to assist in this training.*

1.6 | A costly process

Family reunification procedures are often costly processes for all family members. Related expenses can include translation and verification of documents, visa and embassy fees, the cost of staying in the country where the embassy is (if there is no embassy in the country of residence/origin) and of subsequent travel to the Member State where the sponsor is. DNA tests are at times also required and this often implies significant additional expense, not systematically covered by the authorities. As a result, family members may have to spend thousands of euros, depending on the size of the family and the country of residence. Such costs are another obstacle for people to apply within the time limit.



Austria: Applicants have to cover all travel costs, which can be up to € 8,000 depending on the size of the family and the country of origin.

Belgium: Refugees have to pay for the travel costs, the visa fee (€180 per person), cost of documentation which include translation and legalisation, medical exams and DNA testing that is often required (€200 per person). On average, people spend €3,350 for a family reunification procedure.

Luxembourg: DNA tests are not required by the government, but it might be the only way to prove family links when documents are missing. DNA tests cost €500 per person, so where a child is involved, a family will have to pay at least €1000 to prove the existence of family links in the absence of other supporting evidence.

Sweden: While a refugee's family members are entitled to government sponsored travel to Sweden, beneficiaries of subsidiary protection are excluded from this practice. Other costs related to the application are imposed unless they are family members of sponsors holding refugee status, beneficiaries of subsidiary protection and sponsors granted residence permits on humanitarian grounds. By way of contrast, family members of unaccompanied minors must cover all costs involved in the procedure regardless of status.



**** Recommendations**

- *All family members of beneficiaries of international protection including the spouse, children, parents, and siblings should be exempted from costs of procedural requirements (visa fee, DNA testing, certified translations, etc.).*
- *Governments should provide travel assistance to reunite family members, either directly or through civil society actors.*
- *Low interest social credits or loans should be introduced to cover the potential cost of the family reunification procedure.*

SECTION 2 | Challenging situations in regions of origin

People in need of international protection are fleeing conflict and persecution in their habitual place of residence. This usually implies that the situation in the country of origin of applicants for family reunification is characterised by insecurity and uncertainty. From a practical perspective, this has consequences on the actual procedure. Firstly, a request for documents or information made to states which may be the actors of persecution can put the security of both the sponsor and his/her family at risk. In addition, the capacity of states to deliver official documentation may be affected. A state may also have limited interest and willingness to collaborate in a procedure which implies acknowledgement of its incapacity to protect its residents. Finally, in regions of conflict and in situations of instability, the diplomatic services of EU Member States often tend to limit access to and services of their consular representations.

This section looks at the situation faced by forced migrants in their regions of origin, including the challenges of obtaining supporting documents from states in conflict and of ensuring collaboration with the authorities. It also describes the consequences of the non-availability and accessibility of diplomatic services, and concludes with a brief overview of the consequences of life in transit.

2.1 | Obtaining supporting documents from states in conflict

Member States often require family members to produce civil-status documents or a ‘valid’ travel document (national passport or equivalent) in order to lodge a file at the embassy and/or to reach the EU once family reunification has been approved. Additionally, most Member States impose diverse requirements, such as originals and/or apostilled documents, or copies certified by the administration in the country of origin. Such conditions are not compatible either within the context of forced migration or with the obligations set out in the Directive.³⁷

It is often difficult or even impossible for refugees and family members to obtain the necessary official documents from their national authorities. This may be due to the fear of persecution which has originally led the family to leave the country of origin. Family members may also already be in a third country when they apply, and therefore unable to go back to the country they fled because of ongoing conflict and violence. Additionally, due to years of conflict and ongoing political instability, several countries from which refugees flee lack fully-functioning administrations that are able to deliver official documentation. Some countries considered as “failed states” have no functioning government or state administration at all, and citizens have therefore been unable to obtain official documents such as identity cards, passports or other certificates.

Since the collapse of the Somali central government in 1991, most EU Member States have considered Somalia as a “failed state”, unable to ensure an acceptable quality of documents or to guarantee the authenticity of the personal data included therein.³⁸ Based on security concerns, most states reject Somali passports and thereby in effect exclude Somalis from family reunification. The same situation was reported in a number of countries as regards Afghan documents. As a consequence, several EU Member States question the validity of documents issued by countries they consider to be “failed states”.

Although Article 11(2) stresses that Member States have an obligation to consider ‘other’ evidence when official documents are lacking, practitioners report that in practice Member States only attach value to recognised documentary evidence and/or certified documents. Failure to present these often leads to refusal or significant delays.



France: A Rwandan refugee applied for family reunification with her children who had fled to Uganda. French authorities required the mother to present the Court ruling that she had the custody of the children. As her husband was at that time detained in Rwanda, this requirement compromised his safety, since it would have shown the Rwandese authorities that he facilitated the flight of his children to Uganda.³⁹

Austria: Austrian authorities tend not to accept marriage certificates issued by certain countries. Somali and Afghan marriage certificates are not recognised as official documentation proving marital relationships, thus leading to rejection of applications for family reunification. Additional interviews or other investigations are often not carried out.

Hungary: Family members who are not able to get passports due to danger or lack of functioning administration cannot enter Hungary. For family members to legalise their stay, entry into Hungarian territory has to be legal, and is therefore only possible with a valid passport. However, Hungary does not provide any alternative solutions for those family members whose passports are not accepted (e.g. Somalis and Palestinians with a Travel Document issued by Syria). Since November 2013 Hungary does not accept Travel Documents for Palestinian refugees issued by Syria. Due to this rule, the applications of a Syrian-Palestinian refugee’s two minor children, wife, elderly parents and sick siblings were rejected in June 2014 leaving them in a desperate situation in Damascus.

³⁷ Article 11(2) of the Directive according to which a decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.

³⁸ Hungarian Helsinki Committee (2009), Family reunification of Somali refugees - good practices of several EU Member States.

³⁹ See France Terre d’Asile (2013), *Contribution aux lignes directrices de la Commission européenne concernant la directive sur le regroupement familial*.

Poland: Sponsors have to present a certified copy of the family members' passports, birth and marriage certificates which are often difficult to obtain. In addition, the documents then also have to be translated into Polish by a certified translator, thus complicating the process further.

Sweden: Although all documents provided by the applicants should be taken into consideration during the procedure, the standards of proof are often too high. This creates many problems, particularly for Somali citizens, as documents and passports from their country are usually dismissed as insufficient proof. It can also be problematic for Afghans. For example, when an Afghan applies for family reunification, they need to have an Afghan passport issued in Kabul and supported by an Afghan ID-document Tazkira, (the Tazkira needs to be translated into English and attested by the Ministry of Foreign Affairs in Kabul) in order to prove their identity. Afghans who apply with a passport issued by the Afghan embassy in Teheran, for example are not accepted because the Swedish authorities know that these documents are issued based on oral evidence and not data from a census.



In view of the documentary evidence to be provided in the course of the family reunification procedure, national authorities of both the country of origin and the EU Member State are expected to cooperate. This will often imply that authorities in countries of origin are asked to collaborate in a procedure which effectively implies that they cannot guarantee the protection of their own citizens. This may create some tension or reluctance. Such resistance may translate into their refusal to allow family members to leave the country by not delivering adequate documents, not recognising alternative travel documents issued by EU Member States or other administrative hurdles.



France: A Chadian refugee launched a family reunification procedure to bring her two minor children to France. The French embassy refused to provide the visa on the grounds that the birth certificate did not comply with Chadian legislation and that the application did not thus include any concrete evidence proving the family ties. However, the embassy did not specify which element did not respect Chadian law and what the compliance criteria would be.

Belgium: The Belgian authorities deliver a "laissez-passer" to family members who are in a third country and cannot obtain a passport. However, if the national authorities do not recognise the Belgian laissez-passer as a valid travel document, holders of such documents cannot leave the country. This is sometimes the case with the Rwandan authorities.



** Recommendations

- *Member States cannot reject an application for the sole reason that documentary evidence is lacking or not considered sufficiently reliable.*
- *In such cases, authorities should consider issuing one-way laissez-passer documents to family members who cannot obtain national travel documents, and should accept the Convention Travel Document (CTD) or travel documents of the International Committee of the Red Cross (ICRC).*

2.2 | Limited access to embassies

Member States may not have a representation in all countries of origin or residence of family members. In addition, it is not exceptional for EU Member States to close down their embassies or consulates on security grounds in regions of conflict. Others may change the status of their embassies to front offices where it is possible to pick up visas, but not to make an application. Others limit access to their embassies and do not allow non-nationals to enter their premises. The embassy may also only allow some people to get in with a passport while denying access to others, except when there is a risk of death. Finally, those embassies that do remain open can be overwhelmed by people in need of international protection. This is currently the case for Member State representations in Lebanon, which are overwhelmed by Syrian refugees seeking to reunite with their family members in the EU.



Austria: Austrian embassies require presentation of identity documents or passports before they will allow applicants to enter their premises. Applicants from Somalia must hold Somali passports (even if the passports are not officially recognised by the Austrian authorities) to access the Austrian embassy and to lodge the application.

France: The French embassy in Yemen accepted the family reunification application of a Somali refugee. However, his wife and children are currently finding it impossible to obtain their visa to travel to France. While the visa is ready to be delivered, the family members are not allowed to enter the embassy on security grounds.

Hungary: Due to a lack of capacity the Hungarian embassy in Lebanon only gives appointments to family members of Syrian refugees three months after the request is submitted. As a result, these families are not able to benefit from the more favourable conditions, which makes their reunification impossible for many years.

The Netherlands: Although the Netherlands does not recognise Somali passports, on the grounds of security Somali family members need to show their passport to enter the Dutch embassies in Addis Ababa and in Nairobi. The family members can obtain the passports at the Somali representations in these towns but each passport costs at least 100 US Dollars, and children are also required to get one.

Sweden: Practice shows that Swedish embassies in conflict areas generally do not accept family reunification applications. Applicants are referred to certain embassies specially staffed and resourced for this purpose. Afghans are referred to Islamabad or Teheran, Eritreans to Yemen or Sudan, etc. Families must therefore travel and sometimes put themselves at risk of deportation in the country they are referred to. It is possible to submit a web application, which is a positive development, however, it requires technical assistance and is not possible for minors.



** Recommendation:

- *States should consider the impact of security measures on family reunification procedures and offer alternative means when such measures make applications for family reunification very difficult or impossible in practice. Such alternative means may include express mail services, applications by a third person or family member residing in neighbouring countries, direct applications at the Immigration Office by the family member residing in the host country, etc.*

2.3 | Life in transit

Many family members live undocumented in transit countries, as obtaining a legal status in some countries is difficult or impossible for refugees. Practitioners consider this as an additional obstacle for family reunification since Member States family reunification procedures often require family members to prove a legal status in their country of residence.



Afghans often encounter extreme difficulties to legalise their stay in transit countries. For instance, most Afghan refugee families live undocumented in Pakistan or Iran. They may have lived in this situation for many years and their children are born in these countries. Since the end of 2012, the Pakistani government has stopped issuing proof of registration cards for Afghan refugees. As a result, those previously registered have lost the refugee status, and the provincial governments have been instructed to treat unregistered refugees as irregular migrants thereby exposing them to detention or forced return to Afghanistan. In Iran undocumented Afghan refugees are at risk of being returned to Afghanistan if caught by the police.

Hungary: According to Hungarian law, the family members applying for a residence permit must be legally staying in the country where they apply. In May 2014 the Hungarian consulate in Turkey refused to accept the application of the five Syrian-Palestinian children of a refugee because of a lack of a Turkish stamp in their passports. The Hungarian consulate refused their applications despite knowing that previously the five children could not apply in Lebanon nor in Jordan because these countries do not allow Palestinians to enter their territory.

Sweden: Syrian family members applying for family reunification with close relatives in Sweden experience difficulties in submitting their applications at some embassies, either due to their legal status in the country of transit or the available services at the embassy. Even if they are able to lodge their application, the embassy is not willing to proceed with interviews and investigations, which would allow the migration authorities to assess the case. However, the number of embassies accepting applications has recently been expanded.



** Recommendation:

- *Family members of beneficiaries of international protection should be able to lodge a family reunification application without being required to prove legal stay in the country of application.*

SECTION 3 | Inadequate procedures for family members

While beneficiaries of international protection reach safety in the EU, the situation of family members left behind either in war zones, camps or other unsafe environments is often characterised by great insecurity. They may be exposed to retaliation from the authorities as a consequence of the refugee's flight. Those who have fled to a neighbouring country of first asylum may live undocumented, hosted in camps or in informal settlements, with limited access to resources, information and social networks. Separation from their family members may also expose relatives, in particular children, women or the elderly people, to greater vulnerability.

Through recent restrictions in legislation EU Member States have shifted the administrative burden of family reunification procedures to family members abroad. In several EU Member States where the application for family reunification could previously be made either by the sponsor in Europe or by the family members in the country of origin or transit, the application now has to be lodged in countries of origin or of first asylum. Sponsors may only lodge the application in Europe under "exceptional" circumstances. This possibility is often however at the discretion of Member States and, according to practitioners, is not easy.

As this section illustrates, the obligation to make the application from abroad, the multiplication of requirements that do not take into account the specific context of forced migration, as well as the lack of understanding on the part of authorities, add a further set of problems for family members who are already in precarious situations, and it undermines the fairness of the procedure.

3.1 Lodging an application from abroad

Over the past years Member State embassies and consulates have increasingly become the main places where family reunification procedures are handled. Most embassies require the physical presence of each family member at different stages of the submission, whether lodging the application, for the interview with the authorities, DNA testing, notification of the decision or visa application. This generates a range of obstacles for family members, as accessing the competent embassy can be a real uphill battle.

Where there is no embassy in the family's country of origin or of first asylum, the family will often have to first apply for a visitor visa to enter the country in which the closest embassy is located. Furthermore, even if the visa is issued, it may not be valid to cover the entire length of the process, which forces people to make several visa applications. The journey from their habitual place of residence is often long and expensive, and sometimes also dangerous. This is particularly problematic when Member States have limited diplomatic or consular representation. Some diplomatic or consular representations remove the physical presence requirement for more vulnerable groups, or allow submission at other EU embassies. Although arrangements for diplomatic representation are foreseen in the Visa Code⁴⁰ to facilitate access to consulates for visa applicants, they are still rarely used. This however remains exceptional and people considered as 'vulnerable' (children, pregnant women, elderly people or people with health conditions, etc.) are not systematically exempted from undertaking such journey.



Hawa, a Somali refugee in Sweden, waiting to be reunited with her children
© Swedish Red Cross/Ulrica Zwanger



Finland: The Finnish embassy in Islamabad (Pakistan) was closed down in 2012. Since then Afghan nationals residing in Pakistan are required to apply for family reunification at the Finnish embassy in New Delhi (India). The distance between Islamabad and New Delhi is approximately 700 kilometres. Since Afghans living in Pakistan are generally undocumented, they first have to travel to Kabul to apply for a visa to India. India normally grants a visa for one month, but it can be extended to an additional month. After submitting the application, families must return to Afghanistan to wait for the invitation to an interview at the embassy, following which they may still be required to come back for DNA testing. As a result of the various steps in the procedure, families may have to make three to four trips to India, which may result in an overall cost of about €10,000 including translation, accommodation and administrative fees.

The Netherlands: Family members often have to travel very far to a Dutch embassy for DNA testing or interviews, and then stay have to stay there for a long time. They may incur additional costs if they themselves have had to flee the country, or if they have stayed illegally in a neighbouring country and then try to leave by legal means. For example, Somali family members have to pay up to US\$450 per family member as a penalty for staying illegally in Ethiopia.

⁴⁰ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code).

UK: The UK Home Office website informs applicants which embassy they have to go to in order to submit their application. Even for a lawyer it is very difficult to negotiate for an application to be lodged at another embassy, even though it might be unsafe for applicants to travel to the designated one.

Belgium: A Syrian woman and her children travelled to the Belgian embassy in Ankara to make a visa application for family reunification with her husband in Belgium. They were arrested at the border, and her brother and brother-in-law who had travelled with them were killed. The woman and children were detained for several days, were ransomed and had to return to Syria. She has considered applying at the embassy in Beirut, but considering the circumstances, wishes only to travel when she is certain that the visa will be granted. A proposal to hand in the application by express mail or by another brother-in-law living in Beirut has been refused and her physical presence is required to file the application.



** Recommendations

- *Member States should allow people in need of international protection to lodge their application either in EU Member States or abroad.*
- *Consular cooperation, as foreseen under Article 8 of the Visa Code, should be used as a way to facilitate family reunification procedures through the services of embassies of other EU Member States, particularly in cases of humanitarian crisis.*
- *Where the requirement to appear in person is impossible or very difficult to fulfil due to a particular vulnerability or circumstances beyond the control of the applicant, or where this would impose a disproportionate financial burden on them, applicants should be exempt from this requirement.*

3.2 | Lack of information and support

The obligation to apply from abroad means that family members may not be able to access reliable information or find adequate support for the procedure. Often family members are in countries where such support simply does not exist. Furthermore, embassies or consulates may not have the competence or the resources to inform and assist applicants.

The absence of access to basic information, such as embassy location and opening hour, or contact details of the persons in charge of visas, may constitute barriers to accessing the procedure. Even once the family has the correct location, practitioners report that the absence of reliable information from embassies and consulates is an important obstacle for family reunification.



Belgium: Some embassies are not aware of the rules applicable to family reunification, in particular the one year period during which beneficiaries of international protection enjoy more favourable rules. In addition, several consular services outsource certain tasks to private companies. This is the case for instance in Pakistan, where Fedex is the competent service for all Afghan files. Several problems were reported linked to this, such as late notification, wrong information, incorrect requirements or the suspension of applications when documents are missing.

Finland: The application forms and additional information on requirements posted on the home pages of the Finnish Immigration Service and embassies are only available in Finnish, English or Swedish.



** Recommendations

- *Information on the procedure, such as the documentation required, must be available in different languages, posted on the public websites of embassies and made available in refugee camps.*
- *National authorities should send clear instructions to their embassies and train their staff on family reunification procedures, the realities of forced flight and how to provide the relevant support to family members seeking reunification.*

3.3 | Discretionary practices in consulates and embassies

Consulates and embassies may impose certain requirements on family members that are neither compatible with the Directive nor with their own national legislation. Practitioners report discrepancies and a lack of transparency in how embassies and consulates interpret and apply the rules for family reunification. They also point to misinformation and requests for documents which are not in fact necessary in the context of the family reunification procedure. This can lead to significant delays and additional costs for family members or even rejections.



Finland: The instructions on the Migration Service homepage state that if applicants cannot provide documentation to evidence family ties, they should attach a written explanation to the residence permit application which can then be followed by an interview with the Finnish Immigration Service. Nevertheless, some Finnish embassies refuse applications because official supporting documents are missing.

Hungary: Some Hungarian consulates have arbitrary practices for verification of passports of family members. Sometimes passports are taken away and sent to Hungary for checking, which slows the process down by several months.



** Recommendation

- *Member States must effectively monitor practices in embassies and consulates in order to ensure that staff act consistently to enforce family reunification laws and policies, and the Family Reunification Directive, and do not apply additional requirements that are not prescribed in legislation or policy guidance.*

3.4 | Proving family links

Being able to prove family ties is a central aspect of the family reunification procedure. Such relationships can however be hard to demonstrate when corresponding documentary evidence is missing and often difficult to obtain. The documents required (birth, marriage or fostering certificates) might be impossible to get either because the administrations in countries of origin do not provide such documents or because of the impossibility to return or even contact the relevant administration for safety reasons. Although Article 11 of the Directive stresses that Member States have the obligation to take “other” evidence into account when applicants are unable to provide official documents, in practice there are few procedural safeguards to ensure applications are not rejected on the basis of an absence of official documentation. Practitioners report a general lack of knowledge and at times of understanding of the applicable rules by authorities dealing with beneficiaries of international protection and their families, which may lead to intrusive interviews carried out in embassies. Among the difficulties reported by practitioners, procedures involving non-biological children, single parents and even at times spouses were found particularly problematic.

Reunification with non-biological children, including foster children and *de facto* adopted children, is difficult if there has been no formal adoption procedure. As adoption is not a formal procedure in many countries, applicants are generally not able to support their file. This overlooks both cultural differences in family composition, as well as the context of forced migration where relatives may take custody of children left behind.

A single parent is often required to show parental transfer to prove he or she has the custody of the child (death certificate, consent from the other parent, etc.) in order to get family reunification. Few applicants are able to provide such documents, especially when the partner has died or disappeared in a war zone. As a result, children can be separated from their closest parent for an indeterminate duration.

Finally, applications for family reunification of spouses can be rejected because marriage certificates cannot be produced or are not recognized by certain EU Member States. Additional interviews or other investigations are not carried out and so the sponsor and spouse have no effective chance of having their case heard, in spite of other evidence proving marital relationship.



Belgium: A Guinean refugee wanted to be joined by her 10-year-old foster daughter. She had taken custody of the child as a baby after the mother died. The father is unknown. The Belgian Immigration Office rejected the visa application because of the lack of any formal adoption or evidence of custody right. In this case there was even a UNHCR report which clearly stated that the girl considered the foster mother as her biological mother. The report was not accepted as proof since it was only based on ‘declarations’. A legal adoption procedure is not common in Guinea and the foster mother cannot contact the Guinean authorities because of her refugee status.

The UK: A Sudanese refugee raised her nephew as part of her family after his parents were murdered. Her own children were promptly granted Family Reunion visas but the nephew had to stay behind for another year, unaccompanied and cared for by a stranger, until the positive outcome of an appeal.

The Netherlands: A Somali woman could not be reunited with her two children who were staying in Addis Ababa and being taken care of by a former neighbour. The application was refused because the authorities required the father’s approval (with whom she had not had contact for over five years). The Somali woman had no idea of the whereabouts of the father of the children.

Sweden: Single parents must prove they have the consent of other parent to be reunited with their children. For certain countries it is almost impossible to obtain these documents. There are cases of Afghan women having great difficulty to prove the death or disappearance of their husband. In such cases they need a ruling from the Supreme Court in Kabul stating that they are the sole custodian of the children. This is particularly stressful for refugees who do not wish to contact the authorities of their country of origin.

Austria: A Tibetan woman could be reunited with her child following a successful DNA test, but not with her husband because the marriage certificate could not be presented.



** Recommendations

- *The UNHCR Guidelines on Determining the Best Interests of the Child*⁴¹ should be considered when establishing a child's family links. Member States should keep in mind that the approval of the other parent is not always possible to obtain.
- *Interviews carried out in the context of family reunification procedures must respect fundamental rights, in particular the right to privacy and family life. They should be held with a suitable interpreter. Children should be interviewed having due respect for the requirements set out by the UN Committee of the Rights of the Child, including the right of the child to be heard.*⁴²
- *Other evidence as referred to in the Directive should include family books, testimonies, military cards where parents are mentioned, photos, telephone calls, sponsor's statements during asylum interviews. Guidelines should be developed on what other evidence to take into account.*
- *If DNA testing is required, it should be carried out with full respect for the privacy and safety of those involved.*

3.5 | Family reunification of family members already present in the EU

Family separation in a forced migration context often leads to the situation where family members arrive separately and at different times in Europe, sometimes in different Member States. Under EU law, Member States have to maintain family unity once family members are in Europe (see Directive 2011/95/EU,⁴³ Directive 2013/33/EU,⁴⁴ the Dublin II Regulation,⁴⁵ and Article 8 of the European Convention on Human Rights (ECHR) and Article 7 of the Charter of



Sabria, seen here in Athens, has been waiting for years to be reunited with her children and their families in Germany. Now, after a dramatic journey, her wish is about to come true. © UNHCR/J.Akkash

⁴¹ UNHCR (May 2008), UNHCR Guidelines on Determining the Best Interests of the Child.

⁴² UN Committee of the Rights of the child (July 2009), General comment no 12, The right of the child to be heard, CRC/C/GC/12.

⁴³ See Chapter VII of the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) ("recast Qualification Directive").

⁴⁴ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) ("recast Reception Conditions Directive"), article 12.

⁴⁵ See more particularly Preamble (13-18), and Article 6, 8-11. Recital 14 of the Regulation states that family unity should be a primary consideration of Member States when applying this Regulation.

Fundamental Rights of the EU). During the process of identifying a Member State's responsibility for the examination of an asylum claim the Dublin II Regulation includes provisions regarding the bringing together of family members separated within the EU.⁴⁶

According to Chapter III of the Regulation, a Member State's responsibility can be assigned on the basis of the presence in an EU Member State or Associated Schengen country of family members of the applicant for international protection. Despite the safeguards anchored in EU law, practitioners report that, paradoxically, family reunification is in general more difficult when family members are already in the EU than when they are in third countries. Evidence collected indicates two main obstacles: firstly, the obligation to submit a family reunification application in third countries may prevent family members from having their reunification claim assessed if they are already staying with their sponsor in the territory of an EU Member State. Although Article 5(3) of the Family Reunification Directive allows Member States to accept applications introduced by family members already on its territory, this remains discretionary, and practice shows that authorities may ask the applicant to leave Europe in order to make the application from a third country.

Secondly, there are great disparities in the way Member States apply the family unity principle as given in the Dublin II Regulation. Some Member States tend not to take into account the presence of family members in another Member State, and a Member State's responsibility is often determined on the basis of other grounds that ignore the hierarchy of criteria.⁴⁷ Pursuant to the Dublin II procedure, unaccompanied children are subject to different treatment by Member States with respect to *inter alia* assignment of a guardian, family tracing, and assessment of their best interests and age. Under Article 15 of the Dublin II Regulation, any Member State, even where it is not responsible under the criteria set out in this Regulation, may bring together family members and other dependent relatives on humanitarian grounds, and in particular on the basis of family or cultural considerations. However, due to the fact that the humanitarian clause is a discretionary provision, it is rarely applied, or it is interpreted in such a restrictive manner that families remain separated. Finally, significant delays for bringing family members together under the Dublin II Regulation are reported, leaving families in a prolonged state of uncertainty and separated from one another over long periods of time.



Austria: A woman from Syria with international protection wanted to be reunited with her husband who was in detention in Bulgaria. The Bulgarian Dublin Office sent a take charge request to Austria, but the Austrian authorities refused the request because of problems with recognizing the marriage certificate. The Bulgarian authorities then examined the asylum claim. However, in the absence of any official decision not to allow the transfer to Austria, the husband could not appeal.

The Netherlands: The Netherlands requested that as the first member state of entry Spain take back an 'unaccompanied child', whilst the mother resided in the Netherlands where she was naturalized. The Dutch authorities did not notify the Spanish authorities that the mother was residing legally in the Netherlands. Upon appeal the regional Court ruled that the Netherlands should examine the asylum application and ordered that the child should not be transferred to Spain.⁴⁸

Hungary: A Somali woman with six children had permanent permission to stay in Sweden. Her husband was detained for several months in Hungary. The Hungarian authorities asked Sweden to take charge of the man under the humanitarian clause, but this was refused because the evidence proving his family ties was not considered to be of sufficiently good quality. The Hungarian authorities therefore examined his asylum application and rejected its admissibility on safe third country grounds. The man was deported to Serbia.⁴⁹

Sweden: Separated families give testimonies of long separations due to slow proceedings for transfer under the Dublin regulation. In some cases very young children had to wait six to twelve months in another Member State before they were reunited with parents in Sweden.



** Recommendations

- *Member States must ensure that the principle of family unity is fully respected within the Dublin procedure.*
- *In cases where adherence to the binding criteria would result in families being separated, Member States should apply the humanitarian clause. Member States must take all reasonable steps to trace family members when the applicant for international protection is an unaccompanied child.⁵⁰*

⁴⁶ As this report focuses on the current practice, most information in this document relates to the application of the Dublin II Regulation. This Regulation has now been repealed by the Dublin III Regulation, which includes some improvements regarding family unity. However, it only applies to applications for international protection lodged since January 2014.

⁴⁷ See ECRE (February 2013), Dublin II Regulation, Lives on Hold, European Comparative Report.

⁴⁸ Regional Court Zwolle (Case of Rechtbank Zwolle) Case No. 04/51294, 27 January 2005. Example quoted in Lives on Hold, p. 26.

⁴⁹ County Court of Szeged, M.A.A. v. the Office of Immigration and Nationality, 5.Kpk.20.313/2012/2., 03.02.2012.

⁵⁰ Art 6.4 Dublin III Regulation.

CONCLUSIONS

Building upon the experiences of practitioners, this report has shed light on some of the very practical problems that people in need of international protection may encounter when seeking to be reunited with their family members in the EU. It illustrates the main obstacles facing people from being granted refugee or subsidiary protection status, and also at times their families from enjoying the right to family life and makes some recommendations. We hope that these will be considered by Member States and the European Commission alike with a view to making the right to family life for beneficiaries of international protection effective in the EU.

The evidence presented in this report points to the lack of a transparent, reliable and effective framework for EU family reunification procedures involving people in need of international protection. It is difficult for people in need of international protection to obtain reliable information and data on the actual possibility of enjoying their right to family life. In addition to a comprehensive evaluation of the implementation of the Directive by the European Commission, we call for clear information on the procedure to be made available by the competent authorities. Such information should be systematically provided to beneficiaries of international protection. Member States should further evaluate the impact of their policies on the effective enjoyment of the right to family reunification, particularly since the experience of our members points to multiple inconsistencies between national practices and legislation across Member States. With this in mind, it will be essential for any future evaluation of the implementation of the Directive to take into account the experience and insight of practitioners, including civil society organisations.

We are concerned that family members in situations of forced migration who cannot get through the current complex and inadequate application procedures may be tempted to access the EU by their own means to be reunited with their families, thereby leading to often tragic and desperate situations. In particular, we would stress the following key messages for further investigation and analysis when improving national practices for upholding the right to family life:

- *Firstly, when considering the specific situation and vulnerabilities of people in need of international protection, it seems evident that more flexible rules for people in need of international protection are necessary. A protection-oriented implementation of the procedures is essential for the right to family reunification to be effective. As recommended by the Directive, rules and conditions should be applied flexibly, with better understanding of the realities of forced migrants being promoted in particular through adequate resource allocation by national authorities and training of the staff dealing with these issues.*
- *Secondly, current procedures tend to lead to further isolation and separation of families, which is contrary to the stated objective of the Directive and in breach of the EU Charter of Fundamental Rights. This comes as a result of lengthy and costly procedures, including high evidential requirements for selecting eligible family members. In addition, an unacceptable burden is placed on family members seeking to be reunited with a relative in the EU, considering that the family members are often in a more precarious situation than the sponsor.*
- *Finally, we have found that the question of access to procedures is central to making the right to family life a reality. This requires further reflection so as to ensure effective access to embassies and consulates abroad, without unnecessary obstacles such as disproportionate documentary evidence or unjustified presence requirements. This also implies allocating resources for legal assistance and travel costs, and scrutiny of the practices employed by consulates and embassies.*

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