Access to Justice in the Protection of Their Right to Private and Family Life

Training Materials on Access to Justice for Migrant Children, Module 4

FAIR Project, April 2018

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This training module (a part of a series of training materials[1] relevant to protecting the rights of migrant children) provides standards and materials on the international and EU legal framework on the right to family life and family reunification, including the definitions of family, key principles and rules applicable to migrant children.

I. Introductory section

1. International legal framework

All children, including migrant children, are holders of human rights and have the right to family life and family reunification under international and EU law.

International law

Universal Declaration of Human Rights (UDHR)
Article 16.3

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

International Covenant on Civil and Political Rights (ICCPR)
Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honor and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Convention on the Rights of the Child (CRC)
Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child

[1] These training materials on access to justice for migrant children were developed as part of the FAIR (Fostering Access to Immigrant children's Rights) project and include the following training modules:
0. Guiding principles and definitions,
I. Access to fair procedures including the right to be heard and to participate in proceedings,
II. Access to justice in detention,
III. Access to justice for economic, social and cultural rights,
IV. Access to justice in the protection of their right to private and family life,
V. Redress through international human rights bodies and mechanisms,
VI. Practical handbook for lawyers when representing 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. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. 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. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 22(2)

"2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason , as set forth in the present Convention."

Convention on the Rights of the Child (CRC)

Also relevant are Article 2, non-discrimination, and Article 3, best interests of the child (see Module 0 for more details). Other relevant Articles further in this module: Article 7.

The CRC and CMW in their joint comment on children in the context of international migration (3 and 22, see below) stress that migrant children have a lack of timely family reunification opportunities and that best interests of the child should be taken fully into consideration in decisions regarding family unity.

Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, 16 Nov 2017

29. States parties shall ensure that the best interests of the child are taken fully into consideration in immigration law, (…) and decisions regarding family unity and child custody, where the best interests of the child shall be a primary consideration and thus have high priority.41. The Committees acknowledge that the lack of regular and safe channels for children and families to migrate contribute to children taking life-threatening and extremely dangerous migration journeys. The same is true for border control and surveillance measures that focus on repression rather than facilitating, regulating and governing mobility, including detention and deportation practices, lack of timely family reunification opportunities and lack of avenues for regularization.

European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights or ECHR)

Article 8 Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

European Social Charter (revised)
Article 19.6

…obligation to "facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory"

EU law

EU Charter on Fundamental Rights

Article 7 Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 33 Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

2. Definition of family: What is a family in international law

While there is no internationally agreed definition of a "family" per se applicable to the implementation of all provisions of international human rights treaties related to the family, some international human rights bodies have clarified the scope of family life that states are bound to respect and protect, in particular contexts. For example, as highlighted below, the case law of the European Court of Human Rights has clarified the scope of the right to family life that the state has a duty to respect and protect under article 8 ECHR, including in the context of the determination of claims for international protection and family reunification.

Furthermore various EU instruments which concern migrant children, including the EU Directive on Family Reunification, the Qualifications Directive and Dublin III Regulation, each contain provisions that define the relationships to which the term "family" applies.

International law

European Convention on Human Rights

The European Court's definition of family life is a broad one, which has developed over time in accordance with changing ideas of family, and is likely to continue to do so in light of evolving social attitudes.

"Family" under the ECHR includes a person's children, and adult partnerships, including both opposite-sex and same-sex marital relationships *(Schalk and Kopf v. Austria*, ECtHR; *P.B. and J.S. v. Austria)*, and stable and committed cohabiting non-marital relationships. Relevant decisive factors include: whether the

couple live together, the length of their relationship, whether they have demonstrated their commitment to each other by having children together or by any other means.

Schalk and Kopf v. Austria ECtHR, 24, June, 2010

94 … the Court considers it artificial to maintain the view that, in contrast to a different-sex couple, a same-sex couple cannot enjoy "family life" for the purposes of Article 8. Consequently, the relationship of the applicants, a cohabiting same-sex couple living in a stable de facto partnership, falls within the notion of "family life", just as the relationship of a different-sex couple in the same situation would.

The protection furnished by article 8 ECHR also extends to the relationship between a child and the biological parent if the child is not born out of a marriage (Keegan v Ireland) or to a co-habiting couple.

Onur v. United Kingdom ECtHR, 17 February, 2009

43. … children born either to a married couple or to a co-habiting couple are ipso jure part of that family from the moment of birth and that family life exists between the children and their parents (…)

Where a child's parents are married or cohabiting, this family relationship will continue to exist even where, due to parental separation, the child ceases to live with one of the parents.[2]

Ciliz v. the Netherlands, ECtHR, 11 July 2000

59. … there can be no doubt that a bond amounting to family life … exists between the parents and the child born from their marriage-based relationship, as was the case in the present application ….. Such natural family relationship is not terminated by reason of the fact that the parents separate or divorce as a result of which the child ceases to live with one of its parents …The notion 'family life' is not confined solely to marriage-based relationships and may encompass other de facto family ties where parties are living together outside marriage'

Kroon and others v The Netherlands, ECtHR, 27 October 1994

30. (…)In any case, the Court recalls that the notion of "family life" in Article 8 (art. 8) is not confined solely to marriage-based relationships and may encompass other de facto "family ties" where parties are living together outside marriage …. Although, as a rule, living together may be a requirement for such a relationship, exceptionally other factors may also serve to demonstrate that a relationship has sufficient constancy to create de facto "family ties"; …

Generally, the relationship between and adopted child and the adoptive parent is protected by article 8 ECHR in the same manner as the relationship between a child and a biological parent (*Kurochkin v Ukraine*).

Where a child's parents have never been married or cohabiting, other factors may serve to demonstrate that the child's relationship with the parent with whom the child does not live, amounts to a family relationship. These factors will include the nature and duration of the parents' relationship prior to the birth of the child, and in particular whether they had planned to have a child, contributions made to the child's care and upbringing, and the quality and regularity of contact. In a case concerning migration, the European Court held that for adult parents and adult children, an additional element of dependence is normally required to give rise to the protection of the right to a family life.[3]

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[2] *Ciliz v. the Netherlands*, ECtHR, Application No. 29192/95, Judgment of 11 July 2000, para. 59. See also, *Boughanemi v. France*, ECtHR, para. 35.

[3] The dependency must be a strong one: *A.W. Khan v. United Kingdom*, ECtHR, Application No. 47486/06, Judgment of 12 January 2010, para. 32; *Osman v. Denmark*, ECtHR, para. 55.

The totality of social ties can constitute part of the concept of **private life**. The right to respect for private life under Article 8 ECHR extends to protection of personal and social relationships.

Osman v. Denmark, ECtHR, 14 June, 2011

55. (…) The Court has accepted in a number of cases concerning young adults who had not yet founded a family of their own that their relationship with their parents and other close family members also constituted "family life". Furthermore, Article 8 also protects the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity, it must be accepted that the totality of social ties between settled migrants and the community in which they are living constitutes part of the concept of "private life" within the meaning of Article 8. Regardless of the existence or otherwise of a "family life", the expulsion of a settled migrant therefore constitutes an interference with his or her right to respect for private life. It will depend on the circumstances of the particular case whether it is appropriate for the Court to focus on the "family life" rather than the "private life" aspect (…) .

M.P.E.V. and others v. Switzerland, ECtHR, 8 July, 2014

31. The Court has previously found that the existence or non-existence of "family life" is essentially a question of fact depending upon the real existence in practice of close personal ties (...). However, family life must include the relationship arising from a lawful and genuine marriage (...). Furthermore, it follows from the concept of family on which Article 8 is based that a child born of a marital union is ipso jure part of that relationship; hence, from the moment of the child's birth and by the very fact of it, there exists between him and his parents a bond amounting to "family life" which subsequent events cannot break, save in exceptional circumstances (...), until the child reaches adulthood. The Court has further held that there will be no family life between parents and adult children unless they can demonstrate additional elements of dependence (...).

32. The Court also reiterates that, as Article 8 protects the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity, it must be accepted that the totality of social ties between settled migrants and the community in which they are living constitutes part of the concept of "private life" within the meaning of Article 8 (...).

57. With regard to the first applicant's relationship with his young daughter, the fourth applicant, the Court observes that he raised her with the second applicant and continued to involve himself in the child's upbringing following their separation, as is reflected in the extensive access rights accorded to him. The Court further observes that the Federal Administrative Court considered that, given her integration into Swiss society, lack of knowledge about her country of origin, where she never returned after having entered Switzerland at the age of two, and the fact that she hardly spoke Spanish, it would amount to an "uprooting of excessive rigidity" to send her back to Ecuador (…). Under these circumstances, it can be expected that personal contact between the two applicants would, at the least, be drastically diminished if the first applicant were forced to return to Ecuador. The Court puts emphasis on the fact that the Federal Administrative Court, when considering the first applicant's case, did not make any reference to the child's best interests, because it did not consider that the relationship between them fell under the protection of "family life" within the meaning of Article 8 of the Convention. Under these circumstances, the Court is not convinced that sufficient weight was attached to the child's best interests. Reference is made in this context also to Article 3 of the UN Convention on the Rights of the Child, in accordance with which the best interests of the child shall be a primary consideration in all actions taken by public authorities concerning children (…).

European Social Charter

European Social Charter (revised)
Article 19.6
…obligation to "facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory"

Art 19.6 should be interpreted to mean "at least the worker's spouse and unmarried children, as long as the latter are considered to be minors by the receiving State and are dependent on the migrant worker." (Interpretation by the CJEU - OPINION OF ADVOCATE GENERAL KOKOTT delivered on 8 September 2005 in Case C-540/03 European Parliament v Council of the European Union supported by Federal Republic of Germany and Commission of the European Communities).

ICCPR

The Human Rights Committee has clarified the notion of "family" under Article 23 of the ICCPR, in Ngambi and Nébol v. France.

ICCPR: The Human rights Committee Ngambi and Nébol v. France

6.4 Article 23 of the Covenant guarantees the protection of family life including the interest in family reunification. The Committee recalls that the term "family", for purposes of the Covenant, must be understood broadly as to include all those comprising a family as understood in the society concerned. The protection of such family is not necessarily obviated, in any particular case, by the absence of formal marriage bonds, especially where there is a local practice of customary or common law marriage. Nor is the right to protection of family life necessarily displaced by geographical separation, infidelity, or the absence of conjugal relations. However, there must first be a family bond to protect. (…)

CRC

The Committee on the Rights of the Child, in its General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, states that the term "family" must be interpreted in a broad sense to include biological, adoptive or foster parents, or, where applicable, the members of the extended family or community as provided for by local custom (para 59).

Human Rights Council

Human Rights Council, Protection of the family: contribution of the family to the realization of the right to an adequate standard of living for its members, particularly through its role in poverty eradication and achieving sustainable development, UN Doc A/HRC/31/37 (2016) paras 24-27, 34-36

A. Definition of the family
24.There is no definition of the family under international human rights law. The Human Rights Committee notes that the concept of family may differ in some respects from State to State, and even from region to region within a State, and that is therefore not possible to give the concept a standard definition.Similarly, the Committee on Economic, Social and Cultural Rights has stated that the concept of family must be understood in a wide sense and in accordance with appropriate local usage. Other international human rights mechanisms have expressed similar views. (…)
26. States retain some leeway in defining the concept of family in national legislation, taking into consideration the various legal systems, religions, customs or traditions within their society, including indigenous and minority cultures. However, international standards set forth at least two minimum

conditions for the recognition and protection of families at the national level: first, respect for the principle of equality and non-discrimination, including the equal treatment of women; and second, the effective guarantee of the best interest of the child. Given those parameters, human rights mechanisms have found that some forms of relationships, such as polygamy and child marriage, are contrary to international human rights standards and should be prohibited.
27. In addition to the above principles, international mechanisms have called upon States to protect specific forms of the family in view of the vulnerability of their members in relation to the enjoyment of human rights. For instance, attention has been drawn to the discrimination suffered by women and children in de facto unions and there have been calls for the regulation of those unions in domestic law. In similar terms, the Committee on Economic, Social and Cultural Rights has called upon States to legally recognize same-sex couples.
(…)
C. Right to privacy and family life
(…)
35. The right to family life is reflected in the general preference for preserving the family unit and not separating its members, particularly dependent members. The Convention on the Rights of the Child affirms the right of children not to be separated from their parents against their will, except where necessary for the best interest of the child, such as in cases of abuse or neglect (art. 9(1)), following a judicial determination to that effect. Children deprived of their family environment should be provided with alternative care (art. 20) and, whenever possible, have contact with their parents (art. 9(3)). According to the Convention on the Rights of Persons with Disabilities (art. 23(4)), in no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.
36. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families requires States to ensure the protection of the unity of the families of migrant workers, including by facilitating the reunification of documented migrants with their spouses and dependent children (art. 44). The Convention on the Rights of the Child urges States parties to deal with such requests in a positive, humane and expeditious manner (art. 10).

EU law

The scope of application of the Family Reunification Directive is considerably narrower than the definition of family as it has evolved in international human rights law, although the preamble refers to Article 8 ECHR and states that the Directive should be applied " without discrimination on the basis of […] sexual orientation" (Preamble, paras. 2 and 5). In order to comply with their international human rights law obligations, EU Member States would need to interpret and apply the provisions of the Directive in accordance with the broader meaning of family life established by the European Court of Human Rights, considered above.

Family Reunification Directive

Article 4 Family members

1. The Member States shall authorise the entry and residence… of the following family members:
(a) the sponsor's spouse
(b) the minor children of the sponsor and of his/her spouse, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognised in accordance with international obligations;
(c) the minor children including adopted children of the sponsor where the sponsor has custody and the children are dependent on him or her. Member States may authorize the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement;
(d) the minor children including adopted children of the spouse where the spouse has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom

custody is shared, provided the other party sharing custody has given his or her agreement.The minor children referred to in this Article must be below the age of majority set by the law of the Member State concerned and must not be married.
By way of derogation, where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive.

2. The Member States may, by law or regulation, authorize the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the following family members:
(a) first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin;
(b) the adult unmarried children of the sponsor or his or her spouse, where they are objectively unable to provide for their own needs on account of their state of health.

3. The Member States may, by law or regulation, authorize the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the unmarried partner, being a third country national, with whom the sponsor is in a duly attested stable long-term relationship, or of a third country national who is bound to the sponsor by a registered partnership in accordance with Article 5(2), and of the unmarried minor children, including adopted children, as well as the adult unmarried children who are objectively unable to provide for their own needs on account of their state of health, of such persons.Member States may decide that registered partners are to be treated equally as spouses with respect to family reunification.

4. In the event of a polygamous marriage, where the sponsor already has a spouse living with him in the territory of a Member State, the Member State concerned shall not authorize the family reunification of a further spouse. By way of derogation from paragraph 1(c), Member States may limit the family reunification of minor children of a further spouse and the sponsor.

5. In order to ensure better integration and to prevent forced marriages Member States may require the sponsor and his/her spouse to be of a minimum age, and at maximum 21 years, before the spouse is able to join him/her.

6. By way of derogation, Member States may request that the applications concerning family unification of minor children have to be submitted before the age of 15, as provided for by its existing legislation on the date of the implementation of this Directive. If the application is submitted after the age of 15, the Member States, which decide to apply this derogation, shall authorize the entry and residence of such children on grounds other than family reunification.

Article 10

1. Article 4 shall apply to the definition of family members except that the third subparagraph of paragraph 1 thereof shall not apply to the children of refugees.
2. The Member States may authorise family reunification of other family members not referred to in Article 4, if they are dependent on the refugee.
3. If the refugee is an unaccompanied minor, the Member States:
(a) shall authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line without applying the conditions laid down in Article 4(2)(a);
(b) may authorise the entry and residence for the purposes of family reunification of his/her legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced.

Common European Asylum System (CEAS):

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

Article 2 (j)

(j) 'family members' means, in so far as the family already existed in the country of origin, the following members of the family of the beneficiary of international protection who are present in the same Member State in relation to the application for international protection:
— the spouse of the beneficiary of international protection or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,
— the minor children of the couples referred to in the first indent or of the beneficiary of international protection, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,
— the father, mother or another adult responsible for the beneficiary of international protection whether by law or by the practice of the Member State concerned, when that beneficiary is a minor and unmarried

Dublin III. Regulation

Article 2 (g)

(g) 'family members' means, insofar as the family already existed in the country of origin, the following members of the applicant's family who are present on the territory of the Member States:
— the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,
— the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,
— when the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State where the adult is present,
— when the beneficiary of international protection is a minor and unmarried, the father, mother or another adult responsible for him or her whether by law or by the practice of the Member State where the beneficiary is present

3. Birth registration and the right to a name

International law

Human Rights treaties enshrine the right of all persons to registration immediately after birth, and the right to a name after birth (Art 7 CRC, Art 24(2) ICCPR, Art 18 Convention on the Rights of Persons with Disabilities (CRPD). The right of children to take legal action or invoke administrative proceedings to protect their rights differs in various countries.
Apart from ensuring the existence of the child under law, birth registration provides the foundation for safeguarding children's rights, including children's access to justice.

Convention on the Rights of the Child (CRC)

Article 7

1. The child shall be registered immediately after birth and shall hve the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

International Covenant on Civil and Political Rights (ICCPR)

Article 24(2)

Every child shall be registered immediately after birth and shall have a name

UN Convention on the Rights of People with Disabilities

Article 18 (2)

Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

II. Right to family reunification

1. Key principles

States have positive obligations to ensure children's effective enjoyment of their right to respect for family life. Under both EU and CoE law, the child's best interests must be the primary consideration by all judicial and administrative authorities in any decision related to the child's right to respect for his/her family life. Other key principles include non-discrimination, the right to be heard, the right to a guardian, to be represented by a lawyer, their economic, social and cultural rights and the need for individualized assessments and treatment of each case.[4]

In terms of an application to enter a country for the purposes of family reunification, Article 10.1 Convention on the Rights of the Child (see above) spells out the State's obligations.

The CRC and CMW in their joint comment on children in the context of international migration (No. 4 and 23, see below) stress that states should facilitate family reunification procedures in order to complete them in an expeditious manner, in line with the best interests of the child.

International law

Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 Nov 2017Family reunification

32. Under article 10 of the Convention on the Rights of the Child, States parties are to ensure that applications for family reunification are dealt with in a positive, humane and expeditious manner, including facilitating the reunification of children with their parents. When the child's relations with his or her parents and/or sibling(s) are interrupted by migration (in both the cases of the parents without the child, or of the child without his or her parents and/or sibling(s)), preservation of the family unit should be taken into account when assessing the best interests of the child in decisions on family reunification.

33. In the case of undocumented children in the context of international migration, States shall develop and implement guidelines, taking particular care that time limits, discretionary powers, and/or lack of transparency in administration procedures should not hinder the child's right to family reunification.

34.In the case of unaccompanied or separated children, including children separated from their parents due to the enforcement of immigration laws, such as the parents' detention, efforts to find sustainable, rights-based solutions for them should be initiated and implemented without delay, including the possibility of family reunification. If the child has family in the country of destination, the country of origin or a third country, child protection and welfare authorities in countries of transit or destination should contact family members as soon as possible. The decision as to whether a child should be reunited with his or her family in the country of origin, transit and/or destination should be based on a robust assessment in which the child's best interests are upheld as a primary consideration and family reunification is taken into consideration, and which includes a sustainable reintegration plan where the child is guaranteed to participate in the process.

35. Family reunification in the country of origin should not be pursued where there is a "reasonable risk" that such a return would lead to the violation of the human rights of the child. When family reunification in the country of origin is not in the best interests of the child or not possible due to legal or other obstacles to return, the obligations under article 9 and 10 of the Convention of the Rights of the Child come into

[4] For more information see training modules 0., I. and III.

effect and should govern the State's decisions on family reunification therein. Measures for parents to reunify with their children and/or regularize their status on the basis of their children's best interests should be put in place. Countries should facilitate family reunification procedures in order to complete them in an expeditious manner, in line with the best interests of the child. It is recommended that States apply best interest determination procedures in finalizing family reunification.

36. When a country of destination refuses family reunification to the child and/or to his/her family, it should provide detailed information to the child, in a child-friendly and age-appropriate manner, on the reasons for the refusal and on the child's right to appeal.

37. Children that remain in their countries of origin may end up migrating irregularly and unsafely, seeking to be reunited with their parents and/or older siblings in destination countries. States should develop effective and accessible family reunification procedures that allow children to migrate in a regular manner, including children remaining in countries of origin who may migrate irregularly. States are encouraged to develop policies that enable migrants to regularly be accompanied by their families in order to avoid separation. Procedures should seek to facilitate family life and ensure that any restrictions are legitimate, necessary and proportionate. While this duty is primarily for receiving and transit countries, States of origin should also take measures to facilitate family reunification.

38. The Committees are aware that insufficient financial resources often hinder the exercise of the right to family reunification and that the lack of proof of adequate family income can constitute a barrier to reunion procedures. States are encouraged to provide adequate financial support and other social services to those children and their parent(s), siblings and, where applicable, other relatives.

The enjoyment of rights stipulated in the Convention on the Rights of the Child are not limited to children who are citizens of a State party and must therefore, also be available to all children - including asylum-seeking, refugee and migrant children - irrespective of their nationality, immigration status or statelessness. The principle of non-discrimination, in all its facets, applies in respect to all dealings with separated and unaccompanied children. In particular, it prohibits any discrimination on the basis of the status of a child as being unaccompanied or separated, or as being a refugee, asylum-seeker or migrant.

General Comment no. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, UN Committee on the Rights of the Child (CRC), UN Doc. CRC/GC/2005/6, 1 September 2005

12. State obligations under the Convention apply to each child within the State's territory and to all children subject to its jurisdiction (art. 2). These State obligations cannot be arbitrarily and unilaterally curtailed either by excluding zones or areas from a State's territory or by defining particular zones or areas as not, or only partly, under the jurisdiction of the State. Moreover, State obligations under the Convention apply within the borders of a State, including with respect to those children who come under the State's jurisdiction while attempting to enter the country's territory. Therefore, the enjoyment of rights stipulated in the Convention are not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children - including asylum-seeking, refugee and migrant children - irrespective of their nationality, immigration status or statelessness.

18. The principle of non-discrimination, in all its facets, applies in respect to all dealings with separated and unaccompanied children. In particular, it prohibits any discrimination on the basis of the status of a child as being unaccompanied or separated, or as being a refugee, asylum-seeker or migrant. This principle, when properly understood, does not prevent, but may indeed call for, differentiation on the basis of different protection needs such as those deriving from age and/or gender. Measures should also be taken to address possible misperceptions and stigmatization of unaccompanied or separated children within the society. Policing or other measures concerning unaccompanied or separated children relating to public order are only permissible where such measures are based on the law; entail individual rather than collective assessment; comply with the principle of proportionality; and represent the least intrusive option. In order

not to violate the prohibition on non-discrimination, such measures can, therefore, never be applied on a group or collective basis.

20. A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. Consequently, allowing the child access to the territory is a prerequisite to this initial assessment process. The assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender sensitive related interviewing techniques.

21. Subsequent steps such as the appointment of a competent guardian as expeditiously as possible serves as a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child and, therefore, such a child should only be referred to asylum or other procedures after the appointment of a guardian. In cases where separated or unaccompanied children are referred to asylum procedures or other administrative or judicial proceedings, they should also be provided with a legal representative in addition to a guardian.

2. International law and standards on family reunification

The Final Act of the Conference of Plenipotentiaries, which adopted the Geneva Refugee Convention, affirmed that: "the unity of the family, the natural and fundamental group unit of society, is an essential right of the refugee."

Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, UNHCR, UN Doc. HCR/GIP/09/08, 22 December 2009

For unaccompanied and separated child applicants, efforts need to be made as soon as possible to initiate tracing and family reunification with parents or other family members. There will be exceptions, however, to these priorities where information becomes available suggesting that tracing or reunification could put the parents or other family members in danger, that the child has been subjected to abuse or neglect, and/ or where parents or family members may be implicated or have been involved in their persecution.

UNHCR, Executive Committee Conclusion No. 107 (LVIII)

Paragraph (h)(iii)

Facilitate children's enjoyment of family unity through putting in place procedures to prevent separation, and in respect of unaccompanied and separated children, facilitate tracing and family reunification with their family members in accordance with the respective child's best interests, with due respect for the national legislation of respective States

UNHCR Executive Committee, Conclusion No. 15

Paragraph (e)

In the interest of family reunification and for humanitarian reasons, States should facilitate the admission to their territory of at least the spouse and minor or dependent children of any person to whom temporary refuge or durable asylum has been granted;

UNHCR Executive Committee, Conclusion No. 24

Paragraph 8

In order to promote the rapid integration of refugee families in the country of settlement, joining close family members should in principle be granted the same legal status and facilities as the head of the family who has been formally recognized as a refugee.

The Committee of Ministers of the Council of Europe recommended that applications be treated "in a positive, humane and expeditious manner" and stipulated that "[w]here applications for family reunion by such persons are rejected, independent and impartial review of such decisions should be available."[5]

Art 8 ECHR

There is a positive obligation on the State of destination of a migrant to facilitate family reunification on its territory where there is an insurmountable objective obstacle preventing the migrant already with its jurisdiction from realising his or her family life rights in any other place.

Sen v. the Netherlands, ECtHR, paras. 40-4.

In this case, the European Court of Human Rights found that an "insurmountable obstacle" to the enjoyment of a family life outside of the country of residence existed because the mother seeking family reunification with her child who had been left in the country of origin, also had a second child in the country of destination who had grown up there. In this case, the Court found that the reunification in the country of destination would have been the most adequate solution to develop a family life, considering the difficulties that a resettlement of the whole family in the country of origin would have caused to the second child.

Conditions for family reunification imposed by a state must be reasonable and must not violate the right to respect for family life. The Court did not consider unreasonable a requirement that an adult seeking family reunification with her children in their country of origin, "demonstrate that he or she has sufficient independent and lasting income, not being welfare benefits, to provide for the basic costs of subsistence of the family members with whom reunion is sought." (*Haydarie and Others v. the Netherlands*, admissibility decision 8876/04 ECtHRs).

A rule or practice on family reunification that discriminates on grounds of gender would breach the prohibition of discrimination in connection with the right to family life. (*Abdulaziz, Cabales and Balkandali v. United Kingdom, ECtHR, paras 74-83)*

Haydarie and Others v. the Netherlands, 20 October 2005

Obstacles to or conditions for family reunification cannot violate the right to respect for family life where they can be shown to be unreasonable. In this case, the Court did not consider unreasonable a requirement of demonstrating sufficient independent and lasting income, not being welfare benefits, to provide for the basic costs of subsistence of the family members with whom reunion was sought.

Abdulaziz, Cabales and Balkandali v. United Kingdom, 24 April 1985

In this case, it was held that a rule that discriminates as to family reunification (whether detrimentally or preferentially) based on gender would breach the prohibition of non-discrimination in connection with the right to family life.

[5] Committee of Ministers of the Council of Europe, Recommendation No. R (99) 23, para 4

In examining whether a State has fulfilled its positive obligation under Article 8 ECHR with regard to family reunification of a parent migrant with a child who is outside of the country, the European Court will have regard to the age of the child concerned, their situation in their country of origin and the extent to which the child is dependent on his or her parents.

Tuquabo-Tekle and Others v. the Netherlands, ECtHR, 1 December, 2005

47. As regards the question to what extent it is true that Mehret's settling in the Netherlands would be the most adequate means for the applicants to develop family life together, the Court observes that the present application is very similar to the case of Şen v. the Netherlands (…), in which it found a violation of Article 8 of the Convention. That case also concerned parents with settled immigrant status in the Netherlands who chose to leave a daughter (Sinem) behind in the care of relatives in her country of origin (Turkey) for a number of years before they applied to be reunited with her. At this juncture the Court would remark that it is questionable to what extent it can be maintained in the present case, as the Government did, that Mrs Tuquabo-Tekle left Mehret behind of "her own free will", bearing in mind that she fled Eritrea in the course of a civil war to seek asylum abroad following the death of her husband. Be that as it may, it isin any event the case that Mrs Tuquabo-Tekle and her husband, just like Mr and Mrs Şen, have been lawfully residing in the Netherlands for a number of years, even opting for, and obtaining, Netherlands nationality. In addition, and also just as in the Şen case, two children have been born to the couple in the Netherlands: Tmnit in 1994 and Ablel in 1995. These two children have always lived in the Netherlands and its cultural and linguistic environment, have Netherlands nationality and attend school there. Consequently, they can only have minimal ties, if any, to their parents' country of origin (see Şen, § 40).

48. It was precisely these circumstances which led the Court to conclude in the case of Şen that a major impediment existed to that family's return to Turkey, and that allowing Sinem to come to the Netherlands would be the most adequate way in which the family could develop family life with her. The Court added that this was all the more so as, in view of Sinem's young age, her integration into her parents' close family unit was particularly exigent (…). It is in this latter context that the two cases are different: whereas Sinem Şen was 9 years old when her parents sought to be reunited with her (…), Mehret was already 15 when her mother and stepfather applied for a provisional residence visa on her behalf (see paragraph 11 above). The question therefore arises whether this constitutes such a material difference that the present case ought, for that reason, to be distinguished from Şen, and lead to a different outcome.

49. The Court has indeed previously rejected cases involving failed applications for family reunion and complaints under Article 8 where the children concerned had in the meantime reached an age where they were presumably not as much in need of care as young children and increasingly able to fend for themselves. In cases of this nature, the Court has also examined whether the children had grown up in the cultural and linguistic environment of their country of origin, whether they had other relatives there, and whether it could be expected of the parents to return to that country (…).

50. In the present case the Court notes that the applicants have not alleged that Mehret, who undoubtedly has strong cultural and linguistic links with Eritrea, could no longer be looked after by the relatives who have been doing so ever since her mother left. They have, nevertheless, argued that Mehret's age – rather than making her less dependent on her mother – made it even more pertinent for her tobe allowed to join her family in the Netherlands. This was because, in accordance with Eritrean custom, Mehret's grandmother had taken her out of school, and Mehret had also reached an age where she could be married off (…). Although Mrs Tuquabo-Tekle disagreed with the choices made for Mehret, she was unable to do anything about them as long as her daughter was living in Eritrea. The Court agrees with the Government that the applicants' arguments in this context do not, by themselves, warrant the conclusion that the State is under a positive obligation to allow Mehret to reside in the Netherlands. Even so – and bearing in mind that she was, after all, still a minor – the Court accepts in the particular circumstances of the present case that Mehret's age at the time the application for family reunion was lodged is not an element which should lead it to assess the case differently from that of Şen.

52.Having regard to the above, the Court finds that the respondent State has failed to strike a fair balance between the applicants' interests on the one hand and its own interest in controlling immigration on the other. Accordingly, there has been a violation of Article 8 of the Convention.

Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, ECtHR, 12 October 2006

In this case the Court examines the duties of Belguim regarding the family reunification of a unaccompanied girl under the age of 18 present there with her mother who was in Canada.

(Applying Article 3 ECHR):

58. The Court considers that the measures taken by the Belgian authorities – informing the [mother] of the position, giving her a telephone number where she could reach her daughter, appointing a lawyer to assist the [daughter] and liaising with the Canadian authorities and the Belgian embassy in Kinshasa – were far from sufficient to fulfil the Belgian State's obligation to provide care for the [daughter]. The State had, moreover, had an array of means at its disposal [...].

(Applying Article 8 ECHR):

82. [...] The Court further notes that, far from assisting her reunification with her mother, the authorities' actions in fact hindered it. Having been informed at the outset that the [mother] was in Canada, the Belgian authorities should have made detailed enquiries of their Canadian counterparts in order to clarify the position and bring about the reunification of mother and daughter. The Court considers that that duty became more pressing from 16 October 2002 onwards, that being the date when the Belgian authorities received the fax from the UNHCR contradicting the information they had previously held.

85. Ultimately, since the [daughter] was an unaccompanied foreign minor, the Belgian State was under an obligation to facilitate the family's reunification [...].

***Mengesha Kimfe v. Switzerland*, ECtHR, 29 July 2010**

In this case, the European Court of Human Rights held that a Swiss asylum programme which assigned refugees to mandatory residence in a particular canton (region) of the country, thereby making very difficult the maintenance of family links between two refugees breached their right to family life under Article 8 ECHR. The desire for equitable distribution of refugees within the country for economic reason did not legitimately override the refugees' right to family life.

Where immigration is concerned, Article 8 cannot be considered to impose on a State a general obligation to respect the choice by married couples of the country of their matrimonial residence.

Gül v. Switzerland, ECtHR, 19 February 1996

38. The Court reiterates that the essential object of Article 8 (art. 8) is to protect the individual against arbitrary action by the public authorities. There may in addition be positive obligations inherent in effective "respect" for family life. However, the boundaries between the State's positive and negative obligations under this provision (art. 8) do not lend themselves to precise definition. The applicable principles are, nonetheless, similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (…). The present case concerns not only family life but also immigration, and the extent of a State's obligation to admit to its territory relatives of settled immigrants will vary according to the particular circumstances of the persons involved and the general interest. As a matter of well-established international law and subject to its treaty obligations, a State has the right to control the entry of non-nationals into its territory (…). Moreover, where immigration is concerned, Article 8 cannot be considered to impose on a State a general obligation to respect the choice by married couples of the country of their matrimonial residence and to authorise

family reunion in its territory. In order to establish the scope of the State's obligations, the facts of the case must be considered (…).

39. In this case, therefore, the Court's task is to determine to what extent it is true that Ersin's move to Switzerland would be the only way for Mr Gül to develop family life with his son.

42. In view of the length of time Mr and Mrs Gül have lived in Switzerland, it would admittedly not be easy for them to return to Turkey, but there are, strictly speaking, no obstacles preventing them from developing family life in Turkey. That possibility is all the more real because Ersin has always lived there and has therefore grown up in the cultural and linguistic environment of his country. On that point the situation is not the same as in the *Berrehab case*, where the daughter of a Moroccan applicant had been born in the Netherlands and spent all her life there (see the Berrehab judgment previously cited, p. 8, para. 7).

43. Having regard to all these considerations, and while acknowledging that the Gül family's situation is very difficult from the human point of view, the Court finds that Switzerland has not failed to fulfil the obligations arising under Article 8 para. 1 (art. 8-1), and there has therefore been no interference in the applicant's family life within the meaning of that Article (art. 8-1).

Dependency

In many countries the residence permit of a person who enters a country for the purposes of family reunification is premised on either:
(a) the existence and validity of the permit, whether for work or international protection reasons, of a primary permit holder, i.e. usually someone who migrated there first, or
(b) his or her family relationship with a citizen of the country.
In both cases this leads to dependency on the existence of the relationship with that person.

International human rights bodies and mechanisms have recognized the vulnerability of women whose residence permits are dependent on their employment or relationship with a partner. The CEDAW has recommended that States adopt regulations which permit a woman migrant worker who is granted a residence permit based on the sponsorship of an employer or a spouse to allow the woman to continue to reside in the country lawfully if she flees the employer or spouse because of their abuse or is fired from employment after complaining of such abuse. The Committee of Ministers of the Council of Europe has similarly recommended that States should consider granting immigrant women who have been/are victims of domestic violence an independent right to residence.

CEDAW General Recommendation No. 26 on women migrant workers, UN Doc. CEDAW/C/2009/WP.1/R (2008)

26. (f) Non-discriminatory residency regulations: when residency permits of women migrant workers are premised on the sponsorship of an employer or spouse, States parties should enact provisions relating to independent residency status. Regulations should be made to allow for the legal stay of a woman who flees her abusive employer or spouse or is fired for complaining about abuse (article 2 (f));

Council of Europe Committee of Ministers Recommendation Rec(2002)5 to Member States on The Protection of Women Against Violence recommended

24. in particular, ensure that all services and legal remedies available for victims of domestic violence are provided to immigrant women upon their request;

59. consider, where needed, granting immigrant women who have been/are victims of domestic violence an independent right to residence in order to enable them to leave their violent husbands without having to leave the host country.

Committee of Ministers in Recommendation Rec(2002)4 of the Committee of Ministers to Member States on the legal status of persons admitted for family reunification, adopted by the Committee of Ministers of the Council of Europe on 26 March 2002 at the 790th meeting of the Ministers' Deputies

I. Autonomy of the family member's residence status in relation to that of the principal right holder

1. After a period of four years of legal residence, adult family members should be granted an autonomous residence permit independent of that of the principal.
2. In the case of divorce, separation or death of the principal, a family member having been legally resident for at least one year may apply for an autonomous residence permit. Member states will give due consideration to such applications. In their decisions, the best interests of the children concerned shall be a primary consideration.

Unaccompanied minors and family reunification

General Comment no. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, UN Committee on the Rights of the Child (CRC), UN Doc. CRC/GC/2005/6, 1 September 2005

80. "(…)tracing is an essential component of any search for a durable solution and should be prioritized except where the act of tracing, or the way in which the tracing is conducted, would be contrary to the best interest of the child or jeopardize fundamental rights of those being traced. In any case, in conducting tracing activities, no reference should be made to the status of the child as an asylum-seeker or refugee"

(…)

82. Family reunification in the country of origin is not in the best interests of the child and should therefore not be pursued where there is a "reasonable risk" that such a return would lead to the violation of fundamental human rights of the child. Such risk is indisputably documented in the granting of refugee status or in a decision of the competent authorities on the applicability of non-refoulement obligations (including those deriving from article 3 of the CAT and articles 6 and 7 of the ICCPR). Accordingly, the granting of refugee status constitutes a legally binding obstacle to return to the country of origin and, consequently, to family reunification therein. Where the circumstances in the country of origin contain lower level risks and there is concern, for example, of the child being affected by the indiscriminate effects of generalized violence, such risks must be given full attention and balanced against other rights-based considerations, including the consequences of further separation. In this context, it must be recalled that the survival of the child is of paramount importance and a precondition for the enjoyment of any other rights.

83. Whenever family reunification in the country of origin is not possible, irrespective of whether this is due to legal obstacles to return or whether the best interests-based balancing test has decided against return, the obligations under article 9 and 10 of the Convention come into effect and should govern the host country's decisions on family reunification therein. In this context, States parties are particularly reminded that "applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner" and "shall entail no adverse consequences for the applicants and for the members of their family" (art. 10(1)). Countries of origin must respect "the right of the child and his or her parents to leave any country, including their own, and to enter their own country" (art. 10(2)).

UNHCR Executive Committee, Conclusion No. 24

7. "(…)every effort should be made to trace the parents or other close relatives of unaccompanied minors"

Concluding Observations on Denmark, CCPR, UN Doc. CCPR/CO/70/DNK, 15 November 2000

Paragraph 15

The Committee notes that, under the Aliens Act, article 40c, the Immigration Authorities may require DNA testing of an applicant and the persons with whom the applicant claims family ties on which a residence permit is to be based. DNA testing may have important implications for the right of privacy under article 17 of the Covenant. Denmark should ensure that such testing is used only when necessary and appropriate to the determination of the family ties on which a residence permit is based (…).

Concluding Observations on France, CCPR, CCPR/C/FRA/CO/4, 31 Jul 2008

The Committee is concerned about the length of family reunification procedures for recognized refugees. It also notes that the procedure allowing the use of DNA testing as a way to establish filiation for the purpose of family reunification, introduced by article 13 of Act No. 2007/1631 of 20 November 2007, may pose problems regarding its compatibility with articles 17 and 23 of the Covenant, despite its optional nature and the procedural guarantees provided by the law. (Articles 17 and 23)

EU law

EU Charter on Fundamental rights

In line with the EU Charter, best interests of the child have to be taken into account and respected (Article 24) as well as the right to private and family life (Article 7).

Family Reunification Directive

Family reunification of third country nationals in the EU is governed by the Family Reunification Directive of 2003. Its provisions have been further clarified by the CJEU case-law and in 2014 by the Interpretative guidelines issued as Communication by the European Commission.

The CJEU has clarified that the Directive requires Member States, in specific cases, to authorise family reunification of certain members of the sponsor's family, without being left a margin of appreciation (CJEU, C-540/03).

CJEU further clarified that the provisions of the Directive on Family Reunification require that States ensure that family reunification is the general rule (para 43 of Chakroun case. The margin of appreciation in the Directive should "be interpreted strictly". The interpretation of the provisions of the Directive should not deprive them of their effectiveness.

The CJEU also highlighted that states must "examine applications in interest of children and with a view to promoting family life" (O., S. & L.).

C-540/03, EP v Council of the European Union, CJEU, 27 June 2006

[...] Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor's family, without being left a margin of appreciation (para 60)
[...] as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors. (para 99)

C-578/08, Chakroun, CJEU, 4 March 2010

43. (…) Since authorization of family reunification is the general rule, the faculty provided for in Article 7(1)(c) of the Directive must be interpreted strictly. Furthermore, the margin for manoeuvre which the Member States are recognised as having must not be used by them in a manner which would undermine the objective of the Directive, which is to promote family reunification, and the effectiveness thereof.

64. [...] necessity of not interpreting the provisions of the Directive restrictively and not depriving them of their effectiveness, [...]

C-356/11 and C-357/11, O. and S. and L., CJEU, 6 December 2012

81. It is for the competent national authorities, when implementing Directive 2003/86 and examining applications for family reunification, to make a balanced and reasonable assessment of all the interests in play, taking particular account of the interests of the children concerned.

82. [...] that faculty must be exercised in the light of Articles 7 and 24(2) and (3) of the Charter, which require the Member States to examine applications for family reunification in the interests of the children concerned and also with a view to promoting family life, and avoiding any undermining of the objective and the effectiveness of that directive. [...]

Conditions

The Directive allows Member states to require conditions for family reunification, among others: costs, accommodation requirement, sickness insurance, sufficient resources, pre-integration measures, etc. The CJEU clarified that there always needs to be individual assessment of each case and that the objective of the Directive is to promote family reunification and the effectiveness thereof.

Family Reunification Directive

Article 7(1)

'When the application for family reunification is submitted, the Member State concerned may require the person who has submitted the application to provide evidence that the sponsor has:

(a) accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned;

(b) sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family;

(c) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.'

Criteria for the conditions for family reunification adopted may not be discriminatory. Criteria used by Member states must be transparent and clearly specified in national legislation.[6]

The term "without recourse to the social assistance system" has been interpreted in the Chakroun case.

[6] Interpretative guidelines (Communication by the European Commission: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52014DC0210)

C-578/08, Chakroun, 4 March 2010:

1. The phrase 'recourse to the social assistance system' in Article 7(1)(c) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification must be interpreted as precluding a Member State from adopting rules in respect of family reunification which result in such reunification being refused to a sponsor who has proved that he has stable and regular resources which are sufficient to maintain himself and the members of his family, but who, given the level of his resources, will nevertheless be entitled to claim special assistance in order to meet exceptional, individually determined, essential living costs, tax refunds granted by local authorities on the basis of his income, or income-support measures in the context of local-authority minimum-income policies ('minimabeleid').

2. Directive 2003/86, in particular Article 2(d) thereof, must be interpreted as precluding national legislation which, in applying the income requirement set out in Article 7(1)(c) of Directive 2003/86, draws a distinction according to whether the family relationship arose before or after the sponsor entered the territory of the host Member State.

Integration measures

Family Reunification Directive

Article 7(2) integration measures

Member States may require third country nationals to comply with integration measures, in accordance with national law

European Commission Communication: Interpretative guidelines of application of Directive 2003/86/EC

4.5 Integration measures

(…) MSs may impose a requirement on family members to comply with integration measures under Article 7(2), but this may not amount to an absolute condition upon which the right to family reunification is dependent. The nature of the integration measures in Article 7(2) is different from the conditions envisaged in Articles 4(1) and 7(1). First, Article 4(1) — as a stand-still clause only[52] — allows MSs to verify for children over 12 arriving independently of the rest of their families whether they meet a condition for integration before authorising entry and residence[53]. Secondly, under Article 7(1), MSs may require evidence that these requirements are fulfilled or fulfill able, based on a reasonable prognosis. These can therefore be considered as pre-conditions, which MSs may require the sponsor to achieve before authorising entry and residence of family members.

In contrast, Article 7(2) allows MSs to require third-country nationals to comply with integration measures. MSs may require family members to make a certain effort to demonstrate their willingness to integrate, for instance, by requiring participation in language or integration courses, prior to or after arrival. Since these measures are meant to help facilitate the integration process, this also implies that the way in which MSs conceive this possibility cannot be unlimited.

Article 7(2) comes down to the possibility to ask an immigrant to make the necessary efforts to be able to live his/her day-to-day life in the society in which he/she has to integrate him/herself and to the possibility for MS to verify whether this person shows the required willingness to integrate in his/her new environment. The verification of willingness to integrate may take the form of an examination on basic skills deemed necessary for this purpose. This examination should be gender sensitive to take into account the specific situation of some women that might, for instance, have poor level of education. The level of difficulty of the exam, the cost of participating, the accessibility of the teaching material necessary to prepare for such an examination, or the accessibility of the examination itself must not, in fact, be barriers that complicate

the achievement of this purpose[54]. **In other words, the integration measures that a MS may require cannot result in a performance obligation that is in fact a measure that limits the possibility of family reunification. The measures must, on the contrary, contribute to the success of family reunification**.

Furthermore, integration measures must be proportionate and applied with the necessary flexibility to ensure that, on a case-by-case basis and in view of specific circumstances, family reunification may be granted even where integration requirements are not met [55]. MSs should therefore provide the effective possibility of an exemption, a deferral or other forms of integration measures in case of certain specific issues or personal circumstances of the immigrant in question.

Specific individual circumstances that may be taken into account are, for instance, cognitive abilities, the vulnerable position of the person in question, special cases of inaccessibility of teaching or testing facilities, or other situations of exceptional hardship. Special attention should also be paid to the fact that in several parts of the world women and girls have less access to education and might have a lower literacy level than men. **Therefore, MSs may not refuse entry and stay on its territory to a family member referred to in Article 4(1) on the sole ground that this family member, while still abroad, did not succeed in the integration examination provided for in the legislation of that MS** [56].

The Commission considers that MSs should provide the necessary integration measures for family members to learn about their new country of residence and acquire language skills that can facilitate the integration process. Therefore, the Commission considers that language and integration courses should be offered in an accessible way (available in several locations), be free or at least affordable, and tailored to individual needs, including gender specific needs (e.g. childcare facilities). While pre-departure integration measures may help prepare migrants for their new life in the host country by providing information and training before migration takes place, integration measures may often be more effective in the host country.

Waiting period (Article 8 Family Reunification Directive)

The European Commission Communication **Interpretative guidelines** clarified that there cannot be a general blanket waiting period applied in the same way to all applicants.

C-540/03, EP v Council of the European Union, 27 June 2006"

Duration of residence is only one of the factors to be taken into account; [also take] into account, in specific cases, all the relevant factors", (para 99) "while having due regard to the best interests of minor children" (para 101)
Purpose: "to make sure that family reunification will take place in favorable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration"

European Commission Communication: Interpretative guidelines

4.6 Waiting period

(…) The CJEU has stressed that duration of residence in the MS is only one of the factors that the MS must take into account when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors, while having due regard to the best interests of minor children.
(…)

Fees

The EC interpretative guidelines clarified that reasonable and proportional administrative fees for family reunification applications are allowed. It also clarified that there is a limited margin of discretion for Member States in regard to the level of the fees, as they need to make sure not to jeopardise the achievement of the objectives and the effectiveness of the Directive. The level of fees should not constitute an obstacle to the exercise of the right to family reunification. The fees should be proportionate in comparison with those for similar national permits.

European Commission Communication: Interpretative guidelines

3.1. Submission of the application

(…) MSs are allowed to charge reasonable, proportional administrative fees for an application for family reunification and they have a limited margin of discretion in setting these charges, as long as they do not jeopardize the achievement of the objectives and the effectiveness of the Directive [32]. The level at which fees are set must not have either the object or the effect of creating an obstacle to the exercise of the right to family reunification. Fees which have a significant financial impact on third-country nationals who satisfy the conditions laid down by the Directive could prevent them from exercising the rights conferred by the Directive and would therefore be per se excessive and disproportionate [33]. The fees levied on third-country nationals and their family members under Directive 2003/86 could be compared to those levied on own nationals for the issue of similar documents, to evaluate whether the fees for third-country nationals are proportionate, taking into account that these persons are not in identical situations [34]. To promote best interests of the child, the Commission encourages MSs to exempt applications submitted by minors from administrative fees. In case that an entry visa is required in a MS, the issuing conditions of such a visa should be facilitated and the visa should be granted without additional administrative fees.

5.1 Entry, long-stay visas and residence permits

(…) Administrative fees for visas are allowed, but these may not be excessive or disproportionate. They must not have either the object or the effect of creating an obstacle to obtaining the rights conferred by the Directive and, therefore, depriving it of its effectiveness

6.1.2. Absence of official documentary evidence

(…) The Directive does not prevent MSs from charging refugees or applicants for DNA tests or other investigations. However, fees cannot be excessive or disproportionate to the point that they have the effect of creating an obstacle to obtaining the rights conferred by the Directive and, therefore, deprive it of its effectiveness[74]. In setting potential fees, the Commission considers that MSs should take into account the particular situation of refugees and encourages MSs to bear the costs of a DNA test, especially if it is imposed upon the refugee or his/her family members

States must permit exemptions from the examination to be granted in individual cases, and any examination fees must not be so high as to create an obstacle to the exercise of the right to family reunification (See below the AG Kokott Opinion in case C-153/14. It should be emphasized that the AG opinion does not encourage a reasoning also based on international law but it encapsulates it only as EU law).

Advocate General's Opinion in Case C-153/14 K and A:

Advocate General Kokott Opinion states that family reunification, in the case of married couples who are third-country nationals, may in principle be made contingent on the spouse, who is intending to join the family, passing an examination that tests his or her knowledge of the requested receiving country and of its language. States must permit exemptions from the examination to be granted in individual cases, and any examination fees must not be so high as to create an obstacle to the exercise of the right to family reunification The AG considered that the Netherlands legislation is, however, disproportionate and incompatible with the Directive if the civic integration examination requirement applies even where that requirement is unreasonable for the person intending to join his family, taking into account his individual circumstances, or where, on account of the special circumstances of an individual case, there are grounds on which family reunification should be granted notwithstanding the failure to pass the examination.According to Advocate General Kokott, the Directive also precludes national provisions which attach fees to a civic integration examination such as that at issue here, where those fees and the charging of them are liable to prevent the person intending to join his family from exercising the right to family reunification.

Length of procedures (Article 5(4) of the Family Reunification Directive)

As a general rule, a standard application under normal workload circumstances should be processed promptly without unnecessary delay. In situations of exceptional workload that exceeds the administrative capacity or when the application necessitates further examination, the maximum time limit of nine months may be justified (9 months from the date of first submitted, not the moment of notification of receipt of the application). The extension beyond 9 months can only be justified "in exceptional circumstances linked to the complexity of the examination of [a specific] application" (Article 5(4) second subparagraph). Derogation must be interpreted strictly and on a case-by-case basis. Member States must justify this extension.

European Commission Communication: Interpretative guidelines

3.3. Length of proceduresArticle 5(4) imposes an obligation on MSs to give a written notification of the decision on an application as soon as possible. Recital 13 specifies that the procedure for examination of applications should be effective and manageable, taking account of the normal workload of the MSs' administrations.

Therefore, as a general rule, a standard application under normal workload circumstances should be processed promptly without unnecessary delay. If the workload exceptionally exceeds administrative capacity or if the application needs further examination, the maximum time limit of nine months may be justified. The nine-month period starts from the date on which the application is first submitted, not the moment of notification of receipt of the application by the MS.

The exception provided for in Article 5(4) second subparagraph of an extension beyond the nine-month deadline is only justified in exceptional circumstances linked to the complexity of the examination of a specific application. This derogation should be interpreted strictly and on a case-by-case basis. A MS administration, which wants to make use of this possibility, must justify such an extension by demonstrating that the exceptional complexity of a particular case amounts to exceptional circumstances. Administrative capacity issues cannot justify an exceptional extension and any extension should be kept to the strict minimum necessary to reach a decision. Exceptional circumstances linked to the complexity of a particular case could be, for instance, the need to assess the family relationship within the context of multiple family units, a severe crisis in the country of origin impeding access to administrative records, difficulties in organizing hearings of family members in the country of origin due to the security situation, or difficult access to diplomatic missions, or determining the right to legal custody if the parents are separated.

Article 5(4) states that the decision must be notified in writing and that if it is negative, legal and factual reasons should be given to allow the applicant to effectively exercise the right to mount a legal challenge.

CEAS

The Dublin Regulation[7]

Article 8 of the Dublin Regulation states that if an unaccompanied minor arrives in an EU Member State, and already has family members legally present in another EU country, that country should be responsible for her or his asylum application, so family reunification should be facilitated. The same applies when family members have already been granted international protection in another EU Member State (Article 9) or when family members' application for international protection is under review (Article 10).

Qualification Directive[8]

The Qualification Directive provides for unity either after carrying out a procedure on the merits on the assumption that the person does not individually qualify for such protection.[9]

Qualification Directive
Article 23 Maintaining family unity
1. Member States shall ensure that family unity can be maintained.
2. Member States shall ensure that family members of the beneficiary of international protection who do not individually qualify for such protection are entitled to claim the benefits referred to in Articles 24 to 35, in accordance with national procedures and as far as is compatible with the personal legal status of the family member.
3. Paragraphs 1 and 2 are not applicable where the family member is or would be excluded from international protection pursuant to Chapters III and V.
4. Notwithstanding paragraphs 1 and 2, Member States may refuse, reduce or withdraw the benefits referred to therein for reasons of national security or public order.
5. Member States may decide that this Article also applies to other close relatives who lived together as part of the family at the time of leaving the country of origin, and who were wholly or mainly dependent on the beneficiary of international protection at that time.

Reception Conditions Directive

The RCD takes into account that there are special needs of families and that the unity of families should be an essential goal. The Directive contains provisions on tracing of family members of unaccompanied minors.[10] Article 23 highlights that the best interests principle should be a primary consideration and that member states shall in particular take due account family reunification possibilities (article 23.2.a).

The Directive requires that Member States must take appropriate measures to maintain family unity as far as possible regarding accommodation of families (article 12, 18.5).

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

[8] DIRECTIVE 2011/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011on 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)

[9] Brandl U., in Reforming the Common European Asylum System: The New European Refugee Law edited by Chetail, De Bruycker, Maiani, p. 157

[10] Brandl U., in Reforming the Common European Asylum System: The New European Refugee Law edited by Chetail, De Bruycker, Maiani, p. 155

III. Expulsions and the Right to Family Life

International law

In any decision making process regarding expulsion of a child's parent(s), the principle of the best interests of that child must be paramount.

General Comment no. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, UN Committee on the Rights of the Child (CRC), UN Doc. CRC/GC/2005/6, 1 September 2005

81. In order to pay full respect to the obligation of States under article 9 of the Convention to ensure that a child shall not be separated from his or her parents against their will, all efforts should be made to return an unaccompanied or separated child to his or her parents except where further separation is necessary for the best interests of the child, taking full account of the right of the child to express his or her views (art.12) (see also Section IV(e), Right of the child to express his or her views freely). While the considerations explicitly listed in article 9, paragraph 1, sentence 2; namely, cases involving abuse or neglect of the child by the parents, may prohibit reunification at any location, other best interests considerations can provide an obstacle to reunification at specific locations only.

See also paras 82-83 above

European Convention on Human Rights

Article 8 ECHR and case law: respect for private and family life

Procedural guarantees with regards to expulsion (due process, right to fair trial)

Expulsion must be

a) In accordance with law
b) Pursue a legitimate aim
c) Necessary in democratic society
d) Proportionate to the aim pursued

Respect for private and family life is often invoked as a safeguard against expulsion in cases concerning children who otherwise would have been assessed as not in need of international protection, incl. subsidiary protection.

The expulsion of a non-national family member will amount to an Article 8 violation "only in exceptional circumstances" (*Rodrigues da Silva and Hoogkamer v. the Netherlands*, para. 39 and *Nunez v. Norway*, para. 70).

It is possible to deport or refuse entry to family members provided there are **no insurmountable objective obstacles** to establishing family life elsewhere (Tuquabo/Tekle and others v. the Netherlands).

In the recent case of *Jeunesse v. the Netherlands* the Grand Chamber of the ECtHR found a violation of Article 8 despite the applicant's awareness of her precarious residence status before starting her family life in the Netherlands and despite the absence of insurmountable obstacles for the family to settle in the applicant's country of origin.

Jeunesse v. the Netherlands, ECtHR, 3 October, 2014

116. …The tolerance of her presence for such a lengthy period of time, during which for a large part it was open to the authorities to remove her, in effect enabled the applicant to establish and develop strong family,

social and cultural ties in the Netherlands. The applicant's address, where she has been living for the last fifteen years, has always been known to the Netherlands authorities (para. 116).

117. …given the common background of the applicant and her husband and the relatively young age of their children, that there would appear to be no insurmountable obstacles for them to settle in Suriname. However, it is likely that the applicant and her family would experience a degree of hardship if they were forced to do so. When assessing the compliance of State authorities with their obligations under Article 8, it is necessary to take due account of the situation of all members of the family, as this provision guarantees protection to the whole family.

118. The Court fourthly considers that the impact of the Netherlands authorities' decision on the applicant's three children is another important feature of this case. The Court observes that the best interests of the applicant's children must be taken into account in this balancing exercise …. On this particular point, the Court reiterates that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance ….. Whilst alone they cannot be decisive, such interests certainly must be afforded significant weight. For that purpose, in cases concerning family reunification, the Court pays particular attention to the circumstances of the minor children concerned, especially their age, their situation in the country or countries concerned and the extent to which they are dependent on their parents ….

119. Noting that the applicant takes care of the children on a daily basis, it is obvious that their interests are best served by not disrupting their present circumstances by a forced relocation of their mother from the Netherlands to Suriname or by a rupturing of their relationship with her as a result of future separation. In this connection, the Court observes that the applicant's husband provides for the family by working full-time in a job that includes shift work. He is, consequently, absent from the home on some evenings. The applicant – being the mother and homemaker – is the primary and constant carer of the children who are deeply rooted in the Netherlands of which country – like their father – they are nationals. The materials in the case file do not disclose a direct link between the applicant's children and Suriname, a country where they have never been.

Maslov v. Austria (residence prohibition of long term residence based on non violent criminal offence as juvenile violation of the right to family life), ECtHR, 23 June, 2008

41. (…) the Court attaches weight to the period of good conduct after the applicant's release…During this time he did not commit any further offences. The fact that he was able to resume life in freedom without relapsing into crime during a substantial period mitigates the fear that the applicant may constitute a danger to public order and security …..

42. As to the solidity of the applicant's social, cultural and family ties in Austria, the Court observes that the applicant has spent the formative years of his childhood and youth there and that all his close family members are living there.

43. As to the applicant's ties with his country of origin, the Government asserted that the applicant speaks Bulgarian while the latter denies this. The Court notes that while it appears likely that the applicant, who lived in Bulgaria until the age of six has some basic knowledge of the spoken language, it seems credible that he does not read or write Cyrillic since he never went to school in Bulgaria. Nor does it appear that he has any close relatives there or that he maintained any other contacts with his country of origin, except for spending holidays there twice.

44. Finally, the Government argued that the residence prohibition was limited in duration. It is true that the duration of a residence prohibition is to be taken into account when assessing its proportionality. However, it is only one factor among others …. .

45. Having regard to the circumstances of the present case, in particular to the nature and severity of the offences, which are to be qualified as non- violent juvenile delinquency, the applicant's good conduct after his release from prison and his lack of ties with his country of origin, a ten years' residence prohibition

appears nevertheless disproportionate to the legitimate aim pursued.

46. Consequently, there has been a violation of Article 8 of the Convention.

The duty of the State to ensure a fair and adversarial proceeding applies even in cases of expulsion on grounds that an individual is alleged to pose a risk to national security.

Al-Nashif v. Bulgaria, ECtHR, Application no. 50963/99, 20 June 2002

137. The Court considers that in cases of the expulsion of aliens on grounds of national security … reconciling the interest of preserving sensitive information with the individual's right to an effective remedy is obviously less difficult than in the above-mentioned cases where the system of secret surveillance or secret checks could only function if the individual remained unaware of the measures affecting him.While procedural restrictions may be necessary to ensure that no leakage detrimental to national security would occur and while any independent authority dealing with an appeal against a deportation decision may need to afford a wide margin of appreciation to the executive in matters of national security, that can by no means justify doing away with remedies altogether whenever the executive has chosen to invoke the term "national security" ....
Even where an allegation of a threat to national security is made, the guarantee of an effective remedy requires as a minimum that the competent independent appeals authority must be informed of the reasons grounding the deportation decision, even if such reasons are not publicly available. The authority must be competent to reject the executive's assertion that there is a threat to national security where it finds it arbitrary or unreasonable. There must be some form of adversarial proceedings, if need be through a special representative after a security clearance. Furthermore, the question whether the impugned measure would interfere with the individual's right to respect for family life and, if so, whether a fair balance is struck between the public interest involved and the individual's rights must be examined.

Specific case of unaccompanied minors

Twenty Guidelines on Forced Return, Committee of Ministers, Council of Europe

Guideline 2.5

Before deciding to issue a removal order in respect of a separated child, assistance – in particular legal assistance – should be granted with due consideration given to the best interest of the child. Before removing such a child from its territory, the authorities of the host state should be satisfied that he/she will be returned to a member of his/her family, a nominated guardian or adequate reception facilities in the state of return.

EU law

Return Directive

Article 10 Return and removal of unaccompanied minors

1. Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child.2. Before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return.

Annex – Case studies:

Case of Fabia

Fabia arrived in Narnia on 10 January 2016. She applied for asylum, claiming that she is fleeing war in her country, Montania. In her asylum application she stated that she was 17 years old. She did not have any documents with her. She was placed in a closed post-arrival reception center during the first 10 days and on 20 January she was moved to a reception center for families and unaccompanied minors.

On 25 January she was appointed a guardian, but she only met him ten minutes before the first asylum interview (on 1 March) to which he accompanied her. The interpreter to the official language spoken in Narnia was also present at the interview but not prior to it.

The asylum assessment officer questioned her age during the first asylum interview, stating that Anna seemed to be at least 20 years old and asked for an additional age assessment to be conducted by a qualified social worker.

During the interview, Anna strongly opposed the claim that she was 20 years old or more and said she did not want to deal with the authorities any more. The asylum officer deemed it as very disrespectful and rather aggressive. Anna was subsequently moved to a reception center for women.

The guardian opposed this decision but it was not taken into consideration.

Within the age assessment procedure, Fabia met with a social worker on 5 April, who deemed her to seem rather mature and asked for an X-ray examination in the local hospital.

The guardian was unable to attend the meeting with the social worker. The first available date for the X-Ray was 6 June. One week before the examination, the appointment was postponed due to technical reasons in the hospital, until 20 September.

Finally, on 30 October the social worker decided based on her observations during the meeting on 5 April and the X-ray examination that Fabia is indeed about 17 years old and recommended moving her from the adult accommodation center to a center for children.

On 15 November 2016 Fabia was granted refugee status. 1 December will be her 18th birthday.

Fabia wants to bring her mother and father from Montania, where a civil war is still ongoing.

Applicable law

In Narnia: UN Member, party to the 1949 Geneva Conventions and Protocols, all major UN treaties, and to the Rome Statute of the ICC. It is a party to the Optional Protocol 1 and 2 to the ICCPR, has accepted the individual communication mechanism under CAT, and is party to all the Optional Protocols to the CRC. Party to the 1951 Geneva Refugee Convention and its Additional Protocol and recognising its universal application. It is a EU Member State, with no opt-outs. It is party to the ECHR and all its Protocols and a member of the Council of Europe. It is party to the revised European Social Charter and it has accepted the collective complaints procedure.

Task

Contacted by an NGO alerted on the situation of Fabia, you were asked to advise on the applicable law and strategy to be used in Fabias case. Would it be possible for her to ask for family reunification with her parents?

Seeing similar situations happen in Narnia to other children in similar situations to Fabia's, you wish to advocate for the State's and EU action to be in compliance with their human rights obligations under international and EU law.

1. Provide a legal assessment of any international and EU law applicable to the situation of Fabia, and provide recommendations as her lawyer on the avenues and legal strategies to pursue to at this stage of her case.

2. Which of Fabias rights were violated in Narnia? Which Articles of which international standards were breached in your opinion?

3. Set out an analysis of the advocacy priorities and venues (even the use of multiple venues from different mechanisms) to ensure that children in a similar situation to Fabia see their rights respected, protected and fulfilled under both international and EU law, with explanation for the choice of venue and strategy in terms of capacity to produce effective change or to defend the human rights law framework.

4. If representing Fabia as a lawyer, what would be the next steps that you would undertake?

Case of Beurre

Beurre was born in 1994 in Sofania and currently lives in Viania.

In November 2000 he lawfully entered Viania together with his parents and two siblings. Subsequently, he was legally resident in Viania. His parents were lawfully employed and have meanwhile acquired Vianian nationality. Beurre attended school in Viania.

In late 2008 criminal proceedings were instituted against him. He was suspected of having broken into cars, shops and vending machines, of having stolen empties from a stock ground, of having forced another boy to steal 5,000 Vianian crowns from the latter's mother, of having beaten this boy and thereby having bruised him, and of having used a motor vehicle without the owner's authorisation.

He was convicted of some 22 counts of partially completed and partially attempted aggravated gang burglary, of extortion, of partially completed and partially attempted assault, and of the unauthorised use of a vehicle. He was sentenced to 18 months' imprisonment, 13 of which were suspended on probation. Moreover, he was instructed to start drug therapy. He committed more burglaries the year after and in 2010 was convicted again in 2010 of 18 counts and sentenced to 15 months' imprisonment, all of which he served.

Meanwhile, on 3 January 2011 the Viania Federal Police Authority relying on Section 36 § 1 of the 1997 Aliens Act imposed a ten years' residence prohibition on the applicant. Having regard to the applicant's convictions, it found that his further stay in Viania was contrary to the public interest. Considering Beurre’s relapse into crime after his first conviction, the public interest in the prevention of disorder and crime outweighed the applicant's interest in staying in Austria. Beurre is going to be expelled to Sofania right after serving his sentence.

You are a lawyer representing Beurre, what would be your advice to him?
(It is 1.11.2011)

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