

UNDERSTANDING THE VITAL ROLE OF FAMILY REUNIFICATION IN LEGAL MIGRATION POLICIES AND ITS REQUIREMENTS

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Abstract: The family is seen as the basic unit of society and the strongest network of human relationships. Society and the state regard protecting the family as a fundamental right. Within this context, the right to family reunification is considered one of the key rights supporting the free movement of citizens. Over time, entry and residence for the purpose of family reunification have become the primary form of legal migration for third-country nationals. Beyond its quantitative significance, family reunification serves as an essential avenue for the successful integration of lawfully residing third-country nationals in Member States. The presence of family members plays a vital role in providing stability and deepening the roots of individuals, allowing them to lead normal family lives. This right is protected by both national and international laws. Within the European Union, family reunification recognizes both EU and non-EU citizens as key stakeholders. Specifically, Directive 2003/86/EC governs family reunification for non-EU citizens residing within EU territory. It defines family reunification as the entry and residence in a Member State by a family member of a third-country citizen lawfully residing in that state, with the goal of maintaining the family unit regardless of when the family relationship was established. Our study focuses on the requirements for exercising the right to family reunification. Article 7 of the Directive grants Member States the authority to impose two categories of requirements: evidence of the sponsor's accommodation, health insurance, and stable financial resources, and compliance with integration measures by third-country nationals. This study aims to analyze the protection of the right to family reunification at national, international, and EU levels, scrutinizing the practical challenges related to fulfilling the conditions for its effective realization. The methodology employed encompasses logical, legal, and institutional analyses, incorporating historical methods, legislative analysis, and qualitative approaches. The stance taken by the European Court of Justice on violations of this right holds particular significance.

Keywords: Family reunification, family, Directive, legal migration, third-country nationals.

1. INTRODUCTION

The principle of the right to marry and establish a family is a fundamental constitutional and legal principle upheld by both national and international instruments. The Universal Declaration of Human Rights affirms that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the state." Alongside the right to form a family, the right to family reunification is also recognized as a crucial entitlement aimed at maintaining the unity of the family unit. Accordingly, member states of the European Union either recognize the right to family reunification or have discretionary powers to authorize family reunification, depending on the category and legal status of third-country nationals. For the past three decades, family reunification has been a primary driver of immigration to European Union countries. According to Eurostat (2022), by the end of 2022, there were 24.0 million valid residence permits held by non-EU citizens in the EU, with family reunification accounting for 34.9% of these permits. Approximately 3.5 million first residence permits were issued to non-EU citizens in the EU, marking a 17.8% increase compared to 2021. Among these, 327,000 first residence permits were issued for family reasons to children under the age of 18 who were not EU citizens. The most common citizenships in 2022 for these first residence permits granted for family reasons to children under 18 were Moroccan, Albanian, and Indian.

The children of migrants constitute an increasingly significant segment of European societies, yet their integration remains challenging (Gabielli & Impicciatore, 2021).

Entry, residency, and family reunification stand as the chief pathways for legal migration among third-country nationals. Family immigration entails two primary scenarios: strict family reunification, where family members join the primary resident head of the family, and family formation, which occurs when family ties are established after the primary family head enters the host country. Legal migration is a component of the European Union's common migration policy, benefiting migrants, countries of origin, and destination countries alike. It provides individuals intending to migrate with opportunities to improve their lives by creating better living conditions. Additionally, it addresses the labor market needs of host countries, thus serving as an investment for society and the economy.

Through the implementation of minimum standards, some member states have, for the first time, established clear and detailed rules on the right to family reunification in their national legislation (Groenendijk et al., 2007).

This study will solely focus on the right to family reunification outlined in Council Directive 2003/86/EC, particularly in Chapter IV, Articles 6, 7, and 8 regarding the criteria for exercising this right. In line with past policies and developments, including reports and communications, our attention will specifically target the Second Implementation Report on the Family Reunification Directive 2003/86/EC, alongside the Fitness Check on Legal Migration, and the Communication on guidance for the application of Directive 2003/86/EC on the right to family reunification adopted by the Commission.

2. LEGAL BASIS

The rights to family and family reunification are fundamental liberties entrenched in a plethora of international, regional, and European legal instruments, including the Universal Declaration of Human Rights, the European Convention on Human Rights, the European Social Charter, the International Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights, the International Convention on the Rights of the Child, and others. While immigration facilitated through family reunification provisions may not entirely mitigate labor market challenges or demographic aging in recipient nations, it can bolster stability within existing immigrant communities and mitigate these socio-economic concerns (Fonseca & Ormond, 2008). In this study, we will particularly examine the provision laid out in the European Convention on Human Rights, which stands as one of the foremost instruments safeguarding basic human rights and freedoms. Article 8 of this Convention guarantees the respect for family life, closely linked not only to the right to free movement and family formation but also to Article 3, which prohibits the arbitrary refusal of admission and deportation of legally residing individuals. The Convention serves as a shield against arbitrary state interventions, with the European Court of Human Rights (ECHR) playing a pivotal role. According to the ECHR, the right to family reunification must be evaluated on a case-by-case basis to strike a balance between the state's interests in controlling migratory flows.

In cases such as *Marckx v. Belgium and Emonet and others v. the United Kingdom*, the ECHR has expanded the concept of family to include not only spouses but also certain extended personal relationships, focusing on factors like stable cohabitation, the presence of children, and economic interdependence between partners. While the ECHR has found violations of Article 8 in some cases, it ruled in *Gul v. Switzerland* that denying the right to family reunification did not violate Article 8, as the parents willingly chose to raise their child in Turkey.

Moreover, the Court of Justice of the European Union has issued numerous judgments concerning the right to family reunification, particularly focusing on the requirements for attaining family reunification in EU countries. Since 2006, the Court of Justice has played a significant role, often leveraging its jurisprudence on the free movement rights of EU citizens as a framework for interpreting the Directive. The acknowledgment of the right to family reunification for third-country nationals has traditionally been regarded as a relatively unexplored realm, as it fell within the exclusive jurisdiction of member states as part of intergovernmental collaboration. Community law lacked provisions to facilitate the alignment of legislation and policies among member states in the realm of migration (Colacino, 2004; Pascucci, 2008).

3. THE DIRECTIVE 2003/86/EC ON THE RIGHT TO FAMILY REUNIFICATION

On September 22, 2003, the Council endorsed Directive 2003/86/EC, which outline standardized rules for: Enabling family reunification for third-country nationals who are legally residing in member states. This directive applies to all member states, constituting the inaugural EU-level instrument to establish a comprehensive legal framework for family reunification. These three states abstain from implementing the Directive owing to their distinctive status under Title VI of the EU Treaty (Adamo, 2007). Directive 2003/86/EC governs the regulation of family reunification for non-EU citizens (Erjona Canaj & Bana, 2014).

The primary objective of the Directive is to establish standardized legal guidelines concerning the right to family reunification, with the aim of enabling family members of non-EU nationals who are lawfully residing in the EU to reunite with them in the EU country of residence. Its overarching aim is to protect the integrity of the family unit and facilitate the integration of individuals from non-member countries. The Directive recognizes family reunification as a fundamental right acknowledged and endorsed by all member states (Ciciriello, 2006). However, several scholars have observed that the Directive allows for significant interpretation by member states, rather than setting forth uniform principles, particularly regarding the categories of individuals eligible for family reunification and their protection from deportation (Colacino, 2004).

4. DEFINITIONS

The concept of family reunification is often perceived as constrained by normative, economic, and social conditions in the host country, sometimes overlooking the agency and aspirations of migrants. UNHCR emphasizes that family reunification plays a crucial role in bringing together family members living in different countries.

Key terms related to migration are defined as follows:

International migrant: a person who changes their country of residence (Council Directive 2003/86/EC, 2003; UN Statistics Division, 1998).

Migrant: an individual undergoing a (semi-)permanent change of residence involving a shift in their social, economic, and/or cultural environment.

Non-national/non-citizen: a person who lacks nationality/citizenship of the state in which they reside.

Family reunification: the act or process of bringing family members back together after a separation, particularly reuniting spouses, children with their parents, and elderly or dependent relatives with their caretakers (Council Directive 2003/86/EC, 2003; UNESCO, n.d.).

5. PREREQUISITES FOR EXERCISING THE RIGHT TO FAMILY REUNIFICATION

The Directive in Chapter IV, Article 6 provides that member states may reject an application for family reunification on the basis of public policy, public security or public health reasons. There is a political debate about the conditions that must be met to exercise the right to family reunification. These conditions vary from country to country. In order to exercise the right to be reunited with their family members, applicants must meet the conditions set by the host state. Article 7 defines the general conditions that must be met by citizens of third countries to exercise the right of family reunification (Franco, P, 2007). The examination of implementing laws in three EU member states indicates that the Directive allows for and has even encouraged the enactment of national measures that may raise human rights concerns (Wiesbrock, A., 2011). The prerequisites to fulfill are typically those outlined in the domestic legislation of each country, even predating the adoption of the directive. In certain instances, member states have the discretion to establish specific conditions, such as the possession of accommodation deemed typical for a similar family in the same area and meeting the prevailing health and safety standards in the respective Member State. 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 sufficient income, higher or at least equal to the level of income under which social assistance is given in the member state concerned (Groenendijk, K., 2004). Regarding the housing condition, not all states have a legislative approach to the housing condition. There are countries that consider housing as a necessary condition to request family reunification. In some countries they refer to housing as normal, while others use a more specific approach, requiring the necessary square meters for each additional person. For extra-community citizens, the residence permit may be revoked or renewal refused if the conditions set by the Directive are no longer met. In this sense, the condition of housing, economic income and insurance in case of illness must be present not only at the time of submitting the request for family reunification until its completion, but must also be present after, as long as the family resides in the territory of the host country, except when the status of family members or the reason for the residence permit changes. Also, the member states can ask the citizens of the third countries to respect the integration measures in accordance with the national law.

The right to family life is safeguarded in the Swedish constitution and there were only two notable restrictions on family reunification prior to the arrival of large numbers of asylum seekers in 2015. The first restriction confined eligibility to the nuclear family, and the second imposed a self-sufficiency requirement on the sponsor, which had little effect, however, due to its many exceptions (Borevi, 2014). Referring to the integration measures required for citizens of third countries, there are those measures related to knowing the language, taking courses, and the majority of countries do not issue an entry visa unless a certificate is obtained that verifies the completion of a course or taking of a certain language level, but this risks being discriminatory, especially when they are applied to vulnerable groups, especially migrant women. Courses are not always available, attending a course may mean temporarily leaving a dependent child or parent, renting an apartment in another city and paying for the course and test. And while the level required may seem minimal to experienced language learners, for people with little or no language learning experience and little confidence it can pose a big and disproportionate challenge. In these circumstances, the language requirement can easily be an obstacle to family reunification.

6. DISCUSSIONS

As highlighted in the 2008 Report and the 2014 Communication, the Directive's wording, which grants leeway for Member States to interpret it independently, should not result in a lowering of standards regarding discretionary

provisions concerning requests for the exercise of the right to family reunification, to the extent that they become overly expansive or disproportionate. Fundamental principles of EU law, particularly proportionality and legal certainty, should serve as the primary criteria in evaluating the compatibility of national regulations with the Directive. The 2014 Communication indicated the possibility of reopening the directive; however, following a public consultation, it was decided not to reopen it. Instead, the Commission committed to ensuring full compliance with existing rules, initiating infringement procedures if necessary, and providing guidance on identified issues.

7. CONCLUSIONS

Defining the concept of family in the context of family reunification poses challenges due to the fluidity of family membership and the persistent complexities surrounding migration policies. While efforts are being made to refine the disciplines governing family reunification, it is evident that challenges persist. The Commission remains vigilant in overseeing the practical implementation of directive provisions concerning family reunification requests.

The institution of family reunification is highly valued for its role in safeguarding the integrity of the family unit. It is closely intertwined with the rights to legal immigration and freedom of movement, particularly for non-EU citizens. Within the European Union, the protection of families is influenced by the impact of community freedoms across social, economic, and legal spheres.

There exists ongoing political discourse regarding the criteria for exercising the right to family reunification, with varying conditions across different countries. These conditions may encompass factors such as the age of women and children involved, financial assurances, and increasingly, language proficiency requirements. While the specific requirements for obtaining family reunification differ among EU member states, the overarching objective is to ensure that measures taken align with the preservation of family unity through reunification.

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