

Realising the right to family reunification of refugees in Europe



Issue paper



COMMISSIONER
FOR HUMAN RIGHTS

COMMISSAIRE AUX
DROITS DE L'HOMME

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

The Commissioner's recommendations

Ensure that family reunification procedures for all refugees (broadly understood) are flexible, prompt and effective

1. Give effect to the Court's case law and ensure that all refugee family reunification procedures are flexible, prompt and effective, in order to ensure protection for the right to respect for their family life.
2. Urgently review and revise relevant state policies if they discriminate between 1951 Convention refugees, subsidiary and other protection beneficiaries.

Ensure that the definition of family members eligible for reunification is appropriately broad

3. Accord family reunification rights to all spouses, where the term spouse is understood broadly to encompass not only legally recognised spouses and civil partners (including same-sex spouses and civil partners), but also individuals who are engaged to be married, who have entered a customary marriage (also known as "common-law" marriage) or who have established long-term partnerships (including same-sex partners).
4. Abolish age limits for spousal family reunification that are higher than the age of majority of 18 years.

Strengthen the position of children in the family reunification process

5. Ensure that the best interests of the child is a primary consideration in all family reunification decisions and that refugee children's requests for family reunification are dealt with in a positive, humane and expeditious manner.
6. Avoid family separation and allow both parents and siblings to reunite when an unaccompanied minor is the sponsor, that is, the first family member arriving in a host state.
7. Ensure that, for the purposes of applying for family reunification, a child is regarded as such as long as the application is submitted before he or she turns 18. Applications brought by children should not be terminated when the child turns 18 and should recognise the particular protection needs of young adults who have fled as unaccompanied minors.

Establish clear limits on age assessment processes

8. Carry out age assessments only if there are reasonable doubts about a person being a minor. If doubts remain that the person may be underage, he or she should be granted the benefit of the doubt. Assessment decisions should be subject to administrative or judicial appeal.
9. Age assessments based on medical evidence alone have proven to be ethically dubious and inadequate for determining a person's actual age. Age assessments should rather involve a multidisciplinary evaluation by an independent authority over a period of time and not be based exclusively on medical assessment.
10. Where there is a medical component to a multidisciplinary age assessment, examinations should only be carried out with the consent of the child or his or her guardian. Examinations should not be intrusive and should comply with medical and other pertinent ethical standards. The margin of error of medical and other examinations should be clearly indicated and taken into account.

Ensure that family reunification is granted to extended family members, at least when they are dependent on the refugee sponsor

11. Ensure that extended family members are also eligible for family reunification when they are dependent on the sponsor.
12. Ensure that the concept of dependency allows for a flexible assessment of the emotional, social, financial, and other ties and support between refugees and family members. If those ties have been disrupted due to factors related to flight, they should not be taken to signal that dependency has ceased.
13. The criteria used to assess dependency should be in keeping with the legal concept developed in the Court's case law and other legal guidance. They should be explained in clear and public guidelines or legal instruments, in order to enable refugees to tailor their applications accordingly.

Avoid discrimination between families formed before flight and after (pre- and post-flight families)

14. Respect the duty of non-discrimination between family members, in particular pre- and post-flight family members. Refugees must be allowed to demonstrate their family links formed in exile or in flight. Any interference with refugees' post-flight family relationships must be demonstrated to be necessary in a democratic society and proportionate to the aim pursued.

Ensure that family reunification processes are not unduly delayed

15. Waiting periods for refugee family reunification should not interfere with the right to family life. Waiting periods of over one year are inappropriate for refugees and for their family members.
16. Waiting periods must be justified in the individual case and must be in accordance with law, pursue a legitimate aim and be necessary and proportionate in the circumstances.

Allow refugees sufficient time to apply for family reunification

17. Abolish short time limits for family reunification applications, unless they are adapted to permit a first provisional application to be made by the refugee him- or herself in the country of asylum, allowing documentation and details to be submitted later.

Take measures to account for the particular (practical) problems refugees and their families face in reunification procedures

18. Examine asylum claims and family reunification matters simultaneously, in particular for asylum seekers with manifestly strong protection claims.
19. Refugees may face particular problems in gathering evidence to support their family reunification claims. As such, when assessing family relations, states should consider a range of evidence to demonstrate family ties, not only documentary proof. Flexible approaches should be adapted to the particular situations of different refugee populations.
20. Develop guidelines to make clear which sorts of other evidence may be offered to demonstrate family links, if formal documentation is not acceptable or is unavailable.
21. Ensure that documentation requirements do not put refugees' at further risk from their countries of origin or imperil their family members. Where possible, adapt procedures to ensure that refugees and their family members are not required to engage with the authorities of the country of origin.
22. Ensure that alternative travel documents are provided when national travel documents are not accepted or not available. This may include the use of "1954 Convention travel documents"² or emergency International Committee of the Red Cross (ICRC) travel documents. Issue laissez-passers to family members who do not have the possibility to obtain national travel documents.
23. Avoid imposing onerous integration conditions, such as the passing of excessively difficult integration tests in the country of origin as a condition of reunification.

Avoid routine use of DNA and other biometric assessments

24. Avoid the routine use of DNA and other biometric assessments to establish family relationships. Establish standards to set relevant limits and safeguards in this regard.
25. Resort to DNA testing to verify family relationships only where serious doubts remain after all other types of proof have been examined or where there are strong indications of fraudulent intent and DNA testing is considered the only reliable recourse to prove or disprove fraud.
26. Regulate the maximum cost of DNA tests for family reunification and make provisions for the covering of cost by the state, in particular when the family relationship is subsequently confirmed.

Ensure effective access to places where family reunification procedures can be initiated

27. Enable family reunification applications to be presented in the country of asylum, avoiding the need for families to make dangerous and costly journeys to embassies.
28. If states insist that family members should attend embassies and consulates in order to make applications, every effort should be made to ensure that these are practically accessible.
29. Conduct a thorough review of embassy procedures and develop a clear set of protocols to facilitate family reunification, including by enabling online applications and appointments.
30. For EU member states, if the sponsor's state of residence has no embassy in his/her family's country of asylum, make use of the EU system that allows another member state to handle the issuing of visas.

Reduce practical barriers to family reunification

31. Make information on the rules, procedures and documentary requirements for family reunification available in various pertinent languages online and via those actors who support refugees in regions of origin.
32. Reduce or waive administrative and visa fees for refugees (broadly understood), where such costs may otherwise prevent family reunification.
33. Establish financial support schemes for family reunification of those refugees who do not have sufficient resources to cover the costs.

Ensure that residence permits for family members enable legal protection and autonomy

34. Grant spouses and family members who arrive on the basis of family reunification a legal status that enables them to enjoy full legal protection and independence. In particular, grant autonomous residence permits to spouses in accordance with the best practices and legal measures relating to violence against women and children.

For states bound by the Dublin Regulation: make full and flexible use of the family unity criteria

35. Ensure wide interpretation and effective application of the Dublin family unity criteria.
36. If the Dublin family unity provisions are ineffective, acknowledge and act on the positive duties under Article 8 of the Convention to bring family members together.