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**Third party intervention
by the Council of Europe Commissioner for Human Rights**

under Article 36, paragraph 3, of the European Convention on Human Rights

Application No. 12510/18
Dabo v. Sweden

Introduction

1. On 3 December 2018, the Council of Europe Commissioner for Human Rights (hereinafter: the Commissioner) informed the European Court of Human Rights (hereinafter: the Court) of her decision to intervene as a third party in the Court's proceedings, in accordance with Article 36, paragraph 3, of the European Convention on Human Rights (hereinafter: the Convention), and to submit written observations concerning the case of *Dabo v. Sweden*. The case concerns a denial of a request for family reunification on the basis that the applicant, who was granted international protection, did not meet the so-called maintenance requirement under Swedish law. This requirement became applicable because the request for family reunification was allegedly submitted later than three months after the applicant was granted international protection.¹
2. According to her mandate, the Commissioner fosters the effective observance of human rights; assists member states in the implementation of Council of Europe human rights instruments, in particular the Convention; identifies possible shortcomings in the law and practice concerning human rights; and provides advice and information regarding the protection of human rights across the region.²
3. The protection of the human rights of migrants, including persons who have been granted international protection, has been a priority issue for the Commissioner and her predecessors. They have repeatedly emphasised that full protection would include ensuring their right to family reunification, especially for refugees and other beneficiaries of international protection. This intervention is based on the work of the Commissioner, as well as her predecessors, regarding family reunification in numerous Council of Europe member states, including Sweden. It also builds on two Issue Papers on migrant integration and family reunification published by the Commissioner's Office.
4. Section I of the present written submission sets out the Commissioner's views on the importance of access to family reunification for beneficiaries of international protection. Section II outlines the key elements of the Court's case-law with regard to family reunification that the Commissioner considers of particular importance to the case at hand. Section III describes the Commissioner's main recommendations on access to family reunification. Section IV presents the Commissioner's observations regarding the situation in Sweden, in particular the insufficiency of the three-month deadline for family reunification applications and the imposition of a subsequent maintenance requirement in case of failure to meet that deadline. These sections are followed by the Commissioner's conclusions.

I. The importance of family reunification for refugees and other beneficiaries of international protection

5. Family reunification procedures allow foreign nationals residing in Council of Europe member states to request permission to bring members of their family to join them, and to re-establish family life on the territory of their member state of residence. Access to family reunification is of particular importance to persons who have been forced to flee their countries of origin and have subsequently received a form of international protection in a Council of Europe member state. Such protection can take the form of recognition as a refugee under the 1951 Convention Relating to the Status of Refugees (hereinafter: 1951 Convention refugees), or other forms of protection following from the international human rights obligations of states, such as subsidiary or temporary protection.

¹ See paragraph 17 below for the application of the relevant rules.

² Resolution (99)50 on the Council of Europe Commissioner for Human Rights, adopted by the Committee of Ministers on 7 May 1999.

6. The Commissioner attaches great importance to the possibility of persons receiving international protection to be able to benefit from family reunification. In the Commissioner's 2016 Issue Paper 'Time for Europe to get migrant integration right' (hereinafter: the Issue Paper on integration), family reunification was identified as a key factor for promoting the effective integration of migrants, including beneficiaries of protection, in Council of Europe member states.³ It noted that research has found that restrictions on family reunification have not, as sometimes argued by states, promoted integration. Rather, delayed or aborted family reunification has often had a significant negative effect on individuals' integration efforts. The Issue Paper urged more efforts to ensure the successful integration of migrants, including those receiving protection, with family reunification as one of the priority areas for such efforts.⁴
7. Family separation has been found to have very serious effects on beneficiaries of international protection. This may include severe distress, sleeping or eating disorders, depression, anxiety and feelings of guilt for leaving family members behind in dangerous situations.⁵ Apart from inflicting hardship on beneficiaries of international protection, such problems have been recognised as getting in the way of their necessary steps towards integration, such as language learning, other education, and orientation towards the labour market. In many cases, only once the source of this problem has been removed, meaning that family reunification has been achieved, can the integration trajectory truly begin.⁶
8. The effects of family separation are not however limited to the beneficiaries of protection in Europe. As noted in the Issue Paper on integration, "[f]or beneficiaries of international protection, delaying the enjoyment of their right to family reunion also denies effective protection to family members in camps and conflict zones."⁷ In the Commissioner's 2017 Issue Paper 'Realising the right to family reunification of refugees in Europe' (hereinafter: the Issue Paper on family reunification), it is noted that: "[t]he urgency of family reunification lies also in the fact that families left behind are often at great risk – particularly if they remain in conflict zones or are living precariously in countries in the region of conflict, where the protection available often falls well below international legal standards. In that context, swift family reunification is not only a matter of good policy, but may be equated with humanitarian evacuation."⁸ The Commissioner underlines that the negative effects of prolonged family separation on family members left behind may be all the greater if the beneficiary of protection in Europe is the head of household. In many conflict-affected areas, and in neighbouring countries where family members may seek refuge, single women and children may be particularly at risk of violations of their rights whilst waiting for permission to join their family member already in Europe.
9. The Commissioner also notes the importance of family reunification as a safe and legal route for family members to travel to Council of Europe member states. The lack of safe and legal routes has been identified by many actors, including the Commissioner, the United Nations High Commissioner for Refugees (UNHCR), the United Nations High Commissioner for Human Rights, the EU Fundamental Rights Agency, and numerous NGOs and experts as an important factor driving irregular and often highly perilous migration to Europe. In this context, the Parliamentary Assembly of the Council of Europe has noted that "Member States must provide for safe and regular means of family reunification, thus reducing the recourse to smugglers and mitigating the risks associated with irregular migration."⁹

³ Commissioner for Human Rights, [Time for Europe to get migrant integration right](#), May 2016, Chapter 1.

⁴ *Ibid.*, Chapter 3.

⁵ See, for example, the European Council on Refugees and Exiles and the Red Cross (2014), [Disrupted Flight: The Realities of Separated Families in the EU](#), 2014.

⁶ See, for example, UNHCR, [A New Beginning: Refugee Integration in Europe](#), 2013.

⁷ Commissioner for Human Rights, [Time for Europe to get migrant integration right](#), May 2016, page 13.

⁸ Commissioner for Human Rights, [Realising the right to family reunification of refugees in Europe](#), June 2017, page 12.

⁹ Parliamentary Assembly of the Council of Europe, [Resolution 2243\(2018\)](#), Family reunification of refugees and migrants in the Council of Europe member states, adopted 11 October 2018, paragraph 2.

II. States' obligations with regard to family reunification

10. Family reunification procedures are an important instrument in the protection of the right to respect for family life. The centrality of the protection of family life is evident from, for example, the Universal Declaration of Human Rights,¹⁰ the UN the International Covenant on Civil and Political Rights,¹¹ and the European Union Charter of Fundamental Rights.¹² With regard to persons receiving international protection, the Final Act of the UN Conference of Plenipotentiaries, which adopted the Convention relating to the Status of Refugees, emphasised that family reunification is an essential right of refugees.¹³ Furthermore, the European Social Charter requires Contracting parties to facilitate as far as possible the reunion of family members with foreign workers residing on their territory legally.¹⁴ The European Committee of Social Rights has further noted that such rights should be enjoyed to the fullest extent possible by refugees, and that the obligations undertaken by states under the European Social Charter required a response to the specific needs of refugees and asylum seekers, including the "liberal administration of the right to family reunion."¹⁵ Furthermore, when children are involved, the UN Convention on the Rights of the Child requires, inter alia, that family reunification applications by children or their parents are dealt with "in a positive, humane and expeditious manner."¹⁶
11. With regard to the European Convention on Human Rights, the Commissioner observes that, whilst the Convention does not explicitly set out a right to family reunification, the Court has held in a number of cases that the obligations of Contracting states under Article 8 may under certain circumstances give rise to positive obligations to allow the re-establishment of family on their territories. In light of these obligations, the state must strike a fair balance between the competing interests of the individual and those of the community as a whole.¹⁷ In this regard, the Commissioner specifically takes note of the Court's case-law with regard to the family reunification of persons receiving international protection as Convention refugees. The Court's judgments in *Tanda-Muzinga v. France*¹⁸ and *Mugenzi v. France*¹⁹ in particular have been instrumental in clarifying contracting states' obligations with regard to family reunification applications in this respect. The Commissioner notes the Court has found that "family unity is an essential right of refugees and that family reunion is an essential element in enabling persons who have fled persecution to resume a normal life."²⁰
12. She further observes that these judgments contain several key elements regarding refugees and their claims to family reunification. This includes the acknowledgement that refugees cannot be returned and that therefore the question of whether there are insurmountable obstacles to family life in the country of origin is not applicable. Refugee status also implies that an applicant for family reunification cannot be held responsible for the fact that family life was disrupted.²¹ Importantly, drawing upon the Grand Chamber judgment in *Hirsi Jamaa and Others v. Italy*, the Court also found that obtaining international protection "constitutes evidence of the vulnerability

¹⁰ Article 16(3) of the Universal Declaration of Human Rights.

¹¹ Article 23(1) of the International Covenant on Civil and Political Rights.

¹² Article 7 of the Charter of Fundamental Rights of the European Union.

¹³ UN Doc. A/CONF.2/108/Rev.1, 25 July 1951.

¹⁴ Article 19(6), of the European Social Charter (revised).

¹⁵ ECSR, Conclusions 2015, January 2016, paragraph 21.

¹⁶ Article 10 of the Convention on the Rights of the Child.

¹⁷ For example, *Tuquabo-Tekle v. the Netherlands*, application no. 60665, judgment of 1 December 2005, paragraph 42.

¹⁸ *Tanda-Muzinga v. France*, application no. 2260/10, judgment of 10 July 2014.

¹⁹ *Mugenzi v. France*, application no. 52701/09, judgment of 10 July 2014.

²⁰ *Tanda-Muzinga v. France*, application no. 2260/10, judgment of 10 July 2014, paragraph 75; *Mugenzi v. France*, application 52701/09, judgment of 10 July 2014, paragraph 54.

²¹ *Tanda-Muzinga v. France*, application no. 2260/10, judgment of 10 July 2014, paragraph 73; *Mugenzi v. France*, application no. 52701/09, judgment of 10 July 2014, paragraph 52.

of the parties concerned”.²² Such vulnerability should be taken into account also in processing family reunification applications of all persons granted international protection. The Commissioner suggests that these particular elements were central to the Court’s finding in these cases that family reunification requests of refugees should be handled speedily, attentively and with particular care, ensuring that procedures are flexible, prompt and effective. The above-mentioned cases also stress that, where family reunification involves children, national authorities must take due account of the best interests of the child in their review of proportionality.²³

III. The Commissioner’s recommendations regarding family reunification

13. The Commissioner and her predecessors have devoted considerable attention to the way Council of Europe member states have addressed family reunification, in particular when this has involved beneficiaries of international protection. This has included the issue pertaining to the use of application of deadlines and the imposition of requirements regarding adequate housing, income and health insurance coverage. For example, with regard to Cyprus, the Commissioner’s predecessor, following also UNHCR’s comments, noted that the application of a three-month deadline to request family reunification did not sufficiently take into account the specific situation of refugees and represented serious obstacles to the effective enjoyment of the right to family reunification.²⁴ A similar barrier was noted by the Commissioner regarding Greece, where she called for the removal of such obstacles.²⁵
14. In Switzerland, the Commissioner’s predecessor addressed the “very strict” conditions on family reunification for persons who had become separated from their families during flight, including the availability of appropriate accommodation, and the applicants not being dependent on social assistance. These same restrictions were applicable to unaccompanied children with a provisional permit, noting that these were interpreted in a strict sense, and that in practice, few family reunification requests were granted.²⁶ In light of this, the Swiss authorities were urged to carry out a significant review of the regulations and practice concerning family reunification for refugees and other persons receiving protection.²⁷ With regard to persons not recognised as refugees, the Commissioner’s predecessor has also called on the United Kingdom to review income threshold rules for family reunification in order to lower these and make them realistic and flexible.²⁸
15. Restrictive legislative measures concerning family reunification have become prevalent in the wake of the increased arrival of migrants and asylum seekers in Council of Europe member states in 2015 and 2016, as part of government policies to make their countries less attractive for

²² *Tanda-Muzinga v. France*, application no. 2260/10, judgment of 10 July 2014, paragraph 75; *Mugenzi v. France*, application no. 52701/09, judgment of 10 July 2014, paragraph 54. Both citing *Hirsi Jamaa and Others v. Italy* [GC], application no. 27765/09, judgment of 23 February 2012, paragraph 155.

²³ *Tanda-Muzinga v. France*, application no. 2260/10, judgment of 10 July 2014, paragraph 67; *Mugenzi v. France*, application no. 52701/09, judgment of 10 July 2014, paragraph 45. Also see, for example, for a case not involving refugees, *Jeunesse v. the Netherlands* [GC], application no. 12738/10, judgment of 3 October 2014, paragraph 109.

²⁴ [Report](#) by Nils Muižnieks, Commissioner for Human Rights, following his visit to Cyprus from 7 to 11 December 2015, CommDH(2016)16, published 31 March 2016, paragraph 38.

²⁵ [Report](#) of the Commissioner for Human Rights, Dunja Mijatović, following her visit to Greece from 25 to 29 June 2018, CommDH(2018)24, published 6 November 2018, paragraphs 68 and 87.

²⁶ [Rapport](#) par Nils Muižnieks, Commissaire aux Droits de l’Homme suite à sa visite en Suisse du 22 au 24 mai 2017, CommDH(2017)26, published 17 October 2017, paragraphs 166-167.

²⁷ *Ibid.*, paragraph 169.

²⁸ [Memorandum](#) on the human rights of asylum seekers and immigrants in the United Kingdom, Nils Muižnieks, 22 March 2016, CommDH(2016)17, paragraph 60.

migrants and asylum seekers.²⁹ In light of this, the 2017 Issue Paper on family reunification specifically sets out recommendations with a view to ensuring that effect is given to the Court's case-law that all refugee family reunification procedures are flexible, prompt and effective, in order to ensure protection of the right to respect for family life. These recommendations cover a wide range of issues including the abolition of distinctions between 1951 Convention refugees and persons with subsidiary or temporary protection, which family members should be considered eligible for reunification, reducing administrative and practical barriers to reunification, and eliminating onerous evidentiary requirements.

16. Regarding the present case, some recommendations are of special importance. They address the above-mentioned practice of providing beneficiaries of international protection with preferential treatment regarding housing conditions, financial resources or health care insurance only to the extent that they apply within a short deadline. Noting that such persons may face problems tracing family members, gathering the requisite documents and arranging for family members to travel to consulates or embassies, the Issue Paper notes that such deadlines are often impossible to meet.³⁰ As a result, in order to allow refugees sufficient time to apply for family reunification, the Issue Paper recommends the abolition of short time limits, unless they are adapted to permit a provisional application to be made by the refugee him- or herself in the country of asylum, allowing documentation and details to be submitted later.³¹ The Issue Paper further recommends that member states ensure effective access to places where family reunification procedures can be initiated,³² and to strengthen the position of children in the family reunification process, including by ensuring the best interests of the child are a primary consideration in all decisions.³³

IV. Observations on specific restrictions on family reunification in Sweden

17. In 2017, the Commissioner's predecessor carried out a country visit to Sweden. One of the issues addressed was the impact of the Law on Temporary Restrictions on the Possibility of Obtaining Residence Permits in Sweden (2016:752) (hereinafter: the Temporary Law) on the right to family reunification. The Temporary Law introduces a number of restrictions on family reunification with a person granted international protection in Sweden (1951 Convention refugee status or subsidiary protection). In particular, the approval of family reunification is made dependent on the person granted protection in Sweden meeting a maintenance requirement, having sufficient financial resources and housing of sufficient size to accommodate him- or herself and the family members joining them in Sweden following reunification.³⁴ This maintenance requirement, however, is subject to an exemption if the application for family reunification is lodged within three months after the person granted protection in Sweden received the appropriate residence permit.³⁵ If an application for family reunification is lodged outside this three-month time limit, the

²⁹ See, for example: [Annual activity report 2015](#) by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, CommDH(2016)7, 14 March 2016, page 4; Commissioner for Human Rights, [Time for Europe to get migrant integration right](#), May 2016, page 9.

³⁰ Commissioner for Human Rights, [Realising the right to family reunification of refugees in Europe](#), June 2017, page 41. Also see page 44, outlining practical barriers in accessing embassies and consulates in more detail. Also see UNHCR, [Summary conclusions of the Expert Roundtable on the Right to Family Life and Family Unity in the Context of Family Reunification of Refugees and Other Persons in Need of Protection](#), 4 December 2017, paragraph 29.

³¹ *Ibid.*, page 9, recommendation 17.

³² *Ibid.*, page 9, recommendations 27-30.

³³ *Ibid.*, page 7, recommendation 5.

³⁴ Section 9 of the Temporary Law.

³⁵ Section 10 of the Temporary Law. In the case of persons recognised as 1951 Convention refugees, the permit granted to them at the moment of recognition provides eligibility for family reunification. For persons with a subsidiary protection status, however, eligibility for family reunification only starts once they have received a permanent residence permit, which may be three years after protection was initially granted.

exemption is not applicable and the maintenance requirement must be fully met before family reunification can be granted. Below, the Commissioner presents her views on the application of the maintenance requirement (paragraphs 18-24) and the three-month time limit to benefit from an exemption from this requirement (paragraphs 25-28) to the situation of persons granted protection in Sweden.

Observations on maintenance requirements and their application in Sweden

18. Regarding maintenance requirements generally, the Commissioner notes that the Court in several cases has found that making family reunification conditional on meeting these requirements was compatible with Contracting States' obligations under Article 8 of the Convention.³⁶ However, the Commissioner observes that none of these cases involved persons specifically granted international protection, and thus did not assess such conditions against the specific characteristics of refugees and the particular importance of prompt family reunification for them.³⁷
19. The Commissioner recalls that the Court has found family unity to be an essential right of refugees, and family reunification to be an essential element in enabling persons who have fled persecution to resume a normal life. In this context, the Commissioner particularly notes the Court's finding that "there exists a consensus at the international and European level on the need of refugees to benefit from a family reunification procedure that is more favourable than that foreseen for other aliens..."³⁸ Such more favourable procedures generally mean that maintenance requirements are not applied to refugees.
20. However, persons granted international protection will likely face significant problems in meeting any requirements regarding financial means and housing. Having fled their countries of origin, they will be at an enormous disadvantage in the country where they have found protection in generating sufficient income and finding appropriate accommodation. It is unlikely that they can overcome this disadvantage in a short period after recognition of their status, since this will depend on them successfully learning the language of the host country, obtaining recognised qualifications, and securing a stable income through employment.³⁹
21. Given the various obstacles faced by persons granted international protection, the Commissioner notes that high maintenance requirements, such as those applied in Sweden, are likely to significantly delay the re-establishment of family life, and thus the enjoyment of this essential element of resuming a normal life.⁴⁰ Depending on the specific case, some beneficiaries of protection may never be able to meet these requirements, thus being deprived of family life

³⁶ See, for example, *Haydarie and Others v. the Netherlands* (dec.), 8876/04, 20 October 2005; *Konstantinov v. the Netherlands* (dec.), 16351/03, 26 April 2007.

³⁷ In *Haydarie*, the applicants requesting family reunification had their asylum request in the Netherlands rejected, but received a conditional residence permit on the grounds that her removal to Afghanistan would entail undue hardship. This conditional permit was eventually transformed into a fixed-term residence permit for the purposes of asylum. This was due to the transitory arrangements of a new Aliens Act which had entered into force, rather than to a recognition of the applicants as refugees. In *Konstantinov*, the person applying for family reunification with the applicant had a (non-asylum related) permanent residence permit.

³⁸ *Tanda-Muzinga v. France*, application no. 2260/10, judgment of 10 July 2014, paragraph 75; *Mugenzi v. France*, application no. 52701/09, judgment of 10 July 2014, paragraph 54.

³⁹ See, for example, UNHCR, *Families Together: family reunification for refugees in the European Union*, February 2019, page 15.

⁴⁰ Also see the [observations](#) by the UNHCR Regional Representation for Northern Europe on the draft law proposal on restrictions of the possibility to obtain a residence permit in Sweden, 10 March 2016, paragraph 55. Furthermore, see [Resolution 2243\(2018\)](#) of the Council of Europe's Parliamentary Assembly, 'Family reunification of refugees and migrants in the Council of Europe member States', 11 October 2018, paragraph 7: "The Assembly particularly regrets that some States have high financial requirements or long waiting periods for migrants who wish to apply for visas for their family members."

indefinitely. However, even for those that may be assumed to eventually be able to meet these obligations, this will likely be a drawn-out process, adding to long-term family separation.

22. These concerns are supported by research by the Swedish Red Cross on the impact of the Temporary Law on the family reunification prospects of persons granted protection.⁴¹ It shows that many cases concerning residence permits on grounds of family reunification are denied due to the stricter supporting requirements. The person granted protection in Sweden is often considered to have an income that is too low or too uncertain, and difficulties in finding accommodation that is sufficiently large creates further obstacles. For families with many children, both the accommodation and income requirements are difficult to meet. The strict income requirements may also lead to exploitation in the labour market since many refugees and beneficiaries of subsidiary protection are ready to accept poor working conditions if they believe it will increase their possibility of reuniting with their families.
23. The Commissioner notes that UNHCR has explicitly called on the Swedish authorities not to impose a resource requirement for family reunification on beneficiaries of international protection.⁴² She observes that, as long as such requirements remain in place for persons granted international protection, it is crucial that these are of such a nature that they do not lead to the unnecessary prolongation of family separation. Preventing further family separation would be particularly pressing when children are involved. Furthermore, the Commissioner suggests that, given their impact on the ability to re-establish family life, it should be incumbent on member states insisting on using maintenance requirements to apply these flexibly. In particular, they should assess, on a case-by-case basis, whether such requirements are proportionate and realistic.
24. The Commissioner further observes that Sweden initially introduced maintenance requirements for family reunification primarily from the perspective that this would assist integration.⁴³ However, as discussed above, the Commissioner considers long-term family separation as one of the key factors undermining integration.⁴⁴ As such, the Commissioner questions whether such maintenance requirements, as applied to refugees, can indeed meet this stated objective.

Observations on the three-month time limit and its application in Sweden

25. The Commissioner notes that, as discussed above, Swedish law does provide for an exemption from the maintenance requirement if the application is lodged within three months of receiving the appropriate residence permit. As noted in paragraph 16, one of the key recommendations in the Issue Paper on family reunification is to abolish short application deadlines. This is in recognition that persons granted international protection and their family members are likely to face significant problems in lodging applications within such a short time. In addition to obstacles already mentioned above, the 2017 report on Sweden by the Commissioner's predecessor lists these as including strict documentary requirements to prove identity, and difficulties in reaching a Swedish embassy or consulate to participate in an interview.
26. In this respect, the 2017 report on Sweden notes:

“The Commissioner is concerned that the temporary law makes it more difficult to be reunited with family members, especially for beneficiaries of subsidiary protection and those

⁴¹ Swedish Red Cross, [Humanitarian consequences of the Swedish Temporary Aliens Act](#).

⁴² [Observations](#) by the UNHCR Regional Representation for Northern Europe on the draft law proposal on restrictions of the possibility to obtain a residence permit in Sweden, 10 March 2016, page 20.

⁴³ Statement of facts and observations by the government of Sweden on admissibility and merits in the current case, paragraph 36. Also see [Observations](#) by the UNHCR Regional Representation for Northern Europe on the draft law proposal on restrictions of the possibility to obtain a residence permit in Sweden, 10 March 2016, paragraph 37.

⁴⁴ See paragraph 7 above.

*recognised as refugees under the Geneva Convention whose family members do not apply for reunification within the three-month deadline.*⁴⁵

More specifically, the report calls on the Swedish government, in line with the recommendations in the Issue Paper on family reunification, to abolish the three-month deadline for eligibility for an exemption from the maintenance requirement.⁴⁶

27. The Commissioner notes that, with the passing of the Temporary Law, the government has aimed to deter asylum seekers from coming to Sweden, while improving the capacity of reception and introduction arrangements. This aim was to be achieved, according to the Swedish government, by bringing Swedish asylum law into line with the minimum level stipulated in EU law and international conventions.⁴⁷ The Commissioner notes that the EU Directive 2003/86/EC on the right to family reunification (the Family Reunification Directive) indeed contains provisions to limit more favourable treatment to those applying for family reunification within three months.⁴⁸ However, the Commissioner also notes that the European Commission has recommended that member states “must not use this margin of manoeuvre in a manner that would undermine the objective of the Directive and the effectiveness thereof” and that it has recommended not to apply the optional restrictions, such as the time limit.⁴⁹ In light of the difficulties they will experience in meeting maintenance requirements, UNHCR has also called on EU member states not to apply time limits to the more favourable conditions available to persons granted international protection as this limitation does not take sufficiently into account the particularities of their situation or the special circumstances that have led to the separation of their families.⁵⁰ Whilst the Court of Justice of the EU has confirmed that EU law does not preclude the use of the three-month time limit for refugees, it has also found that member states should apply this with some flexibility, particularly by ensuring refusals on this ground are not applied to situations in which a late submission of a family reunification request was objectively excusable.⁵¹
28. The Commissioner believes that the application of short deadlines to persons granted international protection fails to take into account their specific vulnerability, as recognised by the Court, and the crucial importance of re-establishing family life. Therefore, such a short deadline should not normally be applied. However, when member states persist in using such short deadlines, she considers that they should, at a very minimum, apply them with sufficient flexibility as to ensure that refugees are not effectively denied an opportunity of prompt family reunification and are thus faced with long-term family separation. This, in the view of the Commissioner, is all the more important when the family reunification requests also include the re-establishment of family life with children.

⁴⁵ [Report](#) by Nils Muižnieks, Commissioner for Human Rights, following his visit to Sweden from 2 to 6 October 2017, CommDH(2018)4, published 16 February 2018, paragraph 24. See also ECRI [Report on Sweden](#), published on 27 February 2018, paragraphs 63-64.

⁴⁶ *Ibid.*, paragraph 28.

⁴⁷ Statement of facts and observations by the government of Sweden on admissibility and merits in the current case, paragraph 30. Also see the [observations](#) by the UNHCR Regional Representation for Northern Europe on the draft law proposal on restrictions of the possibility to obtain a residence permit in Sweden, 10 March 2016, paragraph 37.

⁴⁸ Family Reunification Directive, Article 12(1).

⁴⁹ European Commission, Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification, page 21.

⁵⁰ UNHCR, [Families Together: family reunification for refugees in the European Union](#), February 2019, page 16.

⁵¹ CJEU, *K and B v. Staatssecretaris van Veiligheid en Justitie*, Case C-380/17, judgment of 7 November 2018, paragraph 67.

Conclusions

29. The Commissioner reiterates the importance of the ability of all those granted international protection to reunite with family members left behind. Long-term family separation has important negative consequences for the beneficiary of protection, family members left behind, as well as for the objective of successful integration and the avoidance of dangerous, irregular migration to Europe.
30. To conclude, the Commissioner stresses that:
- imposing maintenance requirements on refugees and other beneficiaries of international protection, when these are so high as to have the effect of significantly delaying the re-establishment of family life, raises serious issues of compatibility with Contracting States' obligations under Article 8 of the Convention;
 - depriving refugees and other beneficiaries of international protection of more favourable family reunification procedures because the application was not lodged within a short limit (such as the three months in the present case) raises serious issues of compatibility with Contracting States' obligations under Article 8 of the Convention.