DISPERSED FAMILIES: LEGAL AND PRACTICAL BARRIERS TO REFUGEE FAMILY REUNIFICATION

Dağılmış Aileler: Uygulamada ve Hukuk Sisteminde Mülteci Ailelerin Birleşmesinin Önündeki Engeller

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Abstract

The right to marry and found a family is integral to human rights pursuant to international conventions and therefore, is assured at an international level. However, the international law and international conventions further ensure that any state has the absolute sovereignty whether or not to admit 3rd country nationals within their borders, by virtue of which states stipulate strict conditions for such admissions in the case of family reunification; that is, family reunification is not considered an absolute right, and is at the sole discretion of states. As a consequence, family reunification, which is a legally difficult and arduous procedure, puts much heavier burden on refugees, having or to have left their families and homelands due to various causes. At their destination, in full force, both bureaucratic and legal barriers await refugees who merely intend to reunite with their families and be together in a new phase of their life.

Keywords Family reunification, right to family reunification, respect for family life, international law, refugees

Özet

Uluslararası sözleşmeler uyarınca evlenme ve aile kurma hakkı insan hakları arasında yer almakta ve uluslararası güvence altına alınmaktadır. Ancak, uluslararası hukuk ve sözleşmeler 3. ülke vatandaşlarının ülkelerine girişlerine onay vermeleri noktasında devletlere mutlak egemenlik tanımıştır. Devletler de, aile birleşimi noktasında öne sürdüğü bazı gerekçelere dayanarak sıkı şartlara bağlanmıştır. Aile birleşimi henüz mutlak bir hak olarak güvence altına alınmayarak devletlerin takdir yetkisine bırakılmıştır. Zaten, yasal olarak zor ve meşakkatli bir süreç olan aile birleşiminin faturası değişik nedenlerle evini, yuvasını, vatanını terk etmek zorunda kalmış mültecilere çok daha ağır kesilmektedir. Varış noktasına geldiklerinde en azından ailelerini yeniden bir araya getirerek yeni hayatlarında bir arada olmak isteyen mültecileri uygulanan hem yasal hem de bürokratik engeller beklemektedir.

Anahtar Kelimeler Aile birleşimi, aile birleşimi hakkı, aile hayatına saygı gösterme, uluslararası hukuk, mülteci

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INTRODUCTION

Regardless of whether it was early homo sapiens or it is modern day human, with the basic instinct of survival, mankind has always endeavored to fulfill its needs despite the scarce resources of the Earth. As has the mankind, international law, with its self-revising and responsive nature, has revised itself for certain issues, which led the 20th century redescribed as the age of "human rights" and "migration".

Migration is a phenomenon with various causes such as economic, social, natural or political, as a consequence of which people leave their country, either voluntarily or forcibly, and move to other countries. This, on the other hand, causes other consequences to emerge, most observably legal.

The right to family life stands as one of the fundamental human rights, with the implication that it is also essential to safeguard the fundamental human rights of refugees and asylum seekers, who are considered to be vulnerable groups. The idea of human rights is raised on the fundamentals that every human being is born equal. Pursuant to the Article 1 of the European Convention on Human Rights, rights and freedom of everyone, with no exception of stateless persons, within the jurisdiction of the contracting states, shall be secured, bound by which, the contracting states have the obligation to respect the family life of the foreigners within their borders.

The term "family" lacks a universally agreed definition, wherefore the individuals of whom a family should be constituted, is a matter of dispute, which is perceived differently by various countries; for instance, the USA and Canada recognize the concept of extended family, whereas the European countries tend to limit the extent thereof. In a broader sense, the right to family reunification refers to foreigners right to demand, upon their admission to a respective country, that their family members are also granted admittance to said country and given permission to reside therein. Although the right to marry and found a family is secured under international conventions, states stipulate strict conditions, on certain grounds such as economy, security etc., on the side of family reunification, and therefore, the right to family reunification is not absolute and international law recognizes the sole discretion of states in this respect.

This study reviews refugees and asylum seekers right to family reunification in the lights of legal texts and evaluates how international judicial organs approach to the right to family life.

1. HISTORICAL AND CONCEPTUAL FRAMEWORK

To conceptualize family reunification, initially, the phenomenon of migration is to be laid on a foundation in the context of international law. Mankind, an entity superior to any given state and the laws thereof, assigns a fragment of its rights to a higher authority through the "social contract", with the motive to transition from chaos to cosmos.[1] In this respect, theoreticians argue that the rights and freedoms that had been integral to the individual during the natural-rights era, that is, the pre-states era, are to be immune from governmental conduct and should be respected by the states,[2] and that the states have to honor these fundamental human rights, in other words, the natural rights.[3] Whereas any given national law intends to conserve the state it is in effect, the international law intends to stand by the individual, and the fact that human rights are under the assurance of international law defends the individual against the state.[4]

"The other", conceptualized in parallel with the rise of nation states and well-construed, has imposed the requirement to lay the phenomenon of "migration" on legal grounds.[5] The nation-state perception led to the responsibility of such states for their own citizens, and therefore, such states initiated legal arrangements regarding the migrants/immigrants they avoid to assume responsibility for.[6] The United Kingdom, to have taken the very first step towards this issue, introduced the Aliens Act in 1905 to minimize the immigration to the country.[7] The principles of sovereignty and non-intervention became well-established and was legitimized in international law by the Charter of the United Nations in 1945.[8] Migration, a phenomenon almost as old as the human history, is nevertheless a matter of national law rather than that of international law when considered in the context of the law of nations. Hence, despite its characterization as an international matter, had remained

1 Kapani,M. (1993). Kamu Hürriyetleri, Yetkin Yayınları, pp. 30-31.
2 Akad, M. (1984) Teori ve Uygulama Açısından 1961 Anayasası'nın 10. Maddesi. İÜHFY, p. 9.
3 Hakyemez, Y. (2000) Toplum Sözleşmesi Kavramı ve Günümüz İnsan Hakları Kuramına Etkisi: İdare Hukuku ve İlimleri Dergisi 13, (1), p. 212.
4 Lahav, G. (1997) International Versus National Constraints in Family-Reunification Migration Policy: Global Governance 3, (3). p. 353.
5 Şahin, Y.S. Avrupa Birliği Multeci Hukukunda Üye Devletlerin İltica Başvurusunu Değerlendirme Yetkisinin Çerçevesi (MSc Thesis, Istanbul University 2013) p.8.
6 Şahin Y.S. (2013), ibid, p. 9.
7 Pellew, J. (1989) The Home Office and the Aliens Act, 1905: The Historical Journal 32, (2), p. 373.
8 1945 United Nations Charter §§ 2(1)- 2(7)

under national jurisdictions and at nations' sole discretion, due to the lack of arrangements at international level and the status quo. In the post-WWII period, the humanitarian tragedies suffered during the war led not only to an awareness of human rights but also migrations to gain momentum. During and subsequent to the War, millions of people, having left their home, had to migrate either voluntarily or compulsorily. During the War, Europe had been devastated and for the reconstruction thereof, there had been a lack of male workforce for heavy manual work, which, specifically, resulted from the heavy casualties caused by the War. Europe, now considering migrants as lifesavers, made major compromises with migration policies. However, with the energy crisis in the 1970s, which had a world-wide impact, many countries ceased to offer what they had so far and were highly reluctant.[9] The swift rise of anti-migrant attitudes and changing patterns of migration resulted in a decline in welcoming asylum seekers and further, a rise in governmental interventions.[10] The open-door policy, once adopted by the countries, was now replaced by closed-door policy, a change of attitude, which had the utmost impact on the refugees; regardless of the motives behind refugees' arrival from their country of origin to another, the restrictive policies of the country of destination constituted a dead-end for family reunification, when it comes to the demands of refugees to be with family members. Having fortified the European Stronghold with the Schengen Agreement, effective as of 1995, the EU member states foresaw the irregular migration and the migrants as the greatest threat. Since then, the EU, so as to defend this Stronghold against such designated threats, further fortified that Stronghold through the legal arrangements.[11]

Another notable issue is how the terms used in this study are defined: migration, the fundamental subject matter of the study, is defined as *"... a phenomenon where individuals or masses move from a country or settlement of origin to another, with economic, social or political motives…"*.[12] The United Nations, on the other hand, approaches with a different perspective, length of

9 Speech of Dr. Auguste R. Lindt, United Nations High Commissioner for Refugees, at the 10th meeting of the Council of the Inter-Governmental Committee for European Migration (ICEM), Naples, 5 December 1960 https://www.unhcr.org/admin/hcspeeches/3ae68fb820/speech-dr-auguste-r-lindt-united-nations-high-commissioner-refugees-10th.html, accessed on 20/03/2020.

10 Lahav, G. (1997), ibid. p. 354.

11 Akgün, A. Avrupa Birliği'nin Değişen Göç Politikalarının Sığınma Hakkı Kapsamında Değerlendirilmesi, (MSc Thesis, Maltepe Üniversitesi 2016) p. 90

12 Kırlı, Ö. (2009) Yasadışı Göç Sorunu: Uluslararası Davraz Kovgresi Bildirileri/Küresel Diyalog, Süleyman Demirel Üniversitesi İktisadi Ve İdari Bilimler Fakültesi Yayınları, pp. 2817-2825.

stay, to define migration: accordingly, individuals residing in a foreign country for over one year, regardless of whether it is regular or irregular, or voluntary or involuntary, are migrants.[13] Therefore, along with the definition of migration, that of the migrant is comprehensive of the act of moving from one place to another, by refugees and displaced persons.[14]

For the purposes of international law, a refugee is a person who *"…owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country…"*.[15] Therefore, being legally recognized as a refugee requires fulling certain eligibility conditions. Inevitably, the individual should be a foreigner, in other words, outside the borders of the country of origin, which may not only be grounded on oppression, threat to the right to life, war, poverty and civil unrest but also Article 1 of the 1951 Convention Relating to the Status of the Refugees, a well-founded fear of being persecuted for reasons of membership of a particular social group or political opinion.[16] The Convention also states that a person ceases to be a refugee if *"…he has voluntarily re-availed himself of the protection of the country of his nationality; or having lost his nationality, he has voluntarily re-acquired it; or he has acquired a new nationality, and enjoys the protection of the country of his new nationality; or he has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or he can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality…"*.[17]

The said Convention does not apply to persons who are currently under the protection or assistance of organs or agencies[18] of the United Nations; who *"… has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; … has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a*

13 UN, Definitions, https://refugeesmigrants.un.org/definitions, accessed on 27.11.2020

14 Güneş, Ö. Türkiye İle Bağlantılı Yasadışı Göç ve İnsan Kaçakçılığının Analizi, (MSc Thesis, Turkish Military Academy 2004) p. 10.

15 1951 Convention Relating to the Status of the Refugees § 1/A/(2) & 1967 Protocol Relating to the Status of Refugees, § 1/A/(2)

16 Weissbrodt, D. (2008) The Human Rights of Non-citizens, Oxford University Press, p. 152.

17 1951 Convention Relating to the Status of the Refugees, § 1

18 With the exception of United Nations High Commissioner for Refugees

refugee; ... has been guilty of acts contrary to the purposes and principles of the United Nations.[19]*"*[20]

The Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa defines the term refugee, throughout the Article 1 thereof, as follows: "…every person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership

[19] The Purposes and Principles of the Charter of the United Nations, § 1
The Purposes of the United Nations are:

1. *To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;*
2. *To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;*
3. *To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and*
4. *To be a center for harmonizing the actions of nations in the attainment of these common ends.*

Purposes and Principles of the Charter of the United Nations, § 2
The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. *The Organization is based on the principle of the sovereign equality of all its Members.*
2. *All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.*
3. *All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.*
4. *All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.*
5. *All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.*
6. *The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.*
7. *Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter Vll.*

[20] 1951 Convention Relating to the Status of the Refugees, § 1

of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. The term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality."[21]

The Article 1 of AALCO's 1966 Bangkok Principles on Status and Treatment of Refugees, a regional instrument, defines 'refugee' as *"... a person who, owing to persecution or a well-founded fear of persecution for reasons of race, colour, religion, nationality, ethnic origin, gender, political opinion or membership of a particular social group: (a) leaves the State of which he is a national, or the Country of his nationality, or, if he has no nationality, the State or Country of which he is a habitual resident; or, (b) being outside of such a State or Country, is unable or unwilling to return to it or to avail himself of its protection ...*".[22]

The term 'asylum seeker' is defined as *"someone who leaves their own country, often for political reasons or because of war, and who travels to another country hoping that the government will protect them and allow them to live there"*[23] in the Cambridge Dictionary, and is, therefore, not identical to a refugee: asylum refers to a right whereas the status of refugee may be construed to result from the phenomenon itself.[24] An asylum seeker is a person leaving his/her country forcibly, taking sanctuary within the land, diplomatic missions or consulate facilities, or on warships or state-owned aircraft of a state, and seeking for the protection of that country.[25] In this respect, an asylum, being a body of protection, differs from the status of a refugee, being referred to as the category of people who avail such protection.[26]

[21] The Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems, § 1 https://au.int/sites/default/files/treaties/36400-treaty-oau_convention_1963.pdf, accessed on 03.07.2020.

[22] 1966 Bangkok Principles on the Status and Treatment of Refugees, https://www.refworld.org/docid/3de5f2d52.html, accessed on 03.07.2020.

[23] Cambridge Dictionary, https://dictionary.cambridge.org/dictionary/english/asylum-seeker, accessed on 03.07.2020.

[24] Büyükçalık, M.E. (2015) Mülteci Hukuku'nun Gelişimi ve Türkiye'de Mültecilerin Sosyal Hakları, Oniki Levha Yayınları, p. 224.

[25] Pazarcı, H. (2005) Uluslararası Hukuk Dersleri, Turhan Kitabevi, p. 186.

[26] Gil-Bazo, M.T. (2015) Asylum as a General Principle of International Law: International Journal of Refugee Law 27, (1), p. 7.

International law does not define family conclusively, either. Some countries adopt the definition of extended family whereas some do that of nuclear family. An immediate family consists of a partner and unemancipated minors, while an extended family consists of other family members. For the purposes of no prejudice to the principle of non-discrimination, a fundamental principle of international law, states are encouraged to adopt the definition of extended family.[27] Human Rights Committee, General Comment 19 on the Article 23 of International Covenant on Civil and Political Rights, refers to an implication that being a family should not be delimited by marriage but the possibility of procreation and living together[28], and to establish economic bonds along with a regular and strong relationship.[29] European Court of Human Rights also highlights that family life is rooted from not only legal civil relationships but also genuine relationships.[30] It has been long that informal and religious marriages are recognized under the Article 8[31] of the European Convention on Human Rights.[32]

Family/members of the family is referred to as "… persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned …" in the Article 4 of International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.[33] To the same Convention, family reunification refers to the demand

27 Council of Europe Commissioner for Human Rights. (2017) Realising the right to family reunification of refugees in Europe, p. 15.

28 UN Human Rights Committee (HRC), CCPR General Comment No. 19§ 23 Protection of the Family, the Right to Marriage and Equality of the Spouses, https://www.refworld.org/docid/45139bd74.html, accessed on 03.07.2020.

29 Elçin, D. (2017) Yabancılar ve Uluslararası Koruma Kanunu'nda Aile İkamet İzni: Aile Hayatı Hakkı Mı? Aile Birleşimi Hakkı Mı?: Türkiye Adalet Akademisi Dergisi 30, p. 122.

30 Council of Europe Commissioner for Human Rights. (2017), ibid. p. 15.

31 § 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.*

32 Council of Europe Commissioner for Human Rights. (2017), ibid. p. 15.

33 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
Adopted by General Assembly resolution 45/158 of 18 December 1990. https://www.ohchr.org/Documents/ProfessionalInterest/cmw.pdf, accessed on 03.07.2020.

by the members of a family, who settled in different countries due to voluntary or involuntary migration, for entrance or stay to reunite in a country other than their country of origin or domicile. Family reunification, a legal procedure by nature, is at the discretion of the states; however, it is a right secured under international conventions. The Appendix to the European Social Charter of 1961, for the purposes of the Article 19, paragraph 6 thereof, sets forth that the term "family of a foreign worker" is construed to consist of "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.".[34]

Notwithstanding such approach of international law, states stipulating the condition, especially for the migrants, to present proofs of family bonds, causes tension and makes family reunification practically void. The Third-Country National Policy imposed not only lacks reasonable grounds but also violates the Article 1, Paragraph 3 of the Charter of the UN and ECHR Article 14 on the prohibition of discrimination,[35] as migrants are very likely to stay in a country of transit for long periods and some to found family there.

2. OVERVIEW OF THE INTERNATIONAL AND EU LEGISLATIVE FRAMEWORK ON FAMILY REUNIFICATION

Pacta sunt servanda constitutes one of the core principles of international law. Vienna Convention on the Law of Treaties[36] stipulates that every treaty in force is binding upon the parties and must be performed in good faith.[37] Thereof further sets forth that a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.[38] Therefore, any and all treaties addressed in this section are binding upon and put the contracting states under obligation.

The Article 16 of Universal Declaration of Human Rights,[39]published in 1948 and binding upon all members states of the United Nations, identifies 'family' as the natural and fundamental group unit of society. The same Article also states that family is entitled to protection by the society and the State and men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.

34 European Social Charter, Strasbourg, 3.V.1996, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007cde4, accessed on 03.07.2020.

35 Council of Europe Commissioner for Human Rights. (2017), ibid. p. 15.

36 Vienna Convention on the Law of Treaties, https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf, accessed on 28.11.2020.

37 Vienna Convention on the Law of Treaties § 26

38 Vienna Convention on the Law of Treaties § 26

39 The Universal Declaration of Human Rights, https://www.un.org/en/universal-declaration-human-rights/, accessed on 05.07.2020.

The 1949 Geneva Conventions,[40] considered to be constitution of the humanitarian treatment, addresses the protection of human rights in armed conflicts. Armed conflicts disperse the families of internees and civilians. Article 26 of the Convention (IV) relative to the Protection of Civilian Persons in Time of War[41] regards the dispersed families. Accordingly: *"Each Party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible (...)"*

Article 8 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms,[42] on the other hand, addresses the right to right to respect for private and family life. Accordingly, *"everyone has the right to respect for his private and family life, his home and his correspondence."*

The major criticism against the 1951 Convention Relating to the Status of Refugees the lack of arrangements towards family reunification. It is unfortunate that this Convention, as the most important legal arrangement towards refugees, bears not even a single reference to family reunification. However, Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons considers *"the unity of the family, ..., is an essential right of the refugee ..."* and recommends the governments to the necessary measures for the protection of the refugee's family.[43]

Long after, the UN High Commissioner for Refugees published a series guideline.[44] The Executive Committee of the High Commissioner's Programme, also known as ExCom, formed of intergovernmental officials, insistently highlighted the significance of family reunification.[45] ExCom,

40 Geneva Convention Relative To The Protection Of Civilian Persons In Time Of War Of 12 August 1949, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf, accessed on 28.11.2020.

41 Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/1a13044f3bbb5b8ec12563fb0066f226/7f15bb724290e0f8c12563cd0042b8ca, accessed on 05.07.2020.

42 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, https://www.echr.coe.int/documents/convention_eng.pdf, accessed on 28.11.2020.

43 UNHCR, "Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons", A/CONF.2/108/Rev.1 (25 July 1951), accessed on 10.07.2020.

44 UNHCR, Note on family reunification (UNHCR, August 1981) and UNHCR, Guidelines on reunification of refugee families (UNHCR, July 1983), available at www.unhcr.org/3bd0378f4.pdf, accessed on 17.08.2020.

45 UNHCR. (2014) A Thematic Compilation Of Executive Committee Conclusions, pp. 223-229.

which is quasi-legal – not legally binding – and construed to reflect "Soft Law", adopted five principles in support of family reunification, in 2001.[46]

The 1966 International Covenant on Civil and Political Rights[47] pertains to the right to privacy in the Article 17 thereof, as follows: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation ..." and therefore, the contracting states are to secure everyone against such interferences. The Article 23 thereof is specifically dedicated to the protection of family, as per the provisions whereof: "... States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution ...". It is of great importance to note that UN Human Rights Committee also recommends the term "family" should be interpreted as "extended family" for the purposes of the International Covenant on Civil and Political Rights. The Committee also acknowledges that absence of officially recognized marriage is no prejudice to the implementation of the covenant and a family bond is sufficient. The most significant of point to highlight in the CCPR General Comment No. 15 in 1986 is the extent of the discretion of the states for the purposes of family reunification.[48] Accordingly; in principle, states have sovereignty to or not to admit entrance to their countries. However, the protection under the Covenant shall apply to foreigners in the cases of inhuman and degrading treatment and violation of the right family life.[49] As the body for the proper implementation of the International Covenant on Civil and Political Rights by the states, the UN Human Rights Committee has made decisions on numerous family reunification cases. *Byahuranga v. Denmark*[50] case, briefly stated, is with respect to the appellant, an Ugandan national, having settled in Denmark, married to a Tanzanian national and with two children. There were two options asserted: the family of the appellant, the appellant having been deported due to a drug-related crime, would either stay in Denmark or be

46 UNCHR. (2001) Background Note On Family Reunification In The Context Of Resettlement And Integration, available at www.unhcr.org/protection/resettlement/3b30baa04/background-noteagenda- item-family-reunification-context-resettlement-integration.html, accessed on 17.08.2020.

47 International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx, accessed on 19.08.2020.

48 UN Human Rights Committee (HRC), CCPR General Comment No. 15: The Position of Aliens Under the Covenant, 11 April 1986, available at: https://www.refworld.org/docid/45139acfc.html, accessed on 29 September 2020.

49 Ibid. § 5.

50 Jonny Rubin Byahuranga v. Denmark, Communication no. 1222/2003, http://hrlibrary.umn.edu/undocs/html/1222-2003.html, accessed on 04.12.2018.

deported to Uganda along with the appellant. The decision of the Committee on the communication thereto was that the appellant being deported to Uganda may not be construed to be in prejudice to the right to family life due to the nature of the crime committed. *Madafferi v. Australia*[51] case, briefly stated, on the other hand, pertains to the appellant, a former convict, married to an Australian national and with children. His application for permanent stay in Australia was refused due to his past conviction, however, the Committee made a decision that appellant leaving the country with or without his family would be construed as an interference with family life. Another case, *Dernawi v. Libya*, regards to a family, having been forced to remain in Libya in spite of the decision on family reunification, as their passports were confiscated, whereby family reunification was interfered, and Libya was found to be in violation.[52] In *Gonzalez v. Guyana* case, Guyana was found to be in violation of 17/1, where Guyanese officials refused to grant residence for the spouse, a Cuban national and physician, of the appellant, and failed to deliver opinion as to what country the family may live in.[53] The decision is in further claim of such interference may not be arbitrary and has to be in reasonable accordance with the provisions of the Covenant.[54] In *Ngambi and Nébol v. France* case, the Committee attested that the Article 23 of the Covenant "… guarantees the protection of family life including the interest in family reunification".[55] In addition to these decision, the Committee also delivered opinions as to the states. For instance, in the Concluding observations of the Human Rights Committee in 1966 on Switzerland it was noted that family reunification is authorized only after 18 months of stay, and it was, in Committees view, too long.[56] Also, the Concluding observations of the Human Rights Committee in 2007 on France, expressed the concerns on the length of family reunification procedures for recognized refugees.[57] In another Concluding observations of the Human Rights Committee in 2016, on Denmark, the Committee stated to be concerned about the restrictions that require a residence permit for more

[51] Madafferi v. Australia, Communication no. 1011/2001, http://www.bayefsky.com/pdf/australia_t5_iccpr_1011_2001.pdf, accessed on 04.12.2018.
[52] Farag El Dernawi v. Libya, No. 1143/2002, CCPR/C/90/D/1143/2002, § 6.3.
[53] Gonzalez v. Republic of Guyana, Communication No. 1246/2004, https://www.refworld.org/cases,HRC,4c1895262.html, accessed on 16.08.2020
[54] Gonzalez v. Republic of Guyana, ibid, § 14.3.
[55] Benjamin Ngambi and Marie-Louise Nébol v. France, CCPR/C/81/D/1179/2003, UN Human Rights Committee (HRC), 16 July 2004, available at: https://www.refworld.org/cases,HRC,4162a5a46.html, accessed on 17.08.2020.
[56] Consideration of Reports Submitted By States Parties Under Article 40 Of The Covenant, Switzerland, CCPR/C/79/Add. 70 (1996) § 18.
[57] Consideration of Reports Submitted By States Parties Under Article 40 Of The Covenant, France, CCPR/C/FRA/CO/4 (2008) § 21.

DISPERSED FAMILIES: LEGAL AND PRACTICAL BARRIERS TO REFUGEE FAMILY REUNIFICATION
Prof. Dr. Mesut Hakkı CAŞİN, Türkan Melis PARLAK

than the last three years for family reunification.[58] The fact that the committee handles the issue differently in its decisions despite all these suggestions is a clear indication that it still does not had a clear approach to family reunification.

American Convention on Human Rights of 1969, in Article 17, refers to family as "… the natural and fundamental group unit of society and is entitled to protection by society and the state …"[59]

The Article 9 of the 1989 UN Convention on the Rights of the Child pertains to family bonds as well.[60] Accordingly; *"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."*[61] Article 10 thereof, referring to the Article 9, states *"… 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. 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…"*[62] The Article 16, merely reflecting the provisions of Article 17 of the International Covenant on Civil and Political Rights, prohibits the arbitrary and unlawful interference with the child's family life.[63] The Committee on the Rights of the Child, with the authority and power to admit and intergovernmental and individual appeals, also publishes General Comments. The General Comment No. 6 concerning the treatment of unaccompanied and separated children outside their country of origin attests that family reunification for an unaccompanied or separated child is a must unless otherwise is to the best interests of such child.[64] "the best interest" referred to therein is the presence of a reasonable risk that the fundamental human rights of the child may be violated in the case of family

[58] Consideration of Reports Submitted By States Parties Under Article 40 Of The Covenant, Denmark, CCPR/C/DNK/CO/6 (2016) § 35.
[59] American Convention On Human Rights, see https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm for full-text, accessed on 19.08.2020.
[60] Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, see https://www.ohchr.org/en/professionalinterest/pages/crc.aspx for full-text, accessed on 17.08.2020.
[61] CRC, § 9/1.
[62] CRC, §10.
[63] Council of Europe Commissioner for Human Rights, (2017), ibid. p. 19.
[64] UNCRC, (2005) General Comment No 6: Treatment of unaccompanied and separated children outside their country of origin, 39th Session, UN Doc CRC/GC/2005/6, § 81.

reunification in the country of origin.[65] The Committee reports concerns about certain countries failing to ensure or adopt restrictions towards family reunification and highlights the legal gaps in the protection children.[66] In this respect, the Committee had specific criticism against the procedures Poland adopts for family reunification.[67]

In the European Social Charter, in item 6 of Article 19, states undertake "… to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory …". Another conclusion is by the European Committee of Social Rights that requirements for language proficiency or integration exams and courses hinder family reunification, and is therefore not in conformity with item 6 of Article 19 of the European Social Charter.[68] Pursuant to the European Union Law, citizens of the member states of European Economic Community[69] and their family members have the right to travel to and reside and work within any member state as per the Schengen Agreement. On the other hand, in relation to family members who are not part of the core family, the CJEU held that EU Member States have a wide discretion in selecting the factors to be considered when examining the entry and residence applications of the persons.[70] According to the Dublin II Regulation, any applications seeking asylum can be examined by a single Member State[71], wherefore members of a family dispersed to different countries may not seek for asylum in those countries, with the exception of Humanitarian Clause[72] thereof, where any Member State, regardless of whether it is responsible under

65 UNCRC, (2005), § 82.

66 Hodgkin, R. and Newell, P. (2007) Implementation Handbook for the Convention on the Rights of the Child, UNICEF, p. 126,https://www.unicef.org/publications/files/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child.pdf, accessed on16.08.2020.

67 UNCRC, (2015) Consideration of reports submitted by states parties under Article 44 of the Convention – Concluding Observations: Poland, 70th Session, UN Doc CRC/C/POL/CO/3-4, § 44-45.

68 ECSR. (2015) "Conclusions Article 19-6", Austria, available at http://hudoc.esc.coe.int/eng?i=2015/def/AUT/19/6/EN, accessed on 17.08.2020

69 See https://www.schengenvisainfo.com/schengen-visa-countries-list/ for the list of Member States, accessed on 06.12.2018.

70 FRA, Handbook on European law relating to asylum, borders and immigration, European Union Agency for Fundamental Rights, Belgium, 2015, p. 130, https://fra.europa.eu/sites/default/files/fra_uploads/handbook-law-asylum-migration-borders-2nd-ed_en.pdf, accessed on 21.08.2020.

71 Dublin II Regulation, Regulation (EC) No 343/2003 of 18, § 3/2, https://www.asylumlawdatabase.eu/en/content/en-dublin-ii-regulation-regulation-ec-no-3432003-18-february-2003, accessed on 17.08.2020.

72 Humanitarian ground defined in the article is the dependency on the assistance of the other on account of pregnancy or a new-born child, serious illness, severe handicap or old age. Dublin II Regulation, (2003), ibid, §15

the criteria set out in the Regulation or not, may bring together family members, as well as other dependent relatives, on humanitarian grounds, at the request of another Member State and upon the consent of the persons concerned may examine an application. The Regulation limits the family members of an applicant to the spouse of the asylum seeker or his or her unmarried partner in a stable relationship, the minor children, the father, mother or guardian when the applicant or refugee is a minor and unmarried.[73] Such limitation of family members in the Dublin Regulation is a serious impediment to family reunification of dispersed asylum seekers.[74] This, inevitably, leads to the violation of provisions set forth in the Article 8 of the European Convention on Human Rights. According to the Qualification Directive,[75] beneficiaries of refugee status are to be granted a residence permit, which must be valid for at least 3 years and renewable[76], applicable to the family member of such as well, for which such residence permit may be valid for less than 3 years, without prejudice to assurance of family unity,[77] but renewable.[78] Within the EU Law, the right to family is regulated by Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification and protected under the Article 8 of the European Convention on Human Rights.[79] Accordingly; "… "family reunification" means the entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry…"[80] They shall apply where the sponsor is holding a residence permit issued by a Member State for a period of validity of one year or more who has reasonable prospects of obtaining the right of

73 Dublin II Regulation, (2003), ibid, §(i)(i)-(iii). https://www.asylumlawdatabase.eu/en/content/en-dublin-ii-regulation-regulation-ec-no-3432003-18-february-2003, accessed on 17.08.2020.

74 Ergül, E. (2013) Avrupa Birliği Müktesabatında Yabancıların Aile ve Özel Hayat Hakkı Çerçevesinde Korunması: Ankara Barosu Dergisi 3, p. 203.

75 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, https://eur-lex.europa.eu/eli/dir/2011/95/oj, accessed on 22.08.2020.

76 Directive 2011/95/EU, ibid, § 24/1.

77 Directive 2011/95/EU, ibid, § 23/1.

78 Directive 2011/95/EU, ibid, § 24/1/ 2.

79 Van Reisen M. and others. (2019) Refugees' Right to Family Unity in Belgium and the Netherlands: 'Life is Nothing without Family. In: Van Reisen, M., Mawere, M., Stokmans, M., & Gebre-Egziabher, K. A. (eds), Mobile Africa: Human Trafficking and the Digital Divide, Langaa Research & Publishing CIG, p. 456.

80 Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification, § 2/(d), https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32003L0086&from=EN, accessed on 18.08.2020.

permanent residence, if the members of his or her family are third country nationals of whatever status.[81] According to the Guidance for Application of Directive 2003/86/EC on the right to family reunification even when a situation is not covered by European Union law, MSs are still obliged to respect Article 8 and 14 ECHR.[82] Recommendation No R (99) 23 of the Council of Europe Committee of Ministers states "The rights and entitlements to be granted by member states to joining family members should in principle be the same as those accorded to their family member who is a refugee or another person in need of international protection, respectively." The Qualification Directive also states that not only the persons with refugee status but also their family members have the right to protection and the member states are to ensure the family unity.[83] However, the statistics of admission on such basis seems to be in conflict with this attitude of the EU organs. In this respect, states, in an attentive manner, should stipulate more favorable conditions for the family reunification of refugees. The case of *Abdülaziz, Cabales and Balkandalı v. the UK*[84] pertains to Mrs Cabales, a British citizen who is a lawful resident of the UK, married a Philippine citizen. However, her husband was denied entry to the UK by the British authorities. In the case filed for the violation of Article 8, the court stated that the term "family" expresses a lawful and genuine relationship and that the couple wanted to live a normal family life, however there was no violation as states have no obligation to admit citizens of non-member states to their country. The case is the British legal system grants British men the right to family reunification in the UK if they are married to wives of foreign nationality but not vise-versa, on the grounds whereof the Court ruled that the immigration policies of the UK are not compliant with the Articles 14 and 8 of the Convention; that is the national laws and discretion of the states on family reunification must be in no prejudice to the other provisions of the Convention and to the right to family life. That is, the decision ruled a violation not due to the denial of family reunification demand but discriminatory practices, and therefore, can be deemed to admit "the wide margin of appreciation" of nations for family reunification, in comparison to family life.[85]

81 Council Directive 2003/86/EC, ibid, § 3/1.
82 Communıcation 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, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014DC0210, accessed on 01.12.2018.
83 Reisen and others. (2019) ibid., p. 456.
84 Case Of Abdulaziz, Cabales And Balkandali v. The United Kingdom, Application no. 9214/80; 9473/81; 9474/81, http://hudoc.echr.coe.int/eng?i=001-57416, accessed on 01.12.2018.
85 Rohan, M. (2014) Refugee Family Reunification Rights: A Basis in the European Court of Human Rights' Family Reunification Jurisprudence, Chicago Journal of International Law, 15(1), p.360.

Another important ruling of the Court is on *Gül v. Switzerland.*[86] Accordingly; Mr. Gül, a Turkish national, left Turkey for Switzerland in 1983 and applied for asylum.[87] His wife also left Turkey for Switzerland in 1987 due to an incident.[88] The following year, they had a child, but the physicians refused to allow her to return to Turkey, due to her illness.[89] In 1989, the application to seek asylum was rejected, but a residence permit was granted in Switzerland on humanitarian grounds.[90] However, their later application to bring their two sons remained in Turkey to Switzerland was also rejected.[91] On the basis of this, the ECtHR ruled that residence permits are not for settlement purposes and that persons having such status are not entitled to family reunification in accordance with the Swiss law; further ruling that states have the discretion to control entry into their territory and whether or not to approve the request of non-citizens to bring their families into their lands, depending on the public interest and the situation of the persons, and that there was no violation.[92] In this judgment, The Court clearly distinguished between the legal justification and the moral consideration. This decision is one of the most typical decisions narrowing of the right to family reunification.[93]

In *Ahmut v. The Netherlands*[94] case, the applicant, a Moroccan citizen, settled in the Netherlands upon divorce.[95] Two of the five children of the applicant moved with the applicant on a student visa.[96] Upon the death of applicant's ex-wife, the elderly grandmother took care of the children.[97] However, as the grandmother was of old age the applicant requested to take his children with him, where such request was rejected by the Dutch authorities.[98] The Court ruled that there was nothing hindering the applicant from returning to Morocco, as he was both a Moroccan and a Dutch national, and therefore, that there was no violation of family reunification in terms of immigration.[99] This

86 Case of Gül v. Switzerland, Application no. 23218/94, http://hudoc.echr.coe.int/eng?i=001-57975, accessed on 01.12.2018.
87 Case of Gül v. Switzerland §§ 6-7
88 Case of Gül v. Switzerland § 8
89 Case of Gül v. Switzerland § 9
90 Case of Gül v. Switzerland § 11
91 Case of Gül v. Switzerland § 14
92 Case of Gül v. Switzerland §§§ 36-38
93 John, A., Family Reunification for Migrants and Refugees: A Forgotten Human Right?, p. 20. http://www.igc.fd.uc.pt/data/fileBIB2017724164832.pdf, accessed on 21.11.2020.
94 Case of Ahmut v. The Netherlands, Application no. 21702/93, http://hudoc.echr.coe.int/eng?i=001-58002, accessed on 01.12.2018.
95 Case of Ahmut v. The Netherlands §§§§ 7-10
96 Case of Ahmut v. The Netherlands § 16
97 Case of Ahmut v. The Netherlands § 12
98 Case of Ahmut v. The Netherlands § § 17-18
99 Case of Ahmut v. The Netherlands §§ 70 -71

profoundly controversial ruling is recognized by the emphasis that Article 8 (of the Convention) cannot be considered to impose on a State a general obligation to respect immigrants' choice of the country of their matrimonial residence and to authorize family reunion in its territory.[100] The *Gül* and *Ahmut* decisions imply that, in order for a person to successfully appeal a rejection of family reunification, it must be impossible or at least extremely difficult for them to continue elsewhere the family relation they experienced prior to migration.[101] That is, the Court ruled that the States have a margin of appreciation as to whether the dual citizen may or may not benefit from the right to family reunification.

Another case of the same nature but different ruling is *Şen v. The Netherlands*,[102] where Şen moved to the Netherlands, leaving her daughter in Turkey, and Dutch authorities rejected his application to bring his daughter.[103] Upon the application, the Court ruled it was violation on the basis of the facts that the applicant's family had been living in the Netherlands for long period of time and had children born and grown there.[104] What is critical to this ruling is the Court's acknowledgment of the existence major obstacle to the rest of the family's return to Turkey.[105] This decision is an indication that the Court has softened its approach five years after Gül.[106]

Tuquabo-Tekle and Orhers v. the Netherlands[107] is a reflection of Court's opinion towards the respect to family life, specifically the respect thereto inclusive of children. In 1989, Mrs. Tuquabo-Tekle fled to Norway. In 1992, she married Mr. Tuquabo, who was living in the Netherlands, the next year, in 1993, she moved there to live with Mr. Tuquabo. Their application in 1997 for a residence visa for their 15-year-old (step) daughter, which was rejected on the grounds that to authorize family reunion in the Netherlands since the close family ties between Mrs. Tuquabo-Tekle and her daughter were considered to have ceased to exist and such ties had never existed between Mr. Tuquabo and his stepdaughter.[108] The Court ruled that it is a violation of the Article 8 on the

100 Case Of Ahmut V. The Netherlands § 67(c)
101 Rohan, ibid., p. 362.
102 Case of Sen v. The Netherlands, Application no. 31465/96, http://hudoc.echr.coe.int/eng?i=001-64569, accessed on 04.12.2018.
103 Case of Sen v. The Netherlands § 22
104 Case of Sen v. The Netherlands §§ 41-42
105 Roagna, I. (2012) Protecting the right to respect for private and family life under the European Convention on Human Rights, Council of Europe Human Rights Handbooks, Strasbourg, p. 89.
106 Roagna, ibid, p. 89.
107 Case Of Tuquabo-Tekle And Others V. The Netherlands, Application no. 60665/00.
108 Case Of Tuquabo-Tekle And Others V. The Netherlands §12.

grounds of a previous decision[109] having held that parents who leave children behind while they settle abroad cannot be assumed to have irrevocably decided that those children are to remain in the country of origin permanently and to have abandoned any idea of a future family reunion.[110]

In the case of *Osman v. Denmark*,[111] the Court ruled that Denmark's rejection of the application for residence permit by Sahro Osman, who moved to Denmark as a refugee and lived there with her father and sister, to return to her family two years after leaving for Kenya to care for her grandmother, was a violation of the Article 8 of the Convention.[112]

Another ruling of precedent nature is the one of the *Pajić v. Croatia*[113] case. The Court held that there had been a violation of Article 14 taken in conjunction with Article 8 of the Convention, as the family reunification rules in Croatia did not allow same-sex couples to apply.[114] The Court holds that Croatian legal system recognizes extramarital relationship of same-sex couples, whereas only different-sex couples, regardless of whether married or unmarried, are allowed to residence permit for family reunification purposes.[115] Assessed carefully, the Court's ruling does not address the rights of same-sex couples to application for family residence permit but rather holds that the Alien's Act of Croatia, where relationship of same-sex couples are recognized regardless of whether it is marital or extramarital, not allowing such couples to apply for a family residence permit is in violation of ECHR.[116] This, on the other hand, implies that States not recognizing relationship of same-sex couples in their domestic law may not be imposed an obligation to allow for family residence permit with respect to such couples.

Boultif v. Switzerland[117] case pertains to non-renewal of residence permit of Mr. Boultif, married to a Swiss national, due to criminal involvement.[118] On the grounds that the applicant's wife did not speak Arabic, and Boultif completed his sentence, the court ruled that the Swiss authorities' policy and their interference was not proportionate to the aim pursued, in violation of

109 See. Şen v. the Netherlands, no. 31465/96, § 40.
110 Case Of Tuquabo-Tekle And Others V. The Netherlands § 45.
111 Case of Osman v. Denmark, Application no. 38058/09, http://hudoc.echr.coe.int/eng?i=001-105129, acccessed on 04.12.2018.
112 Case of Osman v. Denmark §§ 55-56
113 Case of Pajić v. Crotia, Application no. 68453/13, http://hudoc.echr.coe.int/eng?i=001-161061, accessed on 09.09.2020.
114 Case of Pajić v. Crotia §§ 79-84
115 Case of Pajic v. Croatia § 72.
116 Elçin, ibid., p. 134.
117 Case of Boultif v. Switzerland, Application no. 54273/00, http://hudoc.echr.coe.int/eng?i=001-59621, accessed on 04.12.2018.
118 Case of Boultif v. Switzerland § 14

Article 8.[119] This ruling is of great importance, as the criteria for expelling foreigners are now known as Boultif Criteria,[120] which are:

- the nature and seriousness of the offence committed by the applicant;
- the duration of the applicant's stay in the country from which he is going to be expelled;
- the time which has elapsed since the commission of the offence and the applicant's conduct during that period;
- the nationalities of the various persons concerned; the applicant's family situation, such as the length of the marriage;
- other factors revealing whether the couple lead a real and genuine family life;
- whether the spouse knew about the offence at the time when he or she entered into a family relationship; and
- whether there are children in the marriage and, if so, their age.

Not least, the Court will also consider the seriousness of the difficulties which the spouse would be likely to encounter in the applicant's country of origin.[121] Occasionally, for some rulings, criteria may include the best interests and welfare of the child.

The 2011 Qualifications Directive ensures the right to family unity of persons eligible for subsidiary protection, who do not qualify for family reunification along with the refugees, along with that of the refugees.[122] In the cases of temporary protection, there is a consensus on the need for prompt reunification during temporary protection, as the refugee status may take long to be determined.[123] To qualify for family reunification the family ties should have existed already in the country of origin, such the ties should have been disrupted due to circumstances surrounding the mass influx, and that the family

119 Case of Boultif v. Switzerland § 48

120 Thym, D. (2008) Respect for Private and Family Life under Article 8 ECHR in Immigration Cases: A Human Right to Regularize Illegal Stay?: International & Comparative Law Quarterly 57, (1), p. 93

121 Peker, A. AİHM' nin Geliştirdiği İlkeler Bağlamında Aile Hayatına Saygı Gösterilmesi Hakkı, (MSc Thesis, Gazi University 2015) p. 81.

122 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, https://eur-lex.europa.eu/eli/dir/2011/95/oj, accessed on 17.08.2020.

123 Jastram, K. and Newland, K. "Family Unity and Refugee Protection", in Feller, E. Türk, V. and Nicholsonc, F. (eds) (2003) Refugee Protection in International Law: UNHCR's Global Consultations on International Protection, Cambridge University Press, p. 589. https://www.refworld.org/pdfid/4bed15822.pdf, accessed on 04.09.2020.

members must be either beneficiaries of temporary protection themselves (but present in another member state) or in need of protection,[124] in the context of which, a previous Council Directive[125] considers "… the spouse of the sponsor or his/her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens; the minor unmarried children of the sponsor or of his/her spouse, without distinction as to whether they were born in or out of wedlock or adopted …" as a part of the family.

3. RESTRICTIVE ATTITUDES TOWARDS FAMILY REUNIFICATION FOR REFUGEES

For refugees, family reunification is a legally and practically challenging procedure. The arduous procedures hinder families, adding to which, the states in Europe, developing policies based on various economic concerns, have challenging restrictions towards family reunification. For instance, German authorities restricted family reunification for certain beneficiaries of subsidiary protection with a two-year suspension in order to minimize the impact of refugee crisis in 2016.[126] Likewise, Hungary, Cyprus and Greece did not grant those benefiting from subsidiary protection the right to family reunification. In 2015, Sweden introduced restrictions to the right to family reunion for persons granted subsidiary protection.[127]

Another issue concerns the child refugees. Failure to determine the age of the child, especially of those from countries with poor birth registration, poses problematic consequences that may end up with the child taken into custody. Age examination should be carried out in multidisciplinary manners, in accordance with medical ethical standards and inevitably with the consent of the child or his guardian. In addition, both length of wait and arduous procedures have devastating effects on unaccompanied children. Moreover, some countries such as Luxembourg require DNA testing to prove the lineage. One specific sub-problem is with the adopted children. States generally agree to child's right to family reunification, if official procedures as to adoption

124 Council of Europe Commissioner for Human Rights, (2017) ibid, p. 31.

125 Council Directive 2001/55/EC of 20 July 2001, https://eur-lex.europa.eu/eli/dir/2001/55/oj, accessed on 04.09.2020.

126 Janne Grote, Family Reunification of third-country nationals in Germany, Focused study by the German National Contact Point for the European Migration Network (EMN), Federal Office for Migration and Refugees 2017, available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/11a_germany_family_reunification_en_final.pdf, accessed on 04.09.2020

127 UNHCR Official Website, https://www.unhcr.org/neu/27059-unhcr-welcomes-swedens-decision-to-re-introduce-access-to-family-reunion.html, accessed on 09.09.2020

are complete. Another controversial issue is with children of the spouse from another partnership. Above all, it is still at the discretion of the states as to who is considered as the part of the family. On the other hand, certain countries recognize the right to family reunification for unofficial partnerships, provided that they meet certain criteria.[128]

The most prominent challenge in family reunification is the length of qualification. Long periods for qualification pose risk of losing rights for children who are close to the age of majority. Although the 1951 Convention explicitly sets forth that such periods would not apply to family reunification of refugees, states generally impose a two-year suspension procedure for applications with regard thereto, where such suspension period may be longer, especially for the beneficiaries of subsidiary protection.[129]

Many states stipulate short-term deadlines for family reunification applications. However, it is literally impractical to expect most refugees to meet such deadlines,[130] as the applicants have difficulty in collecting the necessary documents while tracing their family members. One of the current debates on the resolution of this issue is to extend this period from three months to six months. Furthermore, family reunification procedures for the beneficiaries of international protection are extremely lengthy, usually taking several years.[131] This delay is the consequence of embassies, especially in those countries with the largest influx of refugees, with insufficient resources and lacking accessible and up-to-date information and support for applicants.[132] However, states extending this period of time make it more challenging for families as long periods of separation have a severe psychological impact on the whole family. Moreover, it worsens the risks for family members who face the danger of persecution that caused them to seek international protection in the first place, and unfavorable living conditions pose threat to the health of the

128 For instance, Ireland. Nicholson, F. (2018) The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification: UNHCR, p. 165.

129 Suspension period is 3 years in Austria, Denmark and Switzerland. EMN (2017) Family Reunification of Third-Country Nationals in the EU plus Norway: National Practices: EMN Synthesis Report for the EMN Focussed Study 2016, p. 20, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_family_reunification_sr_final.pdf, accessed on 29.11.2020

130 In 2012, UNHCR reported that the three-month restriction is exploited by the states to hinder refugees from family reunification. Luxemburg, Sweden and Hungary are among such states. For detailed information see https://www.unhcr.org/ro/wp-content/uploads/sites/23/2016/12/Family_Rseunification.pdf, accessed on 10.09.2020

131 4 years, in the case France.

132 Red Cross EU Office, (2016) Disrupted Flight: The Realities of Separated Refugee Families in the EU, p. 12. https://redcross.eu/positions-publications/disrupted-flight-the-realities-of-separated-refugee-families-in-the-eu.pdf, accessed on 10.09.2020

family members. The education of the children and the social costs incurred by the states are not exempt from this situation.[133]

Another problem posed to the refugees is the verification of family link, which is denied international organizations in consideration of the refugee status.[134] Researches carried out revealed that many applications were rejected due to outstanding documents; for instance, the UK adopts strict rules towards that issue, which hinder families from family reunification due to the high-standard expectations for identifying documents.[135] Moreover, it is highly risky and impractical to demand identifying documents from war zones.

Although UNHCR calls for waivers from fees, and for financial support to enable family reunification, the financial burden is still on refugees due to the fees charged for the applications. Visa and embassy fees, translation costs, travel and accommodation expenses for refugees residing away from the embassies and DNA tests are quite costly.[136]

4. ACCESS TO RIGHTS AFTER REUNIFICATION IN EUROPEAN UNION

The problems that await refugees are not limited to the legal difficulties before family reunification only; after the family reunification various problems await them beginning with the integration to a new society. Certain problems are likely to arise regarding the rights to education, employment, vocational training, and application for residence permit.

In most member states of the European Union, migrant children have access to the resources of compulsory education.[137] Moreover, some states have specific support such as language learning for such children.[138] However, certain states such as Greece do not have regulations to support such access to education for third-country nationals reuniting with their families. In cases where family

133 Council Of Europe, (2017) Ending restrictions on family reunification: good for refugees, good for host societies, https://www.coe.int/en/web/commissioner/-/ending-restrictions-on-family-reunification-good-for-refugees-good-for-host-societies, accessed on 29.11.2020

134 UNHCR's ExCom Conclusion No. 24, Council of Europe Committee of Ministers Recommendation No. R (99) 23, § 4

135 Beswick, J. (2015) Not so Straightforward: The Need for Qualified Legal Support in Refugee Family Reunion: British Red Cross, pp. 37-39.

136 For Norway, the application fee is NOK 7.800 alone. Other expenses may be as costly as thousands of euros. For detailed information see https://www.udi.no/en/word-definitions/fees/#link-3593, accessed on 29.11.2020

137 Belgium, Bulgaria, Czechia, Germany, Estonia, Greece, Spain, Finland, France, Hungary, Ireland, Italy, Luxembourg, Latvia, Netherlands, Norway, Sweden, Slovakia and United Kingdom. For detailed information see https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_family_reunification_sr_final.pdf, accessed on 07.09.2020

138 Czechia, Belgium, Estonia, France, Lithuania, Luxembourg, Netherlands, Slovenia. EMN, ibid, p. 38.

members exceed the compulsory education age, language learning classes and integration support are still available. Beneficiaries of international protection are also offered social and integration counseling.

Certain states allow family members to obtain work permits following family reunification without requiring any additional administrative formalities, depending on residence permits.[139] However, family members may be restricted from access to certain public service due to the nationality requirements in such services.[140] In certain cases, family members may be required to apply for a work permit or qualify for a labor market within a certain period of time, which is usually 1 year, after family reunification.[141] Hungary is one EU Member State with the most restrictive policies for the employment of refugees and beneficiaries of subsidiary protection.

As to the right to access healthcare services, majority of the states offer refugee family members a health insurance identical to that offered to local citizens. However, in the UK, for example, access to public healthcare requires an additional 'immigration healthcare fee'.

Such differences are also prominent for residence permits. A majority of countries grant residence permit for the purposes of family reunification only, whereas Austria grants a residence permit for refugees, valid for three years, initially, and extensible for an indefinite period. Likewise, certain countries do not claim application fees from family members when applying for a residence permit,[142] whereas others do.[143]

TURKISH LAWS IN RESPONSE TO FAMILY REUNIFICATION

Turkey had long remained as a country of origin until 1990s, contrary to which, now, it is also a country of transit and destination.[144] The increase in the flow of third-country nationals to the country mandated a revision of law to accommodate the refugee issues[145], as not until recently there had been a comprehensive law on foreigners and to issues in relation to foreigners, two

[139] Czechia, Germany, Greece, Spain (requires work permit except the spouse and the children), France, Italy, Lithuania, Poland, Sweden and Slovenia. EMN, ibid, p. 38.
[140] Countries such as Cyprus have specific requirements for public service personnel. ELTOMA, Why Foreign Workers Can't Work in the Public Sector in Cyprus, http://www.eltoma-property.com/why-foreign-workers-cant-work-in-the-public-sector-in-cyprus/, accessed on 29.11.2020
[141] For example, Belgium and Hungary. IOM (2009) Comparative Study of the Laws in the 27 EU Member States for Legal Immigration: IOM, p.160 and 318.
[142] Austria, Germany, Belgium, Estonia, Cyprus, Greece.
[143] For example, Spain, Finland, France. EMN, ibid, p. 41.
[144] Ekşi, N. (2018). Yabancılar ve Uluslararası Koruma Hukuku, Beta Yayıncılık, p. 7.
[145] Bayındır Goularas, G. And Sunata, U. (2015) Türk Dış Politikasında Göç Ve Multecı Rejimı: Hacettepe Üniversitesi İletişim Fakültesi Kültürel Çalışmalar Dergisi, 2, (1), p. 20.

quasi-competent laws, the Passport Law No 5682 of 1950 and the Law on the Residence and Travel of Foreigners in Turkey No. 5683 of 1950, applied.[146] Therefore, driven by the requirement for a conforming regulation, the Turkish legislature enacted the Foreigners and International Protection Law No. 6458, in 2013.

Turkey has been a party to the 1951 Convention relating to the Status of Refugees since 1961, as well as to its 1967 Protocol, which revoked any geographical limits[147], since 1968, and is the only European Council Member State to still retain a geographical limitation to its ratification of the Convention[148]; accordingly, the term refuges applies to any person who "… As a result of events occurring in *Europe* before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."[149], which is also applicable in the Foreigners and International Protection Law. This geographic limitation is justified by the likelihood that the political unrest in Middle East and Asia may lead to refugee movements towards Turkey, due to its characteristics of a country of transit, as a result of which the European countries may consider Turkey to be a buffer zone.[150] [151] In this respect, the Foreigners and International Protection Law is a revision to Turkey's domestic law as a response, introduces the term 'conditional refugee', which refers to the non-European refugees and allows such refugees to reside in Turkey temporarily until they are resettled to a third country.[152] Moreover, a foreigner

[146] GNAT, Bill on the Foreigners and International Protection Law, https://www2.tbmm.gov.tr/d24/1/1-0619.pdf, Retrieved on 20.11.2020.
[147] The Protocol rules that the declarations to the Convention by the States Parties to the Convention shall remain applicable under the Protocol as well, which grants Turkey the right to retain the said limitations. See. Art. 1/3 of Protocol relating to the Status of Refugees. https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolStatusOfRefugees.aspx, Retrieved on 26.11.2020
[148] Amnesty International, https://www.amnesty.org.tr/icerik/turkiye-65-yil-once-imzalanan-cenevre-multeci-sozlesmesine-koydugu-sinirlamayi-kaldirmalidir, Retrieved on 20.11.2020.
[149] The Foreigners and International Protection Law, § 61/1.
[150] For a legal text with similar remarks, see. Regulation on the Procedures and Principles related to Possible Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to Seek Asylum from Another Country, § 3.
[151] Çiçekli,B. (2003), Yabancılar ve Polis: Seçkin Yayınları, p. 132
[152] The Foreigners and International Protection Law, § 62.

or a stateless person, who neither could be qualified as a refugee nor as a conditional refugee, shall nevertheless be granted subsidiary protection because if returned to the country of origin or country of habitual residence would be sentenced to death or face the execution of the death penalty; face torture or inhuman or degrading treatment or punishment; face serious threat to himself or herself by reason of indiscriminate violence in situations of international or nationwide armed conflict.[153]

Another status is temporary protection, which is applicable to foreigners, who are forced to leave their country [of residence/of citizenship/of origin] and are unable to return to such country and as a result whereof arrive at or cross the borders of Turkey in groups seeking urgent or temporary protection.[154] The current and concrete example where this status applies is the Syrians having had to flee to Turkey due to the Syrian Civil War. The number of Syrians under temporary protection in Turkey are officially reported to be 3,642,517 as of October 21, 2020.[155]

The Foreigners and International Protection Law does not have a definition of family residence permit whereas it defines family members. Accordingly, family members are the minor child(ren) and the dependent adult child(ren) of the applicant or the beneficiary of international protection.[156] The Law grants family residence permit for a maximum duration of three years at a time to the foreign spouse; foreign children or foreign minor children of their spouse; dependent foreign children or dependent foreign children of their spouse of Turkish citizens; of those who were formerly natural-born Turkish citizens but renounced their citizenship and their third degree lineal descendants[157], and of foreigners holding one of the residence permits as well as refugees and subsidiary protection beneficiaries.[158] However, the Law rules such duration of the family residence permit may not exceed that of the sponsor under any circumstances whatsoever. In cases of a polygamous marriage pursuant to the regulation in the foreigner's country of citizenship, only one of such spouses is issued a family residence permit, whereas the foreigner's children from other spouses may be granted a family residence permit.[159] With regard to family residence permit applications, sponsors are eligible only if they have a monthly income in any case not less than the minimum wage in total

153 The Foreigners and International Protection Law § 63.
154 Temporary Protection Regulation § I
155 Association for Refugees, https://multeciler.org.tr/turkiyedeki-suriyeli-sayisi/, Retrieved on 20.11.2020.
156 The Foreigners and International Protection Law, § 3/1(a).
157 Turkish Citizenship Law No. 5901 § 1/1.
158 The Foreigners and International Protection Law § 34/1.
159 The Foreigners and International Protection Law § 34/1.

corresponding not less than one third of the minimum wage per each family member; live in accommodation conditions appropriate to general health and safety standards corresponding to the number of family members and to have medical insurance covering all family members; submit proof of not having been convicted of any crime against family during the five years preceding the application with a criminal record certificate; have been residing in Turkey for at least one year on a residence permit, and have been registered with the address based registration system.[160] Such conditions, however, may not be sought for refugees and subsidiary protection beneficiaries who are in Turkey.[161] Foreigners protected under the Temporary Protection Regulation may also request family reunification in Turkey.[162]

Despite the clarification of some essential matters, the Foreigners and International Protection Law lacks a clear distinction between the organization of a family and family reunification.[163] However, Turkey, in compliance with its obligations under its national law and the conventions it is a party to pursuant to the international law, has been respectful to and flexible in terms of family and family reunification. In this respect, this approach of Turkey serves as a model for respect to family life, specifically in consideration of EU Acquis and the decisions held by ECtHR.

CONCLUSION

Family reunification is a legally difficult and arduous procedure. However, it puts much heavier burden on refugees. Having or to have left their families and homelands due to various causes, refugees would at least seek for new life with their family members, after struggles survived. However, both bureaucratic and legal barriers await refugees who are already dispersed by pains suffered. This is where the dilemma that states both have the positive responsibility to ensure and maintain the unity of families and have the absolute sovereignty whether or not to admit the right to family reunification. As a matter of fact, the practices vary between the states based on their policies. However, considering both the importance of the family and the best interests of the child, if any, then the decision-making mechanisms of international law should, to some extent, prevail the discretion of states.

As to who is considered a part of the family is also a controversial issue. It is not always practical to assert that families should be considered in the context of "nuclear family", as the cultures and traditions of the countries of origin may vary. Escapes and long-term exiles also have impact on family unity. The

160 The Foreigners and International Protection Law § 35/1.
161 The Foreigners and International Protection Law § 35/4.
162 Temporary Protection Regulation § 49/1
163 Elçin, ibid., p. 187.

European Court of Human Rights is a court with precedent judgments on family reunification, and not limiting family life to officially recognized marriages only, rules that partnership affairs must be considered for family reunification. In its rulings, the Court considers commitment factors, contrary to which a majority of states solely recognize official marriages for family reunification. In this century of human rights, such narrow perspective towards the family, contradicts the spirit of the conventions. In this respect, it is of the essence that international organization intervene and adopt a universal definition of "family" on a binding Convention. Furthermore, regardless of the discretion of the states, the right to family reunification should be defined in compliance with the Article 14 of the ECHR. Majority of the applications to the ECtHR for the violation of the Article 8 of European Convention on Human Rights concerning respect to family life, have been mostly submitted by foreigners having committed crimes in the country of residences and have been deported. However, in such cases, the Court usually considers proportionality of the decision to the lawful purposes and does not rules for the non-compliance of the contracting states. Specifically, "Boultif Criteria" apply to such incidents. For such incidents, the Court considers the nature and seriousness of the crime, the risks to the spouse in the destination country, and if any, the best interests and welfare of the child. However, the Court does not rule for violation on the party of the states, in consideration of their discretion, in the cases of drug-related crimes. Even at this point, such discretion should be minimal, for the purposes of family unity, and states should adopt other options such as rehabilitation and integration, instead of literally punishing the whole family, for the sake of protect their own interests. Finally, states should not ignore the beneficiaries of subsidiary protection and should recognize their right to family reunification, respecting their family life.

BIBLIOGRAPHY

Academic Articles, Books and Newspaper Articles

- Bülent Çiçekli, Yabancılar ve Polis (Seçkin Yayınları, 2003)
- Daniel Thym, "*Respect for Private and Family Life under Article 8 ECHR in Immigration Cases: A Human Right to Regularize Illegal Stay?"* (2008) International & Comparative Law Quarterly 57 (1)
- David Weissbrodt, *The Human Rights of Non-citizens* (Oxford University Press, 2008)
- Doğa Elçin, "*Yabancılar ve Uluslararası Koruma Kanunu'nda Aile İkamet İzni: Aile Hayatı Hakkı Mı? Aile Birleşimi Hakkı Mı*?" (2017) Türkiye Adalet Akademisi Dergisi 30
- EMN, *Family Reunification of Third-Country Nationals in the EU plus Norway: National Practices* (EMN Synthesis Report for the EMN Focussed Study 2016, 2017)
- Engin Ergül,"*Avrupa Birliği Müktesabatında Yabancıların Aile ve Özel Hayat Hakkı Çerçevesinde Korunması*" (2013) Ankara Barosu Dergisi 3
- Gallya Lahay, "*International Versus National Constraints in Family-Reunification Migration Policy*" (1997) Global Governance 3(3)
- Gökçe Bayındır Goularas and Ulaş Sunata, "*Türk Dış Politikasında Göç Ve Mülteci Rejimi*" (2015) Hacettepe Üniversitesi İletişim Fakültesi Kültürel Çalışmalar Dergisi 2(1)
- FRA, *Handbook on European law relating to asylum, borders and immigration, European Union Agency for Fundamental Rights*, (2015)
- Frances Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification* (UNHCR 2018)
- Hüseyin Pazarcı, *Uluslararası Hukuk Dersleri* (Turhan Kitabevi, 2005)
- IOM, *Comparative Study of the Laws in the 27 EU Member States for Legal Immigration* (IOM, 2009)
- Ivana Roagna, *Protecting The Right To Respect For Private And Family Life Under The European Convention On Human Rights,* (Council of Europe Human Rights Handbooks, 2012)
- Kate Jastram and Kathleen Newland, "*Family Unity and Refugee Protection*", in Erika Feller, Volker Türk, Frances Nicholson, (eds), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003)
- Jacob Beswick, *Not so Straightforward: The Need for Qualified Legal Support in Refugee Family Reunion* (British Red Cross, 2015)
- Janne Grote, *Family Reunification of third-country nationals in Germany*, European Migration Network, Working Paper 73 (2017)
- Jill Pellew, "*The Home Office and the Aliens Act, 1905"*(1989) The Historical Journal 32(2)
- Maria Teresa Gil-Bazo, "*Asylum as a General Principle of International Law*" (2015) International Journal of Refugee Law 27 (1)
- Mark Rohan, "*Refugee Family Reunification Rights: A Basis in the European Court of Human Rights' Family Reunification Jurisprudence*" (2014) Chicago Journal of International Law 15(1)
- Mehmet Akad, *Teori ve Uygulama Açısından 1961 Anayasası'nın 10. Maddesi* (İÜHFY, 1984)

- Mirjam Van Reisen, Eva Berends, Lucie Delecolle, Jakob Hagenberg, Marco Paron Trivellato & Naomi Stocker, *Refugees' Right to Family Unity in Belgium and the Netherlands: 'Life is Nothing without Family'* in Mirjam Van Reisen, Munyaradzi Mawere, Mia Stokmans, Kinfe Abraha Gebre-Egziabher, (eds), *Mobile Africa: Human Trafficking and the Digital Divide* (Langaa Research & Publishing CIG, 2019)
- Mürvet Ece Büyükçalık, *Mülteci Hukuku'nun Gelişimi ve Türkiye'de Mültecilerin Sosyal Hakları* (Oniki Levha Yayınları, 2015)
- Münci Kapani, *Kamu Hürriyetleri* (Yetkin Yayınları, 1993)
- Nuray Ekşi, *Yabancılar ve Uluslararası Koruma Hukuku* (Beta Yayıncılık, 2018)
- Özlem Kırlı, "*Yasadışı Göç Sorunu*" Uluslararası Davraz Kovgresi Bildirileri/Küresel Diyalog, (Süleyman Demirel Üniversitesi İktisadi Ve İdari Bilimler Fakültesi Yayınları 2009)
- Rachel Hodkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child* (UNICEF, 2007)
- Red Cross, *Disrupted Flight: The Realities of Separated Refugee Families in the EU* (2016)
- Yusuf Hakyemez, "*Toplum Sözleşmesi Kavramı ve Günümüz İnsan Hakları Kuramına Etkisi*" (2000) İdare Hukuku ve İlimleri Dergisi 13(1)

Thesis

- Abdülkadir Peker, AİHM'nin Geliştirdiği İlkeler Bağlamında Aile Hayatına Saygı Gösterilmesi Hakkı, (MSc Thesis, Gazi University 2015)
- Adem Akgün, Avrupa Birliği'nin Değişen Göç Politikalarının Sığınma Hakkı Kapsamında Değerlendirilmesi, (MSc Thesis, Maltepe Üniversitesi 2016)
- Özkan Güneş, Türkiye İle Bağlantılı Yasadışı Göç ve İnsan Kaçakçılığının Analizi, (MSc Thesis, Turkish Military Academy 2004)
- Yusuf Sidar Şahin, Avrupa Birliği Mülteci Hukukunda Üye Devletlerin İltica Başvurusunu Değerlendirme Yetkisinin Çerçevesi (MSc Thesis, Istanbul University 2013)

Court Decisions

- Abdulaziz, Cabales And Balkandali v. The United Kingdom, Application no. 9214/80, ECtHR
- Ahmut v. The Netherlands, Application no. 21702/93, ECtHR

- Benjamin Ngambi and Marie-Louise Nébol v. France, CCPR/C/81/D/1179/2003, ECtHR
- Boultif v. Switzerland, Application no. 54273/00, ECtHR
- Farag El Dernawi v. Libya, No. 1143/2002, CCPR/C/90/D/1143/2002, ECtHR
- Gonzalez v. Republic of Guyana, Communication No. 1246/2004, ECtHR
- Gül v. Switzerland, Application no. 23218/94, ECtHR
- Jonny Rubin Byahuranga v. Denmark, Communication no. 1222/2003, ECtHR
- Madafferi v. Australia, Communication no. 1011/2001, ECtHR
- Osman v. Denmark, Application no. 38058/09, ECtHR
- Pajić v. Crotia, Application no. 68453/13, ECtHR
- Sen v. The Netherlands, Application no. 31465/96, ECtHR
- Tuquabo-Tekle And Others V. The Netherlands, Application no. 60665/00, ECtHR

Legislation, Reports

- 1945 United Nations Charter
- 1966 Bangkok Principles on the Status and Treatment of Refugees
- 1967 Protocol Relating to the Status of Refugees
- 5901 sayılı Türk Vatandaşlığı Kanunu
- 6458 sayılı Yabancılar ve Uluslararası Koruma Kanunu
- American Convention On Human Rights
- Charter of the United Nations
- Consideration of Reports Submitted By States Parties Under Article 40 Of The Covenant, CCPR/C/DNK/CO/6, Denmark
- Consideration Of Reports Submitted By States Parties Under Article 40 Of The Covenant, CCPR/C/FRA/CO/4, France
- Consideration Of Reports Submitted By States Parties Under Article 40 Of The Covenant, CCPR/C/79/Add. 70, Switzerland
- Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification
- Council of Europe Commissioner for Human Rights. Realising the right to family reunification of refugees in Europe
- Convention on the Rights of the Child

- Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.
- 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
- 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
- Dr. Auguste R. Lindt, United Nations High Commissioner for Refugees, at the 10th meeting of the Council of the Inter-Governmental Committee for European Migration (ICEM), Naples, 5 December 1960 https://www.unhcr.org/admin/hcspeeches/3ae68fb820/speech-dr-auguste-r-lindt-united-nations-high-commissioner-refugees-10th.html
- Dublin II Regulation, Regulation (EC) No 343/2003 of 18
- European Social Charter, Strasbourg, 3.V.1996
- ECSR, Conclusions Article 19-6", Austria, 2015/def/AUT/19/6/EN, 2015
- Geçici Koruma Yönetmeliği
- Grand National Assembly of Turkey, Draft Law on Foreigners and International Protection
- International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976
- International Convention on the Protection of the Rights of All Migrant Workers and Members of
- The 1951 Refugee Convention
- The Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems
- The Universal Declaration of Human Rights
- UNHCR, A Thematic Compilation Of Executive Committee Conclusions, 2014
- UNCHR, Background Note On Family Reunification In The Context Of Resettlement And Integration, 2001

- UNCRC, Consideration of reports submitted by states parties under Article 44 of the Convention – Concluding Observations: Poland", 70th Session, UN Doc CRC/C/POL/CO/3-4, 2015
- UNHRC, CCPR General Comment No. 15: The Position of Aliens Under the Covenant, 11 April 1986
- UNCRC, General Comment No 6: Treatment of unaccompanied and separated children outside their country of origin, 39th Session, UN Doc CRC/GC/2005/6, 2005
- UNHCR, "Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons", A/CONF.2/108/Rev.1
- UNHCR, Note on family reunification (UNHCR, August 1981) and UNHCR, Guidelines on reunification of refugee families, 1983
- UN Human Rights Committee (HRC), CCPR General Comment No. 19 Protection of the Family, the Right to Marriage and Equality of the Spouses

Websites

- https://www.amnesty.org.tr/icerik/turkiye-65-yil-once-imzalanan-cenevre-multeci-sozlesmesine-koydugu-sinirlamayi-kaldirmalidir
- https://www.coe.int/en/web/commissioner/-/ending-restrictions-on-family-reunification-good-for-refugees-good-for-host-societies
- https://dictionary.cambridge.org/dictionary/english/asylum-seeker
- https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_family_reunification_sr_final.pdf
- http://www.eltoma-property.com/why-foreign-workers-cant-work-in-the-public-sector-in-cyprus/
- https://multeciler.org.tr/turkiyedeki-suriyeli-sayisi/
- https://refugeesmigrants.un.org/definitions
- https://www.schengenvisainfo.com/schengen-visa-countries-list/
- https://www.unhcr.org/neu/27059-unhcr-welcomes-swedens-decision-to-re-introduce-access-to-family-reunion.html