Parliamentary Assembly
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COUNCIL OF EUROPE
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Resolution 2243 (2018)[1]

Family reunification of refugees and migrants in the Council of Europe member States

Parliamentary Assembly

1. The Parliamentary Assembly is deeply concerned about growing political discourse and action against foreigners, which are a real threat to the protection of refugees and in particular their family life. Families must not be torn apart and should not be prevented from reuniting after an often dangerous and challenging departure from their country of origin, where their fundamental rights to safety and security were threatened.

2. Recalling that member States are committed to protecting the right to family life under Article 8 of the European Convention on Human Rights (ETS No. 5), the Assembly emphasises that this right applies to everyone, including refugees and migrants. Member States should provide for safe and regular means of family reunification, thus reducing the recourse to smugglers and mitigating the risks associated with irregular migration.

3. The Assembly points out that there is no common definition of family with respect to the right to family reunification. While member States may enjoy a broad margin of appreciation in matters concerning morals and religion, family rights require a higher level of protection under the European Convention on Human Rights. National authorities should therefore adopt an enabling approach to family reunification beyond the traditional definition of family which does not necessarily correspond to the multitude of ways in which people live together as a family today.

4. Children must not be discriminated against because their parents are unmarried, divorced or remarried, because they live in "rainbow" families or because they have been adopted by another person or brought up by grandparents or siblings. National authorities should pay particular attention to vulnerable persons, such as young children and family members with special physical or mental needs, who have a higher need for family reunification. Refugees must also be allowed to demonstrate family links formed in exile or while fleeing.

5. People fleeing persecution or war have the right to international protection, and their separated family members have the right to the same protection in accordance with the 1951 United Nations Convention Relating to the Status of Refugees. States should therefore ensure consistency in granting refugee status to members of the same family and thereby ensure that family life is protected, as required under Article 8 of the European Convention on Human Rights. Beneficiaries of international protection should have access to information about family reunification procedures, application forms and legal assistance in a language they can understand. Member States should consider establishing a revolving fund through bilateral agreements or national or European schemes, in order to cover the family reunification costs of beneficiaries of international protection who cannot afford it.

6. The Assembly notes with concern that national law often refuses the delivery of visas to family members of individuals who have not been granted refugee status but have been given subsidiary or temporary protection on humanitarian grounds. The protection of family life and the requirements of the best interest of the child under Article 10 of the United Nations Convention on the Rights of the Child necessitate,

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1. *Assembly debate* on 11 October 2018 (35th Sitting) (see Doc. 14626, report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Ms Ulla Sandbæk). *Text adopted by the Assembly* on 11 October 2018 (35th Sitting).
See also Recommendation 2141 (2018).

however, that such persons be able to maintain their family unity or to reunite with family members. Such subsidiary or temporary protection status must not be considered as an "alternative refugee status" with fewer rights. States should thus not substitute subsidiary or temporary protection status for refugee status, in order to limit family reunification due to the temporary and personal nature of this subsidiary status.

7. Regarding migrants, the Assembly emphasises that, in order to respect the protection of their family life and the best interest of the child, visa requirements for family members of migrants must not be a *de facto* obstacle to maintaining family unity. The Assembly particularly regrets that some States have high financial requirements or long waiting periods for migrants who wish to apply for visas for their family members. Where States are members of the European Union, European Union legislation on the freedom of movement of persons, including family members, must also be respected.

8. Under Article 10.2 of the Convention on the Rights of the Child, a child whose parents reside in different States shall have the right to maintain, on a regular basis, personal relations and direct contacts with both parents. The Assembly regrets that this right is often disregarded in the case of refugees and migrants. National authorities must duly protect this right by ensuring that both parents of a child are identified and contacted and enjoy equal rights to family reunification with their children. No parent must be discriminated against and discriminatory foreign laws must not be implemented by member States, if such laws grant more rights to one parent, for instance on gender or religious grounds.

9. Regarding minors who apply for refugee status abroad, the Assembly calls on national authorities to respect the Hague Convention on the Civil Aspects of International Child Abduction, because abduction can also refer to trafficked or smuggled minors or minors accompanied by only one parent. As this convention applies to children up to the age of 16, national authorities should have a distinct procedure for refugees and migrants below this age. This convention must also be respected where unaccompanied children are put under the guardianship of other persons, in order to ensure the protection of the family life of those children. Divorce proceedings should not be a hindrance to family reunification, as family reunification must serve primarily the best interests of the child.

10. The Assembly recalls that child refugees and minors have rights under the revised European Social Charter (ETS No. 163), including the right to financial and other support by the authorities of the States in which they reside. Therefore, family reunification should not be dependent on the financial situation of a parent who is a migrant or refugee. In this context, the Assembly notes with concern that children are sometimes left behind in another country for financial reasons and the fact that, under European Union legislation and national laws, child allowances are often paid irrespective of the actual residence of children. In accordance with the European Social Charter, responsibility rests with the national authorities where a child resides.

11. The Assembly also underlines that migrant and refugee children belong to the most vulnerable groups, especially those who are unaccompanied and separated from their families. They frequently suffer persistent violations of their human rights and fall through loopholes in child-protection frameworks. One of the vital measures is for an effective guardian to be appointed.

12. Family reunification is often hindered by the fact that the whereabouts of family members are unknown. National authorities must therefore ensure that all refugees and migrants are registered upon arrival and that such data is shared with competent authorities in other member States, in particular through the European Union's Schengen Visa Information System. This is crucial for unaccompanied minors in order to trace and find their parents and other family members. Without such data, family reunification might become a matter of chance, which is in violation of the right to protection of family life. In this context, the Assembly welcomes the long-standing work of the International Committee of the Red Cross (ICRC) in tracing missing family members and encourages greater co-operation between the ICRC and national authorities.

13. Family reunification also requires the competent authorities to set up adequate and functioning administrative procedures, including by consular services abroad. Countries of origin must deliver or reissue identification documents without delay and receiving countries must issue Refugee Convention Travel Documents or migrant visas, which allow the bearer to travel to family members and maintain family unity also across borders, in accordance with the European Agreement on the Abolition of Visas for Refugees (ETS No. 31) and, where applicable, European Union legislation. Member States should accept ICRC travel documents for family reunification purposes.

14. The Assembly calls on all member States to draw up and respect common guidelines for the implementation of the right to family reunification, in order to ensure that refugees and migrants are not forced to go to those countries where family reunification is easier. Hindrances to the protection of family life are not admissible under Article 8 of the European Convention on Human Rights to deter migrants or refugees and their family members.