DEVELOPMENTS IN FAMILY REUNIFICATION CASES BEFORE THE CJEU

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FRIEDERY, R. Developments in Family Reunification Cases Before the CJEU. Bratislava Law Review, Vol. 3, No. 2 (2019), pp. 6 – 17. ISSN 2585-7088, eISSN: 2644-6359

Abstract: Family reunification is defined by primary and secondary EU law and by the case law of the CJEU. The cornerstones are the Charter of Fundamental Rights encompasses the principle of the respect of family life and the fundamental European standards for family reunification of third-state nationals are based in the Council Directive on the Right to Family Reunification. The EU directive explicitly confirms among others that family reunification is a necessary way of making family life possible. The article analyses the way the jurisdiction of the CJEU widens the notion of family reunification and how it offers more realistic picture for the growing importance of family reunification.

Keywords: family life, Charter of Fundamental Rights, Family Reunification Directive, CJEU, third-country national, EU law, family law.

1 INTRODUCTION

Family reunification is defined by primary and secondary EU law and by the case law of the CJEU. When looking at the Charter of Fundamental Rights, it contains the principle of the respect of private and family life, and the right to marry and to found a family.[1] Respect for private and family life, home and communications as this article is the same as the rights guaranteed by Article 8 of the ECHR.[2,3] This gives the frame of respect and protection of family, which is standard also for third-state nationals living in European territory.

The fundamental European standards for family reunification of third-state nationals are based in the Council Directive 2003/86 of 22 September 2003 on the Right to Family Reunification. Its Preamble contains values such as establishment of an area of freedom, security and justice, free movement of persons, protection of family and family life. It does make express reference to Art. 8

[1] The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

[2] 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.

[3] Explanations relating to the Charter of Fundamental Rights, Official Journal of the European Union C 303/17 – 14. 12. 2007.

Published by Wolters Kluwer SR in cooperation with Comenius University in Bratislava, Faculty of Law, Slovak Republic, ISSN (print): 2585-7088; ISSN (online): 2644-6359

of ECHR and to the Charter of Fundamental Rights. The EU directive explicitly confirms that family reunification is a necessary way of making family life possible, helps create sociocultural stability in order to integrate the third country nationals into the State and helps to promote economic and social cohesion that are Community objective based in the Treaty.[4] According to the ECtHR's case-law, Art. 8 can be applied in two life-situations. First, when family members want to join for the purpose of family reunification another member of the family abroad, usually the breadwinner. Second, when a member of the family is expelled or threatened with expulsion – often as a result of sanctions resulting from criminal proceedings – from the country where he/she and the family live. The article starts from this cornerstones and analyses the way the jurisdiction of the CJEU widens the notion of family reunification and how it offers more realistic picture for the growing importance of family reunification.

2 THE FRAME OF FAMILY REUNIFICATION

Regarding primary EU law, the CJEU ruled in *Akberg Fransson* that the Charter is only applicable when the measure falls within the scope of EU law, that is to say, in situations governed by European Union law but not outside such situations. Thus, the Charter cannot be relied upon for purely national family reunification policies.[5]

Family reunification of European citizens and their third-country national family members is not covered by EU law. Member States have discretion to regulate it according to their own interests but the CJEU gave several limits to the freedom of Member States through its case-law,[6;7] The Court has as well broad case-law on the right of family reunification between third-country nationals,[8] that is based on the Family Reunification Directive. The *Chakroun* case was the one where the CJEU held that the Directive established a right to family reunification.[9] The Directive only applies to legally residing third-country nationals who ask to be reunited with third-country national family members.[10;11] But the Court pointed out that the right to private and family life

4 Ibid., para 4.

5 CJEU, Case C-617/10, Åklagaren *v. Hans* Åkerberg *Fransso*n, 26 February 2013, para 19.

6 Töttős, Á. Family reunification rules in the European Union and Hungary. [online]. Available at < https://migrationtothecentre.migrationonline.cz/en/family-reunification-rules-in-the-european-union-and-hungary > [q. 2019-02-30].

7 See CJEU, C-34/09, *Gerardo Ruiz Zambrano v. Office national de l'emploi*, 8 March 2011, Case C-155/07, Sahin v. Bundesminister fur Inneres, Reasoned Order of the 7th Chamber, 19 Dec. 2008, Case C-127/08 Blaise Baheten Metock and Others v Minister for Justice, Equality and Law Reform, Case C-256/11 Judgment of the Court (Grand Chamber) of 15 November 2011 Murat Dereci and Others v Bundesministerium für Inneres, C-86/12 Judgment of the Court (Second Chamber) of 10 October 2013 Adzo Domenyo Alokpa and Others v Ministre du Travail, de l'Emploi et de l'Immigration, C-83/11 Judgment of the Court (Grand Chamber) of 5 September 2012 Secretary of State for the Home Department v Muhammad Sazzadur Rahman and Others, C-423/12 Flora May Reyes v Migrationsverket, C-82/16 K.A. and Others v Belgium.

8 C-34/09, *Gerardo Ruiz Zambrano v Office national de l'emploi*, 8 March 2011, and its follow-up cases law, such as C-256/11, *Murat Dereci and Others v Bundesministerium für Inneres*, and the joined cases C-356/11 and C-357/11, *O and S v Maahanmuuttovirasto and Maahanmuuttovirasto v. L*, 6 December 2012.

9 Case C-578/08, *Chakroun*, 4 March 2010; Cases C-356/11 and C-357/11, *O and S v. Maahanmuuttovirasto* and *Maahanmuuttovira*sto v. L, 6 December 2012; C-540/03, *European Parliament v Council of the European Union*, 27 June 2006.

10 Council *Directive 2003/86/EC* of 22 September 2003 on the right to family reunification (Family Reunification Directive).

11 Third country national means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty.

is not an absolute one. Member States' interests can be taken into account, but any restriction imposed shall be in accordance with the law and necessary in a democratic society. Thus, the Court has set limits on a State's ability to limit the right, emphasising the need to respect the principle of proportionality,[12] and Member States must not interpret the provisions of the Directive restrictively and should not deprive them of their effectiveness.[13] They are obliged to make a balanced and reasonable assessment of all the interests in play, both when implementing Directive 2003/86 and when examining applications for family reunification.[14] According to the above-mentioned Directive, the nature and solidity of the person's family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin must be taken into account where they reject an application, withdraw or refuse to renew a residence permit or decide to order the removal of the sponsor or members of his family.[15]

Family reunification can be refused if the person concerned poses a threat to public policy or public security. According to the case ZH. and O., the concepts of (risk to) 'public policy' and 'public security' are Community concepts, which cannot be defined solely by the various national systems.[16] Member States retain the freedom to determine the requirements of public policy and public security in accordance with their needs, which can vary from one Member State to another and from one period to another but interpret those requirements strictly.[17] They are not at liberty to give their own interpretation, based solely on national law, to the concept of 'risk to public policy' in Article 7(4) of Directive 2008/115.[18] The concept of 'risk to public policy' is neither included in the concepts defined in Art. 3 of Directive 2008/115 nor defined by other provisions of that directive.[19] Public security is generally interpreted to cover both internal and external security[20] with preserving the integrity of the territory of a Member State and its institutions, whereby public policy is generally preventing disturbance of social order. As the Family Reunificaton Directive states, public policy can mean a conviction for committing a serious crime. The notion of public policy and public security also covers cases in which a third country national belongs to an association which supports terrorism, supports such an association or has extremist aspirations.

2.1 The Court in action

The first case in connection with family reunification was *European Parliament v. Council of the European Union*[21], where the Parliament asked for the annulment of some provisions of the Family

12 BASCHERINI, G. Immigrants' Family Life in the Rulings of the European Supranational Courts. In Repetto (ed.): The Constitutional relevance of the ECHR in domestic and European Law. Cambridge-Antwerp-Poland: Intersentia, 2013, p. 189 [online]. Available at <http://www.academia.edu/9853311/Immigrants_Family_Life_in_the_Rulings_of_the_European_Supranational_Courts> [q. 2019-02-20].

13 CJEU, Case C-578/08, *Rhimou Chakroun v. Minister van Buitenlandse Zaken*, 4 March 2010, para 64.

14 CJEU, Cases C-356/11 and C-357/11, *O and S v. Maahanmuuttovirasto* and *Maahanmuuttovirasto v L.*, 6 December 2012, para 81.

15 Article 17, Family Reunification Directive.

16 CJEU, C-554/13, ZH. and O., para. 48 and 54.

17 Cases 36/75 Rutili (para 27), 30/77 Bouchereau (para 33) and C-33/07 Jipa (para 23).

18 CJEU, C-554/13, ZH. and O., para. 30.

19 CJEU, C-554/13, ZH. and O., para. 41.

20 Cases C-423/98 Albore (para 18 et seq.) and C-285/98 Kreil (para 15).

21 CJEU, Case C-540/03, *European Parliament v. Council of the European Union*, 27 June 2006.

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Reunification Directive on the basis of their incompatibility with fundamental rights. The European Parliament contested Art. 4(1), Art. 4(6) and Art. 8. According to Art. 4(1), a child over 12 years arriving to a Member State independently might be asked to meet integration conditions, Art. 4(6) declares that a Member State might decide to issue permits for family reasons only to children above 15 years and Art. 8 states that the sponsor may be required to wait for a period of up to three years before s/he can apply for family reunification.[22]

The CJEU rejected the claim as its provisions preserve only a limited margin of appreciation for the Member States and the Directive does not confer on Member States a greater discretion than other international instruments to weigh, in each situation, the different interests at stake, particularly the effective integration of the immigrants, the right to family life, and the best interest of the child.[23] It is important to mention that this was the first case when the Court officially referred to the Charter of Fundamental Rights of the EU.

The Family Reunification Directive applies only to third-country national sponsors: a person who is not a citizen of the Union within the meaning of Art. 20 (1) of the Treaty on the Functioning of the EU, who is residing lawfully in a Member State, and who applies or whose family members apply for family reunification ('the sponsor'), and to their third-country national family members who join the sponsor to preserve the family unit, whether the family relationship arose before or after the resident's entry.[24]

As already mentioned, the Directive does not apply to EU citizens who seek family reunion with their third-country national family members, as confirmed by the CJEU in *Dereci*. The Directive requires Member States to take due account of inter alia the nature and solidity of the person's family relationships, as well as the best interests of the child.[25]

The connection between the right of Union citizens to family life under the Charter and the right of third-country nationals to family reunification under the Directive were explored in the joined cases O, S and L. The reference for a preliminary ruling concerned the interpretation of Article 20 TFEU. Article 20 TFEU relates to citizenship of the Union and the rights and duties a citizen has. The Court held that EU law does not prevent, in principle, a Member State from refusing to grant a residence permit for family reunification, provided that the refusal does not entail, for the Union citizen concerned, the denial of the enjoyment of the right of family life.[26]

2.2 Family

From the point of view, family members belong to the narrow conception of the nuclear or 'core' family, which can include the spouse or partner and minor, unmarried (including adopted) children, and in such cases Member States have a positive obligation to authorise family reunification, with no margin of appreciation.[27] The case law requires that the limitations on the definition of family

[22] Family Reunification of TCNs in the EU: National Practices. Common Template of EMN Focussed Study 2016 Final version: 16th September 2016.

[23] CJEU, Case C-540/03, *European Parliament v. Council of the European Union*, 27 June 2006, para. 98, 104.

[24] Art. 2, Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

[25] CJEU, Case C-540/03, *European Parliament v. Council of the European Union*, 27 June 2006, para. 56, 58 and 64.

[26] Joined Cases C-356/11 and C-357/11 O, S v Maahanmuuttovirasto (C356/11), and Maahanmuuttovirasto v L (C357/11).

[27] CJEU, Case C-540/03, *European Parliament v. Council of the European Union*, 27 June 2006, para. 60.

members are to be interpreted in a strict manner,[28] given that they are an exception to the general rule that family reunification should be authorised,[29] and in accordance with fundamental rights[30]. Thus, the CJEU held that certain family members cannot be categorically excluded from family reunification, but an individual assessment of the circumstances of the sponsor and applicant is required in every case. EU law draws no distinction between whether the family relationship arose before or after the sponsor entered the territory of the host member State.[31]

An interesting question surrounded the *kafala* guardianship system well-known in Algerian law, on which Advocate-General Campos Sánchez-Bordona gave an opinion. As stated in the concerned case, this form of guardianship does not create a relationship of filiation and does not equate to adoption, which is expressly forbidden in Algeria. Athough *kafala* and adoption are among the forms of protective measures under Article 20 of the Convention on the rights of the Child but a separate mention of adoption in Article 21 means that those measures are not at the same. Moreover, the ECtHR and the 1993 Hague Convention on Adoption point to the same conclusion that *kafala* is not equivalent to adoption. Directives 2003/86 and 2011/95, refer to children and underlined that adoptive children are always included in that concept. As the texts of those instruments indicate, the parent-child relationship is always a key element and cannot support the idea that the concept of direct descendant could be extended to also include legal custody of guardians. Moreover, the *kafala* system is neither permanent nor comparable to a parent-child relationship and can actually coexist with a biological parent-child relationship. Consequently, a child under *kafala* cannot be considered as a direct descendant for the purposes of that Directive. However, the principle of best interests of the child and the protection of family life under, a child placed under the *kafala* system could fall under the broader notion of 'other family members' under Article 3 (2) of Directive 2004/28. Thus, the host Member State must facilitate the child's entry and residence in accordance with national legislation, taking into account the aforementioned safeguards, and authorities would be entitled to refer to Art. 35 of the latter in case of fraudulent or abusive adoptions, as well as to examine whether sufficient regard was had, in the procedure for awarding guardianship or custody, to the best interests of the child.[32]

Another concept, namely the "dependency" was also analysed by the CJEU, and has been held to have an autonomous meaning under EU law.[33] The criteria used by the CJEU to examine "dependency" offer guidance to the States to establish their criteria to define the nature and duration of the dependency. In this regard, the CJEU has held that the status of "dependent" family member is the result of a factual situation characterised by the fact that legal, financial, emotional or material support for that family member is provided by the sponsor or by his/her spouse/partner.[34]

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28 CJEU, Case C-578/08, *Rhimou Chakroun v. Minister van Buitenlandse Zaken*, 4 March 2010, para. 43.

29 CJEU, Joint Cases C-356/11 and C-357/11, *O and S v Maahanmuuttovirasto* and *Maahanmuuttovirasto v L.*, 6 December 2012, para. 74, 79–82.

30 CJEU, Case C-540/03, *European Parliament v. Council of the European Union*, 27 June 2006, paras 62, 105.

31 CJEU, Joint Cases C-356/11 and C-357/11, *O and S v. Maahanmuuttovirasto* and *Maahanmuuttovirasto v. L.*, 6 December 2012, paras 59–61, 66.

32 OPINION OF ADVOCATE GENERAL CAMPOS SÁNCHEZ-BORDONA delivered on 26 February 2019(1) Case C129/18 SM v Entry Clearance Officer, UK Visa Section.

33 See CJEU Case 327/82, *Ekro*, 18 January 1984, para 11; Case C-316/85, *Lebon*, 18 June 1987, para 21; Case C-98/07, N*ordania Finans and BG Factoring*, 6 March 2008, para 17; Case C-83/11, *Rahman and Others*, 5 September 2012, para 24.

34 CJEU, Case C-316/85, *Lebon*, 18 June 1987, para 21–22; Case C-200/02, *Zhu and Chen*, 9 October 2004, para 43; C-1/05, *Jia*, 9 January 2007, paras 36–37; and Case C-83/11, *Rahman and Others*, 5 September 2012, paras 18–45; Cases C-356/11 and C-357/11, *O and S v. Maahanmuuttovirasto* and *Maahanmuuttovirasto v L.*, 6 December 2012, para 56.

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Any particular requirements as to the nature or duration of dependence introduced in national legislation must be consistent with the normal meaning of the words relating to the dependence and cannot deprive it of its effectiveness.[35]

It shall be pointed out that the Court has recently reiterated principles from its previous case-law that such dependency is the result of a factual situation characterised by the sponsor regularly paying the applicant a sum of money as such applicants are not required to show that they have tried without success to find employment, obtain subsistence support and/or otherwise tried to support themselves, which could make the right of residence excessively difficult. This could be applied by analogy to other forms of dependency, meaning that applicants should not be required to show they are unable to rely on other forms of support to establish dependency on the sponsor.[36]

Interestingly, in *Noorzia* the Court gave a restrictive and questionable ruling: the case concerned the minimum age condition that the spouse and the sponsor may be required to satisfy before applying for family reunification. The CJEU ruled that Member States that have implemented this condition, may equally decide to require the sponsor or the family member to meet it at the time the application is lodged or when the decision (on the application) is taken.[37] It should be noted that in this case the Advocate General has given an opposite opinion and that this judgment goes against the Commission's Guidance and the CJEU's prior case-law on the need for an individualised assessment.

2.3 The best interests of the child

It is well-established that the principle of the best interest of the child is a generally recognised principle in international law. This principle is laid down in several legally binding and soft law documents and constitutes the basic standard for guiding decisions and actions taken to help children, whether by national or international organizations, courts of law, administrative authorities, or legislative bodies.[38]

The Convention on the Rights of the Child was adopted in 1989, and it is the most widely accepted human rights treaty. Among the four general principles – all the rights guaranteed by the UNCRC must be available to all children without discrimination of any kind (Article 2); the best interests of the child must be a primary consideration in all actions concerning children (Article 3); every child has the right to life, survival and development (Article 6); and the child's view must be considered and taken into account in all matters affecting him or her (Article 12) – on which the Convention is based, and must be taken into consideration when interpreting the additional rights, the principle of the best interest of the child incorporates the main message of the Convention. Thus, the best interests of children shall be a primary consideration in all actions concerning

35 See CJEU, Case C-83/11, *Rahman and Others*, 5 September 2012, paras 36–40.

36 See BERNERI, C. When is the family member of an EU Citizen 'dependent' on that citizen? EU Law Analysis Blog, 19 January 2014. [online]. Available at <http://eulawanalysis.blogspot.com/2014/01/when-is-family-member-of-eu-citizen.html> [q. 2019-02-20].

37 CJEU, Case C 338/13, *Marjan Noorzia v. Bundesministerin für Inneres*.

38 International Committee of the Red Cross Central Tracing Agency and Protection Division: Inter-Agency Guiding Principles on unaccompanied and separated children, (2004), 13. [online]. Available at <http://www.unicef.org/violencestudy/pdf/IAG_UASCs.pdf>.

children,[39] in the search of short and long-term solutions,[40] acting as an "umbrella provision" with prescription of the approach to be followed in cases concerning children.[41]

Parts of the EU Charter of Fundamental Rights is based on the the European Convention on Human Rights, and states that in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. Although the European Convention on Human Rights[42] does not contain explicitly the best interest of the child principle (nor does it make any reference to the rights of children or vulnerable groups) references are made to the equality between spouses and their right to see the child (Article 5),[43] to the right of respect for private life and family life (Article 8)[44] and to the right of education (Article 2)[45] thus their treatment is considered under these provisions.

The best interest of the child principle has been given greater status in the CJEU jurisdiction, too. In all cases concerning families with children the Court underlined the primacy of the child's best interests. The CJEU has already underlined in case *European Parliament v. Council of the European Union* that Member States must apply the rules of the Family Reunification Directive in a manner

39 See CRC Art. 3(1), ECRE (Children) para. 4, ICCPR Art. 24(1), ICESCR Art. 10(3), UNHCR Guidelines para.1.5.

40 19. Article 3 (1) states that "[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration". In the case of a displaced child, the principle must be respected during all stages of the displacement cycle. At any of these stages, a best interests determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child's life.

20. A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. Consequently, allowing the child access to the territory is a prerequisite of this initial assessment process. The assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques.

21. Subsequent steps, such as the appointment of a competent guardian as expeditiously as possible, serve as a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child. Therefore, such a child should only be referred to asylum or other procedures after the appointment of a guardian. In cases where separated or unaccompanied children are referred to asylum procedures or other administrative or judicial proceedings, they should also be provided with a legal representative in addition to a guardian.

22. Respect for best interests also requires that, where competent authorities have placed an unaccompanied or separated child "for the purposes of care, protection or treatment of his or her physical or mental health", the State recognizes the right of that child to a "periodic review" of their treatment and "all other circumstances relevant to his or her placement" (article 25 of the Convention). See Committee on the Rights of the Child: General Comment No. 6 (2005) Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 9. [online]. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/438/05/PDF/G0543805.pdf?OpenElement>.

41 ALSTON, P, GILMOUR-WALSH. B. The Best Interest of the Child. Towards a Synthesis of Children's Rights and Cultural Values. Innocenti Studies, UNICEF, 1996. 1. [online]. Available at <https://www.unicef-irc.org/publications/108-the-best-interests-of-the-child-towards-a-synthesis-of-childrens-rights-and-cultural.html>.

42 http://echr.coe.int/Pages/home.aspx?p=basictexts&c=#n1359128122487_pointer.

43 Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

44 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 wellbeing 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.

45 No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

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consistent with the protection of fundamental rights, notably regarding the respect for family life and the principle of the best interests of the child.[46] In *Parliament v. Council* the Court declared for the first time that the Convention on the Rights of the Child has to be taken into account when applying the general principles of Community law and, therefore, equally when applying the Family Reunification Directive. In cases where a Member State administration examines an application, in particular when determining whether the conditions of Art. 7(1) are satisfied, the Directive must be interpreted and applied in the light of respect for private and family life and the rights of the child of the Charter.[47] The Court has also recognised the fact that family reunification plays in children's full and harmonious development of their personality.[48] Furthermore, the CJEU has recognised that the right to respect for private or family life laid down in the Charter must be read in conjunction with the other obligations laid down in the Charter, thus the obligation to have regard for the child's best interests, taking account of the need for a child to maintain a personal relationship with both his or her parents on a regular basis.[49]

Regarding unaccompanied children, the CJEU found that in the absence of a family member legally present in a Member State, the state in which the child is physically present is responsible for examining such a claim and cited Art. 24(2) of the Charter, whereby in all actions relating to children, the child's best interests are to bear primary consideration in reaching its conclusion.[50]

2.4 The surroundings of the application

As for the application procedure, the Court gave in several cases clearance about the elements of the procedure. About the standard of proof required upon assessment of family ties the Court concluded that Article 11(2) does not leave a margin of appreciation to the domestic authorities and clearly states that the absence of documentary evidence cannot be the sole reason for rejecting an application in a context such as the one under examination. Conversely, it obliges Member States to take into account other evidence of the existence of the family relationship.[51]

The Court's stance on the income requirement and on the integration requirement is apparent as it ruled that optional clauses should be interpreted strictly and not in a manner that would undermine the objective of the Directive. Instead of applying a condition rigidly, Member States are required to examine each application individually, taking into account the interests of the family members and their circumstances in order to take a decision which is in compliance with Art. 17 of the Directive and the Charter, is proportional and does not undermine the effectiveness of the Directive.[52] That can be seen in the *Chakroun* case, where it was found, that Member States "margin for manoeuvre" must not be used in a manner which would undermine the objective of the Directive, to promote family reunification, and its effectiveness.[53] Namely, in this case next to the

46 CJEU Case 540/03, *European Parliament v. Council of the EuropeanUnion*, 27 June 2006.

47 CJEU, Cases C-356/11 and C-357/11, *O and S v. Maahanmuuttovirasto* and *Maahanmuuttovirasto v. L.*, 6 December 2012, 6 December 2012, para 80.

48 CJEU, Case C-540/03, *European Parliament v. Council of the European Union*, 27 June 2006, para 57.

49 CJEU, Case C-540/03, *European Parliament v. Council of the European Union*, 27 June 2006, para 58.

50 CJEU, C-648-11, *MA, BT and DA v. Secretary of State Department*, 6 June 2013.

51 C 635/17, E.

52 EMN Synthesis Report for the EMN Focussed Study 2016 Family Reunification of Third -Country Nationals in the EU plus Norway: National Practices, Migrapol EMN [Doc 382] April 2017, 19.

53 CJEU, Case C578/08, *Rhimou Chakroun v. Minister van Buitenlandse Zaken*, 4 March 2010, para 43.

income requirement set out in Article 7(1)(c) other criteria such as the nature and solidity of the person's family relationships, the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin shall be taken into account when deciding on an application.

In the *Khachab* case, the CJEU stated that verifying the evidence of stable and regular resources required analysing the past pattern and future perspectives of such resources, and it was not limited to the resources available at the time of the application. Furthermore, considering a period of 6 months to 1 year, before and after the application, to assess the past and perspective resources of the sponsor is compatible with EU law.[54] Another case, the *K and A* case[55] involved a request for exemption submitted by a third country national who was asked to sit a civic integration exam in the country of origin with a cost of €350. Although the Court recognised that States could impose integration measures however, but these measures should be in proportion to serving their objective, i.e. integration of third country nationals, and should not undermine the possibility of family reunification itself. In particular, passing integration tests may be required as a condition to grant a residence permit, provided that the conditions to comply with it do not make compliance excessively difficult. The Court pointed out again to consider the individual circumstances of the applicant which can lead to dispensing with the integration exam where family reunification would otherwise be excessively difficult.[56] Although the Court unfortunately doesn't mention, that right nonetheless suffuses this judgment, as the Court identifies a public interest reason to restrict the right to family life and then subjects this restriction to the principle of proportionality. The Court even suggests that those who are genuinely willing to pass the test and made the effort to do so ought not to be denied family reunion, presumably even if they have not actually passed it.[57]

In *Naime Dogan v Bundesrepublik Deutschland*, the CJEU ruled that although the requirement to demonstrate basic German language skills in the country of origin for family members constituted a violation of the standstill clause included in the 1963 Association Agreement between the European Community and Turkey, a new restriction to family reunification could be introduced but only on compelling grounds of public interest, if it is suitable for achieving a legitimate goal and does not exceed what is necessary for this goal.[58]

With regard to DNA testing to provide evidence of family links, any costs involved should not obstruct the possibility for family reunification, by making the exercise of the right to family reunification impossible or excessively difficult.[59] Similarly, the general principle of legal certainty requires administrative authorities to exercise their powers within the given period to protect the legitimate expectations of the relevant subjects.[60] Furthermore in order to give effect to the principle of the right to be heard, applicants should have the opportunity to explain any alleged discrepancies prior to a decision being taken.[61]

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54 CJEU – Case C-558/14, *Khachab v. Subdelegación del Gobierno en* Álava, 21 April 2016.

55 CJEU – C153/14, *Minister van Buitenlandse Zaken v. K and A*, 19 March 2015.

56 http://www.asylumlawdatabase.eu/en/content/cjeu-c%E2%80%9115314-minister-van-buitenlandse-zaken-v-k-and-#content.

57 PEERS, S. Integration Requirements for family reunion: the CJEU limits Member States' discretion. [online]. Available at <http://eulawanalysis.blogspot.hu/2015/07/integration-requirements-for-family.html>.

58 CJEU, C-138/13, N*aime Dogan v. Bundesrepublik Deutschland*, 10 July 2014.

59 CJEU, Case C-153/14, *Minister van Buitenlandse Zaken v K and A*, 19 March 2015, para. 71.

60 CJEU, Joint cases T-44/01, T-119/01 and T-126/01 *Eduardo Vieira v. the Commission*, 13 January 2005, para. 165.

61 CJEU, Case C-277/11. *M.M. v. Minister for Justice, Equality and Law Reform, Ireland*, 22 November 2012.

Published by Wolters Kluwer SR in cooperation with Comenius University in Bratislava, Faculty of Law, Slovak Republic, ISSN (print): 2585-7088; ISSN (online): 2644-6359

The Court emphasised the personal characteristics of the applicant and the disadvantaged position of certain groups stating that time limits need to be reasonable and proportionate. It is not only applicable to the time limits as such, but also to the application of the time limit to an individual case.[62] Thus in *Diouf* it ruled, that the time limit for lodging an appeal against a negative (asylum) decision must be sufficient in practical terms to enable an applicant to prepare and bring an effective action. It is, however, for the national court to determine – should that timelimit prove, in a given situation, to be insufficient in view of the circumstances.[63]

3 CONCLUSION

States have an obligation to protect the family under international and European law. However, their discretional power creates an environment where it is harder to achieve a more consistent policy and practice across the EU, because they decide the concrete content of the right to family reunification. The Court also made some contradictory decisions which do not help to offer a clear guide for States policy's. As for in all cases concerning families with children, the Court of Justice is underlining the primacy of the child's best interests. The European Court of Justice emphasized in its first family reunification-case, fundamental rights are binding on Member States when they implement Community rules, and that they must apply the Directive's rules in a manner consistent with the requirements governing protection of fundamental rights, notably regarding family life and the principle of the best interests of minor children.

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[62] CJEU, Case C-327/00, *Santex SpA v. Unità Socio Sanitaria Locale*, and *Sca Mölnlycke SpA, Artsana SpA and Fater SpA*, 27 February 2003, para. 57.

[63] CJEU, C-69/10, *Brahim Samba Diouf v. Ministre du Travail, de l'Emploi et de l'Immigration* http://www.asylumlawdatabase.eu/en/content/cjeu-c-6910-brahim-samba-diouf-v-ministre-du-travail-de-l%E2%80%99emploi-et-de-l%E2%80%99immigration.

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