The main principles of family reunification in the jurisprudence of the ECtHR

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Abstract:
Family reunification is regulated directly or indirectly by several international legal instruments at universal and regional level. On regional level the Council of Europe's documents and several conventions give general directions to the contracting states. The European Court of Human Rights was established by virtue of the European Convention of Human Rights, and has only jurisdiction with regard to the interpretation and application of the Convention and the Protocols, it is limited to its interpretation of the Convention and its case-law. Member States of the Council of Europe are obliged to respect the human rights of the Convention with regard to everyone within their jurisdiction, to ensure that all rights laid down in the Convention are respected and accessible on its territory. Parallel to this, Member States have margin of appreciation to interpret and implement the Convention. The paper aims to build a frame around the main principles of family reunification through the jurisdiction of the European Court of Human Rights.

Key words: family reunification, European Court of the Human Rigths, Council of Europe, European Convention of Human Rights

1 INTRODUCTION

Regarding family reunification, we should address those articles of the European Convention on Human Rights (furthermore ECHR) which go hand-in-hand with this principle. First of all, we should point out, that *expressis verbis* we cannot find the right to family reunification in the ECHR, or in its additional protocols. We can say that family reunification is more like a principle under the wide umbrella of the right of private and family life, stated in Art. 8.
Two more articles go hand-in-hand with the principle of family reunification, namely Arts 14 and 25. These articles have strong link to each other. Article 8 gives protection to family life, stating that everyone has the right to respect for his private and family life, his home and his correspondence. Para. 2 of the Art. creates obligations (negative and positive) with proclaiming that 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.
The importance of Art. 14 in connection with Art. 8 is that it provides for the prohibition of discrimination stating that "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status". This is particularly relevant in terms of the difference in treatment between family unity conditions for beneficiaries of international protection and refugee.
Furthermore, Art. 25 of the Convention give the right to all individuals to bring individual claims to the European Court of Human Rights, whose decisions are binding on the contracting states.

2. Unfolding family reunification

2.2 Respect for private and family life

According to the ECtHR's case-law, Art. 8 can be applied in two life-situations. First, when a family members wanting 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. In Mackx v Belgium, the ECtHR clarified that there should be no interference by a public authority with the exercise of a person's right to respect for his private or family life. The court noted that there can be exceptions such as in accordance with the law and 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.[1] The essential object of the article is to protect the individual against arbitrary interference by the public authorities, but in addition there are positive obligations regarding an effective "respect" for family life but the notion's requirements will vary considerably from case to case.

2.3 The notion of family life

[1] ECtHR, Marckx v Belgium, Application No. 6833/74, Judgement of 13 June 1979, para. 31.

According to the Court, by guaranteeing the right to respect for family life, Art. 8 presumes the existence of a family.[2] The expression of "family life", in the case of a married couple, normally comprises cohabitation. The latter proposition is reinforced by the existence of Art. 12 for it is scarcely conceivable that the right to found a family should not encompass the right to live together.[3] The cohabitation of the couple is important but not an absolute criterion[4]. The Court emphasised that family life is rooted in real connections, not only formal legal relationships. Family life exists in the case of relationships between married couples and non-married (stable) partners thus marriage is not a prerequisite to the enjoyment of family life, and an unmarried cohabiting couple may enjoy family life.[5] The ECHR institutions have, however, demonstrated a willingness, in more recent years at least, to construe these criteria more liberally to bring parents who have never married or even cohabited within the protective realm of Article 8. [6]

The Court has long recognised that informal, religious marriages also fall under Art. 8 of the Convention as declared in Abdulaziz, Cabales and Balkandali v the United Kingdom.[7] More recently, the Court has acknowledged that same-sex couples in stable relationships enjoy family life together, even if they are not cohabiting,[8] contrary to its past view that the emotional and sexual relationship of a same-sex couple could not constitute "family life".[9] These couples have instead been given the lesser protection under "private life".[10]That is because the ECtHR established clearly that sexual orientation is one of the grounds covered by Art. 14 ECHR,[11] which approach continued later on.[12] In the Pajić ruling[13] concerning immigration states the same concept of family and the same threshold of prohibition of discrimination are applicable. Thus, even without recognising, a se, a right to family reunification, this case-law will represent a strong limitation to national immigration – and asylum – policies.[14]

The case Hode and Abdi v the United Kingdom is a good example for the different treatment between refugees' spouses who married post-flight and other migrants entitled to family reunification. Here, the Court held that refugees with post-flight spouses were similarly situated to migrant students and workers, who were entitled to family reunification irrespective of when the marriage was contracted. The similarity was rooted in the fact that as students and workers, whose spouses were entitled to join them were usually granted a limited period of leave to remain in the United Kingdom, the Court considers that they too were in an analogous position to the applicants for the purpose of Article 14 of the Convention. Key elements in the Strasbourg court's assessment of whether such a couple enjoys this protection are the stability and intention of the parties.[15]

As regards parents and their children, family ties are created from the moment of a child's birth and only cease to exist under "exceptional circumstances" as stated in Gül v Switzerland.[16] As regards relationships between extended family members, such as those of parents and adult children, the Court accepts that they fall within the concept of "family life" provided that additional factors of dependence, other than normal emotional ties, are shown to exist as seen in Senchishak v Finland[17]. As has already been noted, the case law of the ECHR indicates that it is de facto family ties that matter and, as such, its approach towards social parents is arguably more accommodating of social parents, it requires evidence of genuine and dependent family life over and above a mere family relationship.[18]

2.4 Best interests of the child

[2] Ibid, para. 31.

[3] ECtHR, Abdulaziz, Cabales and Balkandali v UK, Application no 9214/80, 9473/81, 9474/81, Judgement of 28 May 1985, para. 62.

[4] ECtHR, Berrehab v the Netherlands, Application no 10730/84, Judgement of 21 June 1988, para. 21; Kroon and others v The Netherlands, Application no 18535/91, (27.10.1994).

[5] See ECtHR, Marckx v Belgium, Application no 6833/74, Judgement of 13 June 1979; ECtHR, Berrehab v the Netherlands, Application no 10730/84, Judgement of 21 June 1988; ECtHR, Keegan v Ireland, Application no 16969/90, Judgement of 26 May 1994; ECtHR, Kroonand others v The Netherlands, Application no 18535/91, Judgement of 27 October 1994; ECtHR, X, Y and Z v The United Kingdom, Application no 21830/93, Judgement of 22 April 1997; ECtHR, Al-Nashif v Bulgaria, Application No. 50963/99, 20 June 2002; ECtHR, Schalk and Kopf v Austria, Application no 30141/04, 24.05.2010.

[6] Stalford, H. Concepts of Family under EU law – Lessons from the ECHR, s. 417

[7] ECtHR, Abdulaziz, Cabales and Balkandali v UK, Application no 9214/80, 9473/81, 9474/81, Judgement of 28 May 1985, para. 63.

[8] ECtHR, Pajić v Croatia, Application No. 68453/13, Judgement of 23 February 2016 citing ECtHR, P.B. and J.S. v Austria, Application No. 18984/02, Judgement of 22 July 2010, paras. 27-30; ECtHR, Schalk and Kopf v Austria, Application No. 30141/04, 24 June 2010, paras. 91-94. See also ECtHR, Taddeucci v Italy, Application No. 51362/09, (30 June 2016, paras. 94-98

[9] ECtHR, X and Y v UK, Application no. 9369/81, 3.05.1983; ECtHR, S v UK, Application no. 11716/85, Judgement of 14 May 1986 and ECtHR, Mata Estevez v Spain, Application no 56501/00, Judgement of 10 May 2001.

[10] ECtHR, WJ and DP v UK, Application no 12513/86, Judgement of 13 July 1987; ECtHR, ZB v UK, Application no 16106/90, Judgement of 2 October 1990. See also ECtHR, C and LM v UK, Application no 14753/89, Judgement of 9.10.1989.

[11] ECtHR, Da Silva Mouta v Portugal, Application no 33290/96, 21.12.1999; ECtHR, Fretté v France, Application no 36515/97, 26.02.2002 and ECtHR, Karner v Austria, Application no 40016/98, Judgement of 24 July 2003.

[12] ECtHR, Schalk and Kopf v Austria Application no 30141/04, 24.06.2010.

[13] ECtHR, Pajić v Croatia, Application No. 68453/13, 23 February 2016.

[14] Gil, A. R. - Almeida, S. Family reunification for same-sex couples: a step forward in times of crisis – comments on the Pajić ruling of the ECtHR.

[15]Toner, H. Partnership Rights,s.

[16] Gül para. 32.

[17] ECtHR, Senchishak vFinland, Application No. 5049/12, Judgement of 18 November 2014, para. 55.

[18] Stalford, H. Concepts of Family under EU law – Lessons from the ECHR, s.417

It is well-established that the principle of the best interest of the child is a generally recognised principle in international law. Although the European Convention on Human Rights[19] 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),[20] to the right of respect for private life and family life (Article 8)[21] and to the right of education (Article 2)[22] thus their treatment is considered under these provisions.

The principles of best interest of a child and family reunification principle go hand in hand. The development of the best interest of a child principle can be followed through the case law, also creating basic outlines for cases concerning unaccompanied and accompanied children. [23] In Mubilanzis and Kaniki Mitunga v Belgium in 2006, where the case involved the subjects of degrading, inhuman treatment, minors and respect for family life, the Court noted that since the child was unaccompanied, the state was under an obligation to facilitate the family's reunification.[24]

The cases Neulinger and Shuruk v Switzerland and Nunez v Norway concerned children who were accompanied. In Neulinger and Shuruk v Switzerland[25] the child's (future) well-being and development was taken into consideration when deciding on what was in the child's best interests and stated that the term best interests broadly describes the well-being, which is determined by a variety of individual circumstances, such as among others the absence of parents.[26] Nunez v Norway concerned both family life and immigration. Here the Court applied explicitly the Convention on the Rights of the Child and stated that the particular circumstances of the involved persons and the general interest must be taken into consideration.[27] It also pointed out that the authorities shall strike a fair balance between public interest in ensuring immigration control and the need to remain in a position that is able to maintain contact with the children in their best interest.[28] Both cases touched upon the respect for family life and the best interest principle where the Court emphasised again that the best interest principle must be the primary consideration. In Jeunesse v the Netherlands the Court for the first time held that Article 8 of the Convention had been violated in a case concerning family reunification of a spouse. In the above-mentioned cases, the Court referred specifically to the CRC, making clearer the weight that domestic authorities should give the best interests of the children in decisions and refining what the obligation entails. The case Mugenzi v France and Tanda-Muzinga v France is also a good example of the Court's opinion that the national authorities must give precedence to the best interests of the child in proportionality of the interference with family life. Also, the applicant were refugees, their application should have been dealt with speedily, attentively and with especial care, considering that the acquisition of an international protection status is proof that the person concerned is in a vulnerable position. The Court noted that the need for a special procedure for family reunification of refugees was recognised in international and European law, and that the French procedure had failed to guarantee the flexibility, speed and efficiency to respect the right to family life.[29]

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[19] http://echr.coe.int/Pages/home.aspx?p=basictextsandc=#n1359128122487_pointer

[20] 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.

[21] 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.

[22] 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.

[23] See more Friedery, R. UM's in the Jurisdiction of the ECtHR, in Rosskopf: Unaccompanied Minors in International, European and National Law.

[24] The Court laid down the basis for principles regarding unaccompanied minors in ECtHR, Mubilanzis and Kaniki Mitunga v Belgium, Application no. 13178/03, Judgement of 12 October 2006. The case involved the subjects of degrading, inhuman treatment, minors and respect for family life. See http://www.asylumlawdatabase.eu/en/case-law/ecthr-mubilanzila-mayeka-and-kaniki-mitunga-v-belgium-application-no-1317803

[25] The summary of the case Neulinger and Shuruk v Switzerland is following. The first applicant, a Swiss national, settled in Israel, where she got married and the couple had a son. When she feared that the child (the second applicant) would be taken by his father to an ultra-orthodox community abroad, known for its zealous proselytising, the Family Court imposed a ban on the child's removal from Israel until he attained his majority. The first applicant was awarded temporary custody, and parental authority was to be exercised by both parents jointly. The father's access rights were subsequently restricted on account of his threatening behaviour. The parents divorced and the first applicant secretly left Israel for Switzerland with her son. At last instance, the Swiss Federal Court ordered the first applicant to return the child to Israel. See http://www.incadat.com/index.cfm?act=search.detailandcid=1001andlng=1andsl=1

[26] ECtHR, Neulinger and Shuruk v Switzerland (Application No. 41615.07), paras. 51- 52.

[27] The short summary of the case is following. The applicant, a Dominican Republic national, was deported from Norway in 1996 with a two-year prohibition on re-entry following a criminal conviction. Four months later she re-entered the country under a false identity and married a Norwegian national. She continued to reside and work there unlawfully, using permits obtained by deception. She subsequently divorced and cohabited with a settled non-national, with whom she had two daughters, who were born in 2002 and 2003. In April 2005 the immigration authorities, who had been aware since 2001 that the applicant's stay in the country was unlawful, decided she should be expelled and prohibited from re-entering for two years. Her appeals to the domestic courts failed. In the interim and following her separation from the children's father in October 2005 the applicant assumed the daily care of the children until May 2007, when the father was given custody after the court considering the case found that there was little prospect of the applicant obtaining a reversal of the expulsion order. The applicant was granted contact.

[28] ECtHR, Nunez v Norway (Application no. 55597/09), para. 84.

[29] Both applicants were recognised refugees in France, who submitted family reunion applications in 2003 and 2007 respectively. In both cases, the children were in third countries. They both confronted insurmountable difficulties in the

However, contrary to the Court's stance in the above-mentioned case, in case I.A.A. and Others v the United Kingdom the Court held that the mother could relocate to Ethiopia, as there were no insurmountable obstacles or major impediments to her doing so and that although she was married to a refugee, and "neither she nor any of her children (including the applicants) [had] been granted refugee status and the applicants [had] not sought to argue that they would be at risk of ill-treatment were they to return to Somalia".[30]

2.5 The migration aspect

The European Court's jurisprudence turned out to be very limited in its protection of aliens, and developed its case law on family reunification step-by-step with contradicting cases as well and has sought to reconcile states' migration control prerogatives with the right to respect for family life.[31] Although we cannot find any provision specifically on immigration in the ECHR, the case law of ECtHR underlines that a right to family reunification flows from the right to respect of family life in Art 8 ECHR.[32] The Court established several principles when unfolding a family reunification case with immigration aspects: fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation. Where immigration is concerned, Article 8 cannot be considered to impose on a State a general obligation to respect a married couple's choice of country for their matrimonial residence or to authorise family reunification on its territory. Particular circumstances of the persons involved and the general interest must be taken foremost.

Through its practice the Court has firmly established the requirements: effective and strong links between the family members concerned and the host country, actual existence of 'family life', [im]possibility to reunite the family elsewhere. With immigration, the principal factors which should be taken into consideration where detailed in the case Jeunesse [33]:

- the extent to which family life would effectively be ruptured,
- the extent of the ties in the Contracting State. The Court has been reluctant to find a violation where there are no insurmountable obstacles to enjoying family life elsewhere [34],
- whether there are factors of immigration control (for example, a history of breaches of immigration law),
- or considerations of public order weighing in favour of exclusion,
- the best interest of the child is of "paramount" importance and must be afforded "significant weight",
- whether family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host State would from the outset be precarious.[35]

There is a clearly noticeable trend towards a more liberal approach, and the latest judgments of the Grand Chamber show, family life can overcome the principle of state sovereignty if there are major obstacles hindering family life in the country of origin. As refugees and beneficiaries of subsidiary protection can hardly be expected to return, the Contracting State will frequently be obliged to allow children and spouses to join them on its territory.[36]

When migrants must demonstrate that family life cannot be enjoyed "elsewhere" in order to show that the refusal of family reunification will violate Article 8 of the Convention, there is a difference between refugees and non-refugees. While earlier judgments set an extremely high standard for family reunification, requiring applicants to demonstrate that reunification was the only way to (re-)establish family life, the standard now is that applicants must show that reunion is the "most adequate" way to family life.[37]

As said before all individuals present in its territory, nationals or aliens can ask for respect their family life. In the field of immigration, a State has the right to control the entry of non-nationals into its territory, allowed to put conditions on the entry and residence of new people to its territory in accordance with its obligations under international law sees for example the abovementioned Gül v Switzerland. In this respect, the Court pointed out that there is no general obligation for a State to

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procedure. In the Mugenzi case, a cursory dental examination was used to cast doubt on the child's age as disclosed on his birth certificate. As a result, reunion was refused. All domestic appeals against this finding were refused and the children became adults with the passage of time. In the Tanda-Muzinga case, the authorities also questioned the authenticity of the identity documents. After several years of appeals and challenges, they were finally granted reunification

[30] The case concerned the admission of five children of a Somali woman resident in the UK, the children were living in Ethiopia, having been previously in the care of an aunt. The mother had moved to the UK in 2003 to join her second husband, a refugee.

[31] Council of Europe Commissioner for Human Rights, Realising the right to family reunification of refugees in Europe,, Council of Europe, June 2017 https://rm.coe.int/prems-052917-gbr-1700-realising-refugees-160x240-web/1680724ba0

[32] ECtHR Gül v Switzerland, Application no 23218/94, Judgement of 19 February 1996; ECtHR Boultif v Switzerland, Application no 54273/00, Judgement of 20 December 2001; ECtHR Sen v Netherlands, Application no 31465/96, (21.12.2001), paras. 40-41; ECtHR Jakupovic v Austria, Application no 36757/97, Judgement of 6 February 2003 about the clear distinction between admission and expulsion.

[33] Jeunesse, paras. 107-109 and 120.

[34] ECtHR, Arvelo Aponte v the Netherlands, para. 60 and Useinov v the Netherlands, para 9.

[35] See Abdulaziz, Cabales and Balkandali v UK, Application no 9214/80, 9473/81, 9474/81, Judgement of 28 May 1985, para. 68; ECtHR, Mitchell v the United Kingdom (dec.), no.40447/98, 24 November 1998; ECtHR, Ajayi and Others v the United Kingdom (dec.), no. 27663/95, 22 June 1999; ECtHR, M. v the United Kingdom (dec.), no. 25087/06, 24 June 2008; ECtHR, Rodrigues da Silva and Hoogkamer v the Netherlands, cited above, para. 39; ECtHR, Arvelo Aponte v the Netherlands, cited above, paras. 57-58; ECtHR, Butt v Norway, cited above, para. 78 and ECtHR, Nunez v Norway, para. 70.

[36] Czech, P. A right to family reunification for persons granted international protection? The Strasbourg case-law, state sovereignty and EU harmonisation

[37] https://rm.coe.int/prems-052917-gbr-1700-realising-refugees-160x240-web/1680724ba0
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respect immigrants' choice of the country of their residence and to authorise family reunion in its territory, this will depend on the particular circumstances of the persons involved as well as the general public interest[38], with the emphasis put on the circumstances.

It is important to mention the first family reunification case which was in Abdulaziz, Cabales and Balkandali v UK. The applicants were lawfully and permanently settled in the United Kingdom and in accordance with the immigration rules, Mr. Abdulaziz, Mr. Cabales and Mr. Balkandali were refused permission to remain with or join them in that country as their husbands. The applicants maintained that, on this account, they had been victims of a practice of discrimination on the grounds of sex, race and also, in the case of Mrs. Balkandali, birth, and that there had been several violations of Article 3 and of Article 8, taken alone or in conjunction with Article 14 and Article 8, and Article 13 of the Convention.

The Court stated that there was no breach of Article 8 (art. 8) taken alone but Art. 8 and 14 taken together had been violated by reason of discrimination on grounds of sex. The right of a foreigner to enter or remain in a country was not as such guaranteed by the ECHR but immigration controls had been exercised consistently with the obligations of the ECHR. The exclusion of a person from a State where members of his family were living might raise an issue under Art. 8. The Court also unanimously held that there had been a violation of Article 13 as the UK had failed to provide an "effective remedy".

In the cases of Abdulaziz, the parties were effectively choosing between two states in which they would reside after marriage. But a refugee is necessarily outside of his or her country against his or her will. Thus, the rationale for finding a balance in favour of the state's control over its borders given in that case is not persuasive when applied to the refugee. A finding that Abdulaziz is inapplicable to the refugee situation is not sufficient to show a right to family reunification, though, because the standard was twice narrowed after that ruling. The subsequent narrowing of the Abdulaziz holding, however, has similarly not foreclosed the refugee's right to family reunification.[39]

It must be underlined that the ECtHR has made a clear distinction between cases concerning admission and those on expulsion. In the case of Abdulaziz among others, the ECtHR explains the different approach of admission and expulsion cases. Expulsion has in principle been found to be an interference with family life where a state seeks to expel a person who has established family life in that State. Such as in Boultif v Switzerland where the ECtHR held that a Member State had a negative obligation not to expel non-nationals,[40] and a positive obligation which seen as in Gül v Switzerland and Ahmut v Netherlands, is stricter. Couples arguing that a Member State has an obligation of admission have been much less successful than in cases where a member of a family stands the risk of expulsion.[41] The ECtHR follows the principle of international law that a sovereign state has a right to control the entry of non-nationals into its territory and states there is no general obligation to respect the married couple's choice of residence for the family and to accept the non-national spouse to settle in that country.

Member states have a wide margin of appreciation; a state's obligations to admit family members will vary according to the particular circumstances as seen in Abdulaziz. That is to say, the Court is on the opinion that the case by case situation can a right to family reunification appear when it comes to admission, and the Court as well require contracting States to apply a balancing test in cases where expulsion threatens the continuation of family life.[42]

The distinctive approach to family reunification for refugees clearly emerges when contrasting two important cases, Tuquabo-Tekle v the Netherlands and the earlier case of Gül v Switzerland. In Tuquabo-Tekle v the Netherlands, a mother left her daughter behind when she fled Eritrea to seek asylum, following the death of her husband. Her protection needs were recognised not as a 1951 Convention refugee, but rather with another form of (less secure) humanitarian protection. The Court remarked that it was questionable whether the mother left her daughter behind of "her own free will". Accordingly, it was held that the Netherlands was obliged under Article 8 of the Convention to admit her daughter to the territory, so that they could enjoy family life together there. The other approach can be seen in Gül v Switzerland where the Court found no violation in Switzerland's refusal to grant admission to a son to re-join his father in Switzerland. In that case, the father had sought asylum in Switzerland, but was merely granted a residence permit on humanitarian grounds. Considerable time had passed since then, and the father recently had made several visits to his son in Turkey. The Court held that there were no longer "strong humanitarian grounds" for the father to remain in Switzerland, so re-establishing family life in Turkey would be practicable. The Court – in a case which concerned the refusal of Swiss authorities to allow a 12-year-old Turkish boy to join his parents who were living in Switzerland – found no violation of Art. 8 because in view of the length of time Mr and Mrs Gül have lived in Switzerland, it would admittedly not be easy for them to return to Turkey, but there are, strictly speaking, no obstacles preventing them from developing family life in Turkey. That possibility is all the more real because their son has always lived there and has therefore grown up in the cultural and linguistic environment of his country.[43]

But similar to Gül, the Court served another controversial case regarding immigration and family reunification in Ahmut and Ahmut vs. the Netherlands. The Court found that the decisions of the authorities to refuse to admit a 9-year-old child who lost his mother in Morocco - to live with his father - a well-established immigrant who at the time of application had acquired Netherlands nationality - did not constitute a violation of Art. 8 of the Convention. The Court states that the extent of a State's obligation to admit to its territory relatives of settled immigrants will vary according to the particular circumstances of the persons involved and the general interest and where immigration is concerned, Article 8 cannot be considered to impose on a State a general obligation to respect immigrants' choice of the country of their matrimonial residence and to authorise family reunion in its territory" and that "it may well be that Salah Ahmut would prefer to maintain and intensify his family links

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[38] See ECtHR, Gül v Switzerland, Application no. 23218/94, Judgement of 19 February 1996; ECtHR Hode and Abdi v the United Kingdom, Application No. 22341/09, Judgement of 6 February 2013 and ECtHR Tuquabo-tekle v the Netherlands, Application no. no. 60665/00, Judgement of 1 March 2006.

[39] Rohan, M. Refugee Family Reunification Rights: A Basis in the European Court of Human Rights' Family Reunification Jurisprudence, 15 Chi. J. Int'l L. 347 2014-2015, s.370..

[40] ECtHR Boultif v Switzerland, Application no 54273/00, Judgement of 20 December 2001.

[41] ECtHR Gül v Switzerland, Application no 23218/94, Judgement of 19 February 1996, ECtHR Ahmut v Netherlands, Application no 21702/93, (28.11.1996)

[42] See more Peers, S. et al.: The Legal Status of Persons admitted for Family Reunion. Comparative Studies of Law and Practice in some European States; Kees, G. – Guild, E. – Dogan, H. Security of Residence of Long-term Migrants.

[43] See ECtHR Gül v Switzerland, 53/1995/559/645 Court's judgment of 19 February 1996, Reports of Judgments and Decisions 1996-I, p. 159 Gül vs. Switzerland, 53/1995/559/645, para. 42.

with Souffiane in the Netherlands. The Court emphasised that 8 does not guarantee a right to choose the most suitable place to develop family life.[44]

3. Conclusion

Because there is no definite mention of the right for family reunification in the European Convention of Human Rights, the Court has the task to give guidelines to the states. There are several developments e.g. de facto form should be taken into account when examining family relationship, the developments regarding its approach to same-sex relationship, the clear distinction between cases concerning admission and expulsion, and the primary place of the best interest of the child principle. But in the light of ever growing trends, observing a significant increase in the flow of migrants to the European continent, although the ECtHR has milestone judgements, and the Council of Europe bodies give out regularly recommendations, opinions etc. to give guidelines to the states, the ever returning similar cases show the very different approach of the states and unwillingness to follow good faith.

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[44] ECtHR Ahmut and Ahmut vs. the Netherlands 21702/93, Judgement of 17 May 1995, paras. 67 and 71.