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**Possibilities of and obstacles to family reunification during the refugee
crisis, with a special focus on Germany**

BACHELOR THESIS

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DECLARATION OF HONOUR:

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

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ABSTRACT

Refugee crisis was a big challenge for the European Union asylum system, with millions of people approaching Europe and applying for asylum. One of the main problems that EU had to face was separated families, as people that travel alone, including unaccompanied children, are especially vulnerable during crisis. This thesis focuses on the right to family reunification: what is the essence and consequences of the problem, how it is regulated by the legislations on both international and EU level, as well as what are the practical issues and obstacles that people face during reunification process. This thesis also focuses on the implementation of this right in Germany. During the refugee crisis Germany positioned itself as a country, which is open for refugees, thus, this thesis also analyses how family reunification process is covered in Germany.

Keywords: refugee crisis, family reunification, unaccompanied children, Dublin III Regulation, Family Reunification Directive.

SUMMARY

The thesis is analyzing how the right to family reunification is implemented during the European migration crisis. It reviews what are the possibilities of and obstacles to reunification, paying special attention to the situation in Germany.

When in the year 2015 millions of people were approaching European Union borders, countries as Greece and Italy became the ones that received the biggest amount of migrants and asylum seekers. Europe was not ready to take in such big number of people, and as a result, numerous problems appeared. Greece and Italy were not able to provide all the arriving people with necessary social and humanitarian assistance, while other EU member States were not willing to voluntarily take in refugees. Germany was one of the countries that was open to incoming people and asked other countries to follow its example. However, this initiative was not supported by other EU member states. Due to the unsatisfactory conditions in Italian and Greek refugee camps, incoming people started to leave these countries illegally in order to go to other member states with higher living standards. To regulate this problem, the EU used the Dublin III Regulation, which is designed for dealing with crises and assigning responsibility for asylum seeker to the country. However, the Dublin System could not effectively deal with the crisis. In accordance with Dublin III Regulation, people that travel to the other country should be sent back to the country in which they came in the first place. As a result, people that travelled to the other EU member states were still sent back to Italy or Greece as they entered the EU through them. Although the Dublin System failed with reallocating refugees among EU member states and ease the situation in Greece and Italy, it has proven to be effective while dealing with another issue that appeared during the crisis – family reunification.

The problem of separated families appeared due to several reasons: people can leave their home country in a rush, not have enough money to travel together at the same time, get lost during the travel or hope to reunite with their relatives that already reside in the European Union. This problem should be addressed, as it negatively affects the incoming people, their human rights and mental statement. During the crisis, people that travel alone are vulnerable and this especially concerns unaccompanied children. When minor child is left alone without any relatives or legal guardians, it is exposed to numerous risks before, during and after travel to Europe. Children can become victims of different forms of physical and psychological violence, including human trafficking and discrimination. Since the beginning of the crisis, the number of children coming to the EU significantly increased and almost half of these children are unaccompanied. Another category of people that suffer from family separation is family members that are left in their country of origin. These people usually have to live in poverty, if, for instance, father went to Europe and left wife with children in the country of origin. That is why it is especially important to implement family reunification process, in order to give people an opportunity to live in financial and psychological stability.

The right to family reunification is covered on both international and national levels. On the international level, the 1951 Refugee Convention and the International Covenant on Civil and Political Rights cover the right to family life and family unity. When it comes to the protection of children, the Convention on the Rights of the Child covers right to family life of children, as well as best interest of a child, which should be primary consideration when dealing with the cases concerning children.

Talking about the EU law, the main documents that include clauses on family reunification under the Common European Asylum System are Family Reunification

Directive, Dublin III Regulation and Qualification Directive. These documents cover all the points of reunification procedure, including length of the process, deadlines for submitting and reviewing applications, costs of the procedure, obligations of applicants, receiving and sending state etc. Due to the fact that laws on family reunification in Europe are not harmonized, Member States can also regulate certain areas of this sphere.

Although the process of reunification is regulated by several legislations, people that want to reunite with their family members face numerous obstacles during the process. To reunite with family person applying for reunification has to comply with all the deadlines set by the EU legislations and by the national laws. Otherwise, chances for reuniting significantly decrease. However, due to the lack of specialists that could provide legal assistance during the refugee crisis, not all of the people were informed about the deadlines and as a result, many of them lost an opportunity to reunite. One more obstacle that people can face is lengthy procedure. When the refugee crisis started, family reunification was not a priority and, for instance, Dublin Regulation at that time was mostly used for assigning responsibility for people to the member states. Because of that, people had to wait for a long time until they get a chance to reunite with their family members. Another point of criticism refers to different treatment of refugees and beneficiaries of subsidiary protection. The 1951 Refugee Convention or the Family Reunification Directive do not cover people receiving subsidiary protection. As a result, they appear in a less favorable position than refugees, although discrimination against them is prohibited. Talking about the Family Reunification Directive, the procedure under this Directive is paid and not all the people can afford it. As far as money is concerned, both the Dublin III Regulation and the Family Reunification Directive often require evidence for the family ties between the applicants, which often also requires a certain amount of money that not all of the applicants can afford. One more obstacle is that definition of family members eligible for reunification is narrow. Children cannot reunite with their parents or siblings if they reach the age of 18, although at this age they still may not be ready to live and travel alone. Due to these obstacles many people do not get a chance to reunite with their family members, or have to wait for more than a year for that.

The thesis also focuses on the situation in Germany. It is a member state that voluntarily accepted the biggest amount of migrants and asylum seekers. Before the refugee crisis, Germany made amendments in the national law, which provided for equal rights for refugees and people receiving subsidiary protection. Despite that, when the refugee crisis started, Germany suspended the right of the beneficiaries of subsidiary protection to apply for family reunification – people receiving this status could only bring their relatives after residing in the country for at least two years. This change was aimed at regulating the influx of people coming to Germany. However, in 2018 German government lifted the restriction and allowed beneficiaries of subsidiary protection to bring family members to the country without two years waiting period. However, the country also set certain restriction on the total amount of people that can be brought by the beneficiaries of subsidiary protection in one month.

When examining the case law from Germany regarding family reunification, several conclusions were made with regards to the practical obstacles that arise during the reunification process and the reaction of German government to them. Before the refugee crisis, non-compliance with deadlines could serve as a basis for denying the right to family reunification. However, in the cases that took place after the crisis the court noted that deadlines exist in order to make reunification process as fast as possible, and if time frames serve as an obstacle for reunification, they should not be taken into account. What is more, in

the case before the refugee crisis siblings were not allowed to reunite, as they are not covered under the Family Reunification Directive. However, in all the other cases that took place after the crisis, the court took into account personal circumstances of the applicants and allowed siblings to reunite. The case that took place before the refugee crisis also concerned a person that turned 18 while the case was ongoing. Due to that mother lost her chance to reunite with the son, as he was already not minor. However, a similar case took place after the refugee crisis – son was about to turn 18 years old during the reunification process. In that case, the court obliged Germany to review the case in an urgent manner, so that family members do not lose their right to reunite. Beneficiaries of subsidiary protection were not discriminated and were treated same as refugees. What is more, in each case the court was putting special emphasis on the human rights of the applicants and best interest of a child. Several cases also presented an example of how national legislation of the EU member state can influence the outcome of the case. Talking about the documents used, in the case before the crisis the court used Family Reunification Directive, while in the cases that happened after 2015 the court mainly referred to the Dublin III Regulation. This can be explained by several reasons: one of the main focuses of Dublin III Regulation is family reunification, it also provides similar rights to both refugees and people receiving subsidiary protection. After the analysis was done, it was concluded that Germany indeed is open for refugees and is making sure that right of incoming people to family life is respected.

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INTRODUCTION

Migration is a topical question for the European Union, especially after the refugee crisis in 2015. Millions of people came to Europe due to economic and humanitarian reasons. Some people were looking for better living standards, while others were trying to escape the war. It was a challenge for the European Union and for its Common European Asylum System, as migration crisis is a complex problem and consists of numerous nuances that EU had to deal with. The problems that had to be addressed included review of applications for refugee status, providing people with accommodation, first aid, social, humanitarian and financial assistance, dealing with illegal border crossing, as well as helping countries that are overloaded with incoming people (Italy and Greece) etc.

One of the major problems that appeared during the refugee crisis was family separation. Not all the people that came to the EU were able to travel together with their families. Numerous migrants and asylum seekers had to travel alone, hoping that they will be able to reunite with their family members that already live in Europe, or later bring their family to the country where they reside. This problem affected not only adults, but also children, that is why during the refugee crisis many minors remained unaccompanied. This problem is of a big importance for the EU and needs to be addressed due to the fact that people that are left alone, especially children, are more vulnerable than those who travel with family. What is more, reuniting family members is an opportunity to redistribute refugees from Greece and Italy, if they want to reunite with their family members in the other EU member states.

The research question of this paper is **“How is the right to family reunification implemented in the European refugee crisis?”** Special attention in the third part of the research is paid to the situation in **Germany**, as this country was among the top destinations for migrants and refugees. What is more, Germany was the only country that decided to implement open door policy and asked other EU member states to voluntarily accept refugees in order to deal with the crisis.

First chapter of the research focuses on the refugee crisis and family reunification in the context of crisis. It is explained how the refugee crisis influenced the European Union, what was the reaction of the member states and how the EU was trying to deal with crisis. This description is needed to understand how the problem of separated families appeared and why it has to be addressed, which is also discussed in the first chapter. It is explained how and at what stages of travel to the EU families can separate, what are the reasons for that, as well as what are the possible consequences of families being separated. This chapter also briefly describes the process of family reunification.

Second chapter of the thesis describes the legislative framework of family reunification on the international and the EU level. It is discussed, what are the requirements for people who want to reunite with family, which family members are eligible for reunification and what are obligations of the receiving and sending states. Later in the chapter it is observed, what are the main obstacles that applicants face during reunification process. Although this procedure is covered by numerous legislations, there are still shortcomings that get in a way of people that want to apply for reunification.

In the third chapter, the author focuses on the situation with family reunification in Germany. This country was chosen for the analysis as since the refugee crisis started, Germany was very open to refugees, implemented an Open Door policy and was actively

encouraging other EU member States to participate in reallocating migrants and refugees from Greece and Italy to other countries. Thus, the third chapter analyzes if this position is evident also in the sphere of family reunification. It is first examined how Germany reacted to the crisis. Later in the chapter, several cases are analyzed, to see how Germany reacted to the family reunification applications and what were the practical obstacles that applicants faced during the process.

Research questions: How is the right to family reunification implemented in the European refugee crisis? How is this right implemented in Germany?

PART I – PRINCIPLE OF FAMILY REUNIFICATION WITHIN THE REFUGEE CRISIS

This chapter will give insight into the refugee crisis, in order to show why family reunification became topical. Afterwards, the process of family reunification itself will be described, and what problems appear due to the fact that not all families are given a chance to reunite.

1.1. Refugee crisis in Europe

The Syrian civil war that officially started on March 15, 2011 became a catalyst for the refugee crisis in Europe, which began in the year 2015. Afghanistan and Iraq are also among the countries from which a big number of refugees were trying to escape.¹ As the biggest migration to Europe since World War II, this crisis was a big test for the asylum system of the European Union. Millions of asylum seekers entered the territory of Europe, which revealed the unreadiness of Common European Asylum System to receive this amount of people. According to the data provided by Eurostat, in the year 2015, when the actual crisis started, around 1 257 000 people applied for asylum in Europe. Before the crisis, in the year 2014, the amount of applications was 526 700, but in 2016 – 1 204 300. Among those people, there were some that were looking for asylum in order to escape war, as well as migrants that were looking for work and study opportunities in the European Union.² That is why people coming to Europe from Northern Africa and the Middle East during the time of crisis should be distinguished by several categories. Migrants are people who leave their home countries consciously, in order to find better life, or, for instance, work.³ In terms of European refugee crisis, they are usually referred to as economic migrants, as these people plan their travel in advance and want to improve their standard of living. A refugee is a person that

Has fled his country of origin and is unable or unwilling to return because of a well-founded fear of being persecuted because of his race, religion, nationality, membership of a particular social group or political opinion.⁴

An asylum seeker is a person, who is seeking international protection for the same reasons as refugee, and “travels to another country hoping that the government will protect them and allow them to live there”.⁵ The difference between asylum seeker and refugee is that all the refugees’ start as asylum seekers, and only become refugees if they are granted this status.⁶ This status gives a person international protections. Person may also receive subsidiary protection. It is given to a third-country national

who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to their country of

¹ BBC News. Migrant crisis: Migration to Europe explained in seven charts (March 2016), available on: <https://www.bbc.com/news/world-europe-34131911> Accessed January 30, 2020.

² European Commission. *An Economic Take on the Refugee Crisis - A Macroeconomic Assessment for the EU*, Institutional paper 033 (July 2016): p. 10.

³ Oxford Learners Dictionaries. Migrant, available on: https://www.oxfordlearnersdictionaries.com/definition/american_english/migrant Accessed February 1, 2020.

⁴ Amnesty International. What's the Difference Between a Refugee and an Asylum Seeker?, available on: <https://www.amnesty.org.au/refugee-and-an-asylum-seeker-difference/> Accessed February 1, 2020.

⁵ Cambridge Dictionary. Asylum seeker, available on: <https://dictionary.cambridge.org/ru/словарь/английский/asylum-seeker> Accessed February 1, 2020.

⁶ United Nations. World Refugee Day 20 June - Background, available on: <https://www.un.org/en/events/refugeeday/background.shtml> Accessed February 5, 2020.

origin, or in the case of a stateless person to their country of former habitual residence, would face a real risk of suffering serious harm.⁷

It is important to note that beneficiaries of subsidiary protection have less rights and privileges than refugees. During the refugee crisis, EU was issuing not only refugee status, but also subsidiary protection, in order to restrict the possibilities that otherwise a refugee would have (including right to family reunification).⁸ If we compare migrants and people that receive protection, migrants have much less rights than beneficiaries of protection do.

Because such a big number of refugees was rapidly approaching territory of Europe, countries such as Greece and Italy were overloaded with incoming people in a very short period of time due to their geographical location. As the biggest masses of people were coming from North Africa and Middle East, migrants and refugees approached Greece and Italy either by sea, or through Turkey.⁹ Their main goal was to reach Europe, where people could ask for asylum. Because of such influx, these countries were not able to provide all the incoming people with basic social and humanitarian assistance in an appropriate way.¹⁰ Thus, not only migrants, but also refugees started to exit Greece and Italy, through which they first entered European Union, and tried to reach other EU countries. People were looking for better living conditions, as well as opportunities for work. To compare, an asylum seeker who stays in a state-run housing, but opt to buy food by themselves in Germany receives approximately 354 euros a month, in France – 204 euros, or in Austria – up to 200 euros, while in Greece asylum seekers live in worse conditions and receive about 90 euros, and in Italy 75 euros.¹¹ What is more, in Greece refugees often struggle to get cash allowances and receive their money in the form of vouchers.

First reaction of the EU in order to deal with the crisis was to use the Dublin III Regulation, which was designed for quickly determining the member state responsible for asylum seekers and was aimed at regulating the incoming people. The Dublin Regulation is a European law that is binding for all of the EU Member States and determines which EU country is responsible for an asylum application. However, many flaws were indicated in this system. The biggest one concerned the main clause, which was often used by all of the EU member states - sending refugees to the country that they first stepped in. The problem was that such countries usually were Italy and Greece, which were already overloaded. Thus, the problem was that Dublin System is aimed at assigning responsibility, not at equally sharing it among EU countries. Accordingly, the problem was still unsolved, as Greece and Italy were still overloaded, because even if after reaching one of these countries person would move to another member state, that particular member state could send refugee back to Italy or Greece, as this is a country where a person first stepped in. That is why the system itself was criticized, as being designed to solve the crisis, in the real life situation it was not able to deal with it.

⁷ European Commission Migration and Home Affairs. Subsidiary protection, available on: https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/subsidiary-protection_en Accessed February 5, 2020.

⁸ Anja Radjenovic, "Family reunification rights of refugees and beneficiaries of subsidiary protection", *European Parliament Research Service* (February 2020): p. 4.

⁹ Supra note 1.

¹⁰ European Commission. The EU and the Migration Crisis, available on: <http://publications.europa.eu/webpub/com/factsheets/migration-crisis/en/> Accessed February 5, 2020.

¹¹ Diana Hodali, Astrid Prange. "Asylum benefits in the EU: How member states compare", Deutsche Welle (June 19, 2018), available on: <https://www.dw.com/en/asylum-benefits-in-the-eu-how-member-states-compare/a-44298599> Accessed February 6, 2020

Dublin III Regulation is actually an amended version of Dublin II Regulation, which was also heavily criticized and as a result was changed in 2013. The main difference is that Dublin III Regulation has an amended Article 3, which states that refugees should not be sent to the countries with “systemic flaws”, however, it is still not helping to overcome crisis. According to the new clause, refugees cannot be sent to their home country, if military actions are still taking place there, and at the same time, they cannot be sent to the countries that already have too many refugees, as they are unable to provide adequate humanitarian and financial assistance. However, in reality case law shows that countries still find ways to violate this clause and send refugees back to Italy or Greece. For instance, court might not find any substantial grounds for claiming that Italy or Greece are unsafe, and send applicants back there.¹²

Seeing that Dublin System is not working the way it was supposed to, and accordingly did not help to overcome the crisis, in summer 2015, Germany decided to suspend procedure of Dublin III Regulation and stop sending refugees to the countries they first stepped in. At the same time, it also started to implement Open Door policy and accept all the incoming migrants as a sign of solidarity with refugees, as well as the way to unload Italy and Greece. It led to the fact that in summer 2015 Germany received more than 800 000 migrants and refugees. This action alone could not ease the situation in Greece and Italy, which is why, in order to solve the crisis, the EU decided to redistribute refugees among its countries, however, several issues appeared immediately. First, not all of the countries agreed to take in refugees. Second, even the countries that agreed to take in refugees, were taking in a very little number, which would not help to solve the problem.

Nowadays, situation with refugees has stabilized as the flow of incoming migrants and refugees has significantly decreased. However, there are still some problems remaining that the EU has to deal with also nowadays. For the purpose of this research, the author will focus on one particular issue – family reunification, which will be discussed in more details in the next chapters.

1.2. Divided families, unaccompanied children and family reunification

1.2.1. Reasons for family separation

One of the biggest problems that appeared during the refugee crisis is divided families and as a result unaccompanied children. Because refugees leave their home countries in a rush, without planning it, and because the whole process of reaching Europe is happening in such chaos, families often are separated at different stages of their journey. Process of family reunification is extremely important not only to protect human rights of adults, but also to protect unaccompanied children, who are vulnerable persons especially in terms of crisis.

Families are separated in different ways and at different stages.¹³ Sometimes families are separated already in their home countries, when, for instance, parents can only send their

¹² See case UK - The Queen on the application of MS, NA, SG - and - The Secretary of State for the Home Department, [2015] EWHC 1095, 22 April 2015. Available on: <http://www.asylumlawdatabase.eu/en/case-law/uk-queen-application-ms-na-sg-and-secretary-state-home-department-2015-ewhc-1095-22-april> Accessed March 10, 2020

¹³ UNHCR. Fractured Families, available on: <https://www.unhcr.org/FutureOfSyria/fractured-families.html> Accessed February 8, 2020.

kids abroad at the moment and hope to reunite afterward in Europe. Alternatively, it might be vice versa – for example, a father is travelling alone and hopes to be able to bring his family to Europe afterwards. It leads to the situation when, for instance, a child might be in the Italian refugee camp, while his parents are still in the country of their origin or in a refugee camp of another country. This happens because it is hard to maintain contact with family members during crisis, also people usually cannot choose their country of destination or route when leaving their home country, as transportation is very expensive and often happens illegally. Some people get lost while trying to reach the borders of the EU. Such situations happen very often, as routes from North Africa to Europe are most often very dangerous, especially when people are transported by sea. Sometimes family members can get in different boats, or even drown, which happens because people are faced with financial limitations when leaving the country and as a result have to travel by boats, which are overloaded with people. Such way of travelling is extremely dangerous and it often happens so that only half of the people in the boat reach Europe. Some people are separated while trying to illegally cross the borders of EU countries – they either get lost in the crowds of people, or cross borders separately, as they do not have an opportunity to do it together.¹⁴

Sometimes families want to reunite because they lost family members during their route, sometimes because they planned to do so from the beginning, because they cannot travel together or they already have relatives in the EU that they want to reunite with. There might be several purposes for trying to reunite with families. Often reuniting with family means having more stability and protection for family members. However, sometimes it is also used as a way of trying to get a permission to travel to the European countries. People that research migration suggest that families should reunite, as it increases a chance, for instance, for a person who has relatives in Sweden to find accommodation and work there, rather than in Italy.¹⁵ In the country where a person has relatives, he is more likely to receive support while looking for a place to live or for a job. In addition, being overloaded with migrants, Greece and Italy are not able to provide all the asylum seekers with proper accommodation and working places. Accordingly, letting refugees to reunite in the other EU member states is also a way of distributing refugees from Italy and Greece among other countries.

1.2.2. Consequences of family separation and unaccompanied children

Family separation is especially affecting children, as being unaccompanied they are very vulnerable in crisis circumstances. With the refugee crisis, the number of unaccompanied children has drastically grown.¹⁶ Children might become subject to different forms of violence, physical and psychological abuse. What is more, many children are not yet able to take care of themselves, thus, they are fully dependent on the receiving state and social assistance it is providing, which is often not enough to provide high quality medical assistance (both physical and psychological), or education. Although it was mentioned before

¹⁴ Lizzie Dearden, “Refugee crisis: Lost children being split from parents left ‘vulnerable to trafficking and abuse’”, *Independent* (September 10, 2015), available on: <https://www.independent.co.uk/news/world/europe/refugee-crisis-lost-children-being-split-from-parents-left-vulnerable-to-trafficking-and-abuse-10494331.html> Accessed February 8, 2020.

¹⁵ Andrea Dernbach, “Germany suspends Dublin agreement for Syrian refugees”, *Euractiv* (September 29, 2015), available on: <https://www.euractiv.com/section/economy-jobs/news/germany-suspends-dublin-agreement-for-syrian-refugees/> Accessed February 8, 2020.

¹⁶ Joanna Apap, “Vulnerability of unaccompanied and separated child migrants”, *European Parliamentary Research Service* (December 2016): p.3.

that children, who have family members somewhere in Europe have a right to apply for family reunification, statistics still show that nowadays the number of unaccompanied children in Greece is the highest since 2016.¹⁷ The reasons for that vary - this happens due to the slow reallocation process and improper evaluation of claims.¹⁸

When refugee families go with their children abroad or send their children alone, they hope for high living standards and better future for their children, however, reality is often not that positive.¹⁹ One of the biggest dangers for unaccompanied children is to become victims of human trafficking.²⁰ Children might be forced into manual labor, domestic work, drug smuggling and prostitution, as well as become victims of sexual harassment.²¹ Another major problem is that unaccompanied children, who have not been reunited with their families, live in reception centers, which are not adapted for children.²² Accordingly, they do not get proper education (including kindergartens and schools), as well as healthcare assistance. They also often become a subject of bullying and discrimination, for instance in schools. According to the report made by UNICEF, refugee children are five times more likely to be out of school than non-refugee children are.²³ What is more, when some older children enter Europe, they are sometimes detained before their identity gets confirmed. In addition to that, detention centers and refugee camps are not always safe, as sometimes they are attacked. For instance, in Germany in 2015 there were registered 850 attacks on refugee camps.²⁴ Because of the aforementioned factors, children often get deep psychological traumas.²⁵ Moreover, psychological health of unaccompanied refugee children is under a big pressure, as children are separated from parents and do not have a role model in a very important period of their life. As a result, psychological development of an unaccompanied child may suffer.²⁶

These problems are of big importance because of the number of refugee and migrant children that came to Europe during the Refugee Crisis. The crisis itself started in 2015, and according to the data by UNHCR, between the years 2010 and 2015 the number of children refugees increased by 77%.²⁷ What is more, in the year 2015 about 51% of all refugees were children. If we look at more recent data, by the year 2018, 42% of refugee children that came to Europe were unaccompanied.²⁸ By 2019, this number has decreased to 34%.²⁹ The majority

¹⁷ UNICEF. More than 1,100 unaccompanied refugee and migrant children in Greece need urgent shelter and protection, (August 29, 2019), available on: <https://www.unicef.org/press-releases/more-1100-unaccompanied-refugee-and-migrant-children-greece-need-urgent-shelter-and> Accessed February 9, 2020.

¹⁸ Olivia Long, "The Refugee Crisis Isn't Over: Why we urgently need policy reform", *Help Refugees* (January 15, 2020), available on: <https://helprefugees.org/volunteer-blog/the-refugee-crisis-isnt-over-why-we-urgently-need-policy-reform/> Accessed February 9, 2020.

¹⁹ Supra note 13.

²⁰ Emily Garin, Jan Beise, Lucia Hug, Danzhen You. *Uprooted - The Growing Crisis For Refugee and Migrant Children*, UNICEF (September 2016): p. 37.

²¹ UNICEF. Refugee and migrant children in Europe, available on: <https://www.unicef.org/eca/emergencies/refugee-and-migrant-children-europe> Accessed February 10, 2020.

²² Emily Subden, "Letters of frustration and hope from Syrian refugee children now in Europe", *UNICEF* (March 15, 2018), available on: <https://www.unicef.org/eca/stories/letters-from-syrian-refugee-children> Accessed February 10, 2020.

²³ Alex Gray, "Child refugee numbers have soared, according to a new UNICEF report", *World Economic Forum* (September 7, 2016), available on: <https://www.weforum.org/agenda/2016/09/the-number-of-child-refugees-around-the-world-has-risen-rapidly-finds-new-unicef-report/> Accessed February 10, 2020.

²⁴ Ibid.

²⁵ Ibid.

²⁶ UNCHR. *Refugee Children: Guidelines on Protection and Care*, (1994): p. 10.

²⁷ Supra note 23.

²⁸ UNHCR, *Refugee and Migrant Children in Europe - Overview of Trends January - December 2018*: p.1.

of unaccompanied children are in the range between 15 and 17 years old.³⁰ This part of unaccompanied children is at risk of not being able to reunite with family, as they will soon become adults.

Data on issuing refugee status and providing asylum to children vary from year to year. After one year since the beginning of crisis, in the year 2016, 67% of children received positive decision on getting asylum. In 2017 – 63%, in 2018 – 56%, but in 2019 – 59%, which is more than in a previous year.³¹ With regards to refugee status, in 2019 72% of children were able to receive it, while others were provided with subsidiary protection, and number of children receiving protection is only increasing through the years. What is more, children from Syria are more likely to receive a refugee status and number of Syrian children receiving it is increasing.

As it can be seen, family separation can lead to the situation when children are left without their families (unaccompanied children). This is a serious issue, taking into account the fact that unaccompanied children are especially vulnerable persons. Thus, in terms of crisis they might become victims of various threats. That is why it is important to ensure the process of reunification with the families, in order for all the family members to live normal lives, get education, and a chance for a better future. According to the UNICEF report, reuniting unaccompanied children with their family is the best way to protect them and to help them to obtain their legal status.³²

Another problem for families that stay separated appear when one family member leaves home country and goes to Europe, but his family stays alone in their country of origin. The first problem is that family members often stay in the country, where they are in danger. Another is that sometimes families live in poverty, if, for instance, man leaves his wife and children and is not able to bring them to Europe. If family is left solely led by women, especially in a Muslim country, it might face numerous economic and social challenges. Families live in poverty, in constant stress, children are forced to work at a young age, and women become victims of discrimination.

1.2.3. Process of family reunification

A solution for the problem of family separation and unaccompanied children is family reunification, which is a protection of human rights of both children and adults. However, family reunification is also often used by migrants in order to immigrate to the country where they have relatives. As such, this is a recognized method of migration, e.g. family members do have a right to reunite in different EU Member States. However, as the situation with migration escalated during the refugee crisis, there was a need to balance between the right of family members to get together and country's control of immigration. It is important that right to family reunification is not an absolute right and has numerous qualifications.³³

Reuniting families means automatically taking in more refugees, which is a challenge especially for countries that already received a large influx. That is why, since the refugee

²⁹ UNICEF. Latest statistics and graphics on refugee and migrant children, available on: <https://www.unicef.org/eca/emergencies/latest-statistics-and-graphics-refugee-and-migrant-children> Accessed February 11, 2020.

³⁰ Supra note 28, p. 3.

³¹ Supra note 28.

³² Supra note 20, p. 4.

³³ UNICEF Advocacy Brief. *The Right of the Child to Family Reunification* (May 2016): p. 2.

crisis started, countries tend to be less open for family reunification. Since the beginning of the crisis, in Sweden and Germany beneficiaries of subsidiary protection lost their right to apply for reunification, while in such countries as Denmark, Austria and Switzerland people that want to apply for reunification should first reside in the country for three years.³⁴

While talking about the conditions for family reunification, it is important to mention two documents – Family Reunification Directive and Dublin III Regulation (both will be discussed in more detail in the next chapter). These documents lay down the criteria for the reunification procedure.

Family Reunification Directive defines classification for family reunification, including defining applicants and family members eligible for reunification process, rights of people and time frames for the process. The Directive is not straightforward and has many exceptions. What is more, many of the provisions are optional and are up for a state to decide and legislate on. Talking specifically about refugee crisis, provisions of the directive are more favorable for the refugees, than for migrants and other foreigners. In this case, Directive gives less space for Member States to restrict the right to reunification. However, it does not apply to asylum seekers and beneficiaries of temporary or subsidiary protection. Talking about the rights of children under this directive, a child's best interests is a priority in all cases.

Dublin Regulation is another major source of family reunification law. Although it mainly focuses on assigning responsibility for a refugee and on secondary movements, the Dublin III Regulation puts more emphasis on family unity. Under the Regulation, asylum seekers and refugees that have their relatives that received international protection in any other EU Member State can reunite with these family members. Dublin III Regulation also puts down the condition for family reunification. Dublin System may not have worked well for reallocating refugees among EU countries, but the system actually can help people to reunite with their family members, thus, Dublin III Regulation is actively used for that purpose.

PART II - LAW ON FAMILY REUNIFICATION

This part of the research will examine legal documents that have clauses on family reunification, respect to family life and protection of the rights of children. It will further be discussed, what are the main obstacles for refugees when they try to reunite with their family members.

2.1. International law

2.1.1. Family reunification

If we refer to international refugee law, all of the EU Member States, as well as other countries, are parties to the 1951 Refugee Convention. The Convention by definition is binding for all of the parties that signed it and provides for protection of refugees.³⁵ When it

³⁴ Nils Muižnieks. "Ending restrictions on family reunification: good for refugees, good for host societies", *Council of Europe Commissioner for Human Rights* (October 26, 2017), available on <https://www.coe.int/en/web/commissioner/-/ending-restrictions-on-family-reunification-good-for-refugees-good-for-host-societies> Accessed February 10, 2020.

³⁵ Klador Centre for International Refugee Law. *Refugee law in Europe* (2018), available on: <https://www.kaldorcentre.unsw.edu.au/publication/refugee-law-europe> Accessed February 20, 2020

comes to family reunification, in the Convention itself there is no clause that would specifically address family reunification issue, however, in the final act of the convention it is stated, “the unity of the family ... is an essential right of the refugee”.³⁶ It further states that governments should apply all the necessary measures to ensure unity and protection of families.

Special attention can be paid to Article 25. This article provides several clauses with regards to administrative assistance by the country, which may also be applicable to family reunification.³⁷ It states that a country should provide such assistance

when the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse.³⁸

Such obligation arises with regards to any right a refugee is entitled to under both, domestic and international law. Thus, if a country is requesting additional evidence to prove that refugee and person he is trying to reunite with are relatives, this country should also provide assistance to refugee, so that he can gather the required evidence. In terms of refugee crisis, it is important to note that EU was providing protection also to people that did not qualify for the refugee status under 1951 Refugee Convention, and was issuing subsidiary protection status to people. This will further be discussed in the EU law section.

When it comes to international human rights law, the Human Rights Committee (HRC) stated that International Covenant on Civil and Political Rights (ICCPR), which is binding for all the members of the Council of Europe, provides clauses on protection of the right to family life, including family reunification. Article 17 of ICCPR states that “no one shall be subject to arbitrary or unlawful interference with his or her family”.³⁹ Article 23 in its turn “guarantees the protection of family life including the interest in family reunification”.⁴⁰ General comment of the Committee No.19 also provides that Country has a right to control the entry of the aliens, however in certain circumstances, like family reunification, a person can rely on the protection by Covenant.⁴¹

2.1.2. Rights of the children

When it comes specifically to the rights of a child, Articles 9 and 10 of the Convention on the Rights of the Child provide the clauses on the right to family reunification. In accordance with Article 9, a child cannot be separated from parents against their will, unless this separation is in the interest of a child.⁴² Article 10 provides that

³⁶ UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons* (25 July 1951): p. 3., available on: <http://www.refworld.org/docid/40a8a7394.html> Accessed February 21, 2020.

³⁷ Frances Nicholson. *The “Essential Right” to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, UNHCR Legal and Protection Policy Research Series (January 2018): p. 6.

³⁸ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189.

³⁹ Supra note 37, p. 7.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577

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.⁴³

The convention also provides that children should be assisted in obtaining any documents needed for the reunification process.

In terms of rights of the children, special attention should be drawn to the best interest of a child. It is set out in the Article 3 of the Convention on the Rights of the Child that “In all actions concerning children [...] the best interests of the child shall be a primary consideration.”⁴⁴ This is one of the core principles of the convention. Thus, actions of the state, which involve children, should be implemented in accordance with the best interest of a child.

2.2. EU law

Under the Common European Asylum System there are several documents containing provisions on family reunification, which are Dublin Regulation, Qualification Directive and Family reunification Directive. EU primary law, such as Charter of Fundamental Rights of the European Union and European Convention on Human Rights, also has clauses with regards to family reunification. An important note is that the European Union recognizes not only the status of refugee, but also subsidiary protection. Standards for qualification for subsidiary protection are laid out in the Qualification Directive.⁴⁵

Article 8(1) of the European Convention for the Protection of Fundamental Rights and Freedoms provides for the respect for private and family life, as well as Article 8(2) provides that any interference into private life should only be done with accordance to law.⁴⁶ Article 14 provides the clause on non-discrimination, which in terms of refugee crisis can be interpreted in a way that refugees and people having subsidiary protection status should not be treated differently. When it comes to the Charter of Fundamental Rights of the European Union, Article 7 guarantees the right to respect for family life. Article 21 of the Charter also prohibits discrimination, which as well means that different treatment of refugees and beneficiaries of subsidiary protection can only take place if there is sufficient justification for that.⁴⁷

If we look at the Family Reunification Directive, the process of reunification starts when a person receives refugee status or is granted asylum, afterwards he has a right to bring family members with him to the country where he is currently located. However, family is a relatively wide term. Broad notion of a term “family” is recognized by the European Court of Human Rights – it does not define family strictly, rather review it case by case.⁴⁸ Article 3(2) provides that Directive does not apply to asylum seekers, beneficiaries of temporary protection and beneficiaries of “a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States”. As a

⁴³ Ibid.

⁴⁴ Supra note 42.

⁴⁵ European Union: Council of the European Union, *Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted*, 30 September 2004, OJ L. 304/12-304/23; 30.9.2004, 2004/83/EC.

⁴⁶ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5.

⁴⁷ European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02

⁴⁸ Supra note 33, page 4.

result, it is arguable whether people that were granted subsidiary protection by EU Member States can enjoy rights under the Directive, as they are not explicitly excluded.⁴⁹ That is why so far it is up to the state to decide, whether to apply the Directive to the person receiving subsidiary protection, or not. However, under the EU primary law discussed in the section above, there should be no difference in treatment of refugees and beneficiaries of subsidiary protection. That is why lawfulness of this clause of the Directive is under question.⁵⁰

Here it is also important to distinguish between migrants and refugees. In case of migrants the right of nuclear family members (e.g. spouse, children, and unmarried adopted children under 18) to reunite is explicitly recognized by the EU law.⁵¹ Still, in some countries' laws differ with regards to which family members can be reunited. In Germany, for instance, refugee can bring to the country immediate family members, which are spouses and children, or if refugee is a minor, then also siblings and parents. With regards to unmarried partners, most EU states recognize reunification in this case, but there needs to be evidence to demonstrate partnership (for instance, registered partnership). Member States may also require evidence for high level of dependency, in order to apply for reunification. When it comes to people with refugee status, they can bring more than just nuclear family. Unaccompanied children can unify with their parents, or if he has no parents, with guardian or any other relative. What is important is that no evidence of dependency is required in this case. Talking about beneficiaries of subsidiary protection, although they are not covered by the Directive, they still can apply for reunification. However, in this case member state can limit the scope of relatives that person can reunite with, as well as conditions for reunification.⁵²

The Directive specifically points out that people can reunite with "sponsors" in another EU state.⁵³ Sponsor should hold a residence permit in the EU Member State for at least one year (in certain Member States it can also be 2 years) and who can provide assistance (mostly financial) to the person applying for reunification. Sometimes sponsors may be required to show that they have satisfactory accommodation, insurance, stable source of income etc. Talking about beneficiary of family reunification, he should not be a threat to a public security of the country (criminal record does not automatically mean that person cannot reunite with family, such cases are examined separately). Person may also be obliged to undergo integration process, e.g. language courses etc. (it varies among MS, whether it should take place before or after reunification). However, it is important that the Court of Justice of the European Union and the European Commission suggest that all this criteria should be interpreted holistically, and each case should be examined separately, as the objective of the Directive is to help with family reunification.

Talking about the length of the procedure, according to the Directive the time period of examining the application should not exceed 9 months (can be extended in complex cases). However, in order to apply for reunification, a person residing in the EU Member State should spend a certain period of time living there (vary from state to state). For that reason, the process itself takes longer than 9 months, and for instance, child may be left unaccompanied

⁴⁹Council of Europe: Commissioner for Human Rights. *Realising the right to family reunification of refugees in Europe*, (June 2017): p. 28.

⁵⁰ Ibid.

⁵¹ Supra note 49.

⁵² Supra note 33, page 7.

⁵³ Supra note 49.

from 18 months to 3 years.⁵⁴ The fact that procedures of family reunification are usually very long partially explains the high number of unaccompanied refugee children in the EU. This is due to the fact that each Member States can have its own procedural requirements for family reunification, like for instance, documents that are hard to obtain during the crisis or in the home country due to the military actions there. If there are no documents as an evidence, further investigation will follow, which can include DNA test, which can also be hard to do in crisis or in home country, which is not safe. What is more, obtaining such documents or tests can be expensive, and not everyone can afford it. It is important that during the investigation family members cannot be united and should each stay in their respective countries.

Regarding the situation with unaccompanied children, the Report of the 2012 Day of General Discussion of the Committee on the Rights of the Child points out that due to long waiting periods and high number of restrictions, children often chose irregular way to enter the country in order to reunite with the family.⁵⁵ This in its turn increases a chance for a child to become a victim of human traffickers. What is more, there are also family reunification fees implied by this Directive, which vary among the Member States. Accordingly, taking into account the fees, documents and DNA tests, this process cannot be done for free and not everyone can afford it. Costs vary among the countries, but if we take, for instance, Germany, family reunification visas cost 75 EUR for adults and 37, 50 EUR for children under 18 years. However, visa is the last element in the chain of family reunification process, and people have to cover many other expenses before it.

The Dublin Regulation, in its turn, is also laying down criteria for family reunification. The primary function of the Dublin System is to assign a responsibility to a state for an asylum seeker, thus, family reunification is also one of its priorities. First, unaccompanied children under 18 can apply for family reunification and have a wide range of relatives they can reunite with. Child can reunite with parent, legal guardian, sibling or even other relative (e.g. adult aunt, uncle or grandparent), in case if it is in his best interest.⁵⁶ In case if adult is applying for reunification, the rules are stricter. Adults can only reunite with family members that reside in another EU member state and have a refugee status or is an asylum seeker. Family members for adults are spouse, child or unmarried partner (in this case, evidence of stable relationship needs to be presented). In case of couples, spouses should either be married in the country of their origin, or in case of unmarried couple, it is usually up for a Member State to decide, even when the evidence is provided. Children are only eligible for reunification while they are under 18, because when they enter this age, they automatically become adults and do not fall within the scope of “family members” under the Dublin Regulation.⁵⁷ Accordingly, person after 18 years old has low chances of being reunited with parents or siblings. That is why in practice many people remain separated from their parents or siblings. If a person reaches the age of 18 during the reunification process, it is up for a national court to decide, whether a person is still eligible.⁵⁸ As such, adult siblings also usually have low chances of being reunited, as they do not fall within the scope of “family members”. There is also another category of people eligible for applying for family reunification – dependents. In this case, person needs to prove that he is dependent on the family member he wants to reunite with (child, sibling or parent). Dependency may appear

⁵⁴ Supra note 33, page 8.

⁵⁵ Supra note 33, page 5.

⁵⁶ British Red Cross. *Guide to Joining Family under the Dublin Regulation*, (2019): p. 4.

⁵⁷ “When the Dublin system keeps families apart”, *Danish Refugee Council* (May 2018): p. 5.

⁵⁸ European Migration Network. *Family Reunification of Third-Country Nationals in the EU plus Norway: National Practices*, (April 2017): p. 23.

because of following reasons: being pregnant, having a newborn child, having a serious illness, having a severe disability, being elderly. In all of the above-mentioned cases, person with whom refugee or asylum seeker want to reunite should legally reside in one of the EU Member States.

Procedure under the Dublin Regulation can also take a long time, up to 11 months, but sometimes first application can get rejected and then re-examination adds up to the process.⁵⁹ The process starts when applicant claims an application for reunification. Afterwards the host state files a request for the country where reunification should take place. If the request is refused, reexamination might take place. If the request is accepted, the transfer is arranged and applicant is sent to his family. There are also certain deadlines that the receiving country has to meet. For instance, family transfer should take place within six months after the country accepted application for reunification. The application itself is free of charge.

The last document to refer to is the Qualification Directive. As such, the aim of the directive is to clarify the process of granting international protection status to persons applying for it. In the Article 2, it states that beneficiaries of international protection are both refugees and people receiving subsidiary protection. Thus, the Qualification Directive ensures that both of them receive equal treatment and have the same rights. The same article also contains provisions that relate to family reunification. Family members should come from a family that already existed in the country of origin of applicants. Thus, if family was formed during the travel, members of the family are not eligible for reunification. The term “family members” include spouses, unmarried partners in stable relationship, minor children, or if a beneficiary is minor, than his parents or other adults responsible for him are also eligible. Although in the Article 23(1) Directive further calls for maintaining family unity, the previous definition shows that scope of family member for this Directive is narrower than for Family Reunification Directive.

2.3. Limitations and problems

Although there are legislations that cover family reunification, there are still limitations and obstacles for a refugee or migrant that wants to reunite with his family. This chapter will look in more detail at what are the possible problems arising during the process of reunification in time of refugee crisis.

As it could be seen from the previous parts of the research, rules on family reunification in Europe are not harmonized, as Member States are free to establish their own conditions on different matters, thus, it depends on a country, to which extent conditions on reunification are restricted. Especially since the beginning of the refugee crisis, Member States started to implement restrictions for the national legislations, including the matter on family reunification. One of the examples could be lodging an application for family reunification. In different states, the time when a refugee should file an application for reunification varies – it can be 3 months after receiving a refugee status, or it can even be a year. If person fails to do that in the period of time, which is set by a state, he has low chances that his application will be successful. The problem is that because of the big number of incoming people during the refugee crisis, there was a lack of specialists, who would provide people the information about all the deadlines. What is more, there could also occur problems with translation. That is why people were unable to file a claim in a timely manner, and

⁵⁹ Supra note 56, page 3.

Member States used that to reject the applications. Another example is that not all of the states cover the costs of the travel (in case if country accepts a person) for refugee, thus, many people cannot afford it.⁶⁰

There is also a lot of critique with regards to treatment of beneficiaries of subsidiary protection. On the one hand, the 1951 Refugee Convention does not cover beneficiaries of subsidiary protection. On the other hand, the EU does recognize this category of beneficiaries of international protection. Despite that, people receiving subsidiary protection often are discriminated, e.g. have less rights with regards to family reunification than refugees. Although it is up for a state to decide how to treat a person with subsidiary protection and discrimination against them is prohibited on the EU level, there are still cases when such people are in a less favorable position than refugees are.⁶¹

There is also criticism regarding Dublin Regulation principles. Although the Regulation does have provisions on family reunification, especially after it was renewed in 2013, the UNHCR study has shown that between the years 2015 and 2016, when the actual refugee crisis took place, family reunification was not a priority for most of the countries. At that point countries were more focusing on using the Dublin Regulation as an instrument of assigning responsibility for a refugee to send people back to the country where they first stepped in.⁶² When explaining the reasons for such delays Member States were referring to

lengthy family tracing procedures, delays in conducting age assessments, and different documentary and evidential requirements for establishing family links among member states (including as regards DNA tests).⁶³

That is why in reality, during the refugee crisis, many people had no possibility to reunite with their family or had to wait for a very long time.

Talking specifically about the Family reunification Directive, one of the biggest things that is criticized is the costs of the whole procedure. If we compare the amount of money that refugee receives from a country with the expenses that are occurring with regards to reunification process, including the fee for applying to it, it becomes clear that not all of the refugees are able to apply for this procedure.

Another point of criticism refers to the family members eligible for the reunification process. For instance, people who are over 18 years old are not considered to be children anymore, which is why they are not eligible for the reunification process. However, at this age people might not have their own families (children or spouse), which is why they are usually left alone.⁶⁴ When it comes to siblings, they are not considered to be “family members”. They can only be reunited with one another only if there are special circumstances (e.g. dependency).

What is more, due to the large number of refugees in Europe, not all of them have an access to the asylum procedures, thus, many people stay in the camps longer than they actually want. People do not get provided with the necessary information, there is a lack of specialists to provide legal and translation assistance, waiting period is longer than it should be as well as people not always receive the protection they are entitled to. In addition to that,

⁶⁰ Vanessa Cowan, Olivia Field, Karl Pike and Joe Potter. *How reuniting families can provide solutions to the refugee crisis*, British Red Cross (2016): p. 15.

⁶¹ Supra note 49, page 48.

⁶² Supra note 49, page 30.

⁶³ Ibid.

⁶⁴ Supra note 60, page 14.

there are many people that lost their documents during the journey, and process of making new ones is long and not everyone can afford it. Accordingly, waiting period for people can take a very long time, and during that time, not everyone receives proper social assistance.⁶⁵ Another scenario when people cannot legally reunite with their family relatives is that they chose illegal way to reunite. Thus, irregular secondary movement occurs, which might be very dangerous for refugees.⁶⁶

Talking about children, although they are entitled to protection, the number of unaccompanied refugee and migrant children in Greece is nowadays the highest it was since 2016.⁶⁷ The reasons for that are slow process of relocation and unwillingness of countries to take in more refugees.

To conclude, although family reunification is covered on both international and EU level, there are numerous obstacles that people face when attempting to reunite with their families. The next chapter will show how reunification process happens in practice, why access for reunification can be denied and how Germany is dealing with family reunification applications.

PART III – FAMILY REUNIFICATION IN GERMANY

This research further focuses on Germany. During the refugee crisis, it implemented open door policy, asked other EU member states to do the same and became one of the top destinations for refugees and migrants. This part of the research will show what were the possibilities to family reunification in Germany during the refugee crisis. To get a better perspective on the situation, this part will also examine several family reunification case law examples, in order to see, what were the practical obstacles when applying for reunification in Germany.

3.1. Reaction of Germany to the refugee crisis in terms of family reunification

In 2015, when the crisis began, approximately 800 000 people arrived to Germany and applied for protection there. Also in the year 2015, but before the refugee crisis began, Section 29 of the Residence Act of Germany was amended, so that persons receiving subsidiary protection would have the same rights with regards to family reunification as refugees.⁶⁸ However, already in 2016, new amendments were made and Section 104 of the same Act stated that beneficiaries of subsidiary protection could only apply for family reunification after residing in Germany for at least 2 years. In practice that meant that, people could spend two and more years without their families. When it comes to minors, children receiving subsidiary protection could not reunite with parents and had to live alone for a long period of time. Those children who came to Germany being older than 15 years could often not get a chance of reuniting with family, as by the time the 2 years period passes, they would

⁶⁵ Supra note 18.

⁶⁶ Supra note 60, page 17.

⁶⁷ Supra note 18.

⁶⁸ Birgit Laubach. “Subsidiary Protection instead of Full Refugee Status Complicates Family Reunification”, *Legal Dialogue – topics from civil society* (24 November, 2016), available on <https://legal-dialogue.org/subsidiary-protection-instead-full-refugee-status-complicates-family-reunification> Accessed March 6, 2020

not be minors anymore. These changes were made because of the refugee crisis and big influx of people to Germany – such measure was an attempt to control the flow of incoming people. Since then Germany started to grant people arriving from Syria subsidiary protection more actively than it did before. Accordingly, these people could not immediately apply for family reunification. In August 2016 about 225 000 Syrian applied for protection there and 51 000 of them received subsidiary protection, not a refugee status.⁶⁹ To compare, in 2015 158,657 Syrians applied for protection in Germany, and 132,846 people received refugee status, while only 61 applicants were granted subsidiary protection. Around 26 000 people that were granted subsidiary protection after 2016 filed an appeal against this decision, in order to receive a refugee status.⁷⁰ Organizations that support refugees, for instance, the German Institute of Human Rights interpret such trend as a violation of the right to family unity, as well as a violation of rights of beneficiaries of subsidiary protection, as they are in a less favorable position than refugees are.⁷¹ It could lead to the increase of irregular migration, as people would still want to reunite with their families, but would look for non-legal ways to do so. This in its turn would lead to increase of people smuggling.

However, in 2018 government lifted this restriction and from August 1st people with subsidiary status in the EU can also apply for family reunification, however, a total number of family members brought by all the people with subsidiary protection in Germany should not exceed 1000 people in one month.⁷² People can reunite with spouses, unaccompanied children and parents of children. By the end of 2018 there were around 300 000 beneficiaries of subsidiary protection in Germany. In the first 4 months since these amendments were introduced, there were more than 44 760 applications by beneficiaries of subsidiary protection.⁷³

3.2. Case law analysis

In this section case law, concerning family reunification from different years will be examined. This analysis will show what are the practical issues that refugees and beneficiaries of subsidiary protection may face during the process of reunification.

3.2.1. Germany - Federal Administrative Court, 18 April 2013, 19 C 9.12⁷⁴

The first case taken for the analysis happened before the refugee crisis. Examining this case will show what kind of problems could have appeared during reunification even before the crisis began.

The case concerns a young man that was born on December 1, 1992 and travelled alone from Iraq to Germany, where he received a refugee status in 2009 and was still a minor

⁶⁹ Supra note 68.

⁷⁰ Supra note 49, page 34.

⁷¹ Supra note 68.

⁷² Deutsche Welle. German Cabinet approves new refugee family reunification law (May 9, 2018), available on <https://www.dw.com/en/german-cabinet-approves-new-refugee-family-reunification-law/a-43710490> Accessed March 10, 2020

⁷³ Marion MacGregor, “Germany: Family reunification figures picking up”, *InfoMigrants* (February 26, 2019), available on: <https://www.infomigrants.net/en/post/15400/germany-family-reunification-figures-picking-up> Accessed March 13, 2020

⁷⁴ Germany - Federal Administrative Court, 18 April 2013, 19 C 9.12. English summary available on: <https://www.asylumlawdatabase.eu/en/case-law/germany-federal-administrative-court-18-april-2013-19-c-912#content> Accessed March 28, 2020

at that time. Later that year his parents and minor siblings applied for a visa for family reunification in Germany. However, German embassy stated that only parents of that refugee would be able to get a visa. Father of the refugee went to Germany and received a residence permit there, while applications of mother and siblings, who stayed in Iraq, were declined. In November 2010, The Administrative Court of Berlin decided that mother had a right to reunite with her minor child in Germany. However, siblings still did not have such right. In 2011, the High Administrative Court of Berlin-Brandenburg decided that mother did not have the right to reunite with her son in Germany anymore, as he was already joined there by his father. As a result, family filed a claim to the Federal Administrative Court against the decision of the High Administrative Court.

The Federal Administrative Court concluded that both parents had a right to apply for reunification, and German embassy acted unlawfully when it issued a visa for reunification only to father. It is stated in the Article 10(3) (a) of the Family Reunification Directive that unaccompanied minor has a right to be joined by his or her first-degree relatives (which includes parents). Accordingly, both mother and father had a right to reunite with their child. The fact that there were other minor children (siblings) living in Iraq could not be a justification for limiting the rights of one of the parents. The Court highlighted that the fact that minor siblings would be left alone if their mother travelled to Germany does not justify the refusal to issue her visa. It is stated under article 6(2) of the German Basic Law that when a decision concerns taking care of children, it is up to parents to decide what actions to undertake.

What is more, the fact that the refugee was already joined by father could not be a reason for not accepting the mothers claim for reunification. The court referred to the Article 2(f) of the Family Reunification Directive, which provides that a child is to be considered unaccompanied, if there is no relative or responsible adult taking care of him. The court noted that child is considered to be accompanied, if he travels with parents or if a parent is waiting for the child in the country of destination. In this particular case a child travelled alone and was only joined by his father later, so he was technically accompanied by his father after some time. However, mother still had a right to apply for reunification with her son, because she filed a claim at the same time with father.

It follows from the previous conclusion that a mother had a right to submit a claim for reunification. However, there is another obstacle. The claim was annulled because her son reached the age of 18 on December 1, 2010. Applicant filed a claim while her son was still a minor and technically, there was a chance of enforcing the claim before he turned 18.

Talking about siblings, they did not have a right to file an application in this case, as in order for siblings to file such claim in Germany, there has to be an exceptional case, e.g. sibling living in Germany would be dependent on siblings that stayed in Iraq or vice versa.

This case shows that obstacles during the reunification procedure did appear even before the refugee crisis began. With regards to the family members eligible for reunification, this case shows that both parents should have a right to reunite with their minor child. However, when it comes to siblings, they are not covered under the Dublin Regulation and cannot apply for family reunification without special circumstances for that. Technically, if mother was granted a right to reunite with her child in Germany, she would have to leave other minor children in Iraq alone for some period of time, until she could file a claim for reunification with them. This case shows how national law of the country, where an application is reviewed can influence the outcome. In principle, the fact that children would

be left alone in Iraq can contradict to the best interest of a child, which is an important principle under the Family Reunification Directive. However, German national law allows parents to make such decisions. The following case is also an example of how parents (in this case mother) cannot reunite with children if they are not minors anymore and reach the age of 18, as well as how children can age out through the process.

3.2.2 Germany – Wiesbaden Administrative Court, September 2017, 6 L 4438 / 17.WI, 15⁷⁵

This case concerns a minor from Syria that filed an asylum application in Germany. His family members, including mother, father and minor siblings, applied for asylum in Greece. In accordance with the Dublin III Regulation family members applied for reunification with their minor child in Germany. In March 2017 Greek authorities requested German authorities to accept the family under Article 10 of the Dublin Regulation. The request was accepted on March 30, 2017.

In accordance with Article 29 (1) of the Regulation, family member had six months to travel to Germany. Based on the fact that the request was accepted on March 30, deadline for transfer was September 30, 2017. After four months of waiting, the family was still not transferred. On August 1, 2017, family members lodged an interim measure before the Administrative Court of Wiesbaden on the following grounds: the German Dublin Unit was asking the Greek Dublin Unit to transfer to the country only a certain number of people per month, disregarding the travelling deadlines of these people in accordance with Article 29 of the Regulation. In practice that meant that the number of people that should be transferred until the certain date was more than Germany could accept and as a result, people lost their chance to go to Germany, as their deadline for that expired. Family of applicants were at risk of not being able to reunite with the minor in Germany, as their right to reunite would expire while they would be waiting to be transferred. Applicants also argued that Germany did not have a right to limit the number of transfers, as there is no provision in the Dublin Regulation that would allow that. What is more, Article 8 of the Dublin Implementing Regulation provides that

it is the obligation of the Member State responsible to allow the asylum seeker's transfer to take place as quickly as possible and to ensure that no obstacles are put in his way.

Accordingly, applicants had a right to travel to Germany within the time limit of 6 months.

First, the Court ruled that applicant residing in Germany was entitled to reuniting with his family members under the Articles 22 (7) and 29 (1) of the Dublin III Regulation. The court stated that family should has a right to be transferred within a 6 months period. What is more, in accordance with Article 22 (7), Germany also failed to meet the deadlines and examined the application longer than it should have. An important point in this case is that provisions of the Regulation should be interpreted taking into account best interests of a child and right to respect for family life.

The Court further stated that the German Dublin Unit was obliged to inform the Greek Dublin Unit that transfers should take place in accordance with the time limits set for the people that are waiting for transfer, as “the right of the asylum seeker to be transferred with

⁷⁵ Germany – Wiesbaden Administrative Court, September 2017, 6 L 4438 / 17.WI, 15. English summary available on: <https://www.asylumlawdatabase.eu/en/case-law/germany-%E2%80%93-wiesbaden-administrative-court-6-l-4438-17wi-15-september-2017#content> Accessed April 1, 2020.

the time-limit is a subjective right.”⁷⁶ The conclusion of the Court is based on the assumption that the German Dublin Unit can influence whom the Greek Dublin Unit will transfer. Such assumption was based on the documents presented by the applicants. The documents were proving that the German Federal Office for Migration and Refugees coordinated together with the Greek authorities which persons to be transferred to Germany. Therefore, the Court concluded that Germany had an obligation to transfer applicants to Germany within the 6 months period.

This case took place during the refugee crisis. Although Germany was trying to escape responsibility for refugees, the Court still ruled that family unity and best interest of a child should be a top priority. What is more, the Court also referred to the fact that Germany had an obligation under the Dublin Regulation to make sure that transfer takes place as soon as possible. What is also important in this case is that minor siblings of an applicant from Germany were also granted a right to reunite.

3.2.2. Germany – Administrative Court Muenster, 20 December 2018, 2 L 989/18.A⁷⁷

Two applicants in this case are brothers, who are both Syrian nationals. In September 2015, the older brother entered Germany with his family (wife and two children). In August 2016, all of the family members received subsidiary protection. Talking about younger brother, who was a minor at that time, he entered Greece in August 2015 together with his adult cousin. In August 2016, they both applied for international protection and later on cousin was appointed as a guardian of a younger brother. In November 2016, the cousin filed an application on behalf of a minor brother to be reunited with older brother in Germany.

In February 2017, the Greek Dublin Unit made a request to the German Federal Office for Migration and Refugees. The request was based on Articles 8(1) and 17(2) of the Dublin III Regulation. Article 8(1) covers the right of minors for family reunification, while Article 17(2) gives Greece a right to ask Germany to take responsibility for the applications, if applicants provide sufficient grounds for that. However, the Federal Office rejected this request, and the ones that repeatedly followed afterwards. The Office made an argument with regards to Article 8, stating that minor in Greece was already accompanied by an adult, who was officially appointed as his guardian, accordingly, Article 8 does not apply in this case. When it comes to Article 17(2), the Office stated that applicants presented no evidence on dependent relationship, thus, this article is also irrelevant in this case. The Greek authorities made one last request based on the fact that cousin was revoking the temporary guardianship. However, the German Office stated that time limit for doing this (three months) has expired. Applicants lodged a claim to the administrative court.

The Court stated that brothers had a subjective right to request Germany to become responsible for a minor brother in accordance with Article 8 of the Dublin III Regulation. When accessing the Dublin Regulation, the Court referred to Article 8 (right to respect for private and family life) of the European Convention of Human Rights and Articles 7 (respect for private and family life) and 24 (rights of a child) of the Charter of Fundamental Rights of the European Union. The Court noted that it is crucial to refer to the fundamental rights when

⁷⁶ Ibid.

⁷⁷ Germany – Administrative Court Muenster, 20 December 2018, 2 L 989/18.A. English Summary available on: <https://www.asylumlawdatabase.eu/en/case-law/germany-%E2%80%93-administrative-court-muenster-20-december-2018-2-l-98918a#content> Accessed April 4, 2020.

examining Dublin applications. In this case, the denial of Germany to transfer negatively affected the right of both applicants to family unity, as well as best interest of a child was not taken into consideration. What is more, older brother was entitled to the protection of his right to family unity by Germany under the Dublin Regulation, as Germany was a member state responsible for him.

The Court also stated that the German Federal Office was obliged to examine the application for reunification of a younger brother. Younger brother should have been considered as an unaccompanied minor. The cousin could not be considered an adult responsible for the minor under Article 2 of the Dublin III Regulation. The point is that in accordance with Greek law, the procedure that cousin has undergone constituted to temporary protection status, but not to the legal guardianship. Accordingly, minor in Greece did not have a legal guardian. Talking about the best interest of a child, reuniting with an older brother was in the best interest of a younger sibling, as brother residing in Germany was his closest relative. The Court also took into account personal circumstances of the applicants and pointed out that relationship between minor and cousin deteriorated so dramatically that minor had to be physically separated from cousin. Referring to the regulation principles, the Court also pointed out that cousin is not considered as a family member under the Dublin Regulation.

Talking about the time delay, the Court noted that Germany was still responsible for the application regardless of time. The responsibility for time delays could be attributed to the Greek authorities and the cousin, but not to the minor. First, Greek authorities requested a written request for family reunification from cousin, without giving grounds for it under EU law. What is more, this goes against the best interest of a child. Second, cousin was trying to change the procedure and to be included in the request, so that he could also be transferred to Germany. This was illegal and slowed down the procedure. The Court explained that time limits that are set by the Dublin Regulation are aimed to speed up the reunification procedure. However, in this case these limits served as an obstacle to reunification. That is why time limits should not be taken into account in this case. The court granted an application and German Office was obliged to take responsibility for examination of the request of a minor.

This case gives an example of how siblings, which are generally not covered by the Dublin Regulation, can reunite if minor sibling is dependent on adult sibling. In this case, the Court also emphasized the importance of protecting fundamental rights of the applicants. Personal circumstances of the applicants were taken into account. What is more, an important thing to point out in this case is an explanation that court gives to the time frames set by the Dublin Regulation – these are made in order to make reunification procedure as fast as possible. If these time frames are an obstacle to reunification, they are not taken into account.

3.2.4. Germany – Administrative Court Berlin, 15 March 2019, VG 23 L 706.18 A⁷⁸

The case concerns four Syrian nationals. Mother, father and adult daughter (first sibling) were residing in Greece. Their minor son (second sibling) resided in Germany and received subsidiary protection. In October 2017, all four family members applied for family reunification in Germany. On January 15, 2017, Greek authorities made a request to German

⁷⁸ Germany – Administrative Court Berlin, 15 March 2019, VG 23 L 706.18 A. English summary available on: <https://www.asylumlawdatabase.eu/en/case-law/germany-%E2%80%93-administrative-court-berlin-15-march-2019-vg-23-l-70618#content> Accessed April 6, 2020.

authorities to review the applications in accordance with Article 21 of the Dublin Regulation. Parents had a right to reunite with their minor son. With regards to adult sibling, she experienced a hard psychological trauma because of detention, rape and torture that she experienced in Syria – this made her dependent on her parents. However, the German Federal Office for Migration refused to examine the application before evidence is presented that all of the applicants are family members. On February 2, 2018 Greek authorities asked German Office not to make a decision on the application yet, as family needed more time to gather documents. All the necessary information was sent to German Office on February 26, 2018. However, Germany refused to review the application, as deadline for submitting evidence has expired under Article 5 of the Dublin Regulation. In November 2018, applicants filed a complaint to the Administrative Court of Berlin, stating that Germany should take responsibility for examining claims of applicants.

With regards to parents, the Court concluded that Germany should examine their applications, as their minor son was receiving subsidiary protection in Germany. This is a right they have under Article 9 of the Dublin Regulation. The deadline in this case was not expired, as when the request was made for the first time, the requirement for deadlines was met. Additionally, Greece had a right to ask Germany to reexamine the case when more evidence is gathered in accordance with Article 5 of the Dublin Regulation. What is more, the German Federal Office for Migration took more time to answer to the request of Greece than it is set in the Dublin Regulation. The Court states that the main aim of the Dublin process is benefit of applicants, which is also a reason why expired deadline for submitting documents should not be taken into account. The priority is to implement the right of applicants to family unity and reunification under Article 7 of the Charter of Fundamental Rights of the European Union and Article 8 of the European Convention of Human Rights. The Court further concludes that expiry of a deadline cannot serve as a ground for refusal. The Court also refers to the Article 17 of the Dublin Regulation, stating that applicants can claim Germany to be responsible for their request on humanitarian grounds, as they have close family links with their minor child.

Talking about adult sibling, the Court again refers to Article 17 of the Dublin Regulation. In this case the applicant can claim Germany as a responsible state based on the fact that she has serious mental trauma and cannot be left alone in Greece without her family. What is more, the applicant is only 23 years old, has always lived with parents and does not have her own family. As a result, applicants were granted a right to reunite in Germany.

This case is another example of how expiry of deadline cannot serve as a ground for refusal to grant a right to family reunification. It is again explained that the main objective of the Dublin Regulation is to ensure that applicants receive the necessary help and that their rights are not breached. What is more, in this case sister was also granted a right to reunification, although siblings are not covered by the Dublin Regulation. However, in this case, personal circumstances were taken into consideration and accordingly sister was granted the same rights as the other family members.

3.2.5. Germany: Administrative Court Berlin, 26 November 2019, 38 L 442.19 V⁷⁹

The last case to examine concerns parents applying for reunification with a son that was residing in Germany and was about to turn 18 years old. Since this was an urgent situation, family members filed a request for temporary protection. After that German Immigration Office examined the documents in accordance with Section 31 of the German Residence Act.

The Immigration Office approved the application and family did get a chance to reunite. However, the point of this case is to show what happens when a minor involved in reunification process is about to get 18 years old. Under the Family Reunification Directive parents can reunite with their children, if latter are under 18. The Immigration Office in this particular case treated an application in an urgent manner, so that family members get a chance to reunite. If a minor applicant becomes an adult during the reunification, stricter rules will apply to the whole procedure. Thus, in this case German Immigration Office acted urgently in order to ensure the right to family unity of the applicants.

3.3. Case Law Summary

Germany - Federal Administrative Court, 18 April 2013, 19 C 9.12

<i>Family members involved</i>	<i>Issue</i>	<i>Legal directive used</i>	<i>Main arguments of the court</i>	<i>Reasoning</i>
Minor refugee residing in Germany (later becoming an adult). His father, mother and siblings.	Only one application for reunification (fathers') was accepted.	Family Reunification Directive, German Basic Law.	Mother did have a right to reunite with the son in Germany before he turned 18 years old. Siblings did not have such right.	Each parent should have a right to reunite with a minor child. Siblings do not have such right. Although mother made a claim for reunification while her son was minor, she lost her right for family reunification as during the process her sun turned 18 years old.

Germany – Wiesbaden Administrative Court, 15 September 2017, 6 L 4438 / 17.WI

<i>Family members involved</i>	<i>Issue</i>	<i>Legal directive used</i>	<i>Main arguments of the court</i>	<i>Reasoning</i>
Minor residing in Germany. His mother,	Family could have lost an opportunity	Dublin Regulation.	Transfer should take place as soon as possible.	Best interest of a child and right to family life are top priority when making a

⁷⁹ Germany: Administrative Court Berlin, 26 November 2019, 38 L 442.19 V. English summary available on: <https://www.asylumlawdatabase.eu/en/case-law/germany-administrative-court-berlin-26112019-38-l-44219-v#content> Accessed April 8, 2020.

father and minor siblings in Greece.	to reunite because the deadline for that would expire.	Minor siblings also have a right to reunite.	decision. Germany had an obligation under the Dublin Regulation to ensure that transfers are made as soon as possible.
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Germany – Administrative Court Muenster, 20 December 2018, 2 L 989/18.A

<i>Family members involved</i>	<i>Issue</i>	<i>Legal directive used</i>	<i>Main arguments of the court</i>	<i>Reasoning</i>
Adult brother receiving subsidiary protection in Germany. Minor brother in Greece and his adult cousin.	Application for reunification of minor brother was rejected due to the fact that he travelled together with his adult cousin. Deadline for application has expired.	Dublin Regulation, European Convention of Human Rights, Charter of Fundamental Rights of the European Union.	Younger brother should be considered as an unaccompanied minor and have a right to reunite with older brother.	Cousin is not a legal guardian of a minor applicant, as in accordance with Greek law he should undergo a special procedure for that. Thus, unaccompanied minor applicant should have a right to reunite with older brother in Germany. If time limits are an obstacle for reunification, they should not be taken into account. Best interest of a child and right to family life should be a priority while making a decision.

Germany – Administrative Court Berlin, 15 March 2019, VG 23 L 706.18 A

<i>Family members involved</i>	<i>Issue</i>	<i>Legal directive used</i>	<i>Main arguments of the court</i>	<i>Reasoning</i>
Mother, father and daughter residing in Greece. Minor sibling receiving subsidiary protection in Germany.	Application for family reunification was rejected as deadline for doing that has expired.	Dublin Regulation, Charter of Fundamental Rights of the European Union and European Convention of Human Rights.	All family members should have right to reunification.	Expiry of a deadline cannot be a ground for refusing to review family reunification application. Deadlines are set in order to make reunification process faster. Primary objective of the Dublin Regulation is respect to family life and best interest of a child. If time limits are an obstacle to these principles, they should not be taken into account. Adult sibling should also have a right to reunite due to the unstable psychological

condition.				
Germany: Administrative Court Berlin, 26 November 2019, 38 L 442.19 V				
<i>Family members involved</i>	<i>Issue</i>	<i>Legal directive used</i>	<i>Main arguments of the court</i>	<i>Reasoning</i>
Mother, father, and their minor son in Germany.	Parents applied for reunification with their son in Germany. However, they have little time left, as their son is about to turn 18 years old.	Family Reunification Directive.	Application should be reviewed in an urgent manner.	In accordance with the Family Reunification Directive parents can reunite with their child if latter is under 18 years old. The aim of the Directive is to ensure family unity. Accordingly, case application should be reviewed immediately, so that parents do not lose a chance to reunite with their son.

3.4. Summary

Analysis of the case law has shown that assessment of family reunification applications has changed to some extent after the refugee crisis. The argumentation made by courts and outcome of the case that took place before the refugee crisis was very different from the ones that were reviewed further.

In the case that happened in the year 2013, family did not get a chance to reunite due to the fact that deadline for reunification has expired. Siblings of the applicant also did not get a chance to reunite with family members in Germany, as siblings in general (unless there are special circumstances) are not considered to be “family members”.

However, when the cases that took place during the refugee crisis were examined, it could be seen that circumstances of the similar cases were interpreted differently. After amendments done in 2013, the Dublin III Regulation was focusing more on the right to family unity, and this trend is visible in the case law analysis. In several cases, the problem of deadlines was raised. If in the case before refugee crisis deadline served as a basis for refusing the application, then during the crisis the Court stated that the country cannot refuse to review application only based on the fact that deadline has expired. What is more, the last case has shown that if deadline for application is about to expire due to the fact that minor will turn 18 soon, the process should be examined in the urgent manner, because family unity is a priority. Based on the comments made by courts, certain time frames are set by the Dublin Regulation in order to make reunification as fast as possible. That is why deadlines should not serve as a basis for refusal to give family a right to reunite.

In the case that took place before refugee crisis mother did not get a chance to reunite with her son in Germany due to the fact that while applications were reviewed, son already turned 18 years old. However, in all the cases that happened after the year 2015, deadlines for making application were not taken into account, because right to family life and best interest of a child should be a top priority when making decision on reunification. This change can

partially be explained by the fact that during the refugee crisis the main document that courts referred to was the Dublin III Regulation. When the Dublin System was amended in 2013, one of the main priorities of the Dublin III Regulation became family life and right to reunification. The case analysis has shown that in practice new version of the Dublin Regulation called for more respect to family life and best interest of a child.

Talking about siblings, which is another big point found in the cases, in the situation which took place before the crisis siblings were not allowed to reunite, as they were not dependent on each other. However, in the case that took place during the crisis the Court was taking into consideration special circumstances of the case and siblings were also allowed to reunite. There were two types of siblings in the cases reviewed above: minors, who would be left alone, if parents would leave, and person with unstable mental condition, who has never lived without parents and would be especially vulnerable if left alone. Taking into account the fact that these persons cannot be left alone without someone to take care of them, best interest of a child and right to family life of all the people involved in each case, the court made a decision to grant siblings right to reunite, although the Dublin III Regulation does not provide for that. This once again shows that one of the biggest priorities for the Dublin III Regulation is family unity.

As far as beneficiaries of subsidiary protection are concerned, although Germany has restricted the number of people that can reunite with persons receiving this status, the case law has shown that otherwise Germany treated beneficiaries of subsidiary protection same as other applicants (refugees) and granted them with the similar rights. Thus, no discrimination on this ground was indicated. What is more, the case law has shown that Court was putting special emphasis on the best interest of a child, as well as maintaining fundamental rights of the other applicants.

With regards to the documents used, the first case was referring to the Family Reunification Directive, which served as a basis for refusal. However, during the refugee crisis the court shifted to the Dublin Regulation. This might be explained by the fact that the Dublin Regulation in general is aimed at dealing with crises. Additionally, the Regulation was changed in the year 2013, and the changes made were aimed at better protecting the rights of asylum seekers, as well as focusing more on the right to family unity. Although the Dublin Regulation failed to reallocate migrants among EU member states, it has proven to be an effective tool for maintaining family unity. Another reason for using the Dublin Regulation is the fact that it provides similar rights to both, refugees and beneficiaries of subsidiary protection, unlike the Family Reunification Directive, which does not cover people receiving subsidiary protection.

In several cases the court also referred to the national law, as some parts of family reunification can be regulated by the country itself. In the case that happened before the refugee crisis, if mother would be granted right to reunite with her son in Germany, her other minor children would be left alone in their home country. However, the court referred to the Article 6 (2) of the German Basic Law, stating that it is up to a parent to decide which actions to undertake when their children are concerned. In addition, in the case of December 2018, cousin was not considered a legal guardian of a minor, as in accordance with the Greek law he had to undergo a special procedure for that. This shows how in practice national law can influence some areas of family reunification process.

Germany has proven to be a country, which is open for asylum seekers during the crisis. Although in some cases the country was trying to escape responsibility for the

applicants, the court of last instance in Germany decided in favor of the applicants. This might have to do not only with the principles of the Dublin Regulation, but also with the position of Germany. The country has proven to be the most welcoming to refugees and during the refugee crisis - it voluntarily accepted more people than any other EU member state. Decisions of the last instance courts have shown that Germany was ready to comply with its promises. What is more, reuniting families is also a way of redistributing refugees. Applicants in the cases reviewed were from Greece, which is the country that received one of the biggest numbers of migrants and asylum seekers. Thus, accepting their applications means letting them legally leave Greece and go to another EU member state.

CONCLUSION

Refugee crisis became a major test for the European Union Asylum System. Although the EU did not succeed in reallocating incomers among the member states and assigning responsibility for them, it still was able to regulate the problem that appeared during the crisis – dealing with separated families.

When leaving their home countries during the crisis migrants and asylum seekers do not always have a chance to travel with the family. Travelling itself is an expensive process and in terms of crisis often happens in a rush. As a result, not all of the people can afford to travel together. Often one or several family members go to the EU, hoping that after some time he will be able to reunite with other family members. People that travel alone tend to be more vulnerable, and this especially concerns women and unaccompanied children. Minors that travel without adults can often become victims of different forms of violence, thus such an experience can leave them with physical or psychological trauma. Even though rights of children (especially unaccompanied) are usually highly protected, since the crisis started, the amount of unaccompanied children that come to Europe significantly increased and remains high. The above-mentioned factors show that separated families are an issue that has to be addressed, as it deprives people from the right to family unity.

Family reunification is covered by numerous legislations on international and the EU levels. International Covenant on Civil and Political Rights as well as the 1951 Refugee convention cover the right to family life and family unity. The Convention on the Rights of the Child in its turn ensures the right to family life for children, and makes sure that the best interest of a child is a priority when dealing with the cases that concern children.

The reunification process is also covered on the EU level. The main documents to refer to under the Common European Asylum System are the Family Reunification Directive, Dublin III Regulation and Qualification Directive. The legislations cover the whole reunification process, including definition of family members eligible for reunification, deadlines for applications and transfers, costs, obligations of the parties etc. It is important to note however, that laws on family reunification in Europe are not harmonized and there are areas, which Member States are free to regulate by themselves.

Despite the fact that family reunification is regulated by several legislations, the system of reunification is far from being perfect and people face numerous obstacles when trying to reunite with their family members. These problems can be of a different nature. For instance, refugees and beneficiaries of subsidiary protection can often be treated differently, and as a result, refugees appear to be in a more favorable position. Person receiving subsidiary protection is not covered by the 1951 Refugee Convention and as a result under the Family Reunification Directive. Although discrimination on this ground is prohibited, people receiving subsidiary status can usually enjoy less rights than refugees. Reunification system is also criticized due to the fact that this procedure is not affordable and available for everyone. To apply for reunification under the Family Reunification Directive, people have to pay fees. What is more, applying for reunification (also under the Dublin III Regulation) may also require other documents and gathering them also may cost a lot. As a result, there are people that cannot afford to apply for reunification. Another problem is that scope of family members that are eligible for family reunification is relatively narrow. For instance, only minor children can reunite with parents or siblings – if they reach the age of 18, they can lose this right. As a result, adults can only reunite with parents or siblings if there are special circumstances for

that (e.g. dependency). This is a major problem as persons that have just reached the age of 18 may not be ready for living alone, especially during the crisis, as they have never had such experience. Because of that, people may suffer from psychological trauma, as well as have difficulties with successfully finding job and accommodation, or assimilating. People also refer to the deadlines being an obstacle to reunification. In order to successfully apply for reunification people should meet certain deadlines. However, this may be hard to do in crisis circumstances, due to the large amount of applications and difficulties with obtaining the necessary documents. What is more, when the crisis started, there was lack of specialist that would consult all the people on the details of reunification process. As a result, many people lost their right to reunite with family members, as they did not manage to do it in time. Another major problem arising during reunification process is waiting period. In addition to the fact that reunification procedure can be a long process by itself, it was also not a priority when the crisis started, as during the crisis the main focus of the EU was on using Dublin III Regulation for assigning responsibility for people to the member states. Thus, people had to wait for a long time before they can actually be reunited with family members. This in its turn could also result in time delays, due to which people were not able to meet the deadlines set by the legislations and their chances for reunification significantly decreased.

In order to see the practical examples of family reunification, it was decided to analyze situation in one particular country – Germany. This country claimed to be open for incoming migrants and refugees. Before the crisis, it amended the national law, so that refugees and people receiving subsidiary status would have the same rights. However, Germany had to limit the flow of incoming people and in the year 2016 it limited the right of beneficiaries of subsidiary protection to bring family members to the country – they were only able to do that after residing in Germany for two years. Already in 2018, Germany lifted that restriction.

When analyzing the case law, it was indicated that after the events of 2015, Germany became more open to the incoming people. In the case that took place before the refugee crisis, non-compliance with the deadline served as a basis for not granting a mother right to reunite with her son. However, in all the cases that took place after the year 2015, the court noted that deadlines exist to make the reunification as fast as possible, and these deadlines should not serve as an obstacle for families to reunite, but if they do – they should not be taken into account. Talking about siblings, they are generally not covered by the legislations on family reunification, and in the case before the crisis minor siblings were not granted a right to reunite. However, in the other cases the court took into account personal circumstances of the applicants (minor siblings can be left alone, adult sibling having psychological trauma) and granted sibling the right to reunite. Another point that can be compared is children that are about to reach the age of 18. In the case before the crisis, mother lost her chance to reunite with her son due to the fact that he has aged out during the process of reunification. However, when similar case took place in 2019, and family could to lose the right to reunite because son was about to turn 18, the court stated that application needs to be reviewed in an urgent manner, so that family could be reunited. During the analysis, no discrimination between refugees and beneficiaries of subsidiary protection was indicated. In each case, the court emphasized the importance of the respect to human rights of the applicants, their right to family life, and with regards to children – best interest of a child.

With regards to the documents used, in the case that took place before the crisis the court mainly referred to the Family Reunification Directive. However, after 2015 Dublin III Regulation was used more frequently, as this document was designed to deal with crises situations, as well as put a lot of emphasis on the family reunification. What is more, in

several cases the court referred to the national legislations, which influenced the outcome of the case. This shows how important clauses of the national law of the member state can be.

Family reunification remains to be a problem for the EU. Although it is covered by numerous legislations, there still is a room for improvement in this sphere. Some restrictions, like narrow scope of family members eligible for reunification, can negatively affect the right to family life of applicants. However, with regards to Germany, it has proven to be a country open for incomers. It was its official position since 2015, and the research made has shown that Germany tends to respect the human rights of all the applicants, no matter what status they have.

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