

The impact of European Union law on Family Reunification in Greece

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Introduction

Accounting for [approximately 30% of all permanent flows towards the EU](#) [1], family reunification constitutes an integral part of the Union's policy on migration. In regulating the issue, the EU legislator had to strike a balance between protecting external borders and safeguarding human rights, as mandated in articles 2, 3, 6, 21 TEU, and 67 TFEU. With regards to persons receiving international protection, due consideration to the particularities of their situation dictated the favourable treatment of their cases, compared to other third country nationals (Council Directive 2003/86/EC preamble 8). Within the Common European Asylum System framework, [Directives 2004/83/EC](#) [2] and [2011/95/EU](#) [3] (Qualification Directive) and, more extensively, [Council Directive 2003/86/EC](#) [4] (Family Reunification Directive) both contain specific provisions on family unity for the beneficiaries of international protection. Moreover, the right to family life is vindicated in both EU primary law (Article 7, 9 and 33 [Charter of Fundamental Rights of the European Union](#) [5]), international human rights law (Articles 12 and 16 of the [Universal Declaration of Human Rights](#) [6], Articles 17, 23 and 24 of the [International Covenant on Civil and Political Rights](#) [7], Articles 10, 16 and 22 of the [Convention on the Rights of the Child](#) [8] and Article 8 of the [European Convention on Human Rights](#) [9]), as well as the interpretation given to the Family Reunification Directive by the Court of Justice and, consequently, the content of general principles of EU law. It remains to be seen, however, exactly how Member States comply with their relevant legal obligations.

Greece has so far presented a less-than-spotless record in that regard. Severe delays in the transposition of the Family Reunification Directive (see below) meant the new provisions have only recently been put to the test. Furthermore, the lack of official data, along with the absence of any relevant case law, muddy the waters of state practice and almost render the effective assessment of the national framework an exercise in futility. The various difficulties with which persons entitled to international protection and seeking to enjoy family life in Greece may be faced with have been noted by the UNHCR in its 2015 [recommendations to the Greek government](#) [10]. These include cumbersome and lengthy procedures, as well as the exclusion of the beneficiaries of subsidiary protection from the Family Reunification regime. So how exactly, if at all, has EU law influenced Greek law on family unity?

The previous regime of family reunification in Greece

A good way to measure that impact is to take a closer look at the previous regime. Article 7 of Presidential Decree No 61/1999, *on the process of qualification of third country nationals as refugees, revocation of their status, expulsion, family reunification, and cooperation with the UNHCR?*

, introduced the possibility of applying for family reunification where refugee status had been recognised. The law concerned only families predating the refugee's entry into Greek territory and did not set any time restrictions to the authorities for the processing of the relevant applications. Family members entitled to join the sponsor were limited to their spouse, unmarried children under the age of 18, and parents, provided the latter were living with, and were dependant on the refugee in their country of origin. At the same time, a number of stringent conditions such as minimum income requirements, proof of residence and work insurance, as well as the ability to produce a number of documents establishing family ties and the age of the parties concerned, had to be satisfied for the application to move forward. If the above requirements were met, the competent consular authorities were obligated to issue the requisite entry and residence permits. Nevertheless, the whole framework fell short of establishing a distinct right to family reunification, comparable to that guaranteed today under EU law. It is worth noting that the Decree also made mention, in article 8, of the persons granted protection on humanitarian grounds, and provided them with the option of obtaining a permit similar to theirs for their family members.

Family reunification for refugees in Greece: the emperor's clothes syndrome?

The EU approach on family unity ? should have ? influenced national legislation significantly and provided new standards by which to treat relevant cases. The [Tampere Presidency Conclusions](#) [11] and the [Stockholm Programme](#) [12], for instance, have both affirmed the need for ?granting [migrants] rights and obligations comparable to those of citizens of the Union?, while the EU Charter of Fundamental Rights guarantees family life (articles 7, 9, 33) and proscribes discrimination on any ground, including birth or ethnic origin (article 21). At the same time, the Qualification Directive, and its recast, both postulate a general obligation on behalf of Member States to enact measures ensuring family unity can be maintained for all beneficiaries of international protection.

Following that lead, Presidential Decrees 96/2008 and 141/2013, incorporating the above documents into Greek law, institute a general responsibility of the state to adopt all measures necessary to maintain family unity for the beneficiaries of international protection ? without reference to their status as refugees or beneficiaries of subsidiary protection ? and provide for the issuing of the requisite residence permits for the sponsor and their family members (articles 20, 23, 24). Special care has been exhibited with regards to the rights of relatives in the event of divorce, separation, or death, and, for minor children, reaching the age of majority. The legislator has also made use of the option to extend the protection afforded to other family members, namely the sponsor's parents, provided they were dependant on and cohabiting with them in their country of origin. Those granted protection on humanitarian grounds, according to national law, fall outside the scope of P.D. 96/2008 and 141/2013. According, however, to article 28 of P.D. 114/2010, they should enjoy the same rights as the beneficiaries of subsidiary protection, favouring an interpretation that guarantees the unity of their families under the same conditions, for the duration of validity of their residence permit.

With regards to Directive 2003/86/EC, the first specialised instrument in international law conferring a distinct right to family reunification on third country nationals within the EU (see Recitals, 2, 4, 15 and CJEU cases of [Rhimou Chakroun](#) [13], [European Parliament v Council](#) [14], and [O, S, Maahanmuuttovirasto and Maahanmuuttovirasto](#) [15]), the Greek legislator introduced Presidential Decree 131/2006 (Government Gazette A' 143, 13 July 2006), almost a year after the deadline was set for transposition. This first attempt to comply with the new requirements of EU law was, however, severely fragmented, as it disregarded Chapter V of the Directive, on the rights of refugees. The omission was only rectified two years later, with the adoption of Presidential Decree No 167/2008, whose provisions relating to refugees would apply retroactively from October 2005. The [Decree expressly replaces article 7 of P.D. 61/1999 on the reunification of refugee families](#)

[16].

The new provisions follow the Family Reunification Directive and exclude from their scope the beneficiaries of subsidiary protection ? a stance that has been the object of criticism by both the [European Commission](#) [17] and the [UNHCR](#) [18], who have noted the similarities of the two categories with regards to their vulnerability and protection needs. Curtailing the scope of the Directive also results in tension with later domestic legislation (Presidential Decrees 96/2008 and 141/2013) which makes no distinction between beneficiaries of international protection and the necessity to maintain family unity.

On the other hand, when it comes to the circle of family members potentially entitled to join the sponsor into the territory of Greece, the legislator has made good use of the relevant discretionary clauses available in the Directive, extending protection to cover a more favourable definition of what may constitute family. In addition to the family members referred to in art. 4 of P.D. 131/2006 with regards to regular migrants ? i.e. their spouse and their unmarried children under the age of 18, or the unmarried children of their spouse, as well as any adopted children ? the refugee sponsor can now apply to be reunited with their unmarried adult children, provided they cannot objectively care for themselves on account of their health; their parents, if the latter were supported by the refugee, were living with her/him prior to their entry into Greece, and do not enjoy proper support in their country of origin; and, finally, their unmarried partner with whom they maintain a steady, long-term relationship which can be established in a satisfactory way before the competent authorities. Taking into account the relevant ECtHR case law ([Schalk and Kopf v. Austria](#) [19]) and the requirement to effectuate Directive 2003/86/EC without discrimination on the basis of sexual orientation (Preamble 5), the latter category includes both different and same-sex couples. Registered partnerships were not regulated in Greek law at the time, and, hence, are not included in the scope of the provision. In light of their subsequent introduction into the country's legal order (Laws 3719/2008, 4356/2015) as well as the broad legal basis of Article 19 TFEU and Article 21 of the Charter on non-discrimination, the provisions should be applied as including couples in registered partnerships. Polygamous marriages or any relationships stemming from them are not protected. When the refugee is an unaccompanied minor the principle of the best interests of the child takes priority and more favourable standards are in place, allowing, without any additional requirements, their reunification with their first degree relatives in the ascending line, as well as their legal guardians or other family members, if the aforementioned first degree relatives do not exist or cannot be located.

Various international actors in the fields of Human Rights and Immigration have found fault with the practice of enumerating the family members eligible for reunification, in that it fails to account for the variety of family ties that may develop in real life, depending on cultural context and other factors (See [Response by the IRC](#) [20] to the Commission's Green Paper). Instead, they propose taking into consideration *de facto*, as well as *de jure* family links, based on the individual circumstances of each case. Another point at issue is the discretionary clause found in article 9 paragraph 2 of the Family Reunification Directive, according to which MS may limit the scope of application of the relevant provisions to family ties predating the entry of the sponsor into their territory. That clause has been incorporated into the Greek legislation, and still remains, despite the fact that [the Commission](#) [17] now ?encourages the example of a number of MSs that do not apply the optional restrictions, or allow for more leniency, in recognition of the particular plight of refugees and the difficulties they often face in applying for family reunification?. Objective obstacles to establish family life elsewhere, as described [in the relevant case law of the ECtHR](#) [21] , should also be taken into consideration. The propensity to argue for a flexible interpretation of family members and ties is also reflected in a reading of *EP v Council* and *Chakroun* alongside the interpretation given to the general principles of effectiveness, proportionality and non-discrimination by the CJEU. In both cases the Court makes it clear that the Directive must be

interpreted in accordance with human rights and that Member States may not use their discretion to circumvent the objectives of the Directive; the facilitation of family unity.

Perhaps more important for the assessment of the practical application of the family reunification regime in Greece, is the examination of the various bureaucratic requirements set for its accomplishment. [ECRE and the Red Cross](#) [22] have stressed the difficulties persons fleeing persecution or conflict areas may encounter in the process of obtaining civil status certificates or travel documents from the authorities in their state of origin, and have urged receiving countries to accept other means of proving family ties on the basis of leniency. Some progress has been made in that regard, as the new law mandates that the lack of family certificates cannot by itself lead to the rejection of the application. Relationships between unmarried partners can also be established using any suitable means, in particular any prior cohabitation, or the existence of a child. However, the sponsor's relatives are still obligated to apply for separate residence permits within a month from their arrival to the country. In order to do so, they must present certified copies of their valid passports and visas and pay the requisite administrative fees, which do not apply for minor applicants (see C.N. Kanellopoulos and M. Gregou, [Family Reunification in Greece](#) [23]). Whilst States, of course, are not precluded from imposing administrative fees or other financial requirements for the family reunification process, both EU law general principles as well as ECtHR jurisprudence make it clear that such restrictions cannot render the enjoyment of the right ineffective (see, for example, [ECtHR G.R. v. The Netherlands](#) [19]).

The conditions for applying are stricter when it comes to the sponsor's parents. These regard proof of regular income, health insurance covering both the sponsor and their family members, and a contract demonstrating lease or ownership of residence. The same conditions apply when the sponsor has not lodged their application more than three months after they were granted international protection status, except in the case of unaccompanied minors. The above requirements lead to the treatment of their applications in a way practically similar to those of regular migrants, rendering the commitment to the favourable treatment of refugees [effectively void](#) [22].

The new law is the first to set specific time frames for the conclusion of the process, as Directive 2003/86/EC mandates in article 5. These amount to nine months, or an additional two, if objective difficulties justify the extension. Some doubt remains as to whether these deadlines actually fulfil the obligation to process the family reunification claims of those entitled to international protection in a [?positive, humane and expeditious manner](#) [24]?. Applications can always be rejected, revoked, or not renewed for reasons of public order and national security, public health, as well as reasons relating to the relationship between the sponsor and her/his family members, their validity and continuation, and the fulfilment of the various conditions set out in the Decree for the granting of family unity rights.

Conclusions

The legal obligation to facilitate family reunification in Greece is to a large extent tempered by the considerable amount of superficial changes made to the previous regime, symptomatic of the chokehold that national discretion still has over family unity. Whilst there has been a departure from the narrow nuclear family model, and the inclusion of a wider circle of family members to the beneficiaries of the rights afforded, the added evidential burden, when the case concerns relatives in the ascending line, hampers the full realisation of a framework which respects human rights standards, revealing clear tensions when set against the general principles of proportionality and effectiveness. Moreover, the procedures in place remain cumbersome. The refugee is expected to produce a variety of official documents and interact with the authorities in a language they most likely do not understand, raising the risk of errors that can potentially result in the rejection of their

application. Another issue that arises is related to the rights of those entitled to subsidiary protection. In their case the state is only obliged to take measures ensuring family unity can be maintained, and no specific framework conferring a distinct right to family reunification and regulating the relevant process to exercise it exists. The above difficulties have been noted by the UNHCR, who has underscored the need to accelerate procedures and expand the protection afforded to the beneficiaries of subsidiary protection. Greece is under an obligation to respect the fundamental rights of third country nationals as guaranteed under the EU Charter as well as international Human Rights law and standards. However, the country still strives for a framework that prioritises individual rights over the interests of the state. There is, therefore, still a long way to go.

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(This journal entry is an expression of the authors own views, and not necessarily those of EDAL or ECRE)

Keywords:

Family member
Family reunification
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Subsidiary Protection
Refugee Status

Links:

- [1] http://ec.europa.eu/eurostat/statistics-explained/index.php/File:First_residence_permits_issued_in_the_EU-28_by_reasons,_2008,_2009,_2010,_2011,_2012,_2013_and_2014.png
- [2] <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:en:HTML>
- [3] <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>
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- [19] <http://hudoc.echr.coe.int/eng#>

[20] http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2012/pdf/0023/famreun/internationalorganisationsocialpartnersngos/international_commission_icj.pdf

[21] <http://hudoc.echr.coe.int/eng?i=001-57416>

[22] http://www.redcross.eu/en/upload/documents/pdf/2014/Asylum_Migration/RCEU%20ECRE%20%20Family_Reunification%20Report%20Final_HR.pdf

[23] <https://ec.europa.eu/migrant-integration/librarydoc/family-reunification-in-greece-1>

[24] <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage>