



UNHCR NGO Regional Consultations 2018 - Regional Workshop for Southern Europe

Klub M room

Title of the session	Family reunification: implementation and advocacy¹ 7 November 2018
Countries	Cyprus, Greece, Italy, Malta, Portugal, Spain
Focal Points (moderator)	UNHCR: Petros Mastakas (mastakas@unhcr.org) and Jessica Anderson (andersoj@unhcr.org) NGO: João Vasconcelos (joao.vasconcelos@cpr.pt) Note taker: (to be completed by ECRE Secretariat)
Background	<p>While the legal framework is relatively generous in certain countries in the Southern Europe region, implementation in practice can face obstacles due to complicated procedures and delays. On the other hand, in Cyprus and Malta, the legal framework does not allow family reunification for beneficiaries of subsidiary protection. This policy has particularly severe repercussions for beneficiaries of protection in Malta and Cyprus, as the two countries overwhelmingly grant subsidiary protection.² The issue was raised by the Council of Europe Commissioner for Human Rights in a recent exchange with the Maltese authorities.³</p> <p>In addition, in Greece, subsidiary protection beneficiaries are permitted to access family reunification only if they can fulfil the general conditions set out for legally residing migrants (i.e. passport is required). Thus, subsidiary protection beneficiaries are not extended the same favourable treatment (in terms of requirements to be fulfilled) as applicable to recognised refugees.</p> <p>Legal framework: For information on the legal framework in each country regarding eligible sponsors and family members, timelines, etc., see the comparative table for the region in annex.</p> <p>Statistics: The scarcity of official figures on the procedure of family reunification with beneficiaries of international protection pose a substantial challenge to a proper</p>

¹ This session will focus on family reunification involving persons granted international protection in Europe and family members outside of Europe. It will not address issues relating to family reunion under the Dublin system.

² In 2017, the refugee status rate for Syrian nationals was 1.2% in Cyprus and 30.5% in Malta, while the respective subsidiary protection rates were 98.8% and 69.1%. For Eritrean nationals, Malta had a refugee status rate of 11.8% and a subsidiary protection rate of 81.8% during that year: AIDA, Country Report Cyprus, 2017 Update, February 2018, available at: <https://bit.ly/2CPFFVt>, 7; Country Report Malta, 2017 Update, March 2018, available at: <https://bit.ly/2FoMoiW>, 8.

³ Council of Europe Commissioner for Human Rights, Letter to the Minister for Home Affairs and National Security of Malta, CommHR/NM/sf 043-2017, 14 December 2017, available at: <http://bit.ly/2o5Bwr6>.

understanding of the number of people requesting, and ultimately obtaining, entry into an EU country to join family members. States have no obligation to collect or transmit such information to Eurostat or the European Asylum Support Office (EASO), although the ongoing reform of the Migration Statistics Regulation⁴ could open up opportunities for advocacy to that effect.⁵

Available 2017 statistics for **Spain** point to a total of 339 applications for family extension (*Extensión familiar del derecho de asilo o de la protección subsidiaria*),⁶ mainly concerning nationals of Syria (152), Somalia (46), Pakistan (38), Palestine (34), Afghanistan (15), Cuba (13), Eritrea (9) and Iraq (9). The Office for Asylum and Refuge (OAR) took 336 decisions on family extension applications in 2017, of which 211 were positive and 125 were negative.⁷ This indicates that the success rate of family extension applications was 62.8% last year.

In **Greece**, throughout the year 2017, the Asylum Service received 245 applications for family reunification, while another 17 were submitted before the Aliens Directorate of Attica of the Hellenic Police (*Διεύθυνση Αλλοδαπών Αττικής*) by applicants recognised as refugees under the pre-2013 asylum procedure. Of those submitted to the Hellenic Police last year, all cases were rejected. The Asylum Service has not provided further data on the family reunification applications it processes.⁸

In a letter addressed to an NGO, the Greek MFA confirms that during the period from 21 October 2016 to January 2018 only 13 visas were issued to family members of refugees for the purpose of family reunification all of them on the basis of “exceptional humanitarian reasons”. Those 13 visas corresponded to 7 positive decisions issued by the Asylum Service.⁹

In August 2018, a new Ministerial Decision was adopted regulating certain aspects of the procedure for approving family members for family reunification in Greece as well as the documentation required in order to issue them with entry visas. The operational role assigned to Greek consular authorities, the discretionary power of the administration to request a DNA test and the responsibility of the sponsor/visa applicants to cover various costs linked to the reunification approval and visa issuance procedures (ie DNA test cost, visa issuance fees, visa processing fees, documents translation and authentication fees, interpretation fees) are only some of the implementation challenges that need to be addressed.

Main challenges in the region include:

- Malta and Cyprus do not allow subsidiary protection beneficiaries to reunite with family members.
- Varying and/or restrictive definition of family members across region (e.g. excluding same sex unions or dependant adult parents). For example, adult children may be eligible for family reunification in Greece, Portugal, Spain and Italy on the basis of dependency or disability. This is not the case for the other countries in the region.

⁴ Regulation (EU) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection, OJ L199/23.

⁵ European Commission, *Proposal for a Regulation amending Regulation 862/2007*, COM(2018) 307, 16 May 2018. See also ECRE, *Comments on the Commission proposal amending the Migration Statistics Regulation*, June 2018, available at: <https://bit.ly/2JwAQsj>.

⁶ Not to be confused with family reunification (*Reagrupación familiar*). See further below for details.

⁷ AIDA, Country Report Spain, 2017 Update, March 2018, available at: <https://bit.ly/2plANDI>, 78.

⁸ AIDA, Country Report Greece, 2017 Update, March 2018, available at: <https://bit.ly/2G5vKP2>, 175.

⁹ *Ibid.*

- In Spain, there is a gap in the legislation regarding situations where the nationalities of the applicant and the family member are different, resulting in such applicants being unable to access family reunification.
- Documentation (e.g. in Cyprus, documentation need to be certified under Hague Convention).
- Proof of family links: requiring DNA testing.
- Lack of information on the procedure; misleading pre-departure information.
- Lengthy procedures; lack of clear procedures.
- Liability for covering expenses is placed on sponsors/applicants for family reunification (e.g. in Greece they are responsible for DNA test costs, visa processing fees, visa issuance fees, translation and authentication fees, cost of medical examination/lab tests, travel expenses from place of residence of visa applicants to location of competent consular authority, travel expenses of approved family members from their location to the receiving country)
- Difficulty obtaining travel documents to go to locations where embassies are (Malta, Greece).
- Gaps in registration process, missing deadlines. Whereas Italy, Portugal and Spain impose no deadline, waiting period or material conditions on sponsors, restrictions are maintained by Greece, Cyprus and Malta. In Malta, Greece and Cyprus, refugees are exempt from material conditions (accommodation, sufficient resources and sickness insurance) so long as they apply for family reunification within 3 months of becoming eligible.¹⁰
- Negative decisions and lack of ability to request a review of the decision.
- Lack of legal assistance; lack of logistical support.

Litigation: A recent family reunification case was litigated in **Greece**. In February 2018, in a case supported by the Greek Council for Refugees, the Administrative Court of Athens annulled a decision rejecting the application for family reunification submitted by a refugee before the Aliens Directorate of Attica, under the pre-2013 asylum procedure. The Court found that the rejection of the application had been issued in breach of the relevant legal framework and returned it back to the competent authority for a new decision to be taken.¹¹

In **Spain**, a judgment of the *Audiencia Nacional* recognised the right to the extension of refugee status of a refugee of Palestinian origin in favour of her father of 70 years of age, under the family extension provisions of the Asylum Act,¹² as well as family reunification in favour of her 71-year-old Syrian mother under the family reunification provisions of the Act. Importantly, the *Audiencia Nacional* states that whilst Article 41(2) does refer to an implementing regulation (which should have been completed in June 2010), the Article itself contains a sufficiently detailed regulation, almost analogous to that contained in Article 40, which makes it perfectly applicable in practice.

“The *Audiencia Nacional* considers that both the appellant's arguments and those reported by UNHCR are in line with the legal framework comprising Articles 39 to 41 of the Asylum Act, a consideration which must be seen in relation to the situation of conflict and instability affecting a substantial part of Syrian territory, where the parents of the applicant reside, circumstances which make it advisable to have access both to the family extension of international protection for the applicant's father and to family reunification for the applicant's mother, as suggested by the UNHCR and requested in

¹⁰ *Ibid*; AIDA, Country Report Cyprus, 98; Country Report Greece, 173-174.

¹¹ Greek Council for Refugees, ‘Πρώτη απόφαση διοικητικών δικαστηρίων για οικογενειακή επανένωση πρόσφυγα’, 8 February 2018, available in Greek at: <http://bit.ly/2FhY5EE>.

¹² Audiencia Nacional, Decision 656/2016, 15 December 2017, available in Spanish at: <https://bit.ly/2IRvIXd>.

	<p>the application, and it is therefore appropriate to allow the court to grant the application for the proceedings to be contracted.”</p> <p>This presents an illustrative example of judicial intervention to fill gaps in legislative or regulatory provisions with a view to securing the right to family reunification.</p> <p>In Italy, the Court of Bari has held the refusal of a visa for family reunification by the Italian Embassy in New Delhi between two spouses to be unlawful.¹³ According to the Court, the Embassy had taken the decision in “excess of its power” by failing to communicate the documents which they considered to be unreliable and the reasons supporting that conclusion. The ruling “annuls the measure in the acts... and orders the Embassy to issue an entry visa for family reunification.”</p> <p>Other recent cases of interest will be discussed during the session.</p>
<p>Overall objectives of the 2018 Regional Consultations</p>	<p>Access to family reunification is an important priority, both in support of the right to family unity of beneficiaries of international protection, as well as to promote safe and legal pathways to protection for family members and strengthen integration prospects.¹⁴ Nevertheless, certain operational and legal challenges hinder effective enjoyment of this right for all persons of concern in the Southern Europe region.</p> <p>As a result of these regional consultations, UNHCR would like to: (1) find practical ways to improve family reunification outcomes in Southern Europe through increased operational engagement and cooperation with NGOs; and (2) obtain legal and policy changes allowing family reunification for beneficiaries of subsidiary protection on an equal basis with refugees in Cyprus, Greece, and Malta, as well as more flexible definitions of eligible family members.</p>
<p>Objectives of each session & Guiding Questions</p>	<p>This Southern Europe workshop would ideally result in concrete joint follow-up actions between UNHCR and NGOs in the various countries in the region, as laid out in the two guiding questions below:</p> <ol style="list-style-type: none"> 1. What kind of operational engagement can UNHCR and NGOs undertake to facilitate family reunification, in particular regarding: (i) information sharing, (ii) travel documents; (iii) access to embassies and visas; (iv) assistance with travel and visa costs; (v) accelerated procedures for cases with specific needs; (vi) facilitating cooperation with UNHCR offices in first countries of asylum; (vii) “ageing out”; (viii) provision of legal information, counselling, and assistance for individual cases; (ix) legal status in country of destination; (x) establishment of institutional coordination mechanisms with Government entities responsible for family reunification; (xi) developing training for frontline practitioners on family reunification; (xii) designing and producing information materials for persons of concern; and (xiii) supporting Member States’ processing capacity for family reunification applications.

¹³ Court of Bari, Order No 11594/2016, 29 September 2017, available in Italian at: <https://bit.ly/2NIJYOX>.

¹⁴ For more information on the right to family unity, see UNHCR, *The “Essential Right” to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, January 2018, 2nd edition, available at: <http://www.refworld.org/docid/5a902a9b4.html>; UNHCR, *The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied*, January 2018, 2nd edition, available at: <http://www.refworld.org/docid/5a9029f04.html>; ECRE/ELENA, *Information Note on Family Reunification for Beneficiaries of International Protection in Europe*, June 2016, available at: <http://bit.ly/2EITi51>; *Legal Note on Ageing Out and Family Reunification*, June 2018, available at: <https://www.ecre.org/ecre-elena-legal-note-on-ageing-out-and-family-reunification/>.

	<p>2. How can UNHCR and NGOs cooperate on judicial engagement and advocacy to promote family reunification (especially to allow access to family reunification for beneficiaries of subsidiary protection in Cyprus, Greece, and Malta; and related to definition of family members)? For example, joint follow-up actions for UNHCR and NGOs on this point may include: identification of strategic litigation cases; drafting of advocacy papers / messages focussing on the impact of family reunification; organisation of conferences / meetings with key stakeholders to discuss areas for improvement; public awareness campaigns, etc.</p>
Methodology	The session will consist mainly of interactive break-out sessions, with some plenary work at the beginning of the session to introduce the topic and at the end to allow feedback/exchange between the smaller groups.
Agenda (Outline of the workshop)	<p>12:00 – 12:05 Introduction of session by moderators – UNHCR priorities related to family reunification and recent developments, as well as situation in the Southern Europe region.</p> <p>12:05 – 12:20 Getting to know each other (ice-breaker activity: “business card exercise”)</p> <p>12:20 – 12:25 Moderators introduce the first breakout topic: Guiding Question #1 on operational engagement</p> <p>12:25 – 12:35 Presentation by the Italian Refugee Council (CIR) on challenges, good practices and recommendations for improving implementation of family reunification procedures in practice [TBC]</p> <p>12:40 – 13:30 <i>Break into two groups</i> Break-out group discussion on solutions and areas for collaboration between UNHCR and NGOs in response to Guiding Question #1 (operational engagement).</p> <p><i>Lunch</i></p> <p>14:30 – 14:50 Feedback on operational engagement discussion (in plenary, using fishbowl exercise)</p> <p>14:50 – 14:55 Moderators introduce second breakout topic: Guiding Question #2 on judicial engagement and advocacy</p> <p>14:55 – 15:05 Presentation by Sofia Bonatti, ECRE Legal Officer on case law developments and strategic litigation</p> <p>15:10 – 15:30 <i>Break into two groups</i> Break-out group discussion on Guiding Question #2 : judicial engagement and advocacy</p> <p>15:30 – 15:50 Feedback on judicial engagement and advocacy discussion (in plenary, using brief presentations by the groups)</p> <p>15:50 – 16:00 Moderators wrap-up and summarise follow-up actions/next steps</p>

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