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Stuck in Greece? Unaccompanied Minors' Stratified Access to Family Reunification on the Way to Other EU Member States

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Abstract

We analyse the family reunification troubles of a largely overlooked category of unaccompanied minors in Europe. The unaccompanied “followers” migrate in the footsteps of primary or secondary kin, or get separated from accompanying kin during their irregular journey, and then, typically after arriving in the European Union, seek family reunification with family members living in another EU Member State. Using extensive desk research, legal analysis, and semi-structured interviews, we document a considerable ‘family reunification gap’: followers arriving in Greece often see the realisation of their reunification aspirations prevented, or much delayed, because they

lack clear family reunification rights or have difficulty accessing their rights, while the – tempting – path to continued irregular family reunification is similarly full of obstacles. We also show how the interplay of legislation, implementation practices, and opportunities for irregular reunification results in family reunification hierarchy, in which the best interests of the child are unequally fulfilled.

Keywords

civic stratification – family reunification gap – family reunification hierarchies – irregular migration – Greece – unaccompanied minors

1 Introduction

Over the last decades, there has been a rising number of migrant children who have left their countries, seeking protection and a better life in Europe. Whereas most children on the move are accompanied by their parents or caregivers, a notable minority are unaccompanied minors (UAMs).¹ The literature has identified three different categories of such UAMs. The first refers to minors travelling alone, seeking to build a new life after the death or disappearance of their parents in a conflict area.² The second refers to minors who migrate unaccompanied – often with the involvement of smugglers – while their family members are still in the country of origin, possibly with the intention to reunify once the UAM can apply as a sponsor for family reunification from the country of destination.³ The third category of UAMs, which we call ‘followers’, is the focus of the present contribution: these UAMs travel unaccompanied by their parents or guardians for at least part of their journey, and aspire to reunify with kin who reached the destination at an earlier point of time. They are either separated from kin during their irregular journey, or migrate in the footsteps of family members with the intention to reunify with them in the country of destination. The third category of UAMs has been underrepresented in public debates, and in legal and sociological analysis. For example,

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- 1 UNICEF (2017). Refugee and Migrant Children in Greece. UNICEF Refugee and Migrant Response Team in Greece.
 - 2 Fili A. & Xythali V. (2017). The Continuum of Neglect: Unaccompanied Minors in Greece. *Social Work and Society*, 25. ISSN 1613–8953.
 - 3 Lalander P. & Herz M. (2018). Being alone or becoming lonely? The Myth of the Anchor Child and the Decision to Flee in the Narratives of Unaccompanied Children. *NJMR*, 8(2), 2018, 91–98.

according to Parusel,⁴ there has been a substantial amount of research regarding UAMS in the European Union, but how different Member States implement family reunification laws for UAMS, especially for followers, remains largely unaddressed.

We zoom in on followers, who, after having arrived in a European Member State, aspire to reunify with family elsewhere in the European Union. The analysis focuses on Greece, which is a common first EU Member State of entry for followers, who usually aim to reunify with kin living in an EU member state further up North.⁵ According to the National Centre of Social Solidarity (NCSS), during the pre-covid period (January 2016–December 2019), 36,000 UAMS arrived in Greece, while in the period between January 2020 and December 2021, 1,533 UAMS reached the country.⁶ At the time of writing – February 2023–2,516 UAMS reside in Greek shelters.⁷ Their total number is probably higher, since a considerable number of UAMS do not apply for asylum in Greece, and remain undocumented. There is no accurate data on the precise number of followers among UAMS in Greece, but the first author's experience in the field as a teacher in a shelter for UAMS, as well as Eurostat data on submitted Dublin requests,⁸ suggest that their number is considerable. In trying to escape from situations of war, poverty and childhood filled with deprivation, these minors, often originating from countries like Afghanistan or Syria, typically believe that their hardships have ended when they reach the European Union. On the contrary, this study illustrates how they typically 'remain neglected in a system that appears inept to address even their most basic needs,'⁹ since they typically experience considerable difficulties to obtain

4 Parusel B. (2017). Unaccompanied minors in the European Union – Definitions, trends, and policy overview. *Social Work and Society*, Vol. 15, Issue 1, ISSN 1613–8953 <http://nbn-resolving.de/urn:de:hbz:464-sws-1208>.

5 Barn B., Rosa T. & Kallinikaki T. (2021). Unaccompanied Minors In Greece and Italy: An Exploration of the Challenges for Social Work within Tighter Immigration and Resource Constraints in Pandemic Times, *Social Sciences*, 10, issue 4, p.1–17.

6 Khan J., Dey Kumar D. & Todorovska Z. I. (2022). Refugee and Migrant Children in Europe 2021 – Final. UNHCR-UNICEF-IOM.

7 NCSS with the support of UNICEF publishes a bi-weekly updated report on the situation of UAMS in Greece based on accommodation referrals sent to the Service for the management for Accommodation Requests of Unaccompanied Minors. More info can be found here: <https://migration.gov.gr/asynodeyta-anilika-stoicheia-fevroyariou-2023/>.

8 See: https://ec.europa.eu/eurostat/web/main/data/database?p_p_id=NavTreeporletprod_WAR_NavTreeporletprod_INSTANCE_nPqeVbPXRmWQ&p_p_lifecycle=o&p_p_state=pop_up&p_p_mode=view&NavTreeporletprod_WAR_NavTreeporletprod_INSTANCE_nPqeVbPXRmWQ_nodeInfoService=true&nodeId=1006659.

9 Fili A. & Xythali V. (2017). The Continuum of Neglect: Unaccompanied Minors in Greece. *Social Work and Society*, 25. ISSN 1613-8953.

state permission to reunify with their kin. We also show that widespread negligence contributes to followers' – risky – attempts to continue their journey to the preferred Member State irregularly, such as by hopping on freight trains or trucks going North. All in all, these vulnerabilities raise serious questions about whether European states sufficiently consider the best interest of the child. While the analysis focuses on Greece, the results are likely to be also valid for other European 'transit' countries of irregular migration, both in the Mediterranean and Eastern Europe, as followers staying in these countries will be confronted with similar regulations and obstacles to make us of legal family reunification.

Against this backdrop, the paper seeks to answer the following questions:

1. What are the family reunification rights of unaccompanied minor followers who arrive in Greece, and what factors determine access to these rights?
2. What explains why a considerable proportion of the minors experience substantial difficulties to (re)unify with family members elsewhere in the European Union?

To answer these questions, we combine legal and sociological analysis. From a legal perspective, the study brings the EU Family Reunification Directive (FRD) and the Dublin III Regulation into discussion. The former aims to establish common legal principles governing the right to family reunification among Member States.¹⁰ Although the latter was initially established to allocate the responsibilities for asylum applications between Member States,¹¹ the Dublin Regulation also confers rights to individuals, and the Court of Justice of the EU (CJEU) has always been protective of family unity and minors' best interests.¹² While current literature on migrants' reunification mostly analyses the implications of admission requirements of the respective EU Directive considering the sponsor as the applicant, the analysis of the family reunification through the asylum application of unaccompanied followers in the transit country, based on Dublin III Regulation, is limited.

10 Council Directive 2003/86/EC of September 2003 on the right to family reunification (2003) OJ L 251/12 (Family Reunification Directive).

11 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180.

12 Migration Law Clinic (2020). *An Individual Legal Remedy against the Refusal of a Take Charge Request under the Dublin Regulation III*. Vrije University Amsterdam.

The sociological aspects of the analysis are informed by Lockwood's civic stratification theory,¹³ which helps to shed light on relevant stratifications among the followers. The theory argues that states allocate different rights to different categories of individuals, while individuals also have differential access to the rights that have been formally allocated, because of variation in relevant resources. In addition, we explore how followers perceive family reunification regulations, and why a significant proportion is willing, but not always capable, to reunify with family without obtaining state permission. In so doing, we also show that civic stratification theory, which highlights rights and access to rights, does not fully explain the observed family reunification hierarchies.

The study was carried out in two phases. First, desk research and eleven semi-constructed interviews were conducted in the period January to July 2021 with workers (lawyers, social workers, and psychologists) of different Greek NGOs and an intergovernmental organisation.¹⁴ The desk research and interviews were aimed at identifying legal family reunification rights and the main factors structuring access to these rights. For the second phase, two interviews were conducted in October 2021 with former unaccompanied followers in Greece who had applied for family reunification under the Dublin III Regulation. The first interviewee managed to reunify with his brother in Germany, whereas the second, has remained 'stuck' in Greece since 2017 after multiple attempts to reunify with his uncle in Sweden. In the second phase, we also re-approached three lawyers from the first period of data collection. Our purpose was to pose some extra questions to them, and to check whether they agreed with the results of our socio-legal analysis, also having heard the narratives of the followers.

The interviews with the former UAMS were analysed focusing on four topics. First, we examined the participants' family situation and how it had occurred, and investigated their motives to migrate in relation to their relatives in Europe. In the second part, we sketched the existing legislation regarding family reunification, and we inquired what followers knew before departure in regards to these laws. Thirdly, we investigated which potential reunification alternatives and strategies the followers had considered and made use of, and which strategies were considered and used among followers they were

13 Lockwood D. (1996). Civic Integration and Class Formation. *The British Journal of Sociology* 47 (3), Special Issue for Lockwood (Sep. 1996): 531–550.

14 Melissourgos S. (2021). Not for all; The conditional Right to Family Reunification and the Access to it for Unaccompanied minors In Greece. MSc, Department of Social and Behavioural Sciences, Erasmus University Rotterdam.

personally acquainted with. The fourth and final interview point was related to their future plans, their proposals to improve current legislation as well as their suggestions to prospective unaccompanied followers wishing to apply for family reunification.

In the next section, we describe how social scientists have studied family reunification and what is known as the ‘conditional right to family reunification’ in law. Furthermore, we go into Lockwood’s theory on civic stratification, and briefly explain how obstacles to legal family reunification may trigger irregular migration.

2 The Conditional Right to Family Reunification and Civic Stratification

Family reunification includes separate forms, with different categories and their interactions, but generally pertains to all forms of geographical human mobility, including international migration, where people move to another location with a view to living with, or close to, certain family members already living in that other location.¹⁵ Initially, scientists primarily studied family reunification as an outcome of aspirations among relatively settled migrants to reunify with family members left behind in the origin country, usually after a considerable period of geographic separation and transnational living arrangements.¹⁶ Over time, researchers began to increasingly consider the aspirations among the newcomers involved in family reunification. For example, it was observed that forced migrants may use family reunification in order to escape from ‘push factors’ such as conflict areas, poverty and environmental disasters, even if their kin have not acquired stable residence in the country of destination.¹⁷ Such observations also indicated that ‘family migrants’ may have additional motivations to migrate, besides the desire to live with, or close to, family members in

15 On the difficulties of formulating a straightforward definition of family migration see Kofman E. (2004). Family-related migration: a critical review of European Studies. *Journal of ethnic and migration studies* 30(2): 243–262.

16 Barbiano E. & Terzera E. (2018). Family Reunification: Who, When and How? Family trajectories among migrants in Italy. *Demographic Research* Vol. 28(28), p. 737–772. Kofman E. (2004). Family-related migration: a critical review of European Studies. *Journal of ethnic and migration studies* 30(2): 243–262.

17 Kouider, M. (2021). Syrian Secondary Migration: A study on push and pull factors behind the irregular migration of Syrians from Turkey to Europe (Dissertation). Retrieved from <http://urn.kb.se/resolve?urn=urn:nbn:se:mau:diva-40330>.

the location of destination; in fact, the desire to seek family reunification may actually have been triggered by these other reasons.

States have created laws and regulations to define and regulate family reunification.¹⁸ In the European Union, there is what could be called a conditional right to family reunification.¹⁹ Both nationals, citizens from other EU Member States, and residence permit holders from third countries have a right to bring certain family members to the country of residence of the ‘sponsor’ (the family member that already has residence in the EU country), if certain requirements are met. Some requirements pertain to the sponsors. For example, sponsors need to prove that they can financially support the newcomers. Other requirements pertain to newcomers (e.g., that they do not constitute a threat to public safety or, for persons seeking reunification with parents, that they are under 18). A final set of requirements pertain to the relationship between sponsors and immigrating newcomers (e.g., whether the reunifying family members are married or have a mutual parent-child relationship). Recent refugees are generally excluded from the scope of entry requirements, based on the presumption that it cannot be expected from refugees to comply with such requirements shortly after status recognition.²⁰

In stipulating such family reunification rules, the authorities need to define what constitutes a ‘family’, and what family ties should fall under the right to family life that underpins the conditional right to family reunification.²¹ Here, states typically privilege conceptions of the “Eurocentric (heterosexual) nuclear family”, although there is some scope for the recognition of other familial configurations.²² As a consequence, sponsors and/or migrants’ own perceptions of what constitutes family ties that deserve reunification may differ from the definition of the family in the applicable legal instrument, creating obstacles for certain groups to obtain state permission for family reunification.

18 Block L. (2015). Regulating Membership: Explaining Restrictions and Stratification of Family Migration in Europe. *Journal of Family Issues*. 36(1), 1433–1452.

19 See for example Leerkes A. & Kulu-Glasgow I. (2011). Playing Hard(er) to Get: The State, International Couples, and the Income Requirement. *European Journal of Migration and Law* 13(1): 95–121.

20 Klaassen, M. & Lodder, G., The (Limited) Role of Children’s Rights in EU Family Reunification Law for Beneficiaries of International Protection, in: Klaassen, M, Rap, S., Rodrigues, P. & Liefwaard, T. (2020). *Safeguarding Children’s Rights in Immigration Law*, Antwerp: Intersentia, p. 90.

21 Such definitions are not self-evident. Also see Welfens N. & Bonjour S. (2021). Families first? The mobilization of Family Norms in Refugee Resettlement. *International Political Sociology*, Vol. 15(2), p. 212–231.

22 United Nations High Commissioner for Refugees (2018). Desperate Journeys-Refugees and migrants arriving in Europe and at Europe’s borders.

For example, in Afghanistan, an important source country of unaccompanied followers arriving in Greece, the extended family, which includes grandparents and other relatives, is quite salient since it “*serves as a support system both economically and socially ... and comes together on all life-crisis occasions*”.²³

States normally only allow non-citizen minors to immigrate under the banner of family reunification if (1) the sponsor is a citizen or residence permit holder, (2) sponsor and minor are in a parent-child or guardian-child relationship, and (3) the sponsor meets certain income requirements (the latter requirements may not apply if sponsors are recent asylum residence permit holders).²⁴ In applications involving unaccompanied minor followers, Member States should have due regard for the principle of the best interests of the child.²⁵ The purpose of this legal principle is to ensure that children’s rights and well-being are safeguarded and promoted, and that their opinions are taken into consideration in all matters that concern them. In addition, there are certain family reunification opportunities for asylum seekers under the Dublin III Regulation, which we elaborate in section 3.2.

Lockwood’s civic stratification theory maintains that the function of citizenship to promote social integration in the polity – a central idea in Marshall’s sociology of rights – is threatened by societal tendencies toward ‘civic stratification’. States do not treat all residents the same, but tend to allot different rights to different members of the society (e.g. citizens versus non-citizen residents). Additionally, different societal members also tend to possess unequal resources to access the rights that have formally been allotted to them. On top of civic stratification hierarchies are groups that have been allotted the most extensive rights *and* that have the material and/or moral resources to successfully access these rights. At lower positions, we find persons who have been allotted certain rights that they cannot access (Lockwood argues that they are in a state of ‘civic deficit’), or who have not been allotted the rights altogether (Lockwood says that these individuals are in a state of ‘civic exclusion’). Various researchers have used civic stratification theory to analyse migration-related inequalities in legal status.²⁶

23 Merrill L., Paxson D. & Tobey T. (2006). An Introduction to Afghan culture https://islamawareness.net/Asia/Afghanistan/afghanistan_article1003.pdf.

24 Block L. (2015). Regulating Membership: Explaining Restrictions and Stratification of Family Migration in Europe. *Journal of Family Issues*. 36(1), 1433–1452.

25 As laid down in Article 5(5) Family Reunification Directive, Article 24(2) EU Charter of Fundamental Rights and Article 3(1) UNCRC.

26 See for example Morris L. (2003). Managing Contradiction: Civic Stratification and Migrants’ Rights. *The International Migration Review*, Spring, 2003, Vol. 37(1), p. 74–100. <https://www.jstor.org/stable/130037815>. Leerkes A., Engbersen G., Snel E. & Boom j.

A limitation of Lockwood's theory is that it largely overlooks dimensions of social stratification that are not 'civic' in nature, i.e., that do not involve membership rights or access to such rights. In our study, for instance, we found that a considerable number of followers who do not obtain state permission for family reunification, including those who do not have a clear legal right to family reunification, still reunify 'informally' via other official migration channels using relevant resources, for example via 'student migration' or outside of legal migration channels altogether. Arguably, such irregular followers are better off than followers who, on paper, have a right to family reunification, but cannot access the right, and then remain 'stuck in Greece'.

The next section first summarizes our key findings by introducing the different groups of unaccompanied followers that we identified with Lockwood's civic stratification theory as a sensitizing lens (3.1). Subsequently, we document followers' stratified access to family reunification in more detail. In section 3.2, we discuss the right to family life and unity under international and European laws, followed by a discussion of barriers to the effectiveness of the right to family reunification under the Family Reunification Directive in section 3.4. In section 3.4, we report our interview findings from our interviews on the factors shaping access to family reunification rights in Greece. In section 3.5, we end with some observations about 'irregular solutions': the options that followers may resort to when de jure family reunification is impossible or takes too long in their view.

3 Followers in Greece and Their Stratified Access to Family Reunification

3.1 *The Family Reunification Hierarchy*

Our findings point at a family reunification hierarchy among followers reaching the European Union. It consists of five ideal-typical strata. The first stratum pertains to follower/sponsor combinations that have been allotted a legal right to family reunification *and* have sufficient resources to access their rights. They obtain state permission to reunify with kin living elsewhere in Europe. Although there are no statistics on the relative size of the different strata, all

(2017). Civic Stratification and crime. A comparison of asylum migrants with differential legal statuses. *Crime Law Soc Change* <https://doi.org/10.1007/s10611-017-9743-x>
 Jonitz E. & Leerkes A. (2021). Making Asylum Work? Civic Stratification and Labour Related Regulation Among Rejected Asylum Seekers in Germany. *Law & Policy*, University of Denver and Wiley Periodicals LLC. 2022, 44(23), 43.

interviewees agreed that a considerable number of followers, but only after a prolonged period, overcome difficulties and receive permission to reunify, if they reunify with parents. Reunification with other kin or guardians is reported to be considerably more complicated. The second stratum involves followers who encounter difficulties to access their legal right to family reunification, and reunify irregularly, such as by hopping on trains or trucks going North. While these followers fail to obtain state permission to migrate to the other EU country, they still manage to reunify, and may be able to make use of their reunification rights at a later stage, after having arrived in the other EU country. Followers in the third stratum also reunify irregularly, but lack a clear right to family reunification. They reunify with their kin, but are likely to remain in a vulnerable position. The fourth and fifth stratum pertain to followers who remain 'stuck' in Greece. Followers in the fourth stratum have family reunification rights on paper, but are unable to access them. Followers the fifth and most disadvantaged stratum also lack a clear legal right to family reunification.

All strata experience family reunification gaps to some extent. Followers in the first stratum usually have to wait for a considerable amount of time before receiving state permission to go another other EU country; strata two and three are excluded from *regular* family reunification; strata four and five are excluded from regular *and* irregular family reunification.

In the next section, we elaborate on the factors determining these stratifications, starting with a discussion of relevant international and European legislation on family reunification. Thereafter, we analyse state implementation practices in relation to the followers' resources. We end with some observations on the followers' agency and irregular family reunification strategies.

3.2 *The Right to Family Reunification in International and European Law*

International human rights law does not provide for a concrete right to family reunification.²⁷ Even though the family is positioned as the natural and fundamental group unit of society,²⁸ this is not reflected in the legally binding international human rights treaties adopted in the second half of the twentieth century. Most fundamentally, the Refugee Convention does not even mention family reunification. Instead, the Final Act of the United Nations Conference of Plenipotentiaries called upon the contracting parties to allow for family reunification to sponsors who are recognised as refugees, but this is

27 Klaassen M. (2015). The right to family reunification: between migration control and human rights, Leiden: E. M. Meijers Instituut, 2015, p. 35.

28 Art. 16(3) Universal Declaration of Human Rights.

not a legally binding instrument.²⁹ The International Covenant on Civil and Political Rights includes the right to respect for family life but does not protect the right to family reunification as such. The only specific reference to the right to family reunification is found in the Convention on the Rights of the Child (CRC). Article 10 CRC calls upon state parties to deal with applications for family reunification “in a positive, humane and expeditious manner”. However, no substantive and legally enforceable right to family reunification can be derived from this provision. The Committee on the Rights of the Child (ComRC) – acting as the supervisory body of the CRC – has held that in dealing with applications for family reunification, states must assess and determine what is in the best interests of the child and that the family must be defined broadly.³⁰ However, these views of the ComRC are not legally binding.

In the European legal sphere, the European Convention on Human Rights does not include a right to family reunification either.³¹ In interpreting and applying the ECHR, the European Court of Human Rights (ECtHR) has interpreted the right to respect for private and family life as having implications for how states deal with applications for family reunification. Although the number of judgments in which the ECtHR has held that a state has the obligation to allow for family reunification is very limited, it has set clear guidelines in its case law. The ECtHR has held that “*the family unity is an essential right of refugees and that family reunion is an essential element in enabling persons who have fled persecution to resume a normal life [...]*”.³² In the context of respecting their obligations under Article 8 ECHR, the contracting parties must take due account of the applicant’s specific situation and make sure that the family reunification procedure offers the guarantees of flexibility, promptness and effectiveness.³³ Thus, even though the ECHR does not guarantee a substantive

29 See for instance Morris S., Lenard P. T. & Haugen S. (2021). Refugee Sponsorship and Family Reunification, *Journal of Refugee Studies* 34(1), p.132, in which it is argued that international law provides for a “[...] moral, if not legal, responsibility to assist in reunifying families separated inside and outside of their borders.”

30 See ComRC 10 December 2018, Communication 12/2017, Y.B. and N.S. v. Belgium, para. 8.11. See for further analysis G. Erdem Turkelli and W. Vandenhole, Communication 12/2017: Y.B. and N.S. v. Belgium, Leiden Children’s Rights Observatory, Case Note 2018/3, Leiden Law School, 10 December 2018.

31 See R. Schweitzer, A Stratified Right to Family Life? On the Logic(s) and Legitimacy of Granting Differential Access to Family Reunification for Third-country Nationals Living within the EU, *Journal of Ethnic and Migration Studies* 41(13), 2015, p. 2135, for an analysis on the effects of constructing a specific right to family reunification based on the general protection of the right to respect for family life.

32 ECtHR 10 October 2014, Appl. No. 2260/10, (*Tanda Muzinga/France*), para. 75.

33 *Ibid.*, para. 82.

right to family reunification, it does formulate procedural requirements that the contracting parties have to respect in the context of their obligations under Article 8 ECHR.

EU law on the right to family reunification is fragmented in different legal instruments affecting the applicable legal framework.³⁴ These different instruments are implemented and applied by the EU Member States in different manners, depending on the specific EU legal instrument. Central to the existence of a substantive right to family reunification is the legal residence of a sponsor to which a third-country national residing in another state is seeking residence within the host state. For the purpose of this contribution, the FRD and the Dublin III Regulation are identified as the main relevant EU legal instruments for the discussion of the right to family reunification of UAMS seeking to be reunited with family members in other EU member states.

The FRD guarantees the right to family reunification of third-country national applicants to a third-country national sponsor with lawful residence in a host state.³⁵ Being an EU Directive, the Member States have the obligation to implement the FRD in national law and applicants primarily rely on the national implementing laws and regulations to realise the protection that is provided for in the Directive. The FRD provides for a chapter on the right to family reunification of sponsors who are granted refugee status in the host state. The FRD explicitly excludes beneficiaries of subsidiary protection and asylum seekers from the personal scope of the Directive.³⁶ That means that persons that belong to these categories cannot act as the sponsor for an application for family reunification, also not in cases in which a family member is (temporarily) residing in another EU Member State. On the moment that a third country national is granted refugee status, the refugee can apply for family reunification. Refugees are exempted from the substantive requirements for family reunification – relating to income, accommodation, health care insurance and integration measures – but the Member States may require for this exemption to apply that the application is made within a three-month period after status recognition. The Directive explicitly prescribes the obligation to

34 See A. Staver, *Free Movement and the Fragmentation of Family Reunification Rights*, *European Journal of Migration and Law* 15(1), 2013.

35 Groenendijk, K. (2006). *Family Reunification as a Right under Community Law*, *European Journal of Migration and Law* 8(2).

36 See for an analysis of the origins of the distinctions between these different forms of international protection in EU law, H. Battjes, *Subsidiary protection and other alternative forms of protection*, in: V Chetail and C. Bauloz, *Research Handbook on International Law and Migration*, Cheltenham: Edward Elgar Publishing, 2014, p. 541–561.

consider the best interests of the child,³⁷ mirroring the similar obligations in the Charter of Fundamental Rights and the UNCRF. The CJEU has consistently held that the aim of the Directive is to facilitate family reunification and has referred to the best interests concept in its interpretation of the Directive, approaching the Directive from the perspective of children's rights.³⁸

3.3 *Barriers to the Effectiveness of the Right to Family Reunification under the Family Reunification Directive*

The FRD has several shortcomings that effectively limit the right to family reunification for cases in which UAMs find themselves in other Member States than their family members. Firstly, the Directive mostly grants the substantive right to family reunification to the sponsor, meaning that the sponsor should be eligible for family reunification pursuant to the Directive. Furthermore, the exclusion of beneficiaries of subsidiary protection, asylum seekers and irregular migrants from the scope of application of the FRD means that UAMs cannot invoke the protection of the (implementation of the) Directive in case their family member is ineligible to be a sponsor, which can cause a continued separation. Due to that, some national practices have been implemented in order to allow beneficiaries of subsidiary protection to apply for family reunification. For example, in Sweden, although in the early years of Temporary Act's implementation the beneficiaries of subsidiary protection did not hold the right to family reunification at all, after complaints and uproars by several organisations, they have had the same rights as beneficiaries of international protection since July of 2019.³⁹

Secondly, the definition of the family that the Directive provides for limits the definition of the family to the nuclear family, only providing for an obligation to allow for family reunification for the (married) spouse and minor children. Other (dependent) family members are mentioned in the Directive, but only under facultative provisions, not providing for a legal obligation for the Member States to allow for family reunification. On the moment that

37 Article 5(5) Family Reunification Directive.

38 See, among other cases, CJEU 12 April 2018, Case C-550/16 (*A. & S.*); CJEU 1 August 2022, Joined Cases C-273/20 and C-355/20 (*SW, BL & BC*); CJEU 1 August 2022, Case C-279/20 (*XC*); CJEU 17 November 2022, Case C-230/21 (*X.*), M. Klaassen, The right to family reunification for married unaccompanied minors: an analysis of *X. v Belgische staat* (C-230/21), *EU Law Live*, 2022.

39 United Nations High Commissioner for Refugees (2019). UNHCR observations on the Law Proposal "Forlangning av lagen om tillfalliga begränsningar av möjligheten att få uppehållstillstånd i Sverige – utkast till lagrådsremiss" <https://www.regeringen.se/495171/contentassets/e96731d263df43c39569a3a9998d6741/unhcr.pdf>.

the family relationship falls outside the scope of the definition of the family as provided for in the FRD, the Member States do not have the legal obligation based on the Directive to allow for family reunification. According to our interviewees,⁴⁰ some Member States approve family reunification with a member of the extended family relatively easier than others. For example, Sweden, which has traditionally been characterised as a country with liberal migration policies,⁴¹ is, or at least has been, approving the reunification with a member of the extended family, if the UAM's life and access to fundamental rights are under threat.⁴² Additionally, in some other Member States, like Germany and Austria, reunion with members of the extended family is considered as more difficult and in general their family reunification policies are slightly unfavourable.

Thirdly, there can be practical obstacles to realise the right to family reunification. Applicants for family reunification are required to be able to substantiate their identity and nationality. Even though the Directive prescribes that for the family reunification of sponsors who are recognised as refugees an application may not be rejected for the sole reason that they cannot prove their identity with official documents, the lack of availability of such documents can hinder the effectiveness of the right to family reunification.

3.4 *Barriers to the Effectiveness of the Right to Family Reunification under the Dublin III Regulation*

Another instrument of EU law that is identified as relevant for the exercise of the right to family reunification of UAMS is the Dublin III Regulation. Unlike the FRD, the Dublin III Regulation is directly applicable in all EU Member States and requires no implementation in national law. The aim of the Dublin III Regulation is to determine which EU Member State is responsible to handle an application for international protection lodged by an asylum seeker. The realisation of the right to family reunification is not the primary objective of the Dublin III Regulation. However, in the criteria to determine which member state is responsible to handle an application for international protection, the first criterion is the (legal) presence of family members in another EU

40 Also see for more info: <https://www.mipex.eu/family-reunion>.

41 Skodo A. (2018). Sweden: By Turns Welcoming and Restrictive in its Immigration Policy. *The Online Journal of the Migration Policy Institute*. <https://www.migrationpolicy.org/article/sweden-turns-welcoming-and-restrictive-its-immigration-policy>.

42 European Migration Network (2016). Family Reunification of Third Country Nationals in the EU: National Practices – Country report Sweden. http://www.emnsweden.se/download/18.4100dcob159d67dc6148dac/1494411473964/Family%20reunification_A5_web.pdf.

Member State. This makes the Dublin III Regulation a legal instrument that has the potential to bring divided families together again.⁴³

Article 8 of the Dublin III Regulation is dedicated to the position of minors. When an asylum seeker is an UAM, the EU Member State where a family member or a sibling is legally present is designated as the responsible Member State, if this is in the best interests of the child.⁴⁴ In case another relative is legally present in another EU Member State, that Member State is deemed responsible if, based on an individual consideration, that relative is able to take care of the applicant.⁴⁵ In case family members or relatives are legally present in more than one Member States, the responsible Member State is designated based on an assessment of what is in the best interests of the UAM.⁴⁶ Based on these provisions, even though the Dublin III Regulation does not have family reunification as a primary objective, in practice it has the potential to bring separated families together.

However, there are inherent obstacles in the application of the Dublin III Regulation that prevent the full potential of the Regulation to bring families together, and can thus be seen as limiting the followers' access to legal family reunification. First and foremost, unlike the FRD the Dublin III Regulation is an instrument that functions in the cooperation between EU Member States. The EU Member States that are faced with asylum applications are obliged to apply the Dublin III Regulation. In case the Member State determines that another Member State is responsible for an asylum claim, a take charge or take back request must be lodged by the host Member State. Alternatively, a Member State may make use of the facultative sovereignty clause to take responsibility for an asylum claim.⁴⁷ The asylum applicant does not have any agency in whether the Member State makes a take charge request. The asylum applicant may challenge the correctness of the application of the criteria in the Regulation,⁴⁸ but the Regulation itself does not provide for any remedies against the non-application of the Regulation. Despite national remedies in administrative or civil law for a failure to act by the domestic administration responsible for the application of the Dublin III Regulation, asylum applicants lack means to enforce the application of the Regulation. In 2022, the CJEU has established that an asylum applicant has the right to appeal the refusal of the

43 Boreil, F., Desmet, E., Dimitropoulou G. and Klaassen, M., (2020). Family reunification for refugee and migrant children – Standards and promising practices, Council of Europe.

44 Art 8(1) Dublin III Regulation.

45 Art 8(2) Dublin III Regulation.

46 Art 8(3) Dublin III Regulation.

47 Art 17 Dublin III Regulation.

48 CJEU 7 June 2016, Case C-63/15 (*Ghezelbash*).

receiving Member State of a take charge request.⁴⁹ The CJEU reasons that the Regulation intends to give rights to asylum seekers and that the effectiveness of these rights are impaired in case asylum applicants would not be able to challenge the refusal of a take charge requests. It remains to be seen however how the Member States will apply this procedural obligation in their administrative procedures.

Furthermore, the application of Article 8 Dublin III Regulation requires that the family member in the Member State of destination is legally present there. Even though there could be a discussion on the meaning of legal presence – the Regulation itself does not provide for a definition – it is apparent that it excludes irregular migrants without lawful residence. Even though the term legally present should be applied uniformly in all EU Member States, as it is necessary to establish the meaning of this concept to determine which Member State is responsible for the asylum application, there is no guidance on this concept by the CJEU yet. Beyond any doubt, the fact that the majority of asylum seekers do not get an international permit and simultaneously do not return to their country of origin²⁵ or get subsidiary protection statuses – 55.415 out of 211.850 positive decisions to asylum requests between 2011 and 2020 were based on national humanitarian grounds⁵⁰ – does not allow the vast majority of families to reunify lawfully. In addition, some national regulations, like the German practice to grant to the majority of Afghan asylum seekers the *Duldung* status as a temporary suspension of deportation which “*constraints their agency and limits their access to rights*”,⁵¹ in combination with the notable number of Afghan followers in Greece, enlarges the number of followers who do not hold the right to be reunified. In 2019, Germany hosted almost 120,000 migrants with *Duldung* (‘toleration’) status.⁵² Restrictive practices limit the effectiveness of the Dublin III Regulation in realising the right to family reunification of followers stranded in Greece.

Another limitation of followers’ access to legal family reunification through the application of the Dublin III Regulation is that it is incumbent that the UAM makes an application for international protection. Without an asylum

49 CJEU 1 August 2022, Case C-19/21 (*I. & S.*).

50 See https://ec.europa.eu/eurostat/web/main/data/database?p_p_id=NavTreeportletprod_WAR_NavTreeportletprod_INSTANCE_nPqeVbPXRmWQ&p_p_lifecycle=0&p_p_state=pop_up&p_p_mode=view&_NavTreeportletprod_WAR_NavTreeportletprod_INSTANCE_nPqeVbPXRmWQ_nodeInfoService=true&nodeId=1006659.

51 Jonitz E. & Leerkes A. (2021). Making Asylum Work? Civic Stratification and Labour Related Regulation Among Rejected Asylum Seekers in Germany. *Law & Policy*, University of Denver and Wiley Periodicals LLC. 2022, 44(23), 43.

52 See: German Parliament no.19/12240 2019, p.34.

application, the Dublin III Regulation is not triggered. This means that when the access to the asylum procedure is hindered, no family reunification can take place through the application of the Dublin III Regulation. There are various factors limiting access to the asylum procedure by an UAM. Firstly, UAMs are considered as a vulnerable group to fall victim to human trafficking. This can undermine the ability of the UAM to apply for international protection. Furthermore, there can be limitations in the UAM's agency to apply for international protection by himself. In situations in which only a guardian or legal representative can apply for asylum on behalf of the UAM, obstacles in being granted a guardian or legal representative may result in limited access to the asylum procedure. More practically, the UAM and the host Member State must be aware of the legal presence of family members in another Member State. Without a proper tracing and identification of family members mechanism, a lack of information may prevent the triggering of the relevant provisions of the Dublin III Regulation.

The discussion above shows that there are several reasons both limit the right to the framework of international and European law as well as followers' access to the stipulated rights. Although health insurance, integration measures and income may not be key determinants for unaccompanied followers' family reunification, sponsors' status, family ties and sufficient accommodation ensuring the protection of the best interest of the child are. The next section, which is based on the interviews with professionals in Greece, describes a number of additional factors that limit the followers' access to legal family reunification, and contribute to a family reunification hierarchy.

3.5 *Obstacles to the Effectiveness of the Right to Family Reunification in Greece*

In opposition to the need to ensure that the best interests of the child precede the interest of the states, as highlighted by Smyth,⁵³ all interviewees agreed that states interests tend to be prioritised in practice. In particular, even though all Member States have introduced measures to protect children's rights, the violation of some of these rights in certain cases is a daily phenomenon in Greece.⁵⁴ As most interviewees mentioned, followers need to possess various resources. Based on their narratives, below we introduce four such identified resources, and describe why followers often lack these resources.

53 Smyth C. (2013) The common European asylum system and the rights of the child: an exploration of meaning and compliance. University of Leiden <https://scholarlypublications.universiteitleiden.nl/access/item%3A2862104/view>.

54 See: <https://www.hrw.org/world-report/2021/country-chapters/greece>.

Firstly, insufficient opportunities for timely representation. Considering that the majority of UAMS arrive on Greek islands, the interviewed lawyers stated that many followers are inadequately informed about the process, and are not represented in accordance with the safeguards provided for in EU law. Due to several delays, no guardian and legal representative is appointed in a timely manner when minors approach the Greek coasts. As the European Court of Human Rights has ruled in a similar case,⁵⁵ such practices are in violation of EU law and the ECHR. One of the main reasons behind these delays is the detention or protective custody of UAMS by Hellenic Police. Although Greek authorities are obligated to provide specific treatment to UAMS,⁵⁶ minors are subjected to the same treatment as adults, mainly because of inaccurate age assessments upon arrival in Greek coasts. According to the Greek Council of Refugees, Greek authorities instead of following the Joint Ministerial Decision 9889/2020,⁵⁷ which clearly define the age assessment procedure, they do not follow the official process in a consistent and organised manner.⁵⁸ Eventually, after three or four weeks, the majority of UAMS have a legal representative. However, regarding family reunification applications, whereas the specific delay does not concern minors having relatives already residing in most Member States, the reality is different for those wishing to reunite in Germany, which is common. According to the Dublin III Regulation, Greek authorities need to conduct and send the application to the responsible country within three months.⁵⁹ Our respondents report that the time-limit to make the take charge-request creates an obstacle for the transfer to be realised, particularly with respect to Germany, which is reported to have a different interpretation of the determination of the start of the three-month period. This is a chronicle barrier to realise family reunification through the application of the Dublin III Regulation for followers stranded in Greece.

Secondly, followers' *gender* has an important role in the application procedure, and being male, which is the case for most followers, typically reduces access to legal family reunification. The majority of followers in Greece are male minors wishing to reunify with their father or another older male family member. Accordingly, they typically follow a traditional organised migratory plan conducted by families, prioritising the movement of men in order

55 Khan v. France, application no. 12267/16.

56 Article 60 L 4636/2019.

57 Joint Ministerial Decision 9889/2020, Gov. Gazette 3390/B/13-8-2020.

58 For more info regarding age assessment and UAMS detention read: European Council on Refugees and Exiles (2022). AIDA 2021 Update: Greece 2021 p.119–123 & p.214–215.

59 Article 23(3) Dublin III Regulation.

to raise money to make subsequent migration for the rest of the family more feasible and under better conditions.⁶⁰ This strategy is confirmed also by the fact that 84% of UAMS in Greece are males.⁶¹ The few cases interviewees had to deal with related to girls wishing to reunify with families in another Member State, faced much faster procedures and always positive responses. Lawyers argued that this is mainly because females, and especially young girls, are considered more vulnerable than men. Mascini⁶² has also pointed out that UNHCR introduced specific guidelines for refugee women's protection in 1991 because women are the disadvantaged group compared to men and that "notions of femininity have an obvious impact on females' success rate in asylum requests". Male followers, by contrast, are seen more often as a threat. Although interviewees did not mention that applicants had been rejected based on objective public safety concerns, they mentioned that both countries see male followers more as economic or bogus refugees, and potential criminals, rather than seeing them as a vulnerable group. As such, states carry out a more thorough examination of males' applications resulting in delays and a greater number of systematic rejections.

Thirdly, another major difficulty regarding the procedure of family reunification is related to the *inability to submit sufficient documents proving the family tie* between the sponsor and the follower. Although migration authorities allow the minors to provide only one document proving their family ties,⁶³ most of them lack any documentation. These documents are of crucial importance, especially when the sponsor does not belong to the nuclear family, in which case a DNA test is insufficient to prove material family ties. Even though national law of the majority of the Member States' may approve the family reunification for family members of refugees or beneficiaries of subsidiary protection beyond the scope of the nuclear family, in reality this is not easy. Followers wishing to reunite with uncles, aunts or cousins, need to submit pictures and/or mutual communication to demonstrate that close ties existed

60 Mascini P. & Van Bochove M. (2009). Gender Stereotyping in the Dutch Asylum Procedure: "Independent" Men versus "Dependent" Women. Center of Migration Studies of New York DOI: 10.1111/j.1747-7379.2008.01149.x.

61 See: <https://migration.gov.gr/asynodeyta-anilika-stoicheia-fevroyariou-2023/>.

62 Mascini P. & Van Bochove M. (2009). Gender Stereotyping in the Dutch Asylum Procedure: "Independent" Men versus "Dependent" Women. Center of Migration Studies of New York DOI: 10.1111/j.1747-7379.2008.01149.x.

63 European Migration Network, (2017). Synthesis Report – Family Reunification of TCNs in the EU plus Norway: National Practices. Migrapol EMN [Doc 382] April 2017 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_family_reunification_sr_final.pdf.

before departure from their country of origin, or birth certificates of both sponsors' and follower's parents to prove their in-between relationship as siblings.

Followers come up with further difficulties even when they want to reunite with members of the nuclear family. In particular, Member States may ask followers to undergo a costly DNA test as a last resort in order to prove family ties.

When we inform minors that the receiving country asks for a DNA test, they look happy as they believe that is easy to do. In reality, it is one of the main reasons for their prolonged procedure or even the denial of application. Since a DNA test's price today can vary between 300 and 500 Euros. Applicants do not have that money and once again their future is based on our capacity. (Social Worker).

As the previous quote indicates, the fourth main factor limiting access to legal rights to family reunification pertains to *limited* institutional capacities of the appointed Greek guardians, including a lack of financial resources. The Greek guardians are reported to often being unable to effectively communicate and meet followers' needs in an appropriate manner, either due to their weak social networks or limited economic capabilities. According to the UNHCR,⁶⁴ all the actors involved in family reunification applications need to know how children should be treated, to assess their needs and to ensure that all actions are in the best interest of the minors. By contrast, most of the interviewees agreed that people working to protect these minors in Greece typically do not hold any qualification regarding children's needs. According to interviewed lawyers, this fact determines why often the Dublin Team in Greece does not pay enough attention to the best interest of the children. Furthermore, several smaller and lesser-known NGOs are ignored by the authorities of the Member States. Because of their limited financial capacities, the NGOs are also reported to prioritise asylum applications of 'selected' followers, based on the anticipation that a take-charge request will be accepted.

Having analysed the different categories of requirements that followers and their sponsors need to meet, and the different resources that followers and their Greek guardians need to possess in order to legally reunify with kin in another Member State under the banner of family reunification, it transpires that minors' access to such family reunification is both restricted and unequal. The next section helps us to also differentiate between mobile and immobile

64 United Nations High Commissioner for Refugees (2018). The Rights to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied <https://www.unhcr.org/5a8c40ba1.pdf>.

followers among UAMS who are relegated to lower positions in the family reunification hierarchy and do either do not have a right to legal family reunification, or experience considerable obstacles in accessing their rights.

3.6 *Towards Irregular Solutions*

Several factors upon arrival in Greece make followers stand between legality and illegality. In particular, once followers realise that their reunification requests will be under examination for a prolonged period, or when they have received a negative response, they tend to examine alternative pathways to family reunification. While we do not have sufficient data to examine the exact percentages, by taking into consideration the narratives of the two interviewed former followers, we observe a clear inclination toward irregularity around minors' decisions, which was also confirmed by several interviewed professionals. Because of these irregular decisions the family reunification hierarchy cannot be fully reduced to the civic hierarchies that are central in Lockwood's theory: arguably, irregularly mobile followers who do not have family reunification rights are better off than followers who, in principle, have such rights, yet remain 'stuck' in Greece.

One UAM who saw his family reunification application being examined for a prolonged period, considered staying in Greece or asking his family member, a brother living in Germany, to come and live in Greece instead. Although it could be easier for the brothers to reunify in Greece, this was seen as an unacceptable retrogression in their lives.

Well, I was thinking of staying in Greece because I've met so many people there and Greece is a good country ... but not for the future. So, he (brother) refused when I said "Well, I'm thinking of staying in Greece" ... He said, no, you can't. If you do, you have no mind in your head ... if you came from Syria to stay in Greece you are insane. (Follower)

We identified three solutions that minors prefer when legal family reunification is impossible or too difficult. The first option is to apply for relocation in another EU Member State and try from there to reunify with family members. Remarkably, as also lawyers and social workers stated that they currently advise followers to apply for relocation under the respective scheme,⁶⁵ where the process is simpler and faster, because family reunion procedures under

65 Council of Europe (2015). Establishing provisional measures in the area of international protection for the benefit of Italy and Greece. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1601&from=EN>.

Dublin III Regulation might take more than two years in some situations. Afterwards, followers, if they are not relocated in the same country where their sponsor resides, can still apply for family reunification and may have better chances due to the capabilities of the new transit country. Although one could argue that this option is not illegal, we do consider it as irregular. The reason is that the purpose of this scheme is not the reunification but the movement of immigrants from countries that are under extreme pressure, in another Member State.

Followers' second indirect irregular option is to apply for asylum and remain in Greece only for some short period. While the focus of this study does not address the challenges faced by UAMS seeking asylum in Greece, it is worth noting that not all followers qualify for international protection. However, given the general socio-economic conditions in Greece, especially for immigrants, the majority of followers who are granted asylum, do not plan to stay in Greece. In contrast, their aspiration to reunify remains unchanged and they try other pathways toward that direction. Thus, minors having been recognised as refugees in Greece could either travel irregularly to another Member State or try to get a tourist visa and overstay in the destination country.

They rejected my family reunification with my uncle in Germany but now that is okay for me. I don't think a lot about it ... anyway now he is in Sweden and I will go with a tourist visa but I don't plan to return. Although I made friends here, I don't make money ... in Sweden my uncle told me that I could be a taxi driver and gain enough money for me and my parents back home. (Follower)

The third path could be the outcome of a general strategy of not seeking a regular solution at all, and remaining undocumented whilst attempting to move to the destination country irregularly. Considering the Dublin III Regulation, one could argue that these two decisions are interrelated. Particularly, in case where followers submit a take-charge request from Greece to another Member State and, due to rejection or prolonged procedure, try to continue irregularly their journey to the respective Member State, they automatically put themselves at risk of being returned to Greece if they get caught. According to social workers' experiences, currently there are more than 2,000 undocumented minors, and a significant number of them consider Greece as the transition point to Western Europe and families. The interviewees agreed that the main reason for minors' unwillingness to be documented is their sponsors' status.

Imagine having a chance to find your family if you continue your illegal trip or no chance if you are documented. What will you choose? These kids prefer to sacrifice a hot meal or a place to sleep in order to deplete all their possibilities to find their families. (Social worker)

Although these followers could pay smugglers to arrange their journey, extremely high costs to obtain falsified documents lead the majority of followers to try to continue on their own, usually by hiding in trucks, trains and ships.

When I understood that I need to stay in the shelter, I called my uncle in Germany and I was crying telling him that I cannot stay here anymore ... he said to me “okay, I will send you money to make a passport and travel here” but after he spoke with a friend of him and told me that it is better to wait ... it was too expensive and dangerous to make a fake passport. (Follower)

4 Conclusion and Discussion

By taking Greece as a point of reference, we analyse the realities of one specific category of UAMS, the ‘unaccompanied followers’, who represent a notable part of the UAM population in countries like Greece, but have been under-represented in academic and public debates. We discuss the main factors that lead to a considerable family reunification gap, which causes followers’ family reunification aspirations to only become true after a considerable waiting period in Greece, to only become true outside of regular family reunification channels, or to not become true at all. A considerable number of followers are thus ‘stuck’ in the EU country of first arrival – or are at least held up there for a long time. Followers turn out to be stratified into different positions in a multi-layered family reunification hierarchy. Their positions depend on allocated rights through legislation, on access to these rights, but also on followers’ willingness and ability to reunify with family via irregular paths. According to migration scholars, immigrants’ aspirations are dynamic and may change during the migration journey,⁶⁶ but this is not what emerges from the interviews

66 Vervliet, M., Vanobbergen, B., Broekaert, E., & Derluyn, I. (2015). The aspirations of Afghan unaccompanied refugee minors before departure and on arrival in the host country. *Childhood: A Global Journal of Child Research*, 22(3), 330–345. <https://doi.org/10.1177/0907568214533976>.

with the Greek professionals and the followers: most followers remain determined to successfully complete the reunification process and are willing, but not always able, to reunify with family members living elsewhere in the European Union.

The best interests of the child should be the primary consideration in all actions concerning children. This paper has shown that several obstacles preventing family reunification nonetheless remain in place for the unaccompanied followers, without a sufficient consideration of the best interests of the child. Both in the design of EU law regulating the reunification of unaccompanied followers and in the application of the law in individual cases, it is thus apparent that the best interests of the child are often not observed. The core reason for this is that secondary EU law is still ill-suited for the family reunification of UAMS. The FRD focuses on the right of the sponsor lawfully residing in an EU Member State. It is the sponsor who triggers the application of the Directive. Several reasons can prevent the sponsor from being eligible to apply to be reunified with an unaccompanied follower who is a family member and stuck in another EU Member State. The sponsor can only apply for family reunification after the formal recognition of international protection or any other ground of lawful residence. Persons without lawful residence, with lawful residence during the asylum procedure, are ineligible, and the same often applies to those who have received humanitarian protection. Furthermore, a sponsor with refugee status must apply for family reunification within three months after refugee status recognition for the more favourable regime exempting the sponsor from substantive requirements to apply. These limitations of the FRD can keep the unaccompanied followers separated from their family in another EU Member State.

Next to the application of the safeguards offered by the FRD, also the effective functioning of the Dublin III Regulation could bring unaccompanied followers together with family members residing in another Member State. However, several legal and practical barriers may prevent this. Firstly, the Dublin III Regulation works on the basis of cooperation between Member States. Applicants only have access to the safeguards of the Regulation through the asylum application but have no agency over whether the Regulation is applied, as it is not based on an individual application to be transferred to another EU Member State where a family member resides. It remains to be seen what the effect of the recent *I. & S.* judgment will be. In this ruling, the CJEU has held that asylum applicants have the right to appeal the refusal of a take charge request. This could improve the agency of asylum seekers in realising family reunification through the application of the Dublin III Regulation.

Secondly, it similarly requires family members to be lawfully present in the other EU Member State, before that Member State becomes responsible to handle the application for international protection of the unaccompanied follower.

Common to both the application of the FRD and the Dublin III Regulation is that it can be complicated to substantiate family ties. In the absence of formal identification documents, Member States may require other evidence, such as DNA testing. Evidentiary requirements can make it impossible for unaccompanied followers to substantiate family ties. Furthermore, legal procedures to be reunified with family members – in the receiving Member State in case of the application of the FRD and in the sending Member State in case of the application of the Dublin III Regulation – are often complicated. Access to effective legal aid offered by legal representatives and NGOs is crucial for the effectiveness of the right to family reunification. This research has shown that access to legal aid is often limited.

Overall, and in regard to our research questions, the principle of the best interests of the child is codified in Article 24 of the Charter of Fundamental Rights, is mentioned in EU secondary legislation, and is binding for all EU Member States as signatory states to the Convention on the Rights of the Child. However, in the implementation and practical application of EU law, the principle is not observed properly. This creates arbitrariness, legal uncertainty and differences between the receiving Member States. Our research indicates that followers applying for family reunification in some Member States, have more chances to be accepted than in others. Germany, a Member State which has received a large number of take-charge requests by the Greek Dublin team, has implemented relatively restrictive immigration policies. For instance, the practice of granting the *Duldung* status, – a status for persons without lawful residence that Germany uses regularly⁶⁷ – is a barrier for the realisation of family reunification, as a sponsor holding such a status is ineligible for family reunification.

The interviews indicate additional restrictions in followers' access to family reunification rights, which are mostly related to lack of (timely) information about their rights, followers' gender, absence of identification documents, and

67 See Schütze, T. (2022). The (Non-) Status of 'Duldung': Non-Deportability in Germany and the Politics of Limitless Temporariness. *Journal of Refugee Studies*, doi.org/10.1093/jrs/feac056 and Jonitz E. & Leerkes A. (2021). Making Asylum Work? Civic Stratification and Labour Related Regulation Among Rejected Asylum Seekers in Germany. *Law & Policy*, University of Denver and Wiley Periodicals LLC. 2022, 44(23), 43.

costs to undertake DNA costs, and limited institutional capacities of relevant NGOs, especially the Greek guardians. All in all, our findings depict that current legislation and implementation practices contribute to family reunification gaps and family reunification hierarchies that are, in various ways, problematic from the perspective of the best interest of the child.

According to C. Wright Mills,⁶⁸ sociologists should use their sociological imagination in order to show how social forces cause individuals' apparent 'personal troubles', pointing at underlying 'public issues' that warrant public attention and better policy solutions. Our socio-legal analysis has allowed us to identify relevant social determinants of the followers' 'private' troubles, and show how such troubles translate into public issues, which include, irregular migration in the European Union, and a lack of access to family life. The research thus demonstrates that new measures should be introduced with a view to protecting the principle of the best interest of the child, also given Member States' desire to protect children's needs and interests, and to reduce irregular movements in the European Union.

Regarding the legal dimension of this study, our findings depict the need for immediate action and re-examination of family reunification policies. Regarding both the FRD and the Dublin III Regulation, undue obstacles to realise the right to family reunification should be taken away. That would guarantee compliance with the requirement to make the best interests of the child a primary consideration and prevent secondary movements of unaccompanied followers that see no other solution than an unlawful journey to the Member State where family members are present. Moreover, it could be argued that family members who have received subsidiary protection, protection on national humanitarian grounds or any other type of status like *Duldung*, should be eligible as sponsors for family reunification when children are involved. The definition of the family used should be sufficiently flexible to cater to the needs of unaccompanied followers. In addition, new policies safeguarding the simultaneous return of rejected asylum seekers with their followers who are stuck in transit points should be considered. Such initiatives could advance the return decisions of people who stand between irregular and regular pathways. Possibly, Member States are reluctant to extend family reunification rights to rejected asylum seekers (e.g., family members with a *Duldung* status who would like a follower to reunify, or 'rejected' followers whose parents still live in their country of origin), because of the assumption that asylum seekers should comply with the obligation to leave the territory of the EU, and

68 C. Wright Mills (1959). *The Sociological Imagination*. Chapter One: The promise. Oxford University Press.

that allowing family reunification will diminish their willingness to comply with return decisions. However, taking into account the difficulties Member States experience in realising fully effective return policies,⁶⁹ especially also in Southern European transit countries,⁷⁰ we consider that it is necessary to take the best interests of the child into account in finding solutions for unaccompanied minor followers stranded in Greece separated from family members residing in other Member States.

Future research could examine whether the present results can be generalised to other first countries of arrival in the European Union and to other migrant groups (Afghanistan and Syria are prominent in the Greek case) and could engage in a systematic comparative analysis of the policies of all Member States that receive the type of family reunification requests that are highlighted in the present contribution. We suspect, and fear, that the present findings are far from specific to unaccompanied followers in Greece.

69 See for example The European Court of Auditors (2021). *EU readmission cooperation with third countries: relevant actions yielded limited results*. Luxembourg: ECA.

70 See Leerkes, A., & Van Houte, M. (2020). Beyond the deportation regime: Differential state interests and capacities in dealing with (non-) deportability in Europe. *Citizenship Studies*, 24(3), 319–338.