



Hungarian Helsinki Committee

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Application No. 64534/19

Mahamud v. the Netherlands

Third party intervention on behalf of the Hungarian Helsinki Committee

pursuant to the Registrar's notification dated 18 March 2021 that the President of the Section has granted leave, under Rule 44(3) of the Rules of the European Court of Human Rights.

András Kádár
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In the intervener's view matters concerning family reunification of sponsors who have been granted international protection and their adult relatives who are beyond the 'core' family (e.g. adult children or siblings and elderly relatives) often encounter legal and administrative discrepancies, for which they cannot effectively benefit from reunification procedures. National authorities deciding in visa application cases initiated for the purpose of family reunification often tend to disregard that for the already vulnerable position of refugee families, where family members are usually separated for reasons being outside of their reach, their right to family reunification is equally essential as the right to respect any individual's family life within the context of Article 8 of the Convention, if not the precondition of that right itself. The immigration authority, instead of interpreting the legal requirements of family reunification - such as dependency - in a permissive and flexible manner, considering - among others - the positive state obligation to facilitate reunifications, frequently applies a strict and administrative approach. This approach often limits dependency merely to an economic aspect of the relation, without considering the complexity embedded in the notion and disregarding the reality of vulnerable applicants.

Facilitating refugees' family reunification as a positive state obligation

1. A **positive state obligation to facilitate family reunification** of refugee families, while not expressis verbis stated in international human rights instruments, **can still be deduced** from the relevant documents by their **binding provisions concerning the protection of family unity**.
2. Article 16 of the Universal Declaration of Human Rights (UDHR) 1948 provides that "*the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*"¹ Article 17 of the International Covenant of Civil and Political Rights, (ICCPR) binding all Council of Europe Member States, states that, "*no one shall be subjected to arbitrary or unlawful interference with his [...] family*", and that "*everyone has the right to the protection of the law against such interference or attacks*". Article 23 of the ICCPR then further repeats the cited provision of UDHR².
3. With respect to these provisions of the ICCPR, recognizing that no universally accepted definition to 'family' can be given as it might be differing in every state party, the UN Human Rights Committee (HRC) emphasized in its General Comment 19 that "*when a group of persons is regarded as a family under the legislation and practice of a State, it must be given the protection referred to in article 23.*"³ This flexible understanding of family and the protection it enjoys in a state might be extended to aliens too: the HRC stated that "*in certain circumstances an alien may enjoy the*

¹ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html> [accessed 6 April 2021].

² UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html> [accessed 6 April 2021].

³ UN Human Rights Committee (HRC), *CCPR General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses*, 27 July 1990, para 2., available at: <https://www.refworld.org/docid/45139bd74.html> [accessed 1 April 2021].



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protection of the Covenant even in relation to entry or residence, for example, when considerations of [...] respect for family life arise⁴ The HCR accordingly defines a positive state obligation when promulgating that *"the possibility to live together [for a family] implies the adoption of appropriate measures, both at the internal level and as the case may be, in cooperation with other States, to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons."*⁵ This approach also entails that states shall not create impediments to family reunification, unless the interference with family life is provided for by law, aims and objectives of the ICCPR and is reasonable in the particular circumstances.⁶

4. The 1951 Refugee Convention does not explicitly touch upon the issue of family reunification either. The Final Act of the Conference of Plenipotentiaries, at which the Convention was adopted, however, declares that **the unity of the family is the essential right of the refugee** and that unity is constantly threatened. Governments were therefore recommended **to take necessary measures "ensuring that the unity of the refugee's family is maintained, particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country."**⁷
5. The UNHCR also emphasized the importance of refugees' right to the protection of their family unity in numerous guidelines⁸ and conclusions of the Executive Committee⁹ and states' negative and positive obligations relative to that right. The UNHCR stated that *"respect for the right to family unity requires not only that States refrain from action which would result in family separations, but also that they take measures to maintain the unity of the family and reunite family members who have been separated. Refusal to allow family reunification may be considered as an interference with the right to family life or to family unity, especially where the family has no realistic possibilities for enjoying that right elsewhere."*¹⁰
6. State obligations relative to refugees' right to family reunification are also embedded in regional instruments. The European Social Charter (ESC) obliges member states to facilitate *"the reunion of*

⁴ UN Human Rights Committee (HRC), *CCPR General Comment No. 15: The Position of Aliens Under the Covenant*, 11 April 1986, para 5., available at: <https://www.refworld.org/docid/45139acfc.html> [accessed 6 April 2021].

⁵ (n3) para 5.

⁶ *Gonzalez v. Republic of Guyana*, CCPR/C/98/D/1246/2004, UN Human Rights Committee (HRC), 21 May 2010, para 14.3., available at: <https://www.refworld.org/cases,HRC,4c1895262.html> [accessed 1 April 2021].

⁷ UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, 25 July 1951, A/CONF.2/108/Rev.1, p 8., available at: <https://www.refworld.org/docid/40a8a7394.html> [accessed 2 April 2021].

⁸ e.g., UNHCR, Note on family reunification (UNHCR, August 1981) and UNHCR, Guidelines on reunification of refugee families (UNHCR, July 1983), available at: www.unhcr.org/3bd0378f4.pdf, [accessed 7 April 2021].

⁹ e.g. EXCOM Conclusions No. 9 (XXVIII), No. 24 (XXXII), No. 84 (XLVIII), No. 85 (XLIX), and No. 88 (L), available at: <https://www.unhcr.org/en-my/578371524.pdf> [accessed 7 April 2021].

¹⁰ UNHCR, "Summary Conclusions: Family Unity, Expert roundtable organized by UNHCR and the Graduate Institute of International Studies, Geneva, Switzerland, 8–9 November 2001", para 5., available at: <http://www.unhcr.org/419dbfaf4.pdf> [accessed 7 April 2021].



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*the family of a foreign worker permitted to establish himself in the territory*¹¹ With regard to that provision, the European Committee of Social Rights (ECSR) notes that the **rights enshrined in the ESC are to be conferred to refugees too** and obligations undertaken by member states' within the ambit of the Charter " *require a response to the specific needs of refugees and asylum seekers, such as [...] the liberal administration of the right to family reunion*".¹² Regarding Article 8 of European Convention on Human Rights, which primarily requires member states to respect family life by not arbitrarily interfering, there also are, as this Court held, some "**positive obligations inherent in an effective 'respect'**"¹³ for that right. In the context of refugees' enjoyment of Article 8 rights, this Court also held that **family unity is an essential right of refugees, and its fundamental element is the right to family reunification** enabling persons who have fled persecution to resume a normal life. This Court underlined that the family reunification procedure of refugees had to be **more favourable** than those which are open to other foreigners, **considering the special vulnerability of refugees**.¹⁴ These procedures, held this Court, had to be conducted speedily, effectively and with due diligence.¹⁵

The significance of a comprehensive interpretation of dependency in refugee families

7. When states' positive obligation comes into play regarding the family reunification of persons granted international protection, the obligation is to be understood predominantly within the narrower concept of 'nuclear' family. The majority of national laws in the European Union only entitle immediate family members (spouse and minor children, parents of unaccompanied minor) to be eligible for family reunion. When it comes to **extended members of family**, however, the concept of Directive 2003/86/EC on the right to family reunification¹⁶ (FRD) is followed, which **requires the existence of dependency** between the refugee sponsor and the extended family member. Criteria of establishing dependency, nonetheless, "vary widely across Europe, creating a lottery for applicants who seek to be reunified with their family (beyond the nuclear family)."¹⁷
8. Under Article 8 of the Convention as interpreted in the case law of this Court, **family life** between applicants, such as dependent parents and adult siblings, and a refugee sponsor, **can only be**

¹¹ Council of Europe, *European Social Charter (Revised)*, Art 19 (6), 3 May 1996, ETS 163, available at: <https://www.refworld.org/docid/3ae6b3678.html> [accessed 6 April 2021].

¹² European Committee of Social Rights (ECSR), "Conclusions 2015" (January 2016), paragraph 21, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680593904>, [accessed 7 April 2021].

¹³ *Marckx v. Belgium*, App No. 6833/74, para 31, (13 June 1979).

¹⁴ *Mugenzi v. France*, App.No. 52701/09 (10 July 2014) para 54; and *Tanda-Muzinga v. France*, App No. 2260/10 (10 July 2014) paragraph 75.

¹⁵ *ibid.* para 52 and para 73.

¹⁶ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

¹⁷ European Council on Refugees and Exiles, *Disrupted Flight: The Realities of Separated Refugee Families in the EU*, November 2014, p.10., available at: <https://www.refworld.org/docid/58514a054.html> [accessed 5 April 2021].



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established once "*additional elements of dependency, other than the normal emotional ties*" have been **shown**.¹⁸ Complying with this standard of the Court and not following any further elaborated and comprehensive interpretation of dependency, some EU countries, such as the Netherlands, have a very high threshold when it comes to the substantiation of dependency - in some cases, for instance, applicants must evidence 'exclusive dependency' - thereby leaving a great percentage of applications unsuccessful.¹⁹

9. Recognizing the negative trends arising from the differing understanding of family and dependency between family members, the UNHCR promotes a '**comprehensive' reunification of refugee families** and thus has called on states to apply "*liberal criteria in identifying those family members who can be admitted*".²⁰ The application of a **broad and flexible family concept** is necessary according to UNHCR as refugee families are often disrupted for the particular refugee experiences and the composition and definition of a refugee family may be different for specific cultural factors.²¹ Thereby, suggested by the UNHCR, the "*the principle of dependency [also] entails flexible and expansive family reunification criteria that are culturally sensitive and situation specific*".²² When elaborating on the **aspects of dependency**, the UNHCR normally refers to **social, emotional** and the **economic** angles, which are given between close family members, regarding extended family, however, these aspects shall be "determined on a **case-by-case basis**, in light of the applicable credibility indicators."²³ The mentioned aspects of the dependency notion shall "**be given equal weight** and importance in the criteria for reunification **as relationships based on blood lineage or legally sanctioned unions**".²⁴
10. Witnessing the generally insurmountable administrative and legal challenges stemming from the strict and limiting interpretation of dependency in refugees' family reunification procedures in Hungary (e.g. high standard of proof, assessment of dependency limited exclusively to physical or material angles) **the intervener submits that dependency as a principle must be assessed in a complex manner, weighting the aspects of dependency on balance and taking the special and**

¹⁸ *Kwakyie-Nti and Duffie v. the Netherlands*, App. No. 31519/96 (7 November 2000); *Slivenko v. Latvia* [GC], App. No. 48321/99 (9 October 2003) para 97; *A.S. v. Switzerland*, App. No. 39350/13 (30 June 2015), para 49; *Levakovic v. Denmark*, App. No. 7841/14 (23 October 2018) paras 35 and 44.

¹⁹ UN High Commissioner for Refugees (UNHCR), No family torn apart: challenges refugees face securing family reunification in the Netherlands and recommendations for improvements, September 2019, pp 40-43., available at https://www.unhcr.org/nl/wp-content/uploads/UNHCR-Family_Reunification-screen.pdf [accessed: 7 April 2021].

²⁰ Executive Committee of the High Commissioner's Programme, *Protection of the Refugee's Family No. 88 (L) - 1999*, 8 October 1999, No. 88 (L); available at: <https://www.refworld.org/docid/3ae68c4340.html> [accessed 6 April 2021].

²¹ UN High Commissioner for Refugees (UNHCR), *Protecting the Family: Challenges in Implementing Policy in the Resettlement Context*, June 2001, pp 1-2., available at: <https://www.refworld.org/docid/4ae9aca12.html> [accessed 10 March 2021].

²² *ibid.*

²³ UN High Commissioner for Refugees (UNHCR), *UNHCR RSD Procedural Standards - Processing Claims Based on the Right to Family Unity*, 2016, p.3. available at: <https://www.refworld.org/docid/577e17944.html> [accessed 6 April 2021].

²⁴ (n19) p.2.



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frequently quite limiting situation of refugee relatives into account when requiring evidence of a dependent relationship.

11. The lack of this more comprehensive and flexible interpretation of the notion might entail that applicants and sponsors are not able to exercise their rights conferred to them by Article 8 of the Convention at all, although **state obligations embedded in international legal instruments to protect the unity of the refugee family necessitate the application of liberal criteria in these procedures.**

Notion of dependency in CJEU case law

12. The objectives pursued by Family Reunification Directive, as set out in recitals 4 and 8, are (i) to facilitate the integration of the third country nationals concerned by enabling them to lead a normal family life and (ii) to lay down more favourable conditions for the exercise by refugees of their right to family reunification, having regard to their special situation.
13. Family reunification of siblings is regulated in Article 10(2) of the Directive, as "other family members". According to this provision, Member States may authorise family reunification of other family members not referred to in Article 4, if they are **dependent** on the refugee.
14. The concept of 'dependency' has been held to have an autonomous meaning under EU law.²⁵ The notion of dependency in family reunification of refugees was the subject of judicial interpretation in the case *TB* of the Court of Justice of the EU (CJEU).²⁶
15. In the above case, the CJEU referred to the interpretation of dependency adopted in the context of Directive 2004/38/EC²⁷ (Freedom of Movement Directive), as both directive pursue similar objectives in seeking to ensure or encourage, within the host Member State, the family reunification of the nationals of other Member States or of third countries lawfully residing there.²⁸ According to that case law, the existence of a situation of **real dependence** has to be established. Dependent status is the **result of a factual situation** characterised by the fact that **legal, financial, emotional or material support for the family member is provided** by the holder of the right of residence.²⁹ In order to determine the existence of such dependence, the host Member State must assess whether, **having regard to his or her financial and social conditions, the family member is not in a position to support himself or herself. The need for material support must exist in the**

²⁵ Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification, COM(2014) 210 final, 3 April 2014, p. 6.

²⁶ Judgement of 12 December 2019, *TB*, C-519/18.

²⁷ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

²⁸ Judgement of 12 December 2019, *TB*, C-519/18, para. 49.

²⁹ Judgments of 19 October 2004, *Zhu and Chen*, C-200/02, para. 43; of 8 November 2012, *Iida*, C-40/11, para. 55; of 16 January 2014, *Reyes*, C-423/12, paras. 20, 21; of 13 September 2016, *Rendón Marín*, C-165/14, para. 50; of 18 June 1987, *Lebon*, C-316/85, paras. 21, 22; of 5 September 2012, *Rahman and Others*, C-83/11, paras. 18-45; and of 6 December 2012, *O. & S*, C-356/11 and C-357/11, para. 56.



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State of origin of the family member or the country whence he or she came at the time when he or she applies to join the EU citizen.³⁰

16. In relation to **material dependence**, it results from the CJEU's case law that **dependency is established** when a sponsor **regularly and for a significant period pays their family member a sum of money**. The applicants are therefore not required to show that they have tried without success to find employment, or obtain subsistence support from the authorities of their country of origin and/or otherwise tried to support themselves, which could make the right of residence excessively difficult. There is therefore **no need to determine the reasons for dependence or for the recourse to that support**.³¹
17. Applying the above established interpretation of dependency to the situation of family reunification of refugees, the CJEU first reiterates that **special attention should be paid to the situation of refugees**, since they have been obliged to flee their country and cannot conceivably lead a normal family life there and they may have been separated from their family for a long period of time before being granted refugee status and satisfying the substantive conditions required by the directive may pose greater difficulties for them than for other third country nationals.³²
18. A member of a refugee's family must therefore be considered dependent on the refugee, within the meaning of Article 10(2) of Directive 2003/86, where the family member is **genuinely dependent** in the sense that, first, **having regard to his or her financial and social conditions, the family member is not in a position to support himself or herself in his or her State of origin** or the country whence he or she came and, secondly, it is ascertained that **the family member's material support is actually provided by the refugee**, or that, having regard to all the relevant circumstances, such as the degree of relationship of the family member concerned with the refugee, the nature and solidity of the family member's other family relationships and the age and financial situation of his or her other relatives, **the refugee appears as the family member most able to provide the material support required**.³³

Other grounds for dependency besides material reasons:

19. The CJEU, however, acknowledges that Member States are free to lay down additional requirements relating to the nature or duration of the relationship of dependence - that the refugee's family members concerned must be **dependent on the refugee on certain grounds**.³⁴ For example, Hungary has such an additional requirement of the nature of dependence, which is dependency due to the family member's state of health.
20. However, when Member State require certain grounds of dependency, they implement EU law, which means that the discretion afforded to the Member States by Article 10(2) must, first of all, not be

³⁰ Judgments of 12 December 2019, *TB*, C-519/18, para. 48; of 9 January 2007, *Jia*, C-1/05, para. 37; and of 16 January 2014, *Reyes*, C-423/12, paras. 22, 30.

³¹ Judgement of 16 January 2014, *Reyes*, C-423/12, paras. 23-25.

³² Judgments of 12 December 2019, *TB*, C-519/18, para. 50; of 7 November 2018, *K and B*, C-380/17, para. 53; and of 13 March 2019, *E*, C-635/17, para. 66.

³³ Judgement of 12 December 2019, *TB*, C-519/18, para. 52.

³⁴ *Ibid.*, para. 55.



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used by them in a manner which would undermine the objective of Family Reunification Directive and the effectiveness of that Directive.³⁵

21. In that regard, special attention should be paid to the situation of refugees, and applications for family reunification have to be examined on a **case-by-case basis**.³⁶ For example, an application cannot be refused solely because the condition from which a refugee's family member suffers is automatically considered incapable of establishing such a relationship of dependence.³⁷ The examination on a case-by-case basis of the application must take into account, in a balanced and reasonable manner, all the relevant aspects of the personal situation of a refugee's family member, such as their age, level of education, professional and financial situation, and state of health. The national authorities must also take account of the fact that the extent of needs can vary greatly depending on the individual,³⁸ and also of the special situation of refugees, in particular the specific difficulties faced by them as regards obtaining evidence in their countries of origin.³⁹ Second, **the right to family life** in the light of Article 7 of the Charter must be respected.⁴⁰ Finally, in accordance with the **principle of proportionality**, which is one of the general principles of EU law, the measures implemented by the national legislation transposing Article 10(2) of the Family Reunification Directive must be suitable for achieving the objectives of that legislation and must not go beyond what is necessary to attain them.⁴¹
22. In the opinion of the intervener, the requirement of "exclusive dependency" - mentioned in paragraph 8 - goes against the above criteria established by the CJEU's jurisprudence. As there is no need for the applicant to show that they have tried without success to support themselves (for example by finding employment, or by obtaining subsistence support from the authorities), when it comes to material dependency, the intervener sees no reason why this could not be applied by analogy to other forms of dependency, meaning that **applicants should not be required to show they are unable to rely on other forms of support to establish dependency on the refugee**. Exclusive dependency is therefore not needed.
23. This is further supported by the criteria that it is not necessary to prove that it is only the refugee who is able to support the applicant, but the refugee is the family member **most able to provide** the support required.
24. Finally, although the Member States are free to lay down additional criteria for the nature of dependency, the criteria of "exclusivity" undermines the objective of the Family Reunification Directive, which is to promote family reunification in an effective manner, with more favourable measures when it comes to the family members of refugees, as it makes the reunification excessively difficult and the Directive therefore non-effective. Such a requirement of "exclusive dependency" in the HHC's view **disproportionally infringes the refugee's right to family life**.

³⁵ Judgments of 12 December 2019, *TB*, C-519/18, paras. 61, 62; of 13 March 2019, *E*, C-635/17, para. 53, of 5 September 2012, *Rahman and Others*, C-83/11, paras. 36-40.

³⁶ Judgement of 12 December 2019, *TB*, C-519/18, paras. 63, 73.

³⁷ *Ibid*, para. 74.

³⁸ Judgment of 4 March 2010, *Chakroun*, C-578/08, EU:C:2010:117, para. 48.

³⁹ Judgment of 12 December 2019, *TB*, C-519/18, para. 75.

⁴⁰ Judgments of 12 December 2019, *TB*, C-519/18, para. 65; of 21 April 2016, *Khachab*, C-558/14, para. 28.

⁴¹ Judgments of 12 December 2019, *TB*, C-519/18, para. 66; of 21 April 2016, *Khachab*, C-558/14, para. 42.



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Reflexion on relevant Hungarian jurisprudence

25. As mentioned above, **Hungary** has an **additional requirement** of the nature of dependence. Section 19 (4) of Act II of 2007 on the Entry and Stay of Third Country Nationals (TCN Act)⁴² stipulates that the siblings of a refugee may obtain a residence permit for the purpose of family unity if they are unable to provide for their own needs on account of their **state of health**. This section of the TCN Act transposes Article 10 (2) of Council Directive 2003/86/EC on the right to family reunification (Family Reunification Directive), according to which Member States may authorise family reunification of family members not referred to in Article 4, if they are *dependent* on the refugee.
26. The understanding of '**dependency**', however, is **unlawfully limited to being in need of financial support**. The English version of the Directive uses the word *dependency*, whereas the Hungarian translation uses the word *eltartott*, which envisages a **more restrictive approach**, since that word means 'supported'. This discrepancy means that the authorities require the sponsor to demonstrate that she or he supports the family members financially on a regular basis. Therefore, even when the family members are dependent on the sponsor, but are not entirely reliant on her or his financial support, the immigration authority shall reject their request for family reunification, in violation both of the Directive and Article 8 of the Convention.
27. The Supreme Court of Hungary (Kúria) analysed the notion of dependency and the differences in translation regarding the parents of an Egyptian refugee. In its ruling BH 2017.102.⁴³, the Kúria relied on the European Commission's Communication on guidance for application of the Family Reunification Directive and the case law of the Court of Justice of the European Union. It found that in most cases, dependency was understood as a **complex relationship that goes beyond financial needs and means that there is a physical, emotional and material dependence** on the sponsor. While financial dependence (that is, regular monetary support) is one element of the complex nature of dependence, it cannot be the only one. Therefore, the Kúria instructed the immigration authority to examine the refugee's parents' applications based on this definition of dependency. In this case, the Kúria did not rule on whether the immigration authority's rejection of the refugee's siblings' application was lawful by force of the Family Reunification Directive, because it found that the authority failed to adequately establish the relevant facts of the case. The Kúria merely noted that **the complex notion of dependency can only be examined where all relevant facts have been properly established**. It therefore logically follows that the above-presented notion of dependency applies to siblings as well.
28. While the **jurisprudence of lower courts is divergent on this issue**, the state of health of a refugee sponsor's sibling was taken into account by the Budapest Metropolitan Court in case 38.K.701.960/2020.⁴⁴ In its judgement, the Court quashed the immigration authority's decision rejecting the application of the Iranian refugee's sister, who lost her job as a direct consequence of

⁴² Residence permit for the purpose of family reunification shall be provided to the following family members of a sponsor or her/his spouse, or the refugee (a) parents, who are supported by the sponsor (b) sibling or other first degree relative, if they are unable to provide for their own needs owing to the status of their health.

⁴³ A családtagok tartózkodási engedély kiadására irányuló eljárásban a hatóság - figyelemmel az Európai Bíróság gyakorlatára - az eltartottság körében azt köteles vizsgálni, hogy a családtagok között fennáll-e egy komplex függőségi viszony [2007. évi II. tv. 19. § (4) bek., 2003/86/EK irányelv 4. cikk, 10. cikk].

⁴⁴ X v. Országos Idegenrendészeti Főigazgatóság, Decision no. 38.K.701.960/2020/6. 29 May 2020.



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her brother's political activities. She had been suffering from depression when applying for family reunification, which the authorities did not find adequate to allow her to reunite with her brother.

29. Citing the judgement of the Court of Justice of the European Union in case C-519/18., the Metropolitan Court found that the **immigration authority cannot pose as an expert authority on the implications of mental health**, and cannot automatically reject an application based solely on medical grounds. It **must carefully examine all facts and assess them in their entirety, weighing all aspects as part of an individual assessment.** It must take into account the **age, level of education, professional and financial situation and health status** of the applicant and decide, based on these, **whether these indicate a level of dependency** which necessitate granting a residence permit for the purpose of family reunion. The Metropolitan Court attached **particular importance** to the fact that **depression can be recurring, and can easily lead to severe consequences** in all aspects of life, **rendering the family member's ability to support herself or himself illusory.**
30. While the CJEU found that the TCN Act's requirement to demonstrate a dependency stemming from a family member's state of health is not in violation of EU law, the HHC believes that any assessment on granting a residence permit for the purpose of family reunification must, in light of the case law referred to above, go beyond the simple examination of a family member's medical records. Forced separation will inherently lead to some extent of anxiety and trauma, which will have detrimental effects on a person's health status. **In order to ensure an effective enjoyment of the right to family life, authorities must therefore weigh all factors** through which they will also get a better understanding of the personal circumstances of the family member. Mental health, physical health, age, gender, the state of society, the quality and frequency of human interactions and many other **factors** are interdependent, and can only be understood when **carefully assessed together as a system**, as opposed to one factor being elevated for individual examination. The two cases cited from the Hungarian practice demonstrate that such an approach can contribute to the effective enjoyment of the right to family life.

Conclusion

31. The intervener submitted that all aspects of dependency must be assessed on balance and weighted in family reunification procedures which have to be effectively facilitated by states under their international obligations to protect family life, and with special attention to the vulnerable situation of refugee families. This approach is in line with the jurisprudence of CJEU recognizing that the applicant can be dependent on the sponsor on multiple basis, which might be legal, financial, emotional or material, regardless of the reason of the dependency. While member states are entitled to set out further criteria defining dependency, they must consider the principle of proportionality requiring states to follow the objectives of Family Reunification Directive. It follows that a criterion, such as 'exclusive dependency', is at odds with the EU law as the applicants should not be required to show they are unable to rely on other forms of support, thereby the refugee sponsor shall be the most able and not the only one able to provide the support. The requirement of 'exclusive dependency' disproportionately infringes the refugee's right to family life and it undermines the



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objective of the Family Reunification Directive, as it makes the reunification excessively difficult. The intervener found that national authorities and lower courts also tend to use a disunified and restrictive approach when assessing dependency, without establishing all the relevant facts relative to the notion. The intervener thus believes that the restrictive and divergent interpretation of dependency is overstepping the limits of the margin of appreciation that Member States have when implementing their positive obligations with regard to the right to family life of a refugee under Article 8 of the Convention.
