v. 02, nº 01 - jan/jun 2022
ISSN 2763-8685

LATIN AMERICAN JOURNAL OF EUROPEAN STUDIES

BRIDGE PROJECT
JEAN MONNET NETWORK

LACES
Latin American Center of European Studies

Co-funded by the Erasmus+ Programme of the European Union

TABLE OF CONTENTS

https://dx.doi.org/10.51799/2763-8685v2n002

FAMILY REUNIFICATION:

Domestic and regional human rights courts perspective[1]

Lutiana Valadares Fernandes Barbosa[2]
Ana Luisa Zago de Moraes[3]

ABSTRACT: Domestic and regional courts have a relevant role not only in applying international law but also in developing it. This paper aims to critically analyze how regional human rights courts and domestic courts decided cases regarding the right to family reunification in the context of migration. This right flows from and assures the human right to family, an essential institution to democracy. First, it provides an overview of the right to family reunification. Next, it discusses cases from the Inter-American Court of Human Rights (IACHR) and from the European Court of Human Rights (ECHR), observing that the African Court of Justice and Human Rights has no cases in this regard. It further presents cases on family reunification contained in the Oxford International Law in Domestic Courts (ILDC) database. Finally, it concludes that regional human rights courts have played a key role in strengthening and specifying the right to family reunification. Domestic courts, on their turn, provide different contours to this topic, and their decisions gravitate among a spectrum. In one extreme is the child's best interest principle and the family as a lynchpin to the society; on the other, it is the national security interest. However, all the decisions presented recognize protection for family reunification, even if only on exceptional or humanitarian grounds.

KEYWORDS: Family reunification; Migration; Courts.

1. L.V..F. Barbosa; A.L.Z. de Moraes. *Family reunification: domestic and regional human rights courts perspective,* in *Latin American Journal of European Studies*, v. 2, no. 1, 2022, p. 55 *et seq.*

2. Federal Public Defender in Brazil (2010-2022). LL.M Columbia University (2016) Master of Laws PUC-MG (2017) and Ph.D Candidate UFMG. Member of the Public Defender's National School Group Migration and artificial intelligence.

3. Federal Public Defender in Brazil (2010-2022). Master (2009) and Doctor (2016) in Criminal Sciences (PUCRS). Author of the book "Crimigration: the relation between migration and criminal policy in Brazil" (2016). Member of the Public Defender's National School Group Migration and artificial inteligence.

REUNIÃO FAMILIAR: a perspectiva dos tribunais regionais de direitos humanos e das cortes domésticas

RESUMO: Cortes domésticas e regionais tem um relevante papel não somente ao aplicar o Direito internacional mas também ao desenvolvê-lo. Este artigo objetiva analisar criticamente como tais cortes decidem casos relacionados ao direito à reunião familiar no contexto das migrações internacionais. Este direito advém e protege o direito humano à família, uma instituição essencial à uma democracia. Primeiro, traz uma visão do direito à reunião familiar. Em seguinda, discute casos da Corte Interamericana de Direitos Humanos e do Tribunal Europeu de Direitos Humanos, uma vez que a Corte Africana de Direitos Humanos não tem casos nessa temática. Além disso, apresenta casos de reunião familiar contidos na base de dados da Oxford International Law in Domestic Courts. Finalmente, conclui que os tribunais regionais de direitos humanos têm desempenhado um papel fundamental no fortalecimento e espedificação do direito à reunião familiar. Os tribunais nacionais, por sua vez, dão diferentes contornos a esse instituto e suas decisões que gravitam entre o princípio do melhor interesse da criança e da família como base da sociedade até o extremo da supremacia da segurança das nações. No entanto, todas as decisões apresentadas reconhecem a proteção à reunião familiar, ainda que apenas por motivos excepcionais ou humanitários.

PALAVRAS-CHAVE: Reunião familiar; Migração; Tribunais.

Introduction

Human mobility might lead to many situations in which family members remain separated. A child might migrate unaccompanied; parents might cross borders without the possibility of taking their child, couples might have to remain separated. However, family is the core of Society, a cornerstone to human beings' physical and psychological well-being, and essential to a fully functioning democracy. Thus, the right to family reunification is a linchpin of international mobility rights and must be assured by States. This paper aims to analyze how regional human rights courts and domestic courts decided cases regarding the right to family reunification and reflect on the contours those courts gave to this right.

1. The right to family reunification

States are sovereign to decide the conditions of entry, stay, and the migratory status of migrants. However, this right is not without constraints as society and States have the duty to protect the human right to family since it is the linchpin of society[4]. Considering that migration might lead to a separation of the family members and the relevance of the family unity both for migrants and host communities, family reunification must be a necessary consideration in immigration policies[5]. Family reunification contributes to

4. Universal Declaration of Human Rights, Art. 16 (3). International Covenant on Civil and Political Rights, Art. 23.

5. United Nations, Global Compact Thematic Paper: *Family Reunification.* International Organization for Migration (IOM). Geneva, 2016, p. 1.

integration, prevents exposure to violence and other risks, and aids the psychological well-being of migrants[6].

States who ratified the Convention on the Rights of the Child (CRC) must guarantee that children are not separated from their parents in disagreement with their will[7], and when a child or parents apply to cross borders for the sake of family reunification, States must take action expeditiously and humanely[8]. Moreover, States must ensure that family reunification requests "entail no adverse consequences for the applicants and for the members of their family" [9].

In this sense, The United Nations High Commissioner for Refugees (UNHCR) guidelines highlight that "Family reunification, whenever feasible, should generally be regarded as being in the best interests of the child"[10]. One of the twenty common understandings for a planned, balanced, and comprehensive approach to the management of migration of the Berne Initiative is that:

> 17. The family is the basic unit of society and deserves special attention. In the context of migration, family separation impedes integration, whereas facilitation of family reunion can

6. International Organization for Migration (IOM), *Global Compact Thematic Paper: Family Reunification, cit.* See also New York Declaration for Refugees and Migrants A/71/L.1, 2016, p. 14, 57, 75.

7. United Nations, Convention on the Rights of the Child (UNCRC). Adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989. Art. 9(1).

8. UNCRC, Art 10(1). See also article 22.

9. UNCRC, Art 10(1) See also: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by General Assembly resolution 45/158, of 18 December 1990, Art. 44; Charter of Fundamental Rights of the EU, OJ C 326, 26.10.2012, pp. 391–407 Arts. 7 and 24(3).

10. UNHCR, *Guidelines on Determining the Best Interests of the Child,* 2008, p. 31, available at https://www.unhcr.org/4566b16b2.pdf.

> contribute to maximizing the positive effects of social and cultural integration of migrants in the host community[11].

Despite States´s duty to protect families Stated in the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights[12], and CRC provision on family reunification, it is essential to acknowledge that treaty law on human mobility is fragmented and full of gaps. The international Convention Relating to the Status of Refugees (CRSR) does not foresee family reunification. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families expressly provides for family reunification[13] but has a low level of ratification[14], especially of receiving States. On the ground, solicitants face discrimination, prohibitions, or unreasonable requirements of time-lapses.

In the next section (section 3), we will discuss IACHR and ECHR cases on family reunification. There are no Cases from the African Court of Justice and Human Rights on family reunification. Section 4 will discuss domestic cases from the Oxford International Law and Domestic Courts (ILDC) database.

11. United Nations. International Organization for Migration. *International Agenda for Migration Management: Common understandings and effective practices for a planned, balanced, and comprehensive approach to the management of migration.* OIM. Berne: 2004. Available at https://publications.iom.int/system/files/pdf/iamm.pdf.

12. United Nations, Universal Declaration of Human Rights. General Assembly resolution 217 A, proclaimed by the United Nations General Assembly in Paris on 10 December 1948, art. 16 (3); United Nations, International Covenant on Civil and Political Rights. Adopted by the General Assembly of the United Nations on 19 December 1966, art. 23.

13. United Nations, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by General Assembly resolution 45/158. 18 December 1990, articles 44 and 50.

14. Ratified only by 56 states as of 01.02.2022, available at: https://indicators.ohchr.org/.

The scope of the present paper is to provide the courts' contribution to the delimitation and development of family reunification in the context of migration. Considering that regional human rights courts and States' positions evolve over time, and recent judgments are more helpful in understanding the current state of affairs regarding family reunification, we decided to analyze the five most recent cases on the databases. First, we searched for the term "family reunification" in chronological order. Next, we analyzed case by case to see if family reunification was dealt with in the context of migration. Regarding the cases, we only discuss their parts related to family reunification.

2. The regional human rights courts

The IACHR database has only eight cases with the research term "Family reunification." Its jurisprudence is grounded on the continent´s history of human rights, marked by the fight against dictatorship. Thus, in the IACHR, family reunification was first developed in the context of separation of families due to State violence, which represented half of the cases found[15]. Only four concern

15. IACHR, judgement of 14 October 2014, *Rochac Hernández y otros V. El Salvador*, available at https://www.corteidh.or.cr/docs/casos/articulos/resumen_285_esp.pdf. In this case the IACHR declared the Republic of El Salvador internationally responsible for the forced disappearances of Jose Adrian Rochac Hernandez and others in the 1980s during the armed conflict in El Salvador.
IACHR, judgment of 25 November 2019, *López y otros V. Argentina*, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_396_esp.pdf. In this case the IACHR rulled that Argentina is internationally responsible for breaching the rights to personal integrity, to the essential purpose of the punishment of reform and social readaptation of the sentenced person, not to be the object of arbitrary or abusive interference in their private and family life, and the right to family, among others, as stated in the American Convention on Human Rights.
IACHR, judgment of 31 August 2011, *Contreras y otros V. El Salvador,* available at https://corteidh.or.cr/docs/casos/articulos/seriec_232_esp.pdf. In this case El Salva-

family reunification in the context of migration, including provisional measures and advisory opinions.

2.1. The inter-american court of human rights

2.1.1. Advisory opinion oc-21/14, "rights and guarantees of children in the context of migration and/or in need of international protection"[16].

Argentina, Uruguay, Paraguay, and Brazil requested the IACHR to determine more precisely their obligations as regard migrant children according to the Inter-American Convention of Human Rights (arts. 1.1, 2, 4.1, 5, 7, 8, 11, 17, 19, 22.7, 22.8, 25 y 29), to the American Declaration of the Rights and Duties of Man (arts. 1, 6, 8, 25 and 27) and art. 13 of the Inter-American Convention to Prevent and Punish Torture.

The IACHR stated that family reunification must be considered in the initial evaluation process that shall occur when a child crosses international borders (par. 85), and cites the UNHCR Guidelines on Determining the Best Interests of the Child[17]. The IACHR further affirms States are obliged to promote family reunification for unaccompanied and separated migrant children, once regarded

dor recognized its international responsibility for the forced disappearances of children that occurred in the 1980s by members of different military forces in El Salvador. IACRH, judgment in 1 March 2005, *Caso de las hermanas Serrano Cruz V. El Salvador*, available at https://www.corteidh.or.cr/docs/casos/fundamentos/jseriec120.pdf. The case refers to El Salvador´s international responsibility for the lack of investigation into Serrano Cruz sisters disappearance and the violation their personal integrity.

16. Advisory Opinion OC-21/14, "Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection", OC-21/14, Inter-American Court of Human Rights (IACrtHR), 19 August 2014, available at https://www.corteidh.or.cr/docs/opiniones/seriea_21_esp.pdf .

17. UNHCR, *Guidelines on Determining the Best Interests of the Child*, 2008, available at https://www.unhcr.org/4566b16b2.pdf.

child´s best interest (par. 167)[18]. Finally, the IACHR affirmed that States have to adapt their asylum proceedings to assure effective access to children, allowing their specific situation to be considered and assure family reunification procedures if necessary and in consonance with the child´s best interest.

The IACHR thus presented concrete obligations regarding family reunification in three situations: in the initial evaluation process, while dealing with unaccompanied or separated child and in child´s refugee procedures.

2.1.2. Case Ramírez Escobar and others otros v. Guatemala[19]

This case concerns international adoption and does not refer to family reunification in the usual context of migration. However, considering its international framework, it is worth bringing about its remarkable statement on family reunification.

> (...)family separations must be, as far as possible, temporary, for which the State must take measures in favor of family reunification, including providing support to the children's families to avoid separation or the perpetuation of this, as well as the possibility of visits or other forms of maintaining contact or personal relations between parents and children. (para. 189)

In short, IACHR affirms in the context of international adoption States' responsibility as regards family reunification, which includes assuring that separation is as far as possible temporary, providing support for avoiding separation or perpetuation of separation, and possibilities of visits.

18. IACHR invokes the European Court Of Human Rights, judgment of 12 October 2006, Application no. 13178/03, *Case of Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*.

19. IACHR, decision of 9 march 2018, *Ramírez Escobar and Others v. Guatemala*.

2.1.3 Case Vélez Loor v. Panamá, resolution of the inter-american court of human rights provisional measures[20]

The Vélez Loor case concerns the imprisonment of Mrs. Vélez Lor, a citizen from Ecuador, by the Panama police due to irregular entry in Panama. He was arbitrarily detained and judged without due observance of due process and the right to consular assistance. Due to his irregular migratory status, he was imprisoned and submitted to inhumane treatment and torture. The case judged in 2010 does not refer to family reunification[21]. However, it is worth noting that in the 2021 resolution regarding provisional measures[22], the IACHR highlighted the importance of family reunification. It expressly valued the information that Panamá has implemented various actions to protect the rights of migrant women and children, including the prioritization of familiar unity and family reunion (par. 54).

2.1.4. Case of haitian and haitian-origin dominican persons in the Dominican Republic (provisional measures requested by the inter-american commission on human rights)[23]

The Inter-American Commission on Human Rights requested the IACHR provisional measures in favor of Haitian and Haitian-O-

20. IACHR, judgment of 23 November 2010, *Case Vélez Loor v. Panamá*. Resolution of the IACHR, Provisional Measures, 24 June 2021, available at https://www.corteidh.or.cr/docs/medidas/velez_se_03.pdf.

21. IACHR, judgment of 23 November 2010, *Case Vélez Loor v. Panamá*.

22. The provisional measures were adopted in July 2020 to protect migrants in the Stations of migratory reception of La Peñita and de Lajas Blancas in the province of Darién, Panamá, considering the limitations to the right of free movement and the necessity of protection of the rights of migrants in the context of the COVID-19 pandemic. *Caso Vélez Loor v. Panamá* (par 3).

23. IACHR, judgment of 18 August 2000, *Case of Haitian and Haitian-Origin Dominican Persons in the Dominican Republic* (Provisional Measures Requested by the Inter-American Commission on Human Rights).

rigin Dominican Persons in the Dominican Republic who were at risk of collective deportation or expulsion. In the resolution issued on 18 August 2020, the IACHR decided among other issues:

> 5. To require that the State of the Dominican Republic permit, within the shortest possible time, the family reunification of Antonio Sension and Andrea Alezy with their minor children in the Dominican Republic[24].

Thus, the IACHR once more recognized the key role of family unity and ordered family reunification.

2.2. The ECHR decisions on family reunification

The ECHR has a vast number of cases on family reunification. In 2021there were eighteen cases with the research term "family reunification". We will only discuss the cases that effectively dealt with this issue in the context of migration. Cases concerning parental child abduction were also excluded since they regard concurring parental interests[25]. Thus we present three cases from 2021 and two cases from 2020. We recall that article 8 of the European

24. IACHR, *Case of Haitian and Haitian-Origin Dominican Persons in the Dominican Republic*.

25. European Court Of Human Rights, judgment of 09 March 2021, Application no. 16031/18, *Case of Arewa v. Lithuania;* ECHR, judgment of 02 december 2021, Application no. 36516/19, *Case of Jallow v. Norway*; ECHR, judgment of 23 November 2021, Application n. 24757/18, *Case Tapayeva and Others v. Russia*; ECHR, Application no. 54366/08, judgment of 20 April 2021, *Case of Naltakyan V. Russia;* ECHR, Application no. 15379/16, judgment of 10 December 2021, *Case of Abdi Ibrahim V. Norway;* ECHR, judgment of 13 July 2021, referral to the Grand Chamber 22/11/2021, no. 40792/10 And 2 Others, *Case of Fedotova And Others V. Russia*; ECHR, Application. no: 78754/13, judgment of 02 March 2021, *Case of Pavel Shishkov V. Russia*; ECHR, judgment of 9 December 2021, Application No. 53487/13, *Case of R.M. V. Latvia*; ECHR, Application no. 15379/16, judgment of 10 December 2021, *Case of Abdi Ibrahim V. Norway;* ECHR, judgment of 20 January 2022, Application no. 53471/17, *Case of E.M. and others V. Norway*; ECHR, judgment of 08 February 2022, Application. n. 19938/20, *Case of Q and R v. Slovenia*. Cases related to international parental child abduction were also excluded since they regard concuring parental interest.

Convention on Human Rights (EConvHR) foresees: "Everyone has the right to respect for his private and family life (...)".

2.2.1. Case r.r. and others v. Hungary[26]

The case concerns the confinement of an Iranian-Afghan asylum seeker family, including a pregnant woman and three minor children, to the Röszke transit zone at the border of Hungary and Serbia between 19 April and 15 August 2017. The family remained de facto detained in the transit zone, unable to obtain sufficient food, and under a degrading situation[27]. The judgment does not concern family reunification directly. However, it is significant since it recalled article 23 of the Directive 2013/33/EU of the European Parliament and of the Council[28] that lays down standards for the reception of applicants for international protection. This Directive states that the child's best interests shall be a primary consideration for implementing the provisions´ Directive and that family reunification possibilities are a relevant factor in assessing the child´s best interest. Article 22 of the CRC was also expressly mentioned.

26. ECHR, judgment of 02/03/2021, Application no. 36037/17, *Case of R.R. and others V. Hungary.*

27. ECHR, judgment of 02/03/2021, Application no. 36037/17, *Case of R.R. and others V. Hungary*, par. 10 e 11.The applicants relied on Article 3 (conditions in the transit zone), taken alone and in conjunction with Article 13, Article 5 (unlawful deprivation of liberty) and Article 34 (non-compliance with an interim measure) of the EUCHR.

28. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013. Article 23: "1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors. Member States shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development. 2. In assessing the best interests of the child, Member States shall in particular take due account of the following factors: (a) family reunification possibilities; (b) the minor's well-being and social development, taking into particular consideration the minor's background; (c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking; (d) the views of the minor in accordance with his or her age and maturity. (...)"

In short, the case reaffirmed, in the context of reception of applicants for international protection, the relevance of family reunification as a crucial element while assuring child´s best interest. It thus converges with IACHR´s advisory opinion 21/14 that also emphasizes State´s obligation as regards family reunification in the initial evaluation process once children cross borders.

2.2.2. Case M.A. v. Denmark [29]

This case regards an applicant who fled from Syria in January 2015, entered Denmark in April 2015, and requested asylum. His asylum application was denied since authorities considered he did not fulfill the refugee´s requirements under the CRSR. He received "temporary protection status", which is granted for those who are facing a generalized threat.

Based on family reunification, the applicant requested a residence permit for his wife. Danish authorities refused it. According to Danish legislation, since he received "temporary protection", he had to wait three years before claiming for family reunification. He argued that other persons that received international protection in Denmark, such as refugees, were not subject to this waiting period. The applicant invoked Articles 8 of the EConvHR, which states the principle of non-discrimination, and article 8 in conjunction with article 14 of the EConvHR.

The ECHR noted no grounds to question the different treatment domestic law assures to refugees and those who receive "tempo-

29. Application no. 6697/18, 9 July 2021.

rary protection status" under Danish law[30]. However, the ECHR held that three years is an overly burdened wait.

> 179. In the Court's view, however, a waiting period of three years, although temporary, is by any standard a long time to be separated from one's family, when the family member left behind remains in a country characterised by arbitrary violent attacks and ill-treatment of civilians and when insurmountable obstacles to reunification there have been recognised. Moreover, the actual separation period would inevitably be even longer than the waiting period and would exacerbate the disruption of family life and, as in this case, the mutual enjoyment of matrimonial cohabitation, which is the essence of married life (...)The family members would also be separated during the period of flight, during the initial period after arrival in the host country pending the immigration authorities' processing of the asylum application, and for some time after the three-year waiting period (or two months before, see paragraph 128) pending their decision.[31]

The ECHR concluded that

> 194. Having regard to all the above considerations, the Court is not satisfied, notwithstanding their margin of appreciation, that the authorities of the respondent State, when subjecting the applicant to a three-year waiting period before he could apply for family reunification with his wife, struck a fair balance between, on the one hand, the applicant's interest in being reunited with his wife in Denmark and, on the other, the interest of the community as a whole to control immigration with a view to protect the economic well-being of the country, to ensure the effective integration of.

The ECHR held that there had been a violation of article 8 of the EConvHR and also awarded non-pecuniary damage.

In this case, in which a child´s interests were not under consideration, the ECHR recognized the need to balance European's Union

30. ECHR, judgement 9 July 2021, Application no. 6697/18, Grand Chamber, *Case of M.A. V. Denmark*, para. 177.

31. *Case of M.A. V. Denmark*, *cit.*, par. 179.

interest in immigration control and the right to family reunification. Family reunification prevailed, and three years wait was considered to threaten the family unity.

2.2.3. Case of Savran V. Denmark[32]

This case concerns the expulsion and permanent exclusion order against a Turkish national, a long-term settled migrant, with permanent residence in Denmark. He entered Denmark in 1991 at the age of six with his mother and four siblings to family reunification with his father, who died in 2000. In 2007, the High Court of Eastern Denmark convicted him of assault with highly aggravating circumstances and sentenced him to seven years imprisonment and expulsion with a permanent ban on re-entry. He affirmed that he had no family in Turkey, since all his family was in Denmark. He could not speak Turkish, only Kurdish and had schizophrenia[33].

The ECHR mentioned the Council of Europe Committee of Ministers Recommendations Rec(2000)15 that states that any decision on expulsion of a long-term immigrant should take into account the principle of proportionality and must meet the following criteria: (a) the personal behavior of the immigrant; (b) the duration of residence; (c) the consequences for both the immigrant and his or her family; (d) existing links of the immigrant and his or her family to his or her country of origin[34].

32. ECHR, Judgment of 07 December 2021, Application no. 57467/15, *Case of Savran V. Denmark.*

33. ECHR, *Case of Savran V. Denmark,* cit., par. 34.

34. Council of Europe Committee of Ministers, Recommendation Rec(2000)15 of the Committee of Ministers to member states concerning the security of residence of long-term migrants (Adopted by the Committee of Ministers on 13 September 2000 at the 720th meeting of the Ministers' Deputies)

The ECHR followed the Parliamentary Assembly Recommendation 1504 (2001)[35] that states that migrants born or raised in the host country and their underage children cannot be expelled under any circumstances. ECHR also invoked the Committee of Ministers Recommendation Rec(2002)4 that, "...member States should have proper regard to criteria such as the person's place of birth, his age of entry on the territory, the length of residence, his family relationships, the existence of family ties in the country of origin and the solidity of social and cultural ties with the country of origin. Special consideration should be paid to the best interest and well-being of children[36]".

Finally, ECHR mentioned Article 3 of the ECHR, which prohibits torture and inhuman or degrading treatment or punishment in absolute terms. In case of ill-treatment, the conduct/omission has to attain a minimum severity level to fall within artcle´s 3 scope. According to ICHR, the expulsion of seriously ill aliens by a State Party may give rise to an issue under Article 3 where substantial grounds have been shown for believing that the person concerned faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the receiving country, including the need of a contact person for supervision (in the Savran Case, the absence of family members to support in Turkey)[37].

35. Recommendation 1504 (2001), Non-expulsion of long-term immigrants, Parliamentary Assembly Origin - (see Doc. 8986, report of the Committee on Migration, Refugees and Demography, rapporteur: Mrs Aguiar). Text adopted by the Standing Committee, acting on behalf of the Assembly, on 14 March 2001, 7 available at http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16881&lang=en.

36. Rec(2002)4 of the Committee of Ministers to member states on the legal status of persons admitted for family reunification.

37. ECHR, *Case of Savran V. Denmark, cit.*, par. 121-148.

In short, the Grand Chamber applied articles 3 and 8 of the EConvHR against the removal of mentally ill foreigners, considering the right to respect for private and family life, family reunification and mental illness. Family reunification was thus a key issue to consider expulsion a violation.

2.2.4. Case of Z v. Switzerland[38]

This case concerns a fifty-two years Spanish man who was born and has always lived in Switzerland. He was criminally convicted for a sexual crime against a minor and thus lost his residence permit. His mother returned to Spain and he has siblings both in Spain and Switzerland. His wife lives in Spain. He has an adult son from a previous relationship who lives with his girlfriend in Switzerland. He alleged breach of his right to family life, as stated in Article 8 § 1 of the EConvHR[39].

The ECHR cited the Recommendation Rec(2000)15 of the Committee of Ministers concerning the security of residence of long-term migrants and the Recommendation Rec(2002)4 of the Committee of Ministers on the legal status of persons admitted for family reunification, which also grounded the decision of the case of Savran v. Denmark[40.]

The ECHR held there was no violation of article 8 of the EConvHR:

38. ECHR, judgment 22 December 2020, Application no. 6325/15, *Case Of Z v. Switzerland*.

39. ECHR, *Case Of Z v. Switzerland*, cit., par. 50 and 90.

40. See footnotes 31 and 33.

> Against the background of the seriousness of the offences and the ties with Spain that he still maintains (in particular language and nationality) and considering the sovereignty of States to control and regulate the residence of aliens on their territory, the Court accepts that the domestic authorities balanced the applicant's right to respect for his family life reasonably against the State's interests in public safety and in preventing disorder and crime.

In short, differently from Savran v. Denmark, the ECHR safeguarded the interests of public safety, upholding that the right to family life is not absolute.

2.2.5. Case of Usmanov v. Russia[41]

This case concerns a man born in Tajikistan who moved to Russia with his wife and children in 2007. In 2018 he was arrested and in a temporary detention center for foreigners due to lack of compliance with the domestic decision of compulsory withdrawal.

He first received a residence permit and in 2008 was granted Russian citizenship under the simplified naturalization procedure available to citizens from the former USSR. His wife and children also received citizenship. Russia further annulled his citizenship, and left him with no valid documents alleging that he submitted false information regarding his siblings in his application. The applicant stated he did not mention all his siblings since a duty officer affirmed it was unnecessary.

The ECHR recalled important hallmarks of its case-law on family reunification:

41. ECHR, judgment 22 December 2020, Application no. 43936/18, *Case of Usmanov v. Russia*.

> 56. Where immigration is concerned, Article 8 cannot be considered as imposing a general obligation on a State to respect the choice of married couples of the country of their matrimonial residence and to authorise family reunion on its territory (see Gül v. Switzerland, 19 February 1996, § 38, Reports 1996-I). However, the removal of a person from a country where close family members are living may amount to an infringement of the right to respect for family life, as guaranteed by Article 8 § 1 of the Convention (see Boultif, cited above, § 39). Where children are involved, their best interests must be taken into account and national decision-making bodies have a duty to assess evidence in respect of the practicality, feasibility and proportionality of any removal of a non-national parent in order to give effective protection and sufficient weight to the best interests of the children directly affected by it (see Jeunesse v. the Netherlands [GC], no. 12738/10, § 109, 3 October 2014, and Zezev v. Russia, no. 47781/10, § 34, 12 June 2018).

In short, the ECHR held that the annulment of the applicant's Russian citizenship was a violation of article 8 of EConvHR.

3. The ILDC database

The Oxford Reports on International Law in Domestic Courts (ILDC) is a database of domestic court´s cases that applied international law. It covers all continentes and approximately 70 jurisdictions[42]. Following are the ILDC´s five most recent cases that dealt with family reunification in migration[43].

42. Oxford Public International Law (OPIL), *Oxford Reports on International Law in Domestic Courts*, available at https://opil.ouplaw.com/page/212.

43. We did not analyze the fallowing cases fromm the Oxford ILDC database as they do not concern family reunification: Oxford Public International Law (OPIL), Oxford Reports on International Law in Domestic Courts, *Belhaj and Boudchar v. Straw and ors*, Appeal judgment, [2017] UKSC 3, [2017] AC 964, [2017] 2 WLR 456, [2017] 3 All ER 337, [2017] HRLR 4, [2017] 1 WLUK 198, ILDC 2974 (UK 2017), 17th January 2017, United Kingdom; Supreme Court [UKSC]; *Severino and ors v. Syrian Arab Republic*, Appeal decision, STS 1182/2016, ILDC 2621 (ES 2016), 16th March 2016, Spain; Supreme Court; Federal Commissioner for *Asylum Matters and Turkish citizen of Kurdish origin (joining) v. Federal Office for Migration*, Appeal judgment, BVerwG 10 C 27 07, ILDC 2754 (DE 2008), 18th December 2008, Germany; Federal Administrative Court [BVerwG]. We did not analyze tha Sharma and the *Neumann*

3.1. Comilang Case[44]

The Comilang case concerned two non-resident Filipino mothers, both primary caregivers for their respective Hong Kong resident children, who requested family reunification. Hong Kong's immigration Director denied the extensions and stated that there were no exceptional humanitarian or compassionate grounds to justify a different decision. The Hong Kong's Court of Final Appeal ruled that the Director had discretionary to decide on the extension, and the family reunification did not prevail. As regards international law, the Hong Kong's Court of Final Appeal stated that:

> Any attempts to rely on international conventions such as the ICCPR, the ICESCR, the CRC, or the common law principle of the best interests of the child, or to international customary law, were without merit. As for the international conventions, HK maintained a dualist approach to public international law, so they were not self-executing. Even when some treaty provisions were integrated within domestic laws, they remained subject to relevant constitutional provisions. When conventional stipulations were not codified domestically yet potentially elicited legal expectations, they were subordinated to written HK laws and could be dismissed to the extent that they were inconsistent with statutory provisions. As far as common law principles were concerned, immigration provisions took precedence over family related principles in that this was first and foremost an immigration dispute. The CRC was qualified by

v. Neumann case, since they regard international abduction of child. Oxford Public International Law (OPIL), Oxford Reports on International Law in Domestic Courts, Sharma *v.* State of Rajasthan and ors, Writ petition of habeas corpus, DB Habeas Corpus Petition No HC-106/2015, ILDC 2972 (IN 2019), 11th January 2019, India; Rajasthan; High Courts/ Neumann v Neumann, Appeal judgment, 684 Fed App'x 471 (6th Cir 2017), ILDC 2848 (US 2017), 27th March 2017, United States; Court of Appeals (6th Circuit) [6th Cir].

44. Oxford Public International Law (OPIL), Oxford Reports on International Law in Domestic Courts, Comilang and Ahmed *v.* Director of Immigration, Last instance decision, FACV 9/2018, [2019] HKCFA 10, ILDC 3084 (HK 2019), 2 HKC 492, (2019) 22 HKCFAR 59, 4th April 2019, Hong Kong; Court of Final Appeal [HKCFA] (we recall that according to the ILDC report the full decision cited Council Directive 2003/86/EC on the right to family reunification, OJ L 251/12, 22 September 2003).

> the reservation China attached to its ratification with regards to HK, and quasi coincident international customs did not warrant examination[45].

The Court understood that Strong family ties (mother and the first caregiver) are not sufficient to assure family reunification. Thus, according to the Court, family reunification shall only be granted if exceptional humanitarian or compassionate motives exist. In this case, immigration provisions prevailed over family reunification. Hong Kong adopts a dualist approach. Thus, invoking ICCPR, the ICESCR, the CRC, and the child's best interests principle were insufficient for the claim to prevail since provisions are not self--executing.

3.2. Syrian family v. foreign office of Germany[46]

This case concerns a minor who was not considered a refugee but received subsidiary protection in Germany, where he was residing. His family, living in Syria, requested humanitarian visas for family reunification on the ground that the son was in an evident unstable psychological state. The Foreign Office rejected the claim as an amendment to German's Residence act of 2016 suspended family reunification for two years for those who received subsidiary protection.

45. Oxford Public International Law (OPIL), Oxford Reports on International Law in Domestic Courts, *Comilang Case, Comilang and Ahmed v. Director of Immigration*, Last instance decision, FACV 9/2018, [2019] HKCFA 10, (2019) 22 HKCFAR 59, ILDC 3084 (HK 2019), [2019] 2 HKC 492, 4th April 2019, Hong Kong; Court of Final Appeal [HKCFA].

46. Oxford Public International Law (OPIL), Oxford Reports on International Law in Domestic Courts, *Syrian family v. Foreign Office of Germany*, Final judgment, 36 K 92.17 V, ILDC 2872 (DE 2017), 7th November 2017, Germany; Berlin; Administrative Court [VG].

The claim was brought to the Administrative Court Berlin. This Court invoked article 8 of the ECHR and understood that in order to conform to international obligations, German's Residence act of 2016 had to ensure the possibility to analyze individual cases and balance the child´s well-being and family life versus public interests. It held that the Residence act was in accordance with international law, constitutional law and European Union Law, since there were exceptions to the general rule of suspension.

> H3 The CRC established the general obligation to place a special emphasis on the consideration of the best interests of the child. It thus followed that the child should grow up in a family environment for the full and harmonious development of his or her personality. To ensure that the best interests of the child were guaranteed, member states to the CRC had to deal with entry requests presented by a child or his parents for the purpose of family reunification in a benevolent, humane, and accelerated manner. (paragraph 32) However, no precedence of unconditional claims for family reunification or unconditional priority of children's well-being over conflicting public interests could be inferred from the CRC. (paragraph 37)
> H5 Applying the standard established by international obligations, a complete suspension of granting visas for family reunification would be in conflict with international law. However, exceptions to the suspension that allowed a balancing of interests ensured the compliance of Section 22(1) of the Residence Act with international law. According to the exceptions entailed in the provision temporarily suspending family reunification, a foreigner could be granted an entry visa for two reasons: first, for reasons of international law, such as when the entry visa was granted due to international legal obligations; and second, for urgent humanitarian reasons, when the granting of a visa was justified because of an exceptional individual situation. Exceptions based on public international law reasons or urgent humanitarian reasons should always be determined on a case by case basis. In terms of legal consequences, the provision granted a wide margin of appreciation to the German authorities. (paragraph 41)

> H6 Applying these established standards, the Foreign Ministry was obliged to grant entry visas to the Syrian family members on the basis of examination of their individual case as the health of the minor residing in Germany was urgently and seriously endangered and thus fulfilled the requirements of the exceptions to the general suspension. (paragraphs 50–52)[47]

Differently from the Comilang case, in this case international law was considered an essential source of obligation and interpretation. Despite the different outcome, considering that family reunification was ensured here, its contours of the right to family reunification resemble the Comilang case, since it conveyed that the right to family reunification requires demonstration of exceptional humanitarian grounds (the child was psychologically endangered). In short, it delineated that it is lawful to restrain/ bar temporarily the right to family reunification, as long as individual cases can be individually assessed.

3.3. Refugee consortium of Kenya and nt (suing on behalf of DL (minor) and 47 others) v. attorney general and ors[48]

This case is about refugee children who were separated from their parents within Kenyan territory. The Kenyan Cabinet Secretary for the Ministry of Interior and National Co-ordination issued a directive ordering the return to refugee camps of all refugees

47. Oxford Public International Law (OPIL), Oxford Reports on International Law in Domestic Courts, *Syrian family v. Foreign Office of Germany*, Final judgment, 36 K 92.17 V, ILDC 2872 (DE 2017), 7th November 2017, Germany; Berlin; Administrative Court [VG].

48. Oxford Public International Law (OPIL), Oxford Reports on International Law in Domestic Courts, *Refugee Consortium of Kenya and NT (suing on behalf of DL (Minor) and 47 Others) v. Attorney General and ors*, Constitutional petition judgment, Petition No 382 of 2014, [2015] eKLR, ILDC 3166 (KE 2015), 18th December 2015, Kenya, Nairobi, High Court, Constitutional and Human Rights Division.

living outside camps. Parents of minors, including a Congolese refugee mother of six children under the age of 15, one of them being breastfed, were arrested inside a church and had to stay for three days detained at a police station. Next, the parents were forcefully transferred to the Dadaab Refugee Camp in Kenya. Their children were left abandoned.

The Court held that refugees and their families have the rights stated in international treaties ratified by Kenia, including the CRC. Thus, the child's best interests shall be considered in all matters regarding children. Article 14 of the African Charter also states the child's best interest principle. The directive violated a right to a fair administrative procedure since it did not provide exceptions or examine individual circumstances.

> H5 (...) The indiscriminate relocation of refugees to camps was unreasonable. The best interests of the children were also breached. (paragraph 58)
> H6 According to Article 9 of the CRC a child could only be separated from their parent if it was in their best interests. The separation had deprived the children of their right to family and the care of a parent. (paragraph 60) The principle of the best interests of the child required that the identity of the child in terms of nationality, cultural, ethnic and linguistic background, upbringing, and vulnerabilities/protection needs ought to be clearly and comprehensively assessed. (paragraph 63) The government had infringed the children's rights guaranteed under Article 9 of the CRC. (paragraph 68)
> (...)
> H8 The government had not justified that its actions were necessary for security reasons. No nexus was shown between security challenges and the relocated refugees. The limitations of rights by the government were not justified under Article 24 of the Constitution. (paragraph 72).

In this case, as in the Syrian family case (4.2) international law was considered as a basis of obligations and used as a ground to

the decision. The outcome was positive, but as in the Comilang and in the Syrian family case, the message was that restrictive measures to migrant's rights are acceptable as long as they provide for consideration of individual circumstances.

3.4. B010 v. Canada (citizenship and immigration), b010, attorney general of ontario (intervening) and ors (intervening) v. minister of citizenship and immigration[49]

This case's main issue is "Whether 'migrant smuggling' as defined in the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime required that the activity be undertaken for a material benefit[50]". The discussion touches upon family reunification since it discusses whether it can be regarded as a material benefit for smuggling purposes.

The case concerns a Cuban national who helped other Cubans to enter the US irregularly. He was recognized as a refugee in the US, then was convicted for alien smuggling for helping the other Cubans, and then sought refuge in Canada. It also concerns Sri Lanka nationals who sought refuge in Canada. They traveled to Canada by ship and had to assume ship-board responsibilities after the crew abandoned it. According to Canadian's Immigration and

49. Oxford Public International Law (OPIL), Oxford Reports on International Law in Domestic Courts, *B010 v. Canada (Citizenship and Immigration)*, B010, *Attorney General of Ontario (intervening) and ors (intervening) v. Minister of Citizenship and Immigration*, Final appeal, [2015] 3 SCR 704, 2015 SCC 58, No 35388, ILDC 2539 (CA 2015), 27th November 2015, Canada, Supreme Court [SCC].

50. Oxford Public International Law (OPIL), Oxford Reports on International Law in Domestic Courts, *B010 v Canada (Citizenship and Immigration), B010, Attorney General of Ontario (intervening) and ors (intervening) v. Minister of Citizenship and Immigration*, Final appeal, [2015] 3 SCR 704, 2015 SCC 58, No 35388, ILDC 2539 (CA 2015), 27th November 2015, Canada, Supreme Court [SCC].

Refugee Protection Act, those involved in smuggling, in the context of transnational organized crimes, were inadmissible, not entitled to refugee claim, and if entered, shall be deported from Canada.

The Court held that:

> H13Under the Smuggling Protocol, people smuggling required a material benefit. According to the travaux préparatoires, the Smuggling Protocol was intended to target organized crime, not humanitarian assistance to migrants. Benefits like family reunification were not material benefits. (paragraph 60) Interpreting people smuggling as requiring a material benefit was consistent with the Refugee Convention—Article 31(1) of the Refugee Convention prohibited penalizing refugees for illegal entry. (paragraph 62) Denying or obstructing an individual's opportunity to have their refugee claim adjudicated after an illegal entry or for acts of mutual assistance was a penalty within the meaning of that provision. (paragraphs 57, 63).

In short, the benefit of family reunification is not deemed as a material benefit for the sake of smuggling, which targets organized crime and not humanitarian assistance. Thus, the Court´s decision indicates a decision inclined to protect the family.

3.5. A v. gastrosocial compensation office[51]

In this case, a Chinese national fleed to Switzerland in 2002. There he worked in a restaurant from November 2005 until March 2007. The Federal Office for Migration provisionally recognized him as a refugee in April 2006. In December 2006, The Federal Office for Migration recognized the right to family reunification for his wife and two children. The family arrived in Switzerland in January 2007.

51. Oxford Public International Law (OPIL), Oxford Reports on International Law in Domestic Courts, *A v. GastroSocial Compensation Office*, Appeal judgment, 8C-449/2008, BGE 135 V 94, ILDC 1290 (CH 2008), 16th December 2008, Switzerland, Federal Supreme Court [BGer], Social Chamber I.

The GastroSocial Compensation Office granted child benefits to the father from January 2007. It denied child benefits from November 2005 since Article 1(5) of the Cantonal Law on Child Benefit for Workers, BSG 832/71, 5 March 1961 (Switzerland) did not assure child benefits for foreigners when their children resided out of the country. For Swiss citizens, child benefits were granted regardless of where the child resides. A filed an appeal arguing that such discriminatory decision violated Article 24(1)(a) of the Convention Relating to the Status of Refugees.

The Court assured Child's benefits from the moment the father was recognized as a refugee:

> H1 According to Swiss case law, the right to child benefits guaranteed to refugees by Article 24(1)(a) of the Refugee Convention, as well as other 'extended' rights provided for in Articles 23 and 24 of the Refugee Convention, were only recognized from the moment that a person had been officially recognized as a refugee by the national authorities (Decision of the Federal Department of Justice and Police, *Verwaltungspraxis der Bundesbehörden* (VPB) 63.3; 16 November 1998). (paragraph 3)
> H2 The benefits of those rights therefore had to be granted to A with retroactive effect up to 11 April 2006, when A had been recognized as a refugee by the Swiss authorities. This retroactive effect did not, however, go back to the moment when A had entered Switzerland and applied for asylum. (paragraph 4)
> H3 In those circumstances, applying the provisions for aliens of the Cantonal Law on Child Benefit for Workers to A—with the effect of denying him the right to child benefits for the period when his children were living in China—was less favourable than the treatment of a national, and therefore incompatible with Article 24(1) of the Refugee Convention (...)(paragraph 4)

This case is about the social benefits that arise from family reunification, and the decision was relevant to demonstrate the preeminence of the Refugee Convention over national provisions

and the value of family over national interests. It could have been more protective and assured benefits from the moment he entered Switzerland and applied for asylum since the effects of asylum are retroactive regarding migratory *status*.

Final considerations

The analysis of the regional human rights and domestic courts' decisions is relevant to comprehending how they delineate and develop the right to family reunification, which is grounded on and enhances the human right to family. As the family is the core of society, it is essential to a fully working democracy. The point of convergence is that all decisions analyzed recognized some sort of protection to family reunification, demonstrating consensus on the family as the basis of the society and the importance of protecting it in the migration context. Decisions gravitated among a spectrum. In one extreme is the family as a lynchpin to the society and child's best interest principle; on the other, it is the national security interest.

Every IACHR decision enhance the right to and duty of family reunification. All the IACHR decisions on family reunification in the context of migration were analyzed, and the main contours to this right arise from Advisory opinion 21 according to which: States (a) must consider family reunification in the migrants' initial evaluation process; (b) are obliged to promote family reunification for unaccompanied and separated migrant children, once regarded child´s best interest; and (c) have to adapt their asylum proceedings to assure effective access to children, allowing their specific situa-

tion to be considered and assure family reunification procedures, if necessary and in consonance with the child´s best interest. The case Ramírez Escobar and Others v. Guatemala, in the context of international adoption, explicits States' responsibility as regards family reunification: (a) must assure that separation is as far as possible temporary, (b) must provide support for avoiding separation or perpetuation of separation, and (c) must effort to make visits possible. At the Velez Lor 2021 resolution on provisional measures, IACHR welcomes that Panamá has implemented various actions to protect the rights of migrant women and children, including the prioritization of familiar unity and family reunification. The IACHR, in the provisional measure of August 2020 of the Case of Haitian and Haitian-Origin Dominican Persons, required that Dominican Republic permit the family reunification of a Haitian national without delay, reinforcing thus the importance of reuniting family promptly.

ECHR is especially protective to family reunification when child´s interests are at stake, as can be observed in In R.R. and Others v. Hungary. In this case ECHR reaffirmed, in the context of reception of applicants for international protection, the relevance of family reunification as a crucial element to child´s best interest. The case converges with IACHR´s advisory opinion 21/14 that also emphasizes the State´s obligation regarding family reunification in the initial evaluation process. Unlike the IACHR, the ECHR entered on the issue of State´s margin of appreciation and the importance of balancing the value of family with orderly migration in the region. In M.A. v. Denmark case, in which child´s interests were not under consideration, the ECHR recognized the need to balance Europe-

an's Union interest in immigration control and the right to family reunification. Family reunification prevailed, and three years wait was considered to threaten the family unity. The ECHR also expressly accepted a different level of protection of family reunification for refugees and those who received subsidiary protection. Regarding expulsion of adults who were long-term migrants, ECHR bounced between the importance of family and national security interests. The value of family prevailed in Usmanov v. Russia and Savran v. Denmark. In Usmanov v. Russia ECHR held that annulling nationality and issuing an order of compulsory withdrawal violated the right to family life. In Savran v. Denmark, ECHR stated that the expulsion of long-term immigrants should consider the consequences for the immigrant and his or her family, and the immigrant´s bonds to the country of origin. Unlike Savran v. Denmark, in Z v. Switzerland, ECHR safeguarded public safety interests, upholding that the right to family life is not absolute.

In the domestic field, Hongkong´s Court in the Comilang case[52] conveyed the message of family reunification as right only regarding cases where humanitarian and compassionate motives were demonstrated. In the Syrian family case, the german Court delineated that it is lawful to temporarily restrain the right to family reunification, as long as individual cases can be individually assessed and family reunification granted if humanitarian or compassionate motives exist. The Refugee Consortium of Kenya case was also

52. Oxford Public International Law (OPIL), Oxford Reports on International Law in Domestic Courts, *Comilang and Ahmed v. Director of Immigration*, Last instance decision, FACV 9/2018, [2019] HKCFA 10, ILDC 3084 (HK 2019), 2 HKC 492, (2019) 22 HKCFAR 59, 4th April 2019, Hong Kong, Court of Final Appeal [HKCFA] (we recall that according to the ILDC report the full decision cited Council Directive 2003/86/EC on the right to family reunification, OJ L 251/12, 22 September 2003).

protective to family reunification but stated that restrictive measures are allowed as long as it is possible to analyze individual circumstances. The two last decisions presented delineated collateral aspects of family reunification. In B010 v Canada, the Court ruled benefit of family reunification is not deemed as a material benefit for the sake of smuggling, which targets organized crime and not humanitarian assistance. Thus, the Court´s decision indicates a decision inclined to protect the family. Finally, in A v GastroSocial Compensation Office[53], the Switzerland court was also protective to the family by assuring refugees equality of treatment with nationals and receiving social benefits from the moment refuge is granted.

In sum, the IACHR and ECHR decisions were, as anticipated, more protective to family, especially when child´s rights when under consideration, providing relevant specifications to the migrant´s rights of and corresponding State´s duties regarding family reunification. All IACHR´s decisions were protective, while ECHR, which has a far more developed case law in this regard, was very protective when child´s rights were under consideration but balanced between national security interests and the value of family for adults. The five most recent cases from ILDC databases also demonstrate that all decisions recognized some sort of protection to family reunification. However, they also presented constraints, most of them requiring humanitarian and extraordinary conditions even when child´s interests were considered.

53. Oxford Public International Law (OPIL), Oxford Reports on International Law in Domestic Courts, *A v. GastroSocial Compensation Office*, Appeal judgment, 8C-449/2008, BGE 135 V 94, ILDC 1290 (CH 2008), 16th December 2008, Switzerland, Federal Supreme Court [BGer], Social Chamber I.

While there is regional a bottom-up dialog, as regional human rights courts often reassess domestic court´s decisions, the top--down flow, which means domestic courts discussing regional human rights courts decisions, needs to be enhanced. Domestic courts could benefit from observing or discussing the standard of protection that regional human rights courts provide on family reunification. We observed the IACHR citing ECHR but not the reverse, so we claim that Horizontal and even diagonal dialogs (among domestic and regional human rights courts of different regions) could be intensified, especially from global-south to global-north, so migrant families would likely be better protected.

Bibliographic references:

Council Of Europe Committee Of Ministers, *Recommendation Rec(2000)15 of the Committee of Ministers to member states concerning the security of residence of long-term migrants (Adopted by the Committee of Ministers on 13 September 2000 at the 720th meeting of the Ministers' Deputies),* available at https://rm.coe.int/native/09000016804eb800.

European Court Of Human Rights, Application no. 15379/16, judgment of 10 December 2021*, Case of Abdi Ibrahim v. Norway.*

European Court Of Human Rights, judgment of 20 January 2022, Application No. 53471/17, *Case, Case of E.M. and others V. Norway*.

European Court Of Human Rights, judgment of 13 July 2021, referral to the Grand Chamber 22/11/2021, nos. 40792/10 And 2 Others, *Case of Fedotova And Others v. Russia*.

European Court Of Human Rights, Application no. 54366/08, judgment of 20 April 2021, *Case of Naltakyan v. Russia.*

European Court Of Human Rights, Application n 78754/13, judgment of 02 March 2021, *Case of Pavel Shishkov v. Russia*.

European Court Of Human Rights, judgment of 9 December 2021, Application No. 53487/13, *Case of R.M. v. Latvia*.European Court Of Human Rights, judgment of 02 March 2021, Application no. 36037/17, *Case of R.R. and others v. Hungary* .

European Court Of Human Rights, Application no 57467/15, judgment of 7 December 2021, *Case of Savran v. Denmark*.

European Court Of Human Rights, judgment of 22 December 2020, Application no. 43936/18, *Case of Usmanov v. Russia*.

European Court Of Human Rights, judgment of 22 December 2020, Application no. 6325/15, *Case Of Z v. Switzerland*.

European Court Of Human Rights, judgment of 23 November 2021, N. 24757/18, *Case Tapayeva and Others v. Russia*.

European Court Of Human Rights, judgment of 09 March 2021, Application no. 16031/18, *Case of Arewa v. Lithuania*.

European Court Of Human Rights, judgment of 08 February 2022, Application. n. 19938/20, *Case of Q and R v. Slovenia*.

European Court Of Human Rights, Judgment of 02 december 2021, Application. n. 36516/19, *Case of Jallow v. Norway*.

European Court Of Human Rights, judgment of 12 October 2006, Application no. 13178/03, *Case of Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*.

European Union, Directive 2013/33/EU of the European Parliament and of the Council, of 26 June 2013.

European Union, Recommendation 1504 (2001) Non-expulsion of long-term immigrants. Parliamentary Assembly Origin - (see Doc. 8986, report of the Committee on Migration, Refugees and Demography, rapporteur: Mrs Aguiar). Text adopted by the Standing Committee, acting on behalf of the Assembly, on 14 March 2001, available at http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16881&lang=en.

European Union, Rec(2002)4 of the Committee of Ministers to member states on the legal status of persons admitted for family reunification. Adopted by the Committee of Ministers on 26 March 2002 at the 790th meeting of the Ministers' Deputies. Strasbourg: 2002.

International American Court Of Human Rights, Advisory Opinion OC-21/14, Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, OC-21/14, Inter-American Court of Human Rights (IACrtHR), 19 August 2014, available at https://www.corteidh.or.cr/docs/opiniones/seriea_21_esp.pdf.

International American Court Of Human Rights, judgment of 31 August 2011, *Contreras y otros V. El Salvador*.

International American Court Of Human Rights, judgment of 25 November 2019, *López y otros V. Argentina*.

International American Court Of Human Rights, Judgement of 14 October 2014, *Rochac Hernández y otros V. El Salvador*.

International American Court Of Human Rights, Judgement of 18 August 2000, *Case of Haitian and Haitian-Origin Dominican Persons in the Dominican Republic* (Provisional Measures Requested by the Inter-American Commission on Human Rights).

International American Court Of Human Rights, judgement of 24 June 2021, *Case Vélez Loor v. Panamá*, Resolution of the IACHR. Provisional Measures.

International American Court Of Human Rights, judgement of 23 November 2010, Case *Vélez Loor v. Panamá*.

International American Court Of Human Rights, judgment of 1 March 2005, *Caso de las hermanas Serrano Cruz V. El Salvador*.

International American Court Of Human Rights, decision of 9 march 2018, *Ramírez Escobar and Others v. Guatemala*.

Oxford Public International Law (OPIL), *Oxford Reports on International Law in Domestic Courts*, available at https://opil.ouplaw.com/page/212.

United Nations. International Organization for Migration. *International Agenda for Migration Management: Common understandings and effective practices for a planned, balanced, and comprehensive approach to the management of migration*. OIM. Berne: 2004.

United Nations, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by General Assembly resolution 45/158. 18 December 1990.

United Nations, New York Declaration for Refugees and Migrants A/71/L.1. Resolution adopted by the General Assembly on 19 September 2016.

United Nations, Convention on the Rights of the Child (UNCRC). Adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989.

United Nations, Global Compact Thematic Paper: Family Reunification, International Organization for Migration (IOM). Geneva, 2016.

United Nations, International Covenant on Civil and Political Rights. Adopted by the General Assembly of the United Nations on 19 December 1966.

United Nations, Universal Declaration of Human Rights. General Assembly resolution 217 A, proclaimed by the United Nations General Assembly in Paris on 10 December 1948.

United Nations High Commissioner For Refugees, *Guidelines* on Determining the Best Interests of the Child 2008, available at https://www.unhcr.org/4566b16b2.pdf.

V. Chetail, *International Migration Law*, United Kingdom: Oxford University Press, 2019.