RETHINKING FAMILY LIFE UNDER ARTICLE 8 ECHR: TOWARDS A BROADER RIGHT TO FAMILY UNITY FOR ADULT-ADULT RELATIONSHIPS

Laura Zanella

A thesis submitted for the degree of Doctor of Philosophy in Law

School of Law

University of Essex

March 2026

Acknowledgements

I am deeply grateful to my supervisors, Professor Geoff Gilbert and Professor Renee Luthra, for their invaluable guidance and critical insight throughout this thesis.

I also thank Professor Steve Peers for his early supervision and helpful comments.

I am also grateful to Professor Helena Wray, who supervised my LLM dissertation, for inspiring my initial interest in this field.

I am indebted to the academics who agreed to be interviewed for this research and who shared their time and expertise so generously.

I am grateful to Giangiacomo Gerevini for his friendship and encouragement throughout the PhD journey.

My deepest gratitude goes to Warren, my parents and my sister for their love, patience, and unwavering belief in me. This thesis would not have been possible without their constant support.

Abstract

This thesis examines how the European Court of Human Rights (ECtHR) interprets 'family' under Article 8 of the European Convention on Human Rights (ECHR) in both migration and non-migration cases, with particular attention to the Court's approach in the migration context. It argues that this approach is internally inconsistent, culturally biased, and normatively unjustified. While the ECtHR recognises a wide range of adult-adult relationships in non-migration cases, it adopts a markedly narrower, nuclear-family model in the migration context. Adult relatives — such as parents and adult children, adult siblings, and grandparents and adult grandchildren — are excluded altogether or protected only under an exceptionally demanding dependency test. This bifurcated approach fails to reflect contemporary sociological realities and risks indirect discrimination under Article 14 ECHR by privileging a culturally specific conception of family that disproportionately disadvantages migrants.

Using an interdisciplinary methodology combining doctrinal analysis, a review of sociological research informed in part by cross-national survey evidence, and expert interviews, the thesis demonstrates that adult-adult kinship ties are widely recognised as integral components of family across cultures. These ties provide essential emotional, practical, and intergenerational support and are central to the functioning of national and transnational families. Physical distance does not automatically weaken familial bonds or responsibilities, undermining blanket justifications for treating transnational families differently.

The thesis advances a normative argument for reform grounded in a combined model of "family-as-being" and "family-as-doing", which integrates legal status with the

functional and emotional dimensions of caregiving and mutual support. It argues that the ECtHR, applying its doctrine of evolutive interpretation, should adopt a more inclusive, culturally sensitive, and functionally grounded conception of family that reflects contemporary family practices and restores coherence to its Article 8 jurisprudence. Such an approach would strengthen substantive equality in migration cases, particularly by addressing the exclusion of adult-adult kinship ties.

Table of contents

Introduction and methodology

Introduction

Family migration has become an increasingly common phenomenon in the modern age and, since the mid-1980s, has constituted the primary mode of legal entry into the European Union.[1] This pattern has persisted over subsequent decades: across Western and other Organisation for Economic Co-operation and Development countries, family migration continues to represent the main channel of admission, accounting for around 40% of total inflows in many states and reaching 43% of all new permanent immigrants in 2023, the highest share of any migration category.[2] Yet, despite its numerical significance, family migration has long been marginalised as a subject of research and, until relatively recently, constituted a "blind spot" within migration studies.[3]

Early scholarship tended to focus on the individual migrant rather than the family unit, prioritised economic explanations, and reinforced gendered assumptions by framing female migration through a male-producer/female-reproducer dichotomy.[4] In other words, family migration did not receive sustained academic attention until the early 2000s, despite earlier contributions in the late 1980s — particularly in North American and Asia-Pacific research — and throughout the 1990s.[5] Prior to that, it was not considered a primary form of migration, but rather the inadvertent result of the cessation of mass labour migration in the 1970s, whereby male breadwinners migrated

[1] Eleonore Kofman, 'Family-Related Migration: A Critical Review of European Studies' (2004) 30 Journal of Ethnic and Migration Studies 243.
[2] Anton Ahlén, 'The Effects of Admission Policies on Rates of Family Migration in European States, 2008–2019' (2024) 14(3) Nordic Journal of Migration Research 1; OECD, *International Migration Outlook 2024* (OECD Publishing 2024).
[3] Kofman (n 1); Saskia Bonjour and Albert Kraler, 'Introduction: Family Migration as an Integration Issue? Policy Perspectives and Academic Insights' (2015) 36(11) Journal of Family Issues 1407.
[4] Kofman (n 1).
[5] ibid; Bonjour and Kraler (n 3).

first, and dependent women followed.[6] Since the early 2000s, however, academic interest in family migration has grown substantially — including, of particular relevance to this study, increased research into one of its core forms: family reunification.[7]

Despite this growing interest, the vast majority of academic literature has focused almost exclusively on parents and their dependent minor children — the so-called nuclear family — and, to a lesser extent, on spouses. Human rights law has therefore devoted limited attention to the relationships between adult family members, excluding spouses, in the context of family reunification, which form the focus of this study. These relationships, along with those between minors and individuals who are not their parents, fall within the category of the extended family, in contrast to the nuclear family defined above.

The subject examined in this work is therefore strikingly under-explored. Adult-adult relationships include, for example, those between parents and their adult children, between adult siblings, and between aunts or uncles and their adult nieces or nephews. The originality and the value of this research are further underscored by the fact that adult-adult relationships have likewise received limited attention in other disciplines, such as sociology. For instance, the literature on adult sibling relationships is sparse, and the same holds true for grandparenting.[8]

This thesis argues that the limited scholarly engagement with adult-adult relationships in human rights law stems from a broader tendency among scholars to follow the jurisprudence — particularly that of the European Court of Human Rights (ECtHR) —

---

[6] Kofman (n 1); Debra L. DeLaet, 'Introduction: The Invisibility of Women in Scholarship on International Migration' in Gregory A. Kelson and Debra L. DeLaet (eds), *Gender and Immigration* (Palgrave Macmillan 1999).

[7] Kofman (n 1); Bonjour and Kraler (n 3).

[8] Jill Langer and Mathew Love, 'The ties of later life: aging siblings' (2019) 45(9) Educational Gerontology 573; Megan Gilligan, Clare M. Stocker and Katherine Jewsbury Conger, 'Sibling Relationships in Adulthood: Research Findings and New Frontiers' (2020) Journal of Family Theory & Review 1; Marieke Voorpostel and Rosemary Blieszner, 'Intergenerational Solidarity and Support between Adult Siblings' (2008) 70(1) Journal of Marriage and Family 157.

which has historically centred on the nuclear family and, to a lesser extent, on marriage. Indeed, although Article 8(1) of the European Convention on Human Rights (ECHR)[9] guarantees the right to respect for private and family life, the ECtHR has adopted a particularly narrow interpretation of 'family' in migration cases, typically restricting it to the nuclear family. This thesis, therefore, seeks to address this gap in the literature by advancing a normative argument for an expanded conception of family for the purposes of Article 8 that includes adult-adult relationships. Although adult relatives are formally classified as part of the extended family, this work will demonstrate that they are sociologically recognised as integral members of the family. This sociological evidence will highlight the divergence between lived family realities and the ECtHR's approach: while, as shown in Chapter 2, relationships between adult relatives are acknowledged as part of family life in non-migration contexts, they are denied equivalent recognition in migration cases. Taken together, the sociological evidence, the Court's inconsistent treatment, and other considerations developed throughout this thesis — including the discriminatory impact of the current approach and the human consequences of family separation — support the argument that such relationships should be encompassed within the ECtHR's conception of family in migration cases and afforded the protection that recognition as family entails.

The following section, therefore, provides the conceptual foundation for this argument by examining how family and family networks are defined and how family unity contributes to well-being. The chapter then turns to adult-adult relationships, highlighting their fundamental and growing significance in contemporary family life. Section 3 examines transnational families and the family migration policies that regulate, enable, or constrain their existence. Section 4 reviews the principal

[9] European Convention for the Protection of Human Rights and Fundamental Freedoms [1950] ETS 5.

international human rights instruments protecting family life and family unity. Section 5 sets out the motivation for this study, and Section 6 outlines the methodology adopted and the research questions that structure the remainder of the thesis.

1. Family and family networks: an introduction and their importance for well-being

The phenomenon of family reunification — defined as the act of bringing together family members who do not currently live in the same country — is politically sensitive, as it relates to movement across borders.[10] The ability to control such borders is closely linked to the notion of state sovereignty.[11] This thesis will therefore examine in detail the tension inherent in family reunification, focusing particularly in Chapter 2 on the conflict between state sovereignty and the protection of migrants' human rights. At this stage, it is important to underline that arguments for family reunification derive from the existence of the right to family unity.[12] When family unity — conceived by many as the "smallest, closest and yet most important community" —[13] is disrupted, family reunification serves as the means through which this unity can be restored.[14]

Before turning to the European legal frameworks governing the protection of family life in the migration context, it is first necessary to consider how family is defined sociologically, since this informs which relationships should be capable of legal recognition in family reunification and removal cases. While Chapter 1 offers an in-

[10] Anne Staver, 'Family Reunification: A Right for Forced Migrants?' (2008) Refugee Studies Centre Working Paper Series 51 <https://www.rsc.ox.ac.uk/files/files-1/wp51-family-reunification-2008.pdf> accessed 28 May 2020.
[11] ibid.
[12] ibid.
[13] Ryszard Cholewinski, 'Family Reunification and Conditions Placed on Family Members: Dismantling a Fundamental Human Right' (2002) 4 European Journal of Migration and Law 271.
[14] Staver (n 10).

depth examination of the sociological definition of family, this section provides a brief overview of the complexity involved in defining this term, to establish the conceptual background necessary for understanding how definitional choices affect the recognition and protection of adult-adult relationships under the ECtHR's jurisprudence. Indeed, the central issue in any assessment of the human rights protection afforded to 'family life' concerns the particular definition of 'family' being employed.

From a sociological standpoint, Georgas affirms that "it is common knowledge that different cultures seem to have different types of family systems".[15] Georgas observes that the nuclear family model appears predominant in the U.S., Canada, and Northern European countries, whereas in most other parts of the world, family tends to be understood in a much broader sense, encompassing grandparents, aunts, uncles, cousins, and other relatives.[16] Similarly, Scales, Potthast, and Oravecz underline that understandings of what constitutes family have evolved throughout history, both within and between cultural groups.[17] They also note that various cultures attach differing importance to diverse family structures, noting for example that polygamy is common in many Asian, Arabic, and African countries, that Asians are more likely than Anglo-Americans to co-reside with members of the extended family, and that Latino children tend to maintain more active contact with multiple extended relatives than their Anglo-American counterparts.[18]

---

[15] James Georgas, 'Family: Variations and Changes Across Cultures' (2003) 6 Online Readings in Psychology and Culture <https://scholarworks.gvsu.edu/cgi/viewcontent.cgi?article=1061&context=orpc> accessed 2 October 2019.

[16] ibid.

[17] Stephen Scales, Adam Potthast and Linda Oravecz (eds), *The Ethics of the Family* (Cambridge Scholars Publishing 2010).

[18] ibid.

The fact that family has never been a static concept was already emphasised in the 1970s by Laslett, who highlighted the considerable variation in family household structures.[19]

Moreover, the more recent phenomenon of "bordered globalization"[20] has contributed to the emergence of increasingly diverse forms of family. As Hacker highlights, the movement of people across borders and the circulation of ideas have heightened awareness of alternative family structures. Hacker further notes that "bordered globalization" also shapes the routines and internal structure of contemporary families.[21] In particular, since the early 2000s, the forces of globalisation have led millions of economic migrants to move from poorer origin countries to more prosperous destination countries in search of employment opportunities.[22] This process has often generated new family arrangements, despite a general trend towards states enacting increasingly stringent migration policies to tighten their borders.[23] International migration has, in fact, given rise to what are now widely referred to as transnational families.[24] This term refers to families with "one or more family members located in different countries".[25] Transnational families are thus characterised by members who spend some or most of their time living apart yet remain emotionally and functionally connected in ways that sustain a sense of shared "welfare and unity", which can be

---

[19] E. A. Hammel and Peter Laslett, 'Comparing Household Structure over Time and between Cultures' (1974) 16 Comparative Studies in Society and History 73; Peter Laslett and Richard Wall (eds), *Household and family in past time. Comparative studies in the size and structure of the domestic group over the last three centuries in England, France, Serbia, Japan and colonial North America, with further materials from Western Europe* (Cambridge University Press 1972).

[20] Daphna Hacker, *Legalized Families in the Era of Bordered Globalization* (Cambridge University Press 2017).

[21] ibid.

[22] Deborah Fahy Bryceson, 'Transnational families negotiating migration and care life cycles across nation-state borders' (2019) 45(16) Journal of Ethnic and Migration Studies 3042.

[23] ibid.

[24] Bahira Sherif Trask, 'Globalization and Families: Meeting the Family Policy Challenge' (2011) <http://www.un.org/esa/socdev/family/docs/egm11/Traskpaper.pdf> accessed 4 November 2019.

[25] Valentina Mazzucato, 'Transnational families, research and scholarship', *The Encyclopedia of Global Human Migration* (2013) vol V.

described as “familyhood”.[26] In other words, they are typified by having retained roots in home countries while, at the same time, building a new life and forming new social bonds in their host countries.[27]

Thus, even at this introductory stage, it is evident that the modern era is characterised by a great diversity of family forms. The concept of family now encompasses arrangements such as unmarried and same-sex couples cohabiting, as well as single-parent households, which diverge from the traditional structural model of the family defined as a unit comprising parents and their minor children or a married man and woman. This wide variety has made achieving a universally agreed definition of family extremely difficult and, to date, unattainable. As will be explored in greater detail in Chapter 1, definitions of family vary not only across cultures but also over time, reflecting shifting social and political views regarding who is considered part of the family.

Despite this diversity, what remains evident is the fundamental importance of family — however defined — in human life. Scholars have recognised the family as “the most crucial and basic social grouping”, performing an extensive array of functions.[28] Family unity is therefore acknowledged as a vital factor in shaping both human development and well-being.[29]

While the importance of family for well-being is widely acknowledged, this significance cannot be understood solely in terms of spousal or parent-minor child relationships.

---

[26] Deborah Fahy Bryceson and Ulla Vuorela, ‘Transnational Families in the Twenty-first Century’ in Deborah Fahy Bryceson and Ulla Vuorela (eds), *The Transnational Family: New European Frontiers and Global Networks* (Berg 2002).
[27] Trask (n 24).
[28] Staver (n 10).
[29] ibid.

Given this broader understanding of family, how ‘family’ is defined becomes more than a theoretical question, as definitional boundaries have tangible implications for which relationships are recognised and protected under the law. The following section turns to adult-adult relationships, which, as demonstrated in Chapter 2, are excluded under the ECtHR’s interpretation of family in migration cases, an exclusion that has profound social and human consequences. Nonetheless, their central role in family life underpins the argument advanced in this thesis.

2. Adult-adult relationships: their fundamental and growing importance in family life and migration

Building on the preceding outline of the central role of family and family unity in maintaining well-being, this section turns to adult-adult relationships, which lie at the heart of this thesis. Although such ties receive little to no recognition under the ECtHR’s restrictive definition of family in migration cases, it will be shown that they are, in fact, central to lived family practice. Demonstrating their importance not only anticipates and addresses the potential objection that limited academic attention reflects a lack of social relevance, but also underscores the need for these relationships to receive greater scholarly analysis and stronger legal protection.

As will be shown in detail in Chapter 1, adult-adult relationships constitute a vital dimension of family life, providing and receiving care, emotional support, and practical assistance across generations, and contributing positively to the well-being of those involved. In addition, these ties function as essential safety nets in times of crisis — such as divorce, ill health, or economic hardship — and, in the migration context, have been shown to be instrumental in enabling integration and settlement.

Although this is only an overview of their relevance, it is evident that adult ties represent for most individuals a vital dimension of human existence. This significance is heightened in the present era of demographic change: life expectancy has risen across the globe, creating new forms of intergenerational overlap.[30] Adults in their fifties and sixties are increasingly likely to have both living parents and grandchildren, often combining care for elderly relatives with support for their children and grandchildren.[31] In this context, adult-adult relationships, particularly those between adult children and their ageing parents, are becoming even more pivotal, as they increasingly shoulder the demands of intergenerational care — a trend set to intensify as populations continue to age.[32] Older people themselves tend to view their family as the most natural and suitable source of support, reinforcing the central role these ties play in later life.[33] Given that this project is situated within a migration context, it is also important to note the rise of transnational families, outlined above, a phenomenon that will be examined below and in greater detail in Chapter 1. Combined with population ageing, this

[30] Office for National Statistics, 'Living longer: how our population is changing and why it matters. Overview of population ageing in the UK and some of the implications for the economy, public services, society and the individual' (2018) <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/ageing/articles/livinglongerhowourpopulationischangingandwhyitmatters/2018-08-13> accessed 16 April 2020; 'Ageing and health' (*World Health Organization*, 5 February 2018) <https://www.who.int/news-room/fact-sheets/detail/ageing-and-health> accessed 10 April 2020; Office for National Statistics, 'Living longer: Fitting it all in – working, caring and health in later life. An overview of two barriers to working at older ages – health and caring' (2018) <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/ageing/articles/livinglongerhowourpopulationischangingandwhyitmatters/fittingitallinworkingcaringandhealthinlaterlife> accessed 16 April 2020.

[31] Office for National Statistics, 'Living longer: caring in later working life. Examining the interplay between caring and working in later life in the UK' (2019) <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/ageing/articles/livinglongerhowourpopulationischangingandwhyitmatters/2019-03-15> accessed 16 April 2020; Office for National Statistics, 'Living longer: Fitting it all in' (n 30).

[32] See, e.g., 'Ageing and health' (n 30); Office for National Statistics, 'Living longer: Fitting it all in' (n 30).

[33] Langer and Love (n 8); Martie Gillen, Terry Mills and Jenny Jump, 'Family Relationships in an Aging Society' (University of Florida 2012) <https://edis.ifas.ufl.edu/pdffiles/FY/FY62500.pdf> accessed 18 March 2022; Sara Honn Qualls, 'Family caregiving' in Kenneth F. Ferraro and Deborah Carr (eds), *Handbook of Aging and the Social Sciences* (9th edn, Academic Press 2021). See also Liliana Sousa (ed), *Families in Later life: Emerging Themes and Challenges* (Nova Science Publishers 2009).

development is likely to increase demands for family reunification, as individuals seek to provide care for their elderly relatives across national borders.

In sum, an analysis of family that limits itself to spousal or parent-minor child relationships is incomplete, as it overlooks the central role played by adult-adult ties. The inadequacy of such a narrow approach is even more evident when one considers those who, whether by choice or circumstance, do not marry or have children. For such individuals, family relationships are not absent; rather, adult kinship ties often take on heightened significance, providing the primary bonds of family life. For those who do form nuclear families, such adult ties complement and sustain them, ensuring care, support, and solidarity across the life course. As noted above, increased life expectancy and the resulting ageing of populations point to the growing importance of adult kinship relationships, particularly intergenerational ones,[34] while women's social and economic emancipation has undermined the male breadwinner model at the core of the traditional nuclear family, contributing to its decline.[35] Together, these developments demonstrate that the nuclear family alone no longer reflects lived family life and underscore the increasing salience of adult-adult kinship ties.

This thesis will therefore demonstrate that adult-adult relationships are fundamental to family life and of growing importance in contemporary societies, and argues that they deserve fuller recognition not only in scholarly debate but also within the ECtHR's

[34] Vern L. Bengtson, 'The Burgess Award Lecture. Beyond the Nuclear Family: The Increasing Importance of Multigenerational Bonds' (2001) 63(1) Journal of Marriage and Family 1.
[35] Judith Stacey, *In the Name of the Family: Rethinking Family Values in the Postmodern Age* (Beacon Press 1996).
On the decline of the nuclear family, see, e.g., David Brooks, 'The Nuclear Family Was a Mistake' *The Atlantic* (Washington DC, March 2020) <https://www.theatlantic.com/magazine/archive/2020/03/the-nuclear-family-was-a-mistake/605536/> accessed 2 April 2022; Mary Patricia Treuthart, 'Adopting a More Realistic Definition of "Family"' (1990) 26(1) Gonzaga Law Review 91. This is discussed further in Chapter 1.

understanding of family in migration cases. The sociological analysis set out in Chapter 1 will provide detailed evidence in support of this claim.

3. Transnational families and family migration policies

To situate the arguments advanced in this thesis, and to foreshadow the tension between legal and policy frameworks and lived family realities, it is also necessary to examine briefly how transnational families intersect with family migration policies. The discussion that follows highlights the distinctive features of family migration, traces its growing political salience, and signals the restrictive policy trends that shape the legal debates examined in the chapters that follow.

The discussion therefore turns to the phenomenon of transnational families, which both influence and are influenced by the migration policy regimes of receiving countries, as well as by broader processes of globalisation, increased cross-border mobility, and shifts in the global employment market.[36] The phenomenon is also driven by family-level dynamics such as strong kinship ties, family pressure, and key life-cycle moments in which migration appears as a strategy to secure greater stability or opportunity.[37]

Before turning to an overview of family migration policies, it must be noted that family migration is distinct from other forms of migration because it is structured around a pre-existing, meaningful family relationship.[38] In some cases, this relationship is invoked by a family member seeking admission to join a sponsor already present in the host

[36] Bryceson (n 22).
[37] Gordon F. De Jong, Brenda Davis Root, Robert W. Gardner, James T. Fawcett and Ricardo G. Abad, 'Migration Intentions and Behavior: Decision Making in a Rural Philippine Province' (1985) 8(1) Population and Environment 41; Bryceson (n 22); Michael Haan, 'The Place of Place: Location and Immigrant Economic Well-Being in Canada' (2008) 27(6) Population Research and Policy Review 751.
[38] Laura Block, 'Regulating Membership: Explaining Restriction and Stratification of Family Migration in Europe' (2015) 36(11) Journal of Family Issues 1433.

state. In others, it is relied upon by a migrant already resident there to resist removal where expulsion would disrupt established family life.

Furthermore, while the protection of family life under the international human rights instruments analysed below provides a strong "humanistic and moral basis" for states to allow family reunification, there is no universal right to family reunification.[39] The right to family migration is closely tied to the sponsor's membership in the host society and the recognition of their right to remain.[40] It is generally assumed that individuals have a "right to remain" in the country in which they have established their lives.[41] As "no one should be forced by the state to choose between home and family",[42] the case for family reunification arises from the intersection of the right to remain and the right to family life.[43] In allowing family migration, a state thus recognises not only the bonds between individuals within the family (the "right to the protection of family life") but also the importance of the sponsor's bond with the host society (the "right to remain").[44]

Some scholars have suggested that, within Europe, family migration has gained increasing prominence and now occupies a central position in discussions on migration and integration.[45] This growing relevance stems from the fact that it has become one of the principal, and in many cases the only, lawful routes of entry into receiving states.[46] In recent years, however, the prevailing trend in many Western European countries has been to portray family migration as comprising "unproductive,

[39] Gallya Lahav, 'International Versus National Constraints in Family-Reunification Migration Policy' (1997) 3(3) Global Governance 349.
[40] Block (n 38).
[41] ibid.
[42] Joseph H. Carens, 'Who Should Get in? The Ethics of Immigration Admissions' (2003) 17(1) Ethics & International Affairs 95.
[43] Block (n 38).
[44] ibid.
[45] Elisabeth Strasser, Albert Kraler, Saskia Bonjour and Veronika Bilger, 'Doing family. Responses to the constructions of "the migrant family" across Europe' (2009) 14(2) The History of the Family 165.
[46] ibid.

burdensome inflows" that have adverse effects on integration.[47] Parents and grandparents, in particular, are often depicted as contributing to such negative impacts.[48]

Family migration policies in many European countries have become increasingly restrictive and stratified over the past three decades.[49] The predominant focus on the nuclear family — which sidelines wider kinship ties — illustrates that both states and, as will be shown in Chapter 2, the ECtHR adopt a narrow conception of family that fails to capture its full scope. As mentioned above, this form of migration is often seen as undesirable and is regulated through complex admission rules and requirements.[50] Recent Migrant Integration Policy Index (MIPEX) data show stark variation across countries: states such as Canada, Portugal, and Sweden adopt comparatively favourable rules, while others, including the Netherlands, the UK, and Denmark, rank among the most restrictive,[51] a pattern reflected, within Europe, in declining levels of family migration.[52] Although family migration constitutes a fundamental part of immigration systems worldwide, significant differences remain, as outlined in Section 1.1(b)(I), in how states regulate who is entitled to enter and under what conditions.[53]

---

[47] Block (n 38); Strasser and others (n 45).
[48] Denise L. Spitzer, 'Family Migration Policies and Social Integration' (United Nations Expert Group Family Policies for Inclusive Societies, May 2018) <https://www.un.org/development/desa/family/wp-content/uploads/sites/23/2018/05/Family-Oriented-Migration-Policies-and-Social-Integration.pdf> accessed 6 April 2020; Bronwyn Bragg and Lloyd L. Wong, '"Cancelled Dreams": Family Reunification and Shifting Canadian Immigration Policy' (2016) 14(1) Journal of Immigrant & Refugee Studies 46; Strasser and others (n 45).
[49] Block (n 38).
[50] ibid.
[51] 'Family Reunion' (*Migrant Integration Policy Index*, 2025) <http://www.mipex.eu/family-reunion> accessed 5 November 2025.
[52] Yves Pascouau and Henri Labayle, 'Conditions for family reunification under strain. A comparative study in nine EU member states' (European Policy Centre 2011) <http://www.europeanmigrationlaw.eu/documents/news/Conditions-for-family-reunification-2011.pdf> accessed 2 May 2020; Ahlén (n 2).
[53] Kate Hooper and Brian Salant, 'It's Relative: A Crosscountry Comparison of Family-Migration Policies and Flows' (Migration Policy Institute 2018) <https://www.migrationpolicy.org/research/crosscountry-comparison-family-migration> accessed 2 May 2020.

Those restrictive tendencies reflect a broader policy logic rooted in neoliberal thinking, which prioritises the circulation of labour that is immediately economically productive.[54] As a result, highly-skilled migrants — typically men — find it easier to resettle than other demographic groups, while family members seeking to accompany or reunite with them are often perceived as potential burdens on society. Paradoxically, however, restrictive employment regulations frequently prevent these family members from entering the workforce and contributing economically.[55] This economically driven logic also extends to how migrants are viewed: they are frequently regarded primarily as economic actors rather than as individuals with families and aspirations, a view that undermines integration and reinforces the perception of migrants as "outsiders" within the host society.[56]

In sum, the regulation of family migration demonstrates both the centrality of family ties in migration flows and the extent to which states restrict recognition to a narrow, nuclear model, often casting wider or adult kinship ties as undesirable or burdensome. This tension between the lived realities of transnational families and the restrictive frameworks of law and policy forms the context for the analysis developed in the following chapters.

The contradiction in state approaches to family migration — recognising family life in principle while restricting it in practice — underscores the importance of examining the broader human rights framework within which such policies operate. The following

[54] Spitzer (n 48).
[55] ibid.
[56] Bragg and Wong (n 48).

section, therefore, turns to the principal international human rights instruments that enshrine the right to family life.

4. International human rights instruments for the protection of the right to family life

The emergence of international law provisions concerning the family is a relatively recent development.[57] Before the mid-twentieth century, family and family life matters were governed by international law only insofar as it laid down "choice-of-law principles" for national courts dealing with cross-border family disputes, such as those involving mixed-nationality or immigrant families.[58] Until then, conflicts over personal status were resolved by applying the law of domicile. It was only in the second half of the twentieth century, with the proliferation of human rights treaties, that substantive principles regulating States' treatment of families and the protection of children began to emerge.[59] There is now general recognition that the family is "entitled to respect, protection, assistance and support".[60]

The principal human rights instruments view the family as the primary social unit, conferring upon it a right to legal recognition of family relationships.[61] Article 16(3) of the Universal Declaration of Human Rights (UDHR)[62] represents the starting point of

[57] Sonja Starr and Lea Brilmayer, 'Family Separation as a Violation of International Law' (2003) 21 Berkeley Journal of International Law 213.
[58] ibid.
[59] ibid.
[60] Kate Jastram, 'Family Unity: The New Geography of Family Life' (*Migration Policy Institute*, 1 May 2003) <https://www.migrationpolicy.org/article/family-unity-new-geography-family-life> accessed 15 March 2022.
[61] Staver (n 10); Cynthia S. Anderfuhren-Wayne, 'Family Unity in Immigration and Refugee Matters: United States and European Approaches' (1996) 8(3) International Journal of Refugee Law 347.
[62] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

modern human rights formulations of the family.[63] It provides that "[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State". The inclusion of the family in the UDHR was uncontroversial, as there was broad consensus that it constituted the basic foundation of both society and the state.[64] From the beginning, family life was largely conceived as stemming from consensual heterosexual marriage between adults. Today, more than seventy years after the UDHR's adoption, the notion of family, as outlined in Section 1, has expanded to encompass a far wider range of forms.[65]

The formulation in the UDHR was reaffirmed in Article 23(1) of the International Covenant on Civil and Political Rights (ICCPR),[66] which also recognises the right to marry and to found a family.[67] The Human Rights Committee (HRC) clarified that "[t]he right to found a family implies, in principle, the possibility to [...] live together".[68] Article 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)[69] expands on this by emphasising the family's role in the care and education of dependent children. Moreover, Article 17 ICCPR provides that "[n]o one shall be subject to arbitrary or unlawful interference with his [...] family" and that "[e]veryone has the right to the protection of the law against such interference". Article 10(1) ICESCR, mentioned above, strengthens that provision by stressing that the family must be afforded the "widest possible protection and assistance". As discussed by

[63] Fareda Banda and John Eekelaar, 'International Conceptions of the Family' (2017) 66 International & Comparative Law Quarterly 833.
[64] ibid.
[65] ibid. E.g. UN Human Rights Council, 'Report of the Working Group on the issue of discrimination against women in law and in practice' (2 April 2015) A/HRC/29/40 <https://www.refworld.org/docid/5577ed8a4.html> accessed 4 May 2020, para 23.
[66] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).
[67] Art 23(2) ICCPR.
[68] UN Human Rights Committee, '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) <https://www.refworld.org/docid/45139bd74.html> accessed 5 May 2020, para 5.
[69] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

Staver, Van Krieken argues that such a formulation suggests that States are obliged to take a "fairly active approach" to family rights, going beyond mere protection.[70]

The HRC has repeatedly affirmed that 'family' under the ICCPR must be interpreted "broadly"[71] and that the protection of family life is not negated solely because family members live in different countries.[72] It has also acknowledged that the concept of family "may differ in some respects from State to State, and even from region to region within a State", making a single, universal definition impossible.[73] Nonetheless, the HRC has stated that where a group of persons is treated as a family according to a State's legislation and practice, that unit must receive the protection referred to in Article 23 ICCPR. States parties are therefore expected to report on how the concept and scope of the family are construed or defined within their own society and legal system.[74] This statement may appear to suggest that the HRC is prepared to accept as 'family' any social unit that a State recognises as such under its legislation, whether through formal acts or other means.[75]

The rights connected to family life and family unity enshrined in these universal human rights instruments are echoed in regional human rights law.[76] Among the regional instruments particularly relevant to this thesis are the ECHR (specifically Article 8) and

[70] Staver (n 10), citing P. van Krieken, 'Family and International Law: The Principle of Family Unity and Family Reunification' (Family Reunification for Refugees in Europe conference, Helsingør, 15–17 May 1993).
[71] *Balaguer Santacana v Spain* Comm No 417/1990 (Human Rights Committee, 27 July 1994) UN Doc CCPR/C/51/D/417/1990; *Hopu and Bessert v France* Comm No 549/1993 (Human Rights Committee, 30 October 1995) UN Doc CCPR/C/51/D/549/1993; *Ngambi and Nébol v France* Comm No 1179/2003 (Human Rights Committee, 16 July 2004) UN Doc CCPR/C/81/D/1179/2003.
[72] *Ngambi and Nébol v France* (n 71), para 6.4.
[73] 'General Comment No. 19' (n 68), para 2.
[74] ibid.
[75] Banda and Eekelaar (n 63).
[76] Frances Nicholson, 'The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied' (United Nations High Commissioner for Refugees 2018) <http://www.unhcr.org/en-us/5a8c40ba1.pdf> accessed 8 April 2020.

Council Directive 2003/86/EC.[77] While both will be examined in greater detail later, it is noteworthy that the *travaux préparatoires* to Article 8 ECHR indicate that it was intended primarily to protect family life from State interference,[78] in particular to guard against the forms of State control characteristic of totalitarian regimes.[79] The *travaux préparatoires* contain no indication that the drafters addressed the meaning of 'family' or 'family life', likely because the need for such definitions was deemed unnecessary at the time.[80] Over time, however, the ECtHR's case-law has generated significant inconsistencies in defining the scope and meaning of 'family life', particularly in migration cases involving adult-adult relationships. This issue forms the central focus of this thesis.

Taken together, Articles 17 and 23 ICCPR provide a notably broader and more affirmative protection of the family than is found in the ECHR. Article 17 mirrors Article 8 ECHR in prohibiting arbitrary or unlawful interference with one's family, but Article 23(1) goes considerably further by affirming the family as the "natural and fundamental group unit of society" and by requiring States to accord it protection and assistance. Read alongside the HRC's General Comment No. 19,[81] which emphasises both the cultural diversity of family forms and the positive obligations arising from the right to family life, the ICCPR framework offers a more expansive and integrated understanding of the family as a social unit. This stands in contrast to Article 8 ECHR, whose more modest formulation focuses on respect for family life and does not

[77] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification [2003] OJ L 251/12.
[78] Alison Perry, 'The Right to a Family Life', *Max Planck Encyclopedia of Comparative Constitutional Law* (2019).
[79] Ed Bates, *The Evolution of the European Convention on Human Rights. From its Inception to the Creation of a Permanent Court of Human Rights* (Oxford University Press 2010).
[80] Perry (n 78).
[81] 'General Comment No. 19' (n 68).

incorporate the broader positive obligations reflected in Article 23 ICCPR. This contrast in the formulation of the relevant provisions helps to contextualise the ECtHR's subsequent interpretation of Article 8 (examined in Chapter 2), while also suggesting that the Court's approach — particularly in migration cases — sits uneasily with broader international standards that emphasise both family unity and a more expansive understanding of the family.

While those instruments of international human rights law clearly promote respect for and protection of the family, they do so in broad and general terms and do not attempt to provide a concrete definition of the term 'family'.[82] As Fourlanos observes, this absence reflects the fact that "a universally accepted concept of family can hardly be said to exist".[83] Understandings of the term 'family' differ from one State or community to another and are shaped by "historical, social, cultural, and economic factors".[84]

The absence of a concrete definition gives rise to both advantages and difficulties. On the one hand, because family structures vary across cultures and evolve over time, the concept of family is inherently fluid; a rigid definition would inevitably fail to capture this dynamism, and the absence of one helps ensure that international instruments remain adaptable rather than become outdated. On the other hand, definitional openness poses challenges in determining the scope of human rights protection and grants international bodies significant interpretive discretion. Such discretion risks producing culturally specific or unduly narrow understandings of family that fail to reflect lived realities. This concern is borne out in the context of Article 8 ECHR, where the ECtHR

[82] Staver (n 10); Perry (n 78).
[83] Gerassimos Fourlanos, *Sovereignty and the Ingress of Aliens: With Special Focus on Family Unity and Refugee Law* (Almqvist & Wiksell International 1986).
[84] Perry (n 78).

has adopted a restrictive conception of family life — particularly in migration cases — that does not take account of demographic and sociological developments. As later chapters show, the Court's approach has tended to prioritise one cultural model of the family over others, thereby diminishing the breadth of human rights protection available to certain family relationships.

The question of how 'family' is conceived in international human rights law also bears upon the related question of whether international law recognises a distinct right to family reunification. While international human rights law recognises a subjective right to family life, the existence of a distinct right to family reunification remains far less certain, despite strong arguments that can be derived from the recognition of family life as a human right.[85] The HRC has, however, acknowledged that Article 23 ICCPR encompasses "the interest in family reunification",[86] and has affirmed that the possibility of living together requires States to adopt appropriate measures to "ensure the unity or reunification of families".[87] The absence of a universally accepted definition of 'family' contributes to the uncertainty surrounding family reunification, since States interpret the notion of family differently within their own legal systems.[88] This, in turn, has resulted in widely differing approaches to family reunification among States.[89]

[85] Hélène Lambert, 'Family unity in migration law: The evolution of a more unified approach in Europe' in Vincent Chetail and Céline Bauloz (eds), *Research Handbook on International Law and Migration* (Edward Elgar 2014).
[86] *Ngambi and Nébol v France* (n 71), para 6.4.
[87] 'General Comment No. 19' (n 68), para 5.
[88] Lambert (n 85).
[89] ibid.

5. Motivation for this study

As outlined above, this thesis situates itself in an under-researched area and seeks to make a novel contribution to scholarship on adult-adult relationships in the context of family reunification. The importance and urgency of this research arise from several considerations.

First, the question of adult-adult relationships in cross-border family reunification has received limited attention in the academic literature. This scholarly gap mirrors their near-total marginalisation by human rights bodies, particularly the ECtHR — the main focus of this study — despite their centrality to the affective lives, support structures, and practical arrangements of many families.

Second, the contemporary period is characterised by the global spread of transnational families. Together with rising life expectancy, these demographic and social trends are likely to generate growing demands for family reunification, as individuals seek to join — or be joined by — elderly relatives, often for the purpose of providing care. These trends reinforce the need to consider how contemporary family practices — and the increasing importance of adult relatives in sustaining family life — should inform the interpretation of ‘family’ for the purposes of Article 8 ECHR in migration cases.

Third, another motivation for this investigation stems from the significant negative consequences that delays or refusals of family reunification impose on migrants and their relatives left behind. Family separation is widely recognised as a major source of psychological distress and social isolation, with harmful effects on well-being and integration — consequences examined in Chapter 4. These considerations underscore the need to analyse how the ECtHR conceptualises ‘family’ in migration cases, particularly given the current under-recognition of adult relatives in its case-law.

Taken together, these considerations suggest a pressing need for systematic analysis — a gap this study seeks to fill by making a substantive contribution to existing knowledge. The decision to focus on the ECtHR is grounded in the fact that a supranational human rights court constitutes one of the few arenas in which transnational families can meaningfully challenge national migration regimes. The Court is therefore a crucial site for examining how the tensions between cross-border family mobility and the sovereign authority of States to regulate migration are negotiated and resolved.

6. Methodology and research questions

Having outlined the motivations for this thesis, this section sets out the methodology and research questions that guide the analysis.

The objective of this study is to examine the lack of protection afforded to adult-adult relationships in the migration context under the ECtHR's jurisprudence and to develop a normative argument for the Court to recognise and protect an expanded conception of family life that encompasses such relationships.

Chapter 1 undertakes a sociological analysis of the definition of family to assess a central critique of the ECtHR's approach in the migration context: namely, that by adhering to a rigid, nuclear conception of family, the Court displays cultural bias by relying on a conception of family that does not reflect the lived realities of contemporary family life. The research questions addressed in this chapter concern how 'family' is defined sociologically across cultures and whether adult-adult relationships are included within such definitions. The chapter also examines transnational families — a long-standing feature of migration that has become increasingly central to

understanding contemporary family life — and explores whether ‘family life’ can exist across borders and how adult-adult familial ties are sustained within these transnational arrangements.

This sociological component of the thesis was undertaken through a literature review incorporating comparative empirical scholarship to assess variations in family attitudes across different cultural and national contexts. Building on this, two pilot interviews were carried out to ensure that the research topic was appropriately framed by the proposed interview questions. After refining these questions, a further four interviews were conducted. All interviewees were academics in sociology, demography or anthropology, with expertise in family studies and migration. All interviews were conducted in English via Zoom, recorded with participants’ consent, and subsequently transcribed.

Chapter 2 examines how the ECtHR defines ‘family life’ under Article 8 ECHR in both migration and non-migration contexts, with a particular focus on adult-adult relationships. The research questions guiding this chapter concern how the Court defines ‘family life’ across these two domains; what approach it adopts towards adult-adult familial ties; and the extent to which this approach is shaped by culturally specific norms, such as those aligned with a Western view of family. These questions are informed by existing scholarly critiques of the ECtHR’s approach in the migration context, particularly concerns about the Court’s adoption of a statist position, its reliance on a culturally biased understanding of family, and a potential violation of the principle of non-discrimination under Article 14 ECHR.

The analysis involved a systematic review of relevant ECtHR case-law, accompanied by critical engagement with academic commentary. Particular attention was paid to

dissenting opinions, both to illustrate the profoundly limited protection the Court affords to adult familial relationships in migration contexts and to provide a basis for considering how its narrow conception of family life in this area might be reconceptualised in a more inclusive and culturally sensitive manner.

Chapter 3 continues the legal analysis through a comparative examination of the protection afforded to adult-adult family relationships in EU law. The research questions guiding this chapter concern how 'family' is defined in this context; what forms of protection are afforded to adult-adult family relationships; how EU protection compares to that under the ECHR; and whether EU law may serve as a model for enhancing protection at the ECHR level. These questions were addressed through an analysis of relevant jurisprudence and a review of the academic literature.

Chapter 4 examines the human and societal consequences of family separation, with the aim of contributing to the normative case for recognising adult-adult relationships within the scope of family life under Article 8 ECHR, thereby highlighting why the ECtHR's current approach requires reconsideration. The analysis is guided by two main questions: what the health and well-being effects are when adult family members are prevented from living together due to migration law, and what the broader societal consequences of such separation may be. A related line of inquiry considers the potential benefits for individuals and for society when adult-adult family members are permitted to live together. This chapter is informed by an interdisciplinary literature review that draws on research from the medical, psychological, and sociological fields.

Building on the analysis developed in the preceding chapters, **Chapter 5** explores possible pathways for reform towards a broader definition of family — one that encompasses relationships between adult relatives — in migration contexts. The research questions guiding this chapter concern how protection for adult-adult relationships in migration cases could evolve under ECtHR principles; what role national legal systems may play; and whether EU law may offer a route for such development. The analysis in this chapter is based on a review of the relevant academic literature.

The thesis therefore adopts a multidisciplinary approach, drawing together law, sociology, and health studies, and its structure reflects this integrative framework.

1 Defining family sociologically and the relevance of adult-adult relationships in its definition

1.1 How is ‘family’ defined sociologically across cultures? Are adult-adult relationships included in the definition of family?

The ECtHR, as will be demonstrated, has consistently adopted a narrow definition of ‘family’ in immigration-related cases, primarily limiting it to the nuclear family. Section 1 of this chapter analyses sociological definitions of family across cultures and historical periods to assess whether the Court’s approach in the migration context aligns with these cultural and historical perspectives. Subsection a) demonstrates that family is not a fixed or universal concept, but a social and political construct shaped by cultural norms, state power, and societal hierarchies, with migration policies rendering these dynamics particularly visible. Subsection b), drawing on historical and sociological analysis as well as insights from expert interviews, examines the nuclear family as the supposed dominant model, assessing whether this claim accurately reflects contemporary societies. It also considers, from a sociological perspective, whether adult-adult relationships — such as those between parents and their adult children, between adult siblings, and between grandparents and their adult grandchildren — are encompassed within contemporary understandings of family, in order to evaluate whether the Court’s systematic exclusion of such ties from its definition of family in the migration context, as discussed in Chapter 2, is supported by sociological evidence. In particular, it assesses whether the nuclear family genuinely functions as an isolated unit, or whether, if it does not, its depiction as such has led scholars to understate the significance of extended kinship in academic discourse.

Section 2 addresses the concept of transnational families, analysing how family life is maintained across distance and how such arrangements challenge conventional assumptions that family life presupposes co-residence and frequent in-person contact.

The discussions in Sections 1 and 2 provide the foundation for a critical assessment of the Court's persistent lack of recognition and protection of adult kinship ties and of the lived realities of transnational family relationships.

In addition to reviewing sociological literature, this chapter incorporates original interviews conducted by the author with academics in sociology, demography, and anthropology, with particular expertise in family studies and migration. These interviews provide expert perspectives on both the meaning of family and the concept of transnational family life. The theoretical framework established from the literature, together with the evidence gathered through these interviews, underpins the argument that, in the migration context, the Court should recognise and afford due protection to the bonds between adult relatives, as these relationships — as outlined in the discussion below — are embedded in the lived reality of individuals and constitute a fundamental component of family life.

a) The social and political construction of family

Before examining how family is defined sociologically and which relationships it includes, it is essential to recognize that conceptions of family are shaped by broader structures. The understanding of who and what constitutes family, as well as who is entitled to family recognition, varies globally and evolves over time.[90] Notably, the

[90] Saskia Bonjour and Laura Cleton, 'Co-constructions of family and belonging in the politics of family migration' in Emma Carmel, Katharina Lenner and Regine Paul (eds), *Handbook on the Governance and Politics of Migration* (Edward Elgar Publishing 2021); Georgas (n 15).

concept of family is neither fixed nor universal but is shaped by social, political, and cultural factors.[91] For instance, what one country or culture considers a “proper” family may differ significantly from another’s. These definitions often reflect societal norms and power dynamics, such as those rooted in ethnicity, race, or national identity. Crucially, states and institutions determine which family relationships are officially recognised, and only those relationships receive legal rights, such as family migration benefits. Consequently, ‘family’ is not merely a natural or biological reality; it is also a political construct, shaped by societal debates and struggles over which relationships merit recognition and support.[92] These dynamics are reflected in both policy and public discourse.

In the UK, for example, multigenerational households — prevalent among many minoritised communities, including Bangladeshi, Indian, and Chinese populations — were scapegoated as contributing to the spread of COVID-19, allegedly increasing the risk of infection, transmission, and mortality.[93] Similarly, the strong family ties to wider kinship networks and the greater geographical immobility among less educated individuals in Britain are frequently framed as impediments to their socioeconomic mobility.[94] Such narratives underscore the extent to which dominant societal and political structures shape conceptions of the “proper” or “good” family.

Family migration policies, in particular, illustrate these dynamics by embedding implicit notions of what constitutes a “good” or “proper” family, an idea often shaped by class,

---

[91] Bonjour and Cleton (n 90).
[92] ibid.
[93] Women and Equalities Committee, *Unequal impact? Coronavirus and BAME people* (HC 2019-2021, 384); Vahé Nafilyan, Nazrul Islam, Daniel Ayoubkhani, Clare Gilles, Srinivasa Vittal Katikireddi, Rohini Mathur, Annabel Summerfield, Karen Tingay, Miqdad Asaria, Ann John, Peter Goldblatt, Amitava Banerjee, Myer Glickman and Kamlesh Khunti, ‘Ethnicity, household composition and COVID-19 mortality: a national linked data study’ (2021) 114(4) Journal of the Royal Society of Medicine 182.
[94] Social Mobility Commission, *Moving out to move on: understanding the link between migration, disadvantage and social mobility* (31 July 2020).

gender, and ethnicity,[95] rather than by any objective standard. Within this policy framework, a “good” family is typically defined as one that is financially independent and structured around patriarchal norms, with the sponsor — most often male — bearing primary responsibility.[96] Moreover, this idealised family structure is frequently rooted in Western-centric values that emphasise romantic love, gender equality, and individual choice, thereby excluding many migrant family models that do not conform to these expectations.[97]

In addition, policies may reinforce ethno-racial biases, as seen in contexts where maintaining ethnic homogeneity is prioritised over inclusive definitions of family.[98]

As outlined above, the notion of a “good” family is also shaped by class distinctions, as wealthier migrants are more likely to secure family reunification rights, while lower-income migrants face restrictive income thresholds that limit their ability to sponsor family members for entry into Europe.[99] This hierarchy is reinforced by the legal requirement of economic independence (mentioned above), which serves as a key criterion in defining a “legitimate” family. By prioritizing financial self-sufficiency, migration policies privilege those who can demonstrate economic stability while systematically excluding families that do not meet these thresholds. In doing so, they institutionalise class-based exclusion in the regulation of migrant family life.[100]

---

[95] Bonjour and Cleton (n 90); Clare McGlynn, *Families and the European Union. Law, Politics and Pluralism* (Cambridge University Press 2006) ch 2. McGlynn refers to the “dominant ideology of ‘the family’”, emphasising, however, that the concept of the “ideal family” has little resemblance to the realities of family structures, both historically and in the present.

[96] Bonjour and Cleton (n 90).

[97] Joëlle Moret, Apostolos Andrikopoulos and Janine Dahinden, ‘Contesting categories: cross-border marriages from the perspectives of the state, spouses and researchers’ (2021) 47(2) Journal of Ethnic and Migration Studies 325.

[98] Bonjour and Cleton (n 90).

[99] Moret, Andrikopoulos and Dahinden (n 97).

[100] Strasser and others (n 45).

These normative expectations demonstrate how migration policies reflect broader societal hierarchies and power structures.[101] In fact, states function as gatekeepers, determining which family structures are deemed acceptable for legal migration.[102] As a result, migrant families are subjected to greater scrutiny and regulatory oversight than non-migrant families. The concept of the "good" immigrant family is therefore shaped by state-imposed norms that reinforce economic, cultural, and gendered expectations.[103]

Rigid immigration laws fail to account for the diverse realities of migrant family life, leading to exclusion and hardship. This, in turn, reinforces a system in which only those who align with the state's conception of the "good" family are granted legal recognition and rights.[104]

Since family is shaped by social, political, cultural, and legal forces, examining its sociological definitions is essential for understanding how these forces determine which relationships are recognized and formally legitimised in law and policy as family.

b) Defining family and identifying its relationships

I. The nuclear family as the dominant model: a critical examination

As will be demonstrated in this subsection, sociological and anthropological depictions of Western families have traditionally centred on the nuclear family framework,[105] even though its centrality is far from universal.

---

[101] Bonjour and Cleton (n 90).
[102] Strasser and others (n 45).
[103] ibid.
[104] ibid.
[105] Azubike Felix Uzoka, 'The Myth of the Nuclear Family: Historical Background and Clinical Implications' (1979) 34(11) American Psychologist 1095.

In most European countries, the definition of 'family' — or more precisely, the focus of the data derived from traditional social science in Western contexts — has been predominantly confined to the nuclear unit.[106] The EU[107] and the UK stand out as particularly restrictive outliers, often limiting family reunification primarily to this narrow conception of family.[108] By contrast, other parts of the world adopt a broader conceptualisation of the core family, extending it beyond spouses and their minor children to include additional family members.[109] For instance, in large parts of the Caribbean — such as Trinidad and Tobago and Barbados — parents and grandparents of citizens and permanent residents are granted admission without additional requirements.[110] Similarly, in some South American states[111] — for example, Brazil —[112] the admission of parents, siblings, grandchildren, and other relatives is permitted, while in the U.S., siblings and adult children are admitted within an annual immigration quota.[113] Moreover, Canada and Australia allow the admission of extended family members if the sponsor has no closer relatives eligible for sponsorship.[114]

---

[106] Thomas Leopold, Marcel Raab, Charlotte Clara Becker, Zafer Buyukkececi and Beyda Çineli, 'Mapping modern kinship networks: First results from the KINMATRIX survey' (2025) 87(2) Journal of Marriage and Family 478; Stacey (n 35) ch 2.

[107] Family reunification under EU law will be discussed in Chapter 3.

[108] Bonjour and Cleton (n 90); Justice and Home Affairs Committee, *All families matter: An inquiry into family migration* (HL 2022-23, 144).

[109] Bonjour and Cleton (n 90); Saskia Bonjour and Susan Diepenmaat, 'Doing Family Before the State. Does Recognition of *De Facto* Families Lead to More Inclusive Migration Law Practices?' (2024) Social Politics: International Studies in Gender, State and Society <https://doi.org/10.1093/sp/jxae015>.

[110] Bonjour and Cleton (n 90).

[111] Scholars note that, since the early 2000s, South American governments and regional organisations have embraced what has been described as the "world's most open" and inclusive stance on migration and citizenship: Diego Acosta, *The National versus the Foreigner in South America: 200 Years of Migration and Citizenship Law* (Cambridge University Press 2018).

[112] See Ministry of Foreign Affairs of Brazil, 'Types of Visa' (*gov.br*), VITEM XI <https://www.gov.br/mre/pt-br/consulado-los-angeles/english/visas/types-of-visa> accessed 5 November 2024.

[113] Bonjour and Cleton (n 90); Bonjour and Diepenmaat (n 109).

[114] Bonjour and Cleton (n 90); 'Sponsor your relatives' (*Canada.ca*) <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/family-sponsorship/other-relatives/who-you-can-sponsor.html> accessed 23 October 2024; Australian National Audit Office, 'Management of Migration to Australia - Family Migration Program' (*Anao*, 27 March 2023) <https://www.anao.gov.au/work/performance-audit/management-migration-to-australia-

These variations in how family is conceptualised and legally recognised call into question whether the nuclear family has historically constituted the predominant family structure and continues to do so in contemporary society, or whether its prominence has been overstated. This work, therefore, now turns to a historical and sociological analysis of the family, including an examination of whether the nuclear family's claimed dominance reflects an empirical reality or rather a psychological or adaptive construct shaped by the conditions of industrialization.

The nuclear family has been typically defined as a unit constituting of a father, mother and their minor dependent children residing together in one household.[115] Murdock, for instance, described family as "a social group characterized by common residence, economic cooperation, and reproduction. It includes adults of both sexes, at least two of whom maintain a socially approved sexual relationship, and one or more children, own or adopted, of the sexually cohabiting adults".[116] This has led scholars to point out that a significant issue in numerous studies of the nuclear family lies in the excessive emphasis that certain researchers have placed on its structural characteristics and on its element of co-residence within a single household.[117] This structuralist approach

family-migration-program> accessed 23 October 2024; Australian Government - Department of Home Affairs, 'The Administration of the Immigration and Citizenship Programs' (10th edn, October 2022) <https://immi.homeaffairs.gov.au/programs-subsite/files/administration-immigration-program-10th-edition.pdf> accessed 23 October 2024; Australian Government - Department of Home Affairs, 'Subclass 115: Remaining Relative visa' (*Homeaffairs.gov.au*) <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/remaining-relative-115> accessed 23 October 2024; Australian Government - Department of Home Affairs, 'Subclass 838: Aged Dependent Relative visa' (*Homeaffairs.gov.au*) <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/aged-dependent-relative-838> accessed 23 October 2024.

[115] James Georgas, Kostas Mylonas, Tsabika Bafiti, Ype H. Poortinga, Sophia Christakopoulou, Cigdem Kagitcibasi, Kyunghwa Kwak, Bilge Ataca, John Berry, Sabiha Orung, Diane Sunar, Neophytos Charalambous, Robin Goodwin, Wen-Zhong Wang, Alois Angleitner, Irena Stepanikova, Susan Pick, Martha Givaudan, Irina Zhuravliova-Gionis, Rajani Konantambigi, Michele J. Gelfand, Velislava Marinova, Catherine McBride-Chang and Yasmin Kodiç, 'Functional relationships in the nuclear and extended family: A 16-culture study' (2001) 36(5) International Journal of Psychology 289.

[116] George Peter Murdock, *Social structure* (The Free Press 1949) ch 1.

[117] Georgas and others (n 115).

was already evident among early sociologists who supported the notion that Western families functioned as self-contained nuclear units.[118] Parsons, in particular, argued that the nuclear family was separated from its extended kinship network.[119] Many scholars, even in later periods, persisted in following this perspective.[120] According to these sociologists, the Western family was therefore perceived as not only "structurally nuclear" but also "functionally atomistic and isolated" from extended kinship networks.[121] Consequently, the Western family came to be understood as a small, self-contained unit, detached from broader family connections.

It is important to emphasize at this point that structure and function are two essential concepts related to family.[122] According to Smith, structure pertains to the number of family members and the designation of familial roles such as parent, spouse, and child.[123] In contrast, function involves the ways in which families fulfil the "physical and psychological needs" of their members, as well as the "survival and maintenance needs of society".[124]

Additionally, Wells highlighted a significant difference between modern Western society and what he termed "simpler societies", as well as ancient civilizations such as

---

The heterosexual framing in Murdock's definition (n 116) is an important aspect of how family has historically been defined, but it is not the focus of this work, as same-sex relationships do not fall within the scope of this study. Rather, as shown later in this thesis, the analysis concentrates on the tension between structure and function, since an emphasis on structural features obscures other significant family relationships.

[118] Uzoka (n 105).

[119] Talcott Parsons, 'The Kinship System of the Contemporary United States' (1943) 45(1) American Anthropologist 22; Talcott Parsons, 'The social structure of the family' in Ruth Nanda Anshen (ed), *The family: Its functions and destiny* (Harper & Brothers 1949).

[120] Uzoka (n 105).

[121] ibid.

[122] Georgas and others (n 115).

[123] Suzanna Smith, 'Family Theory and Multicultural Family Studies' in Bron B. Ingoldsby and Suzanna Smith (eds), *Families in Multicultural Perspective* (Guilford Press 1995).

[124] ibid.

those in India and China, in relation to the importance of extended kin relationships. He argued that while multigenerational families and kin groups play a crucial role throughout an individual's life in many simpler societies, their significance is greatly diminished in industrialized societies, where they hold only marginal importance and are largely overlooked.[125]

Hareven criticized those early sociological theories — and subsequent family studies — for overemphasizing family structure and neglecting the importance of extended kin networks, with which nuclear households interact. She also argued that early sociologists' idealization of the middle-class American nuclear family led them to perceive deviations from this model as signs of social disorganization.[126] Although early sociological theories emphasized the nuclear family as an isolated unit, studies predating Hareven's critique had already begun to challenge this notion. These studies contradicted the (earlier) dominant perspective on family dynamics and structure, demonstrating that the nuclear family is typically integrated within broader networks of extended kin.[127] Thus, despite appearances of isolation due to geographic distance or economic independence, families remain functionally connected to broader kinship networks.[128] Among these functional aspects, support for young nuclear families in childcare and reciprocal support for elderly kin members have been mentioned. Studies have shown, in particular, that families take their responsibilities towards

[125] Alan Frank Wells, *Social Institutions* (Heinemann Educational Books 1970); see also Uzoka (n 105).
[126] Tamara K. Hareven, 'The History of the Family as an Interdisciplinary Field' in Theodore K. Rabb and Robert I. Rotberg (eds), *The Family in History: Interdisciplinary Essays* (Harper & Row 1971); see also Uzoka (n 105).
[127] Floyd Dotson, 'Patterns of Voluntary Association Among Urban Working-Class Families' (1951) 16(5) American Sociological Review 687; Scott Greer, 'Urbanism Reconsidered: A Comparative Study of Local Areas in a Metropolis' (1956) 21(1) American Sociological Review 19; Eugene Litwak, 'Geographic Mobility and Extended Family Cohesion' (1960) 25(3) American Sociological Review 385; Marvin B. Sussman, 'The Isolated Nuclear Family: Fact or Fiction' (1959) 6 Social Problems 333.
[128] Uzoka (n 105).

elderly relatives seriously, with continuous contact and mutual service exchanges being the norm.[129]

With specific regard to geographic distance — a factor that has been central to arguments supporting the idea of the nuclear family as a "functionally isolated unit" — it has been emphasized that physical proximity is not required to maintain extended family relationships.[130] Even when family members live apart, extended family relationships remain connected and continue to provide support, facilitated by modern communication technologies such as the telephone, which not only prevents a reduction in contact between relatives but, in many cases, enhances it.[131]

Expanding on critiques of the nuclear family's perceived isolation, subsequent scholars have further questioned the assumption that kinship ties hold (little to) no significance. Pitt-Rivers underscored the enduring significance of kinship, conceptualizing it as an "extension of self" and emphasising reciprocity as a core organising principle.[132] Similarly, Segalen contended that recent historical and anthropological research has challenged several myths surrounding the dominance of the nuclear family in European societies from the 15th century onward. Drawing on these studies, she disputed claims that industrialization eroded kinship structures, arguing instead that historical and anthropological evidence demonstrates their persistence and, in some

[129] See ibid.
[130] ibid; Litwak (n 127).
[131] Uzoka (n 105); Hope Jensen Leichter and William E. Mitchell, 'Jewish Extended Familism' in Robert F. Winch and Louis Wolf Goodman (eds), *Selected Studies in Marriage and the Family* (Holt, Rinehart and Winston 1968).
[132] Julian Pitt-Rivers, 'The Kith and the Kin' in Jack Goody (ed), *The Character of Kinship* (Cambridge University Press 1973); see also Uzoka (n 105).

cases, their reinforcement in response to societal upheavals such as wars, epidemics, and industrialization itself.[133]

Building on critiques of the myths surrounding the dominance of the nuclear family structure in Western societies, Uzoka takes this argument further, asserting that the nuclear family itself is a "myth".[134] He contends that it functioned as a psychological coping mechanism during industrialization, allowing individuals to manage the emotional distress caused by family separations. This construct, in effect, negated the existence of the extended family and rendered its loyalties invisible.[135] According to Uzoka, social scientists perpetuated the nuclear family myth without challenging its biases or understanding its psychological significance. Consequently, emphasizing the nuclear family weakened family bonds by promoting unnecessary separations and prioritizing individual autonomy. Uzoka further argues that modern communication advances have diminished the need for the nuclear family as a coping mechanism, as they allow family members to maintain close relationships despite physical distance. Uzoka, therefore, concludes that studies and empirical evidence suggest that viewing the family strictly as a nuclear unit is not only insufficient and misleading, but also highly harmful. This perspective fails to accurately capture the complexities of how families operate and should not serve as the foundation for understanding family dynamics or for guiding therapeutic interventions.[136]

---

[133] Martine Segalen, *Historical Anthropology of the Family* (Cambridge University Press 1986); see also Georgas and others (n 115).
[134] Uzoka (n 105).
[135] ibid, drawing on Antonio J. Ferreira, 'Family Myth and Homeostasis' (1963) 9 Archives of General Psychiatry 457.
[136] Uzoka (n 105).

Consequently, it is now widely agreed that the nuclear family model is an artificial construct that does not reflect the actual dynamics of family life.[137] Evidence, in fact, has shown that “extended family attitudes and behaviours are the rule, not the exception”. This holds true not only in non-industrialized or rural societies but also among Western industrialized populations, contradicting claims that industrialization has universally weakened kinship ties.[138]

Thus, while nuclear families may appear structurally self-contained, they often rely on and interact significantly with wider social networks for support, contradicting the idea that they function in isolation from other family or community members.[139] The idea of the nuclear family, as just mentioned, is therefore a “myth”, differing from the extended family model only in how much its followers, willingly or unwillingly, deny their extended family connections due to fear of social judgment.[140]

Uzoka, indeed, emphasized that it is perplexing that, despite clear evidence of kinship behaviour, some authors still contend that describing the modern Western family as an “extended family” is an “unfortunate misnomer”.[141]

A relatively recent study[142] reinforces Uzoka’s argument by highlighting that extended family remains crucial across cultures, regardless of structural differences such as geographical proximity. This study emphasizes that focusing exclusively on family structure (e.g., nuclear versus extended) is misleading, as it overlooks the functional relationships and psychological ties that persist even in more affluent societies. By centring attention solely on the nuclear family, the analysis is confined to those residing

[137] ibid.
[138] ibid.
[139] Georgas and others (n 115).
[140] Uzoka (n 105).
[141] ibid, quoting Wells (n 125).
[142] Georgas and others (n 115).

within the household, while disregarding important members of the extended family who may live nearby and maintain significant relationships with nuclear family members.[143]

In particular, this study, conducted across sixteen cultures worldwide, examined the relationship between culture, family roles, kinship, and geographical proximity, as well as social and psychological interactions. It found that while affluence allows nuclear families to live independently from grandparents, psychological ties to extended kin remain strong, contradicting Parsons' theory of nuclear family isolation. This study further emphasized the importance of focusing on functional relationships — prioritizing roles, interactions, and support systems — between nuclear and extended family members across all cultures, rather than making rigid structural distinctions, such as categorizing family strictly as nuclear or extended.[144]

The relevance of functional relationships over structural definitions of family has also been reiterated in very recent discussions on family in the immigration context.[145] As will be demonstrated in the following subsection, a state's adoption of "family-as-doing" conceptions can facilitate and expand more inclusive practices in family migration law.[146]

Thus, the evidence presented challenges the assumption that the nuclear family has been and remains the dominant form in contemporary society. A more accurate understanding of family dynamics should prioritise function over rigid structural classifications, showing that extended family relationships are essential components

[143] ibid.
[144] ibid.
[145] Bonjour and Diepenmaat (n 109).
[146] ibid.

of the interconnected network of support that constitutes family, an aspect explored in greater detail below.

II. Expanding the definition of family beyond the nuclear model: insights from expert interviews

The idea that family is neither a fixed nor universally defined concept, but rather a social institution shaped by legal, biological, and cultural influences, also emerged as a shared perspective across the six expert interviews conducted by the author with academics in sociology, demography, and anthropology, whose research focuses on family studies, intergenerational relationships, and migration.[147]

Table 1: Overview of expert interviews, indicating speciality, academic seniority, and time of interview.

Interviewee Number	Speciality/Field of Expertise	Academic Seniority	Time of Interview
1	Sociology (family studies)	Associate Professor	29th April 2021
2	Anthropology and sociology (migration)	Emeritus Professor	9th February 2021
3	Demography and sociology (migration and family studies)	Professor	29th June 2021
4	Sociology (family studies and migration)	Associate Professor	22nd February 2021
5	Sociology (migration)	Associate Professor	1st May 2021
6	Demography (family studies and intergenerational relationships)	Emeritus Professor	21st January 2021

[147] Descriptions of the expert interviews with the speciality, academic seniority, and time of interview can be found in table 1.

Across the interviews, there was a strong consensus that family is dynamic and evolves over time, adapting to social and economic shifts, including rising divorce rates, changing household structures, and varying caregiving responsibilities. While all interviewees agreed that family extends beyond the nuclear model, differences emerged regarding the extent to which biological descent, legal recognition, and cultural variation shape its definition. Some experts emphasized blood ties and common ancestry, asserting that kinship is primarily rooted in descent. According to this view, family relationships extend to distant relatives who share lineage, even if cultural practices modify these ties. Others advocated for a more flexible, relationship-based definition, where family is determined by social recognition, caregiving responsibilities, and mutual commitment, rather than formal kinship categories. One expert adopted a context-based approach, suggesting that family must be defined within a specific social, cultural, or research framework, meaning that different relationships may be considered family depending on the circumstances.

Thus, while some definitions acknowledge state-recognized family structures based on legal obligations (e.g., marriage, parent-child relationships) and biological ties (e.g., descent, ancestry), others stress the importance of chosen families and fictive kin, where relationships are formed through emotional bonds, caregiving, and mutual support, rather than formal legal or genetic connections.

This variation in the definition of family is also evident in the extent to which extended family members are included. The expert interviews reveal a broad but varied understanding of which relationships are included in the definition of family and the extent to which adult relatives are recognized as part of the family unit. Across the interviews, there is a strong consensus that parent-child relationships remain central

to family, regardless of whether the child is a minor or an adult. Additionally, grandparents are widely acknowledged as family members due to their intergenerational role in caregiving and emotional support. Similarly, siblings are consistently included, with several experts emphasizing that sibling relationships persist across a lifetime. While most experts also recognize extended kin, such as aunts, uncles, and cousins, the degree of inclusion varies depending on the conceptual and cultural framework being applied.

When considering, in particular, the inclusion of adult relatives, the interviewees consistently agree that family ties do not dissolve once a child reaches adulthood, affirming that parent-adult child relationships remain an integral part of the family. In this regard, one interviewee specifically referred to the sociological concept of "elongated transition to adulthood". This concept highlights the increasing length of time it takes young people to attain full economic and social independence, particularly in terms of financial self-sufficiency, stable employment, and family formation. This phenomenon is largely driven by shifts in societal and economic structures, including prolonged education, economic precarity and cultural changes — such as the widespread postponement of traditional markers of adulthood, including marriage and homeownership. This perspective reinforces the idea that parental support extends well beyond childhood and that familial bonds remain significant throughout adulthood — or more specifically, during the phase of "emerging adulthood", a concept developed by Arnett.[148] Furthermore, most experts recognize adult siblings as family, emphasizing their lifelong significance.

[148] See, e.g., Jeffrey Jensen Arnett, 'Emerging Adulthood. A Theory of Development From the Late Teens Through the Twenties' (2000) 55(5) American Psychologist 469; Richard A. Settersten Jr. and Barbara Ray, 'What's Going on with Young People Today? The Long and Twisting Path to Adulthood' (2010) 20(1) The Future of Children 19.

However, perspectives on the inclusion of extended adult relatives vary. Some experts argue that adult relatives are inherently part of the family and that excluding them would be unnatural. Others adopt a more conditional approach, suggesting that ongoing contact and relationship maintenance determine whether adult relatives continue to be considered part of an individual's family. This interpretation aligns with the "family-as-doing" concept, as it emphasizes the dynamic, ongoing, and relational nature of family rather than a fixed, biological or legal status, commonly referred to as "family-as-being". Both concepts will be examined in detail below. One expert emphasized that family definitions depend on context and research focus, noting that extended family members — including cousins — are often considered part of the family, although closeness and perceived importance may vary in large kinship networks.

A more restrictive perspective was also present, with one interviewee including siblings but explicitly excluding cousins, thereby suggesting a narrower definition of family regarding extended adult relatives. However, no clear rationale was provided for this distinction, although the interviewee acknowledged the role of legal and economic recognition in shaping family inclusion. Additionally, one expert highlights the influence of legal frameworks in shaping family recognition, referencing U.S. migration policies that allow family reunification based on adult sibling relationships, illustrating how legal definitions can either reinforce or restrict broader understandings of family.

Thus, based on the information elicited from the interviews, it can be concluded that while there is a consensus that family extends beyond the nuclear model — aligning with the more recent definitions of family found in contemporary literature discussed above — perspectives vary regarding which relationships should be prioritized and whether legal, biological, or social bonds hold the greatest significance. Some

interviewees and some strands of the literature point to the possible inclusion of chosen family or other close networks of care. However, the interviews did not provide a sufficiently consistent basis for developing that broader claim in this thesis. Given the restrictive legal framework examined in Chapter 2, this thesis advances a narrower and more doctrinally grounded claim: that adult kinship ties should not be excluded from the definition of family life in migration cases. Within that narrower focus, parent-child relationships, siblings, and grandparents are widely recognised as integral components of the family. Furthermore, the findings highlight not only that reaching the age of majority does not sever family ties, but also that, at a minimum, relationships between parents and their adult children, as well as those adult siblings, should be included in the definition of family.

On the basis of the evidence presented, it is clear that, despite the complexity of defining family and the challenges in establishing a definitive definition, the findings indirectly highlight the divergence between individuals' broader perceptions of family and the narrower, nuclear-based definition imposed by the state. Consequently, these findings underscore the need for a more inclusive conceptualization of family — one that acknowledges both traditional kinship structures and evolving social realities.

Finally, the distinction between formal, legal, and biological definitions of family, and between social, functional, and chosen family structures is fundamental to the central argument of this work — namely, the expansion of the definition of family to include adult relatives. This differentiation underscores that family is not merely a legal or biological construct but also a social and emotional network. Recognizing this broader

perspective reinforces the idea that adult relatives and other non-nuclear family members should be acknowledged as integral parts of the family unit.

Earlier studies have already highlighted the importance of adult kinship ties, which form the central focus of this thesis. They have emphasised, in particular, that such ties often assume increasing importance with age, as caregiving needs expand while other social connections (such as in the workplace) diminish,[149] with adult children frequently assuming greater responsibilities for their elderly parents, a responsibility disproportionately shouldered by women.[150] A study conducted among adults in the U.S. found that 76% of respondents regarded their family as the "single most important element" in their lives.[151] Further research has also demonstrated that close intergenerational ties can mitigate the elevated mortality risks faced by newly widowed elderly parents.[152]

It has also shown that older family members frequently constitute an important source of practical and emotional support for their adult children and grandchildren,[153] and that relationships between grandparents and grandchildren are generally associated with increases in the subjective well-being of both generations.[154] Similarly, studies on

---

[149] Melissa A. Milkie, Alex Bierman and Scott Schieman, 'How Adult Children Influence Older Parents' Mental Health: Integrating Stress-process and Life-course Perspectives' (2008) 71(1) Social Psychology Quarterly 86.

[150] See, e.g., Office for National Statistics, 'Living longer: caring in later working life' (n 31).

[151] Pew Research Center, 'The Decline of Marriage And Rise of New Families' (Pew Research Center 2010) <https://www.pewresearch.org/wp-content/uploads/sites/20/2010/11/pew-social-trends-2010-families.pdf> accessed 4 February 2020.

[152] Merril Silverstein and Vern L. Bengtson, 'Do Close Parent-Child Relations Reduce the Mortality Risk of Older Parents?' (1991) 32(4) Journal of Health and Social Behavior 382.
With reference to broader patterns of intergenerational support, see, e.g., Teresa Toguchi Swartz, 'Intergenerational Family Relations in Adulthood: Patterns, Variations, and Implications in the Contemporary United States' (2009) 35 Annual Review of Sociology 191.

[153] Swartz (n 152); Martin Kohli and Marco Albertini, 'The family as a source of support for adult children's own family projects: European varieties' in Chiara Saraceno (ed), *Families, Ageing and Social Policy* (Edward Elgar 2008).

[154] Patricia A. Thomas, Hui Liu and Debra Umberson, 'Family Relationships and Well-Being' (2017) 1(3) Innovation in Aging 1; Bruno Arpino, Valeria Bordone and Nicoletta Balbo, 'Grandparenting, education and subjective well-being of older Europeans' (2018) 15 European Journal of Ageing 251.

parent-adult child relationships have indicated that these ties are mostly associated with positive well-being outcomes for both generations.[155]

Sibling relationships, which for most individuals represent the longest-lasting family tie across the life course, have been shown to be of central importance to families and individuals across the world.[156] In later life, positive adult sibling ties provide emotional support, reduce loneliness, and foster closeness and solidarity.[157] As with other adult kinship ties, adult sibling relationships, particularly when characterised by close ties, are positively associated with the well-being of both parties.[158]

A deterioration in well-being has been observed in cases where contact between grandparents and grandchildren is lost.[159]

In the migration context, studies of immigrant families in Canada have underscored the particularly crucial role of grandparents, whose presence is central to families' settlement and integration in the host country and whose involvement in childcare — particularly significant given the high costs and limited availability of formal childcare in Canada — is frequently cited as a primary motivation for family reunification. Their support not only enables parents' economic security but also fosters children's integration, cultural identity, and heritage language acquisition.[160]

---

[155] Eva-Maria Merz, Nathan S. Consedine, Hans-Joachim Schulze and Carlo Schuengel, 'Wellbeing of adult children and ageing parents: associations with intergenerational support and relationship quality' (2009) 29 Ageing & Society 783.

[156] Langer and Love (n 8); Gilligan, Stocker and Conger (n 8); Victor G. Cicirelli, *Sibling Relationships across the Life Span* (Plenum Press 1995); Ingrid Arnet Connidis and Lori D. Campbell, 'Closeness, Confiding, and Contact Among Siblings in Middle and Late Adulthood' (1995) 16(6) Journal of Family Issues 722.

[157] Langer and Love (n 8).

[158] Thomas, Liu and Umberson (n 154); Victoria Hilkevitch Bedford and Paula Smith Avioli, 'Variations on Sibling Intimacy in Old Age' (2001) 25(2) Generations: Journal of the American Society on Aging 34.

[159] Linda M. Drew and Merril Silverstein, 'Grandparents' Psychological Well-Being After Loss of Contact With Their Grandchildren' (2007) 21(3) Journal of Family Psychology 372.

[160] Bragg and Wong (n 48); Yanqiu Rachel Zhou, 'Toward transnational care interdependence: Rethinking the relationships between care, immigration and social policy' (2013) 13(3) Global Social Policy 280; Pramila Aggarwal and Tania Das Gupta, 'Grandmothering at work: conversations with Sikh Punjabi grandmothers in Toronto' (2013) 5(1) South Asian Diaspora 77.

Other studies have further indicated that extended kin also play a fundamental role in helping individuals cope with stressful life events, such as separation and divorce, or with mental-health difficulties, by buffering anxiety and providing advice and economic or material support. Evidence has also shown that in the aftermath of such events — especially divorce — the bond with extended family members often becomes even stronger, with increases in contact, closeness, and influence reported.[161]

Extending this line of evidence, the recently published KINMATRIX survey provides large-scale cross-national evidence for the central role of extended adult kin, further reinforcing the argument that family cannot be understood solely through the nuclear model, as it calls for a broader empirical understanding of family that includes aunts, uncles, cousins, and grandparents as integral to kinship networks.[162] In particular, findings from the KINMATRIX survey, which analysed the retrospective, current and prospective views of kinship networks of young adults aged 25 to 35 across seven Western countries (Germany, Italy, the Netherlands, Poland, Sweden, the United Kingdom, and the United States), emphasize that extended adult kin play a far more significant role than previously acknowledged in empirical research and available data. When examining extended adult kin, it is particularly significant to highlight that these relatives frequently outnumber nuclear family members, by a *ratio* of approximately 3 to 1. Despite extended kin ties being “weaker on average”, their numerical advantage compensates for this, providing a broader opportunity for social transmission, integration, and support. This challenges the notion that family should be defined solely through nuclear family structures.[163]

---

[161] M. Selenga Gürmen, Shayne R. Anderson and Edna Brown, ‘Relationship with extended family following divorce: a closer look at contemporary times’ (2021) 27(1) Journal of Family Studies 48.
[162] Leopold and others (n 106).
[163] ibid.

The importance of extended kin in shaping family relationships has been demonstrated to be crucial for social integration, emotional support, and protection against social isolation.[164] Moreover, extended family members serve as a vital safety net, particularly in times of crisis.[165] The "latent kin matrix" illustrates how they provide a protective support system, especially for families with lower socioeconomic status who face financial or social hardships.[166] Additionally, among individuals with higher socioeconomic status, extended kin contribute to social mobility by facilitating the intergenerational transmission of advantages, thereby reinforcing existing social stratification.[167]

Thus, this study presents compelling empirical evidence demonstrating that extended adult kin are fundamental to family structures across diverse social and cultural contexts. However, it remains clear that different societies incorporate extended kin differently, reinforcing the idea — highlighted above — that family is not a universal or fixed concept.[168] For instance, in Italy, extended family members are deeply integrated into daily life, with very high levels of emotional closeness and contact. However, this does not automatically translate into an expanded protective safety net beyond the nuclear family. In contrast, in the United States and Sweden, while extended kin remain highly important, they become particularly salient in cases where nuclear family cohesion is weaker due to higher rates of divorce and separation. Meanwhile, in Northern Europe, an emphasis on "self-reliance" has led to "looser family norms", with kinship ties often being more voluntaristic rather than obligatory. While in this part of

[164] ibid.
[165] ibid; Colleen L. Johnson, 'Perspectives on American Kinship in the Later 1990s' (2000) 62(3) Journal of Marriage and Family 623. See also, e.g., on divorce and related stressors, Gürmen, Anderson and Brown (n 161).
[166] Leopold and others (n 106); Matilda White Riley, 'The Family in an Aging Society: A Matrix of Latent Relationships' (1983) 4(3) Journal of Family Issues 439; Johnson (n 165).
[167] Leopold and others (n 106).
[168] ibid.

Europe, extended family connections are not as structurally integrated as in Italy, kinship networks remain relevant. These ties are maintained more flexibly, shaped by weaker obligations and less gendered kinkeeping roles.[169]

Ultimately, the KINMATRIX study provides strong evidence that extended adult kin occupy a central place in real-life family structures.[170] Its findings challenge prevailing legal frameworks — particularly in migration policies — that prioritize nuclear family ties while failing to account for the broader kinship networks on which individuals rely, primarily for social, financial, and emotional support. This omission highlights a significant gap in migration law, where restrictive definitions of family do not adequately reflect the lived realities of kinship and interdependence.

As mentioned above, what remains irrefutable is that states or governing bodies ultimately define what constitutes a family, often relying on traditional or legal models, such as the nuclear family. However, this “dominant ideology” functions as a “normative” framework rather than a “descriptive” reflection of family life, as an increasing number of individuals live in diverse family structures that do not conform to this idealized model.[171] Scholars in the U.S. and Europe have expressed concerns about the emphasis on restrictive definitions of the nuclear family, arguing, for instance, that U.S. family immigration law is rooted in an outdated conception of the family, failing to account for the diverse family structures that exist within the U.S., especially among immigrant communities.[172] Comparable concerns have been raised in the UK: the

[169] ibid.
[170] ibid.
[171] McGlynn (n 95).
[172] Bonjour and Cleton (n 90); Monique Lee Hawthorne, ‘Family Unity in Immigration Law: Broadening the Scope of Family’ (2007) 11(3) Lewis & Clark Law Review 809.

report “All Families Matter” concluded that current family migration policies should be reformed to move beyond an outdated, nuclear-based understanding of family and instead recognise and support the wide range of family forms that exist in contemporary society.[173] Consequently, legal and social policies anchored in this “dominant ideology” risk marginalizing, excluding, and potentially discriminating against individuals whose families do not fit the traditional, standardized model.[174] In response to scholarly reflections on whether states should abandon a “top-down” definition of family in favour of one that reflects individuals’ lived experiences,[175] this thesis strongly endorses this approach.

If the discussion thus far has primarily focused on structural classifications of family, such as the nuclear or extended family, other sociologists and anthropologists have instead directed their attention to the fundamental nature of family relationships. As previously mentioned, some scholars distinguish between “family-as-being” and “family-as-doing”,[176] a distinction that will now be explored in greater depth.

While definitions of the nuclear and extended family categorize family based on composition and generational scope, the distinction between “family-as-being” and “family-as-doing” differentiates between family as an inherent, static identity and family as a flexible, ongoing process shaped by interactions and daily practices.[177]

The concept of “family-as-being” refers to a permanent status that exists regardless of changes in the lives or actions of its members. In this view, family is defined by birth or legal ties, and an individual is recognised as a family member solely by virtue of their

[173] Justice and Home Affairs Committee (n 108).
[174] McGlynn (n 95).
[175] Bonjour and Diepenmaat (n 109).
[176] ibid.
[177] ibid.

status as a child, sibling, or spouse, irrespective of how the relationship actually functions.

Conversely, “family-as-doing” conceptualizes family as a “process” people create and sustain through ongoing interactions and practices. This perspective challenges the assumption that family is inherently permanent, instead emphasizing how it is formed and evolves through individuals’ daily actions and social relationships, irrespective of biological ties or legal norms.[178] Thus, individuals — such as close friends — who provide emotional support and care may be regarded as family even without legally or biologically recognized ties.

This conceptual contrast underscores a fundamental question: whether family is best understood as a fixed, enduring unit (“family-as-being”) or as a continuously evolving social relationship (“family-as-doing”).

Despite the fluid nature of family relationships, the fixed conception of “family-as-being” continues — as noted above — to be regarded as the dominant framework in state practices, particularly in migration law and policy.[179] However, research has highlighted that migrants may navigate and draw upon both fixed and evolving conceptions of family depending on the context.[180]

By aligning legal definitions of family with the diverse and evolving ways in which people experience and understand family, states can develop policies that more accurately reflect social realities. A definition rooted in individuals’ lived experiences — thus embodying a “bottom-up” understanding of family — would enable states to fully recognize and support the relationships that constitute family life, fostering a more

[178] ibid; David H. J. Morgan, *Rethinking Family Practices* (Palgrave Macmillan 2011); Janet Finch, ‘Displaying Families’ (2007) 41(1) Sociology 65.
[179] Bonjour and Diepenmaat (n 109).
[180] ibid.

inclusive and adaptable legal framework that acknowledges the varied forms that family may take. A central aspect of this “bottom-up” perspective is the concept of “family as doing”, which emphasizes family as a set of enacted practices rather than a fixed legal or biological category. Understanding family as something continually shaped through care, commitment, and daily interactions challenges restrictive definitions that rely solely on formal status. Adopting this “bottom-up” approach would also validate diverse family structures, ensuring that those who do not conform to a predefined model are neither excluded nor forced to align with it, as often occurs — as demonstrated in subsequent chapters of this work — under “top-down” definitions. Conversely, the continued reliance on outdated “top-down” legal definitions — reflecting the concept of “family-as-being”, examined above — not only fails to capture the complexity of real family life but also reinforces structural inequalities by denying recognition and rights to families that deviate from the traditional nuclear model.

This reliance on a fixed model, as emphasised above, is evident in most European countries, where family migration rights are restricted to the nuclear family. However, scholars have observed that certain state actors employ a complex combination of family conceptions in their migration control practices.[181] These frameworks are used to determine who is permitted to enter, remain, or be required to leave a country. This approach, therefore, directly influences how different types of families are recognised or excluded in migration processes.

For instance, while Dutch migration law predominantly adheres to a fixed, nuclear conception of family, it also incorporates “family-as-doing” perspectives, which emphasize lived experiences of dependency and care.[182] Indeed, two categories of

[181] ibid.
[182] ibid.

individuals are admitted beyond the nuclear family. The first pertains to extended relatives in cases of severe dependency and distress, while the second concerns individuals who serve as parents but do not have a legal or biological relationship with the child in their care. This broader approach allows for the recognition of family arrangements beyond the traditional nuclear model. However, the recognition of "family-as-doing" conceptions also introduces new dimensions of state oversight into individuals' private lives, including intrusive evaluations of caregiving roles — such as assessing who is responsible for bathing and feeding children or conducting interviews with parents to evaluate their co-parent's parenting strengths and weaknesses. Furthermore, this approach can lead to additional forms of exclusion, for example, due to the highly restrictive interpretation of the dependency requirement or the application of an idealized Western model of family, which results in potential cultural and racial biases in the assessment of parenting roles.[183]

Thus, "family-as-being" and "family-as-doing" constitute another approach to defining family sociologically, alongside distinctions such as those between nuclear and extended family structures. As previously established — and further explored in Chapter 2 — "family-as-being", particularly when narrowly confined to the nuclear family, has historically been the dominant model for conceptualising family, especially in European countries. However, as demonstrated above, relying exclusively on this definition excludes relatives who are fundamental to an individual's life and well-being. A shift towards, or rather, an integrated consideration of this concept alongside "family-as-doing" would therefore be highly advisable. In particular, emphasizing relational practices among family members ("family-as-doing") would enable states and legal

[183] ibid.

bodies to focus on the relationships that individuals themselves consider fundamental and regard as an integral part of their family. Conversely, continuing to conceive family exclusively and rigidly as “family-as-being” results in a narrow focus on biological and legal ties, overlooking the social interactions, emotional bonds and caregiving roles that shape the lived realities of family life.

This issue is particularly relevant in the present era, where both states and judicial bodies — such as the ECtHR (as discussed in Chapter 2) — continue to uphold a nuclear conception of family, thereby confining “family-as-being” to that unit. Thus, embracing a combined approach that integrates “family-as-being” and “family-as-doing” would allow for a broader, more inclusive definition of family, extending recognition beyond the nuclear model to include individuals who, while linked by biological or legal ties (such as siblings, grandparents, and parents with their adult children), are otherwise excluded under a rigid nuclear-based definition. More importantly, it would ensure recognition as part of the family of those who play a vital role in their relatives’ lives — by providing care, emotional or material support, shared responsibilities, or other essential family functions — with the corresponding legal protections that such status entails, thereby aligning the law with lived realities. This expansion would only be possible if “family-as-doing” were considered alongside, rather than separately from, “family-as-being”. Nevertheless, Bonjour and Diepenmaat have cautioned that adopting an approach grounded in “family-as-doing” also carries risks.[184] By requiring states to assess caregiving roles or financial support, such an approach could invite intrusive scrutiny into private life, potentially leading to additional forms of exclusion. Examining “family-as-doing” inherently involves analysing activities, roles and support systems, many of which are, to some extent, private and

[184] ibid.

should be treated as such. For instance, it may constitute a violation of privacy when, in assessing economic support, states scrutinize individuals' financial records to determine the extent of material dependency between family members. Such intensive scrutiny risks excluding individuals who are unable to provide formal proof of caregiving, practical assistance, or financial contributions, thereby reinforcing rigid state-imposed criteria for family recognition. Such exclusion can be prevented, or at least mitigated, by adopting flexible and contextual evidentiary standards. Rather than treating formal documentation as decisive, courts and decision-makers should assess relationships holistically, taking account of the different ways in which care, support and responsibility may be expressed, including through informal, indirect, material, emotional, or culturally specific practices, as will be discussed in Subsection 1.2(b). Applicants could also be allowed to explain gaps in formal evidence, particularly where these result from poverty, insecure immigration status, geographical distance, or the practical realities of transnational family life. Where evidential scrutiny is necessary, decision-makers should rely, where possible, on less intrusive forms of evidence, such as patterns of financial contribution, communication records, or practical assistance, rather than requiring detailed proof of intimate daily family life. States must also minimise interference in private life by seeking only the evidence needed to establish the relationship and ensuring that any data collected is handled with the utmost care and respect for privacy.

1.2 Beyond borders: transnational families

Does "family life" exist across borders? How is family life between adults sustained in transnational families?

As discussed in Section 1.1(b), the definition of family varies across cultures, with some recognizing adult relationships as central to kinship structures, while others prioritize nuclear family ties. These cultural variations acquire particular significance in the context of migration, where transnational families — understood as those whose members live, most of the time, across different countries while maintaining strong kinship ties —[185] challenge rigid, state-imposed definitions of family.

In an increasingly globalized world, transnational families have become a defining feature of modern migration patterns. With the growing prevalence of cross-border family arrangements due to rising migration rates, the legal definition of family plays a crucial role in determining individuals' rights to reside with and provide support to their loved ones.

However, legal frameworks, particularly within European human rights law, frequently fail to accommodate these families, as they continue to prioritize nuclear family structures over broader kinship networks. This is especially evident in the ECtHR's approach to family reunification in migration cases, where a restrictive definition of family has led to the systematic exclusion of many transnational family members from legal recognition. As Chapter 2 will explore, these legal constraints typically restrict family reunification rights to nuclear family members, thereby excluding broader kinship ties such as adult children, adult siblings, and other extended relatives. In this way, rigid and narrow legal definitions not only separate transnational families but also

[185] See Introductory chapter, Section 1, for a detailed definition of transnational families.

create significant hardships by failing to reflect the complexity and diversity of contemporary familial arrangements.

The Introductory chapter defined the concept of transnational families, outlined the main factors driving their development, and situated this phenomenon within the broader context of globalisation, cross-border mobility, and migration policy frameworks.[186]

This section, drawing on the findings of interviews conducted by the author, seeks to examine whether, despite the restrictive legal definition of family, family life can persist across borders and, if so, how it is sustained among adult relatives. In this context, the role of contact and its significance in transnational relationships will also be explored, particularly in relation to whether a lack of contact may be interpreted as evidence of severed family ties.

The central objective of this section is to assess whether the differential treatment accorded by the ECtHR to the relationships between adult relatives in transnational contexts (as will be discussed in Chapter 2) is justified by the inherently distinctive nature of those relations, or whether, on the contrary, there is no substantive difference between transnational families and those residing within a single national context, aside from the geographical separation of their members. Should the latter be the case, it would suggest that the differentiated legal treatment of transnational families lacks a valid legal justification.

[186] See Introductory chapter, Sections 1 and 3.

a) Transnational families and their relationship to national family structures

When considering the definition of transnational families, geographical separation emerges as a defining characteristic. However, a central question arises as to whether this distinction — living across borders — results in substantive differences in family life compared to families residing within a single national context.

The expert interviews conducted for this work examined this question. The findings suggest that although transnational families navigate unique challenges associated with physical distance, their core functions, obligations, and emotional connections remain largely consistent with those of families living within a single country. It was emphasised that care and obligations within families do not disappear simply because family members live apart. As interviewees noted, phone calls, social media, and, importantly, remittances are all means through which migrants continue to support their families despite physical separation. One expert further stressed that remittances should not be viewed merely as financial transactions but rather as tangible expressions of care and responsibility towards family members who remain in the country of origin.

These findings, therefore, support the claim that family life exists across borders in much the same way as it does within a single national context. One expert offered a compelling example, noting that, in their research, fathers who had migrated to the U.S. maintained more frequent contact and engagement with their children in Mexico than fathers who remained in the country but were divorced from the children's mothers. In this case, divorce proved more disruptive to family ties than either migration or border separation. The maintenance of family relationships in a transnational context is often facilitated through alternative modes of interaction, including — as further discussed below — digital communication.

While it was argued that transnational families share the same fundamental obligations as national families, experts acknowledged that migration introduces additional layers of sociocultural transformation that can influence family dynamics. In particular, migrants often undergo linguistic, cultural, and economic changes, which inevitably shape their relationships with relatives in their country of origin. However, such changes do not necessarily weaken familial bonds or prevent individuals from maintaining meaningful ties. Rather, they add dimensions to transnational families that may not be present in families residing in a single national context.

In other words, while migration may reshape the ways in which family connections materialise — and thus influence how family members interact and sustain their bonds — it does not alter the underlying obligations that bind them together. These obligations, as noted above, are not fundamentally different in transnational families compared to those in national contexts.

One expert further suggested that family life is shaped more by geographical and physical proximity than by national borders. While acknowledging that state-imposed borders carry legal and practical implications — such as influencing mobility and rights — they argued that these are incidental to how families function in everyday life. Rather, it is the degree of interaction and reciprocity that determines whether family life continues across distance. Whether across countries or within the same state, it is geographical distance — not borders — that alters how family operates. The family continues to exist, but the nature of kinship — the lived experience of being a family — shifts with physical separation.

This thesis takes this perspective as a useful starting point for further reflection on its legal implications. The view — that it is geographical proximity, rather than national

borders, which determines how family life is experienced — invites critical consideration of the continued relevance of the legal distinction between transnational and national families. If physical distance, irrespective of whether it involves crossing an international border, is what shapes interaction, reciprocity, and the sense of kinship, then families separated within a single country may function in similar ways to those separated by state boundaries. This suggests that the transnational/national distinction holds limited analytical value when assessing the quality or continuity of family life. More importantly, it exposes the arbitrariness of legal frameworks that rely on border-crossing as a decisive threshold for recognising or denying family ties.

If, according to the view emerging in the interviews, borders are not the defining factor in shaping family life, this suggests that legal systems such as the ECtHR are misguided in using them as the primary criterion for recognizing or denying family ties. As a result, the Court's standards risk failing to reflect the lived realities of familial relationships, as there may be no meaningful difference between some national and transnational families.

Although the interviewee's perspective offers a compelling challenge to border-based legal distinctions, this work does not fully endorse the assumption that distance is the decisive factor in shaping family life. Separation — whether across borders or within the same country — can certainly alter relational dynamics, influencing patterns of interaction, care, and reciprocity. However, physical distance does not necessarily diminish the strength or legitimacy of familial ties. Reversing the argument would risk implying that all relationships lose significance merely due to a lack of physical proximity, an assumption that does not reflect the lived experiences of many families. Accordingly, while proximity may influence how family life is organised, it should not be regarded as a definitive measure of its existence or value.

Significantly, it was also emphasised that no systematic study has conclusively shown that transnational families are inherently different from families residing in the same country. Perceptions of difference are often grounded in assumption rather than empirical evidence. This calls into question whether legal distinctions between national and transnational families are based on robust research or instead reflect conventional assumptions about what constitutes a family.

Accordingly, the perspective emerging from the interviews — that family life persists across borders in much the same way as it does within a single country — challenges (as further discussed below) legal definitions that prioritise cohabitation or frequent in-person contact as the primary indicators of a legitimate family relationship in the context of migration. If familial functions and obligations demonstrably continue across geographical distance, it becomes necessary to ask whether existing legal distinctions between national and transnational families accurately reflect lived experience, or whether they remain anchored in outdated assumptions that equate family (life) with cohabitation or physical proximity.

Finally, another dimension highlighted in the interviews is that transnational family is not a recent development, but rather a long-standing reality. One expert emphasised that such families have existed across generations, with letters and remittances historically serving similar relational functions to those now fulfilled by digital communication and financial transfers. This historical continuity suggests that transnational families are not a modern phenomenon, but instead a persistent and adaptive form of family life that has evolved in response to enduring patterns of human mobility and migration. It was further noted that what is relatively recent is not the

existence of transnational families themselves, but rather their formal recognition and theorisation as a distinct concept within the social sciences. In fact, scholarly attention to transnational families only began to grow notably in the 1980s, despite their long-standing presence in migration histories.

The overall perspective emerging from the expert interviews suggests that transnational families, despite physical separation and sociocultural transformation, continue to fulfil core functions that are broadly comparable to those of families residing within a single national context. Emotional bonds, obligations of care, and practical forms of support persist across distance, facilitated through means such as remittances, phone calls, and digital communication. Crucially, these findings challenge the assumption that geographical separation fundamentally disrupts family life; instead, they highlight the resilience and adaptability of transnational families in maintaining meaningful ties. This understanding aligns with Bryceson and Vuorela's concept of "relativising", which describes how individuals in transnational families actively construct, sustain, or renegotiate family relationships in response to shifting spatial, emotional, and practical circumstances.[187] While the above findings drawn from the interviews emphasise the continuity of familial obligations across borders, Bryceson and Vuorela's framework offers a conceptual lens for understanding how such continuity is achieved: not through static definitions of kinship, but through selective engagement and the ongoing work of sustaining a shared sense of "familyhood".[188] Taken together, both perspectives affirm that family life is not bound by co-residence or national borders, but is shaped through relational effort and adaptability.

[187] Bryceson and Vuorela (n 26).
[188] ibid.

However, while transnational families may continue to function across distance, their legal recognition is often subject to more restrictive criteria. In the context of migration, the ECtHR has tended to associate the existence of family life with indicators such as cohabitation and regular contact. This raises a crucial question: is ongoing contact truly essential to the persistence of family ties across borders, and if so, what forms of contact are considered meaningful or sufficient? Or can family bonds endure even in the absence of contact? The following subsection addresses this question through insights from expert interviews, focusing on how contact is interpreted and experienced in transnational families, and how it relates to legal and evidentiary frameworks that determine the recognition of family life in the migration context.

b) The role of contact in sustaining transnational family life

One aspect that emerges as particularly significant — both in law and in lived experience — is the role of contact in sustaining transnational family relationships. While a detailed analysis will be provided in Chapter 2, it suffices for the present purposes to note that, in the migration context and specifically where adult relatives are concerned, the ECtHR appears, at least in a few instances, to have treated cohabitation as an important indicator when assessing the existence of family life under Article 8 ECHR.[189] Furthermore, in its line of adult-adult migration cases, an absence of contact — or a prolonged interruption of communication — appears, in the Court's approach, to sever any potential link to family life.[190] Applying this reasoning *a contrario*, it follows that, as this case law suggests, regular and ongoing contact is regarded as essential — though not sufficient on its own, as further elements of

[189] See, e.g., *Javeed v Netherlands* App no 47390/99 (ECtHR, Decision, 3 July 2001), 5. For further discussion of this point, see Section 2.2(a) below.
[190] See *Senchishak v Finland* App no 5049/12 (ECtHR, 18 November 2014), para 56.

dependency are also required — in establishing the existence of family life in the migration context when adult relatives are involved.

This raises a central question for any examination of transnational families of whether contact is indeed essential to maintaining family ties across borders.

This question was investigated through the interviews conducted with experts in sociology and demography.

The interviews revealed a diversity of perspectives. Some interviewees unequivocally stated that contact is indispensable for transnational families to function, with one expert explicitly claiming that such families cannot exist without contact. Others took a different view, emphasising that contact is not necessarily essential. Among this latter group, some have argued that contact is not essential even within nuclear families, suggesting that blood ties alone are sufficient to define family, irrespective of sustained communication or interaction.

When present, contact in transnational families assumes various forms, adapted to the constraints of geographical separation. Phone calls, text messages, and social media were cited as common tools for maintaining real-time communication and staying informed about each other's lives. Occasional visits and travel — when feasible — were also noted as reinforcing familial bonds.

Beyond verbal communication, financial and material exchanges also play a significant role in sustaining family ties. Sending money in the form of remittances or providing goods was — as highlighted above — not merely described as an economic transaction, but was also regarded as a tangible expression of care and responsibility towards family members who remain in the country of origin. These insights suggest

that transnational family life is not solely dependent on verbal or physical interaction but can also be sustained through alternative forms of exchange and care.

Additionally, transnational family members may maintain contact indirectly. Among those experts who viewed contact as essential, there was a recognition that it does not always require direct interaction. One interviewee explained that family bonds may be maintained indirectly through kinship networks, whereby news and updates about relatives are transmitted via intermediaries, such as parents or other close kin, even in the absence of direct communication between the individuals concerned. This suggests that the continuity of transnational family life may rely not only on direct contact but also on extended social structures, and that a lack of direct interaction does not necessarily sever family ties.

However, as will be demonstrated in Chapter 2, the ECtHR recognises the existence of family life between adult relatives in the migration context only when there is evidence of "further elements of dependency involving more than the normal emotional ties",[191] with dependency being interpreted very narrowly. In practice, this means that if adult relatives simply maintain only ordinary affection or have infrequent contact, their relationship falls outside the protection of family life under Article 8 ECHR. Although, so far as can be determined, the Court has not explicitly stated that contact must be direct, its reasoning can nonetheless be understood to imply this. Consequently, indirect forms of contact do not appear to be considered relevant to the Court in establishing the existence of family life in migration cases.

It was also acknowledged that the ways in which transnational families maintain contact have evolved over time, although a degree of historical continuity remains. In

[191] *Javeed v Netherlands* (n 189), 5.

earlier generations, letters and remittance-based exchanges served as key mechanisms for sustaining transnational family life, fulfilling functions similar to those now played by digital communication. While digital technologies have facilitated more frequent and immediate interactions, this technological shift has not fundamentally altered the underlying nature of family obligations, which remain rooted in emotional support, responsibility, and care across borders.

The ability to document contact plays a crucial role in legal contexts, particularly in family reunification proceedings involving adult relatives, where evidence of an ongoing relationship is typically required to establish the existence of family life. However, as discussed in Section 1.1(b)(II), this raises significant concerns regarding potential intrusions into privacy.

The interviews identified several ways through which contact in transnational families may be formally documented: phone records, emails, and social media exchanges were all mentioned as forms of evidence of sustained communication. Financial documentation, such as joint bank accounts with evidence of transactions, may demonstrate economic interdependence, while travel history — such as flight tickets or travel records — can reflect efforts to maintain in-person contact. Finally, institutional records, such as medical documents, may also capture care-related or dependency relationships.

However, concerns emerged regarding the limitations of such documentation in fully capturing the complexities of transnational family life. For instance, it was emphasised that there is a need for caution when applying rigid (evidentiary) criteria to measure contact as migrants often face structural barriers and constraints — such as financial hardship or irregular status — that may prevent regular communication or physical

travel (for instance, for undocumented populations, cross-border visits may be impossible).

In any case, it is important to highlight that legal frameworks requiring formal proof of contact may systematically exclude or disadvantage families who sustain meaningful relationships through less conventional or less easily documented means. These include, for instance, the aforementioned indirect communication via extended family members or "informal support networks"[192] — such as unrecorded financial assistance, which may be provided in cash rather than through traceable bank transfers, or practical, in-person help delivered by trusted community members, including extended family, neighbours, or friends.[193]

Such frameworks also tend to overlook culturally specific practices of expressing family bonds that fall outside the evidentiary standards commonly recognised by Western legal systems. For example, transnational families may demonstrate care and belonging through acts such as saying prayers for relatives or naming children after them.[194]

While all these practices carry deep emotional, cultural, and social significance within specific communities, they are typically not recognised as valid indicators of an ongoing family relationship under prevailing legal standards.

---

[192] Lisa Merry, Jill Hanley, Monica Ruiz-Casares, Isabelle Archambault and Dominic Mogere, 'Migrant families with children in Montreal, Canada and transnational family support: a protocol for a focused ethnography' (2019) 9 BMJ Open e029074 <https://doi.org/10.1136/bmjopen-2019-029074> accessed 20 February 2025.

[193] See, e.g., Bryceson and Vuorela (n 26); Bryceson (n 22); Valentina Mazzucato and Djamila Schans, 'Transnational Families and the Well-Being of Children: Conceptual and Methodological Challenges' (2011) 73(4) Journal of Marriage and Family 704.

[194] Zlatko Skrbiš, 'Transnational Families: Theorising Migration, Emotions and Belonging' (2008) 29(3) Journal of Intercultural Studies 231; Asuncion Fresnoza-Flot, 'Social Relatedness and Forenaming in "Mixed" Families: Valuing Children of Filipino-Belgian Couples' in Doris Bühler-Niederberger, Xiaorong Gu, Jessica Schwittek and Elena Kim (eds), *The Emerald Handbook of Childhood and Youth in Asian Societies* (Emerald Publishing Limited 2023).

Finally, another form of undocumented or less formalised support may be expressed through symbolic or affective gestures — such as sending small items like “sticks of gum”[195] — which, though materially modest, can carry profound emotional weight and kinship meaning, even taking on what has been described as “umbilical significance”,[196] yet remain largely invisible to formal systems of documentation.

The interviews also provided relevant insights into the meaning of interrupted contact in the context of transnational family life.

One expert emphasised that even a prolonged absence of communication — such as a five-year gap — does not necessarily mean that family life has ceased to exist. Rather, the reason for the interruption matters: if the absence of contact results from structural or financial constraints, this may not sever family ties whereas intentional withdrawal or abandonment may carry different implications.

Another expert highlighted that in kinship networks, particularly those in which multiple relatives have contributed to support a family member’s migration, mutual obligations play a central role in maintaining family ties. In such contexts, sending remittances or goods is not merely an act of generosity but a fulfilment of familial duty. Failure to do so — regardless of the migrant’s circumstances — may be perceived as a refusal to uphold those obligations and, in some cases, as a severing of family ties. This illustrates the fragility of transnational relationships when expectations of reciprocity go unmet and underscores the importance of understanding how such relationships are socially maintained or ruptured over time.

In some contexts, such as New Zealand, it was noted that when contact cannot be demonstrated — regardless of the underlying reason — this may pose serious

[195] Bryceson and Vuorela (n 26).
[196] ibid.

challenges in legal or immigration procedures. Regulatory frameworks require concrete evidence of sustained communication, and failure to provide it may lead to the conclusion that the family relationship no longer exists. It was further explained that evidentiary requirements may vary depending on the type of relationship. In the case of parents and siblings, proof of regular contact is generally not required if the familial bond can be established through official documents, such as birth certificates. However, where other categories of relatives are concerned, the implication is that communication should occur as frequently as possible and be supported by appropriate documentation — for example, in the case of spouses, where stricter requirements apply due to concerns about fraudulent applications.

Interestingly, within the group of scholars who view contact as essential, some recognise that it can be maintained indirectly. As previously noted, if indirect forms of contact — such as through family networks — are sufficient to sustain familial bonds, then direct contact is not the only way to establish or maintain family ties, as the Court seems to assume. This raises a critical point: if indirect contact can also preserve family relationships, then the requirement for direct contact to be considered ‘essential’ may need to be reconsidered. While contact remains important and crucial, it may not necessarily be essential in the way that the term is traditionally understood in legal contexts. This broader understanding of what constitutes meaningful contact weakens the rigid distinction between ‘essential’ and ‘non-essential’ contact, as both direct and indirect forms are recognised as capable of preserving family relationships.

The interviews underscore that, while contact remains a key indicator in legal assessments of transnational family life, its lived reality is more complex and culturally specific. Contact can take many forms — direct, indirect, material, or symbolic — and

may persist even in the absence of regular communication. Rigid evidentiary requirements risk marginalising families whose relationships are maintained through forms of care and connection not easily captured in formal documentation.

A more reflexive legal and policy approach requires a critical reassessment of the evidentiary standards currently used to determine the existence of family life. It calls for greater sensitivity to the lived realities of transnational families, whose relationships may not align with conventional expectations but are nonetheless sustained through diverse, culturally specific, and sometimes undocumented forms of connection. Such an approach would recognise that not all families are equally positioned to maintain regular, formally documented contact, due to structural barriers such as economic hardship, insecure immigration status, or geographical constraints.

Moreover, this approach would also acknowledge the diverse ways in which familial bonds are expressed and sustained across cultural contexts — including through indirect communication, material support, or symbolic acts — rather than privileging only those forms of contact that are easily verifiable through institutional records. In doing so, legal and policy frameworks would become more responsive to the complex realities of family life in transnational settings. Such changes would ensure that family life is recognised more inclusively, safeguarding the rights of all transnational families.

In summary, Section 1, through sociological and historical analysis, as well as expert interviews, questioned the assumption that the nuclear family represents the dominant model — both in law and in public discourse — in contemporary society. It emphasised the importance of recognising relationships beyond this model — particularly those involving parents and adult children, siblings, and grandparents, which were widely acknowledged by interviewees — as legitimate components of the family. Moving

beyond rigid structural definitions towards a more functional understanding of family enables a broader and more inclusive approach, one that better reflects how families actually live, care, and connect.

Section 2 focused on transnational families, demonstrating that, despite geographical separation, they continue to perform core familial functions comparable to those of families residing in the same country. These relationships are sustained through a range of direct, indirect, material, and symbolic forms of contact. The findings challenge the assumption that regular cohabitation or direct contact is essential for family life and underscore the inadequacy of rigid evidentiary standards. A more flexible and culturally sensitive legal approach is needed, one that reflects the varied ways in which family ties are maintained across borders.

The analysis across both sections demonstrates that the prevailing legal definition of family is overly narrow and requires reconsideration. A more inclusive understanding should reflect how families function in everyday life — through caregiving, emotional support, and enduring ties that include adult children, grandparents, and other relatives who may not reside in the same household. These forms of family life are overlooked by legal frameworks — most notably migration policies and the ECtHR's migration jurisprudence — which are grounded in the nuclear model. Recognising these ties is essential to ensuring fairer and more representative approaches in law and policy.

While this chapter has explored the sociological understanding of family and highlighted its divergence from the dominant legal definition, it has only briefly outlined how the term family is defined and applied in legal practice through the ECtHR's case law. The next chapter will analyse this in depth, focusing in particular on the migration

context. It will demonstrate that, in this area, the Court adopts a highly restrictive approach aligned with the nuclear family model, thereby excluding broader familial relationships from legal protection except in rare and exceptional cases.

2 Family life under Article 8 ECHR: the ECtHR's interpretation

Following the sociological analysis of the concept of family set out in the previous chapter, this work now turns to the ECtHR jurisprudence to highlight the gap between the relationships that sociological inquiry regards as part of the family and those that the Court recognises as constituting family for the purposes of Article 8 of the ECHR in migration cases.

The chapter first examines the Court's definition of "family life" under Article 8 and the range of relationships included within this framework in both migration and non-migration contexts. It then turns to the treatment of adult-adult relationships, highlighting the Court's markedly restrictive approach in migration cases, where such ties are almost invariably denied recognition as constituting family for the purposes of Article 8. In this way, it will be shown that the Court applies divergent standards depending on the context. The chapter concludes by considering the criticisms directed at this restrictive jurisprudence and by examining the tension between state sovereignty and the protection of migrants' family life that underpins this approach.

2.1 The ECtHR's definition of family in migration and non-migration contexts

- **Overview on Article 8 ECHR: private and family life**

When dealing with family-related claims, the first question the ECtHR faces is whether the ties invoked by the applicant constitute "family life" under Article 8(1) of the ECHR.[197] Article 8 ECHR is, therefore, the key provision in any discussion on the meaning of "family" and "family life".

[197] Lourdes Peroni, 'Challenging Culturally Dominant Conceptions in Human Rights Law: The Cases of Property and Family' (2010) 4(2) Human Rights & International Legal Discourse 241.

Article 8(1) guarantees the fundamental right to respect for private and family life, but neither term is defined in the ECHR, leaving their content to be developed through interpretation.[198] For this reason, Article 8 has been described as "the least defined and most unruly of the rights enshrined in the Convention".[199]

With regard to "family life", the Court has on several occasions held that "the mutual enjoyment of each other's company constitutes a fundamental element of family life".[200] As Lambert observes, this formulation brings the ECtHR close to acknowledging what is sometimes referred to as "affiliation", in which "the value of family life" can be understood as resting not only on physical support but also on personal intimacy and the giving and receiving of care in the broadest sense.[201]

Before turning to a more detailed analysis of how the ECtHR interprets "family", this section will briefly consider the meaning of "private life". This brief discussion is necessary because, as will be shown later in this work, the ECtHR, when addressing the protection of the ties between adult relatives, "shifted [its] attention"[202] from the "family life" limb to that of "private life". The ECtHR has affirmed that private life is a broad concept which cannot be exhaustively defined.[203] However, in its case law, it has been understood as covering three broad categories: "a person's physical, psychological or moral integrity, his privacy and his identity and autonomy".[204] For

---

[198] David Harris, Michael O'Boyle, Ed Bates and Carla Buckley, *Harris, O'Boyle, and Warbrick: Law of the European Convention on Human Rights* (4th edn, Oxford University Press 2018).
[199] Stanley Burnton J. in *Wright v Secretary of State for Health* [2006] EWHC 2886 (Admin), para 60.
[200] *Mehemi v France* (No 2) App no 53470/99 (ECtHR, 10 April 2003), para 45; *Olsson v Sweden* (No 1) App no 10465/83 (ECtHR, 24 March 1988), para 59; *Johansen v Norway* App no 17383/90 (ECtHR, 7 August 1996), para 52; *Bronda v Italy* App no 22430/93 (ECtHR, 9 June 1998), para 51.
[201] Lambert (n 85), citing Iseult Honohan, 'Reconsidering the Claim to Family Reunification in Migration' (2009) 57 Political Studies 768.
[202] Carmen Draghici, 'Adult Children and Elderly Parents in Strasbourg Proceedings: A Misconstrued Approach to "Family Life"' (2018) 32 International Journal of Law, Policy and the Family 42.
[203] *Costello-Roberts v UK* App no 13134/87 (ECtHR, 25 March 1993), para 36; *Niemietz v Germany* App no 13710/88 (ECtHR, 16 December 1992), para 29.
[204] European Court of Human Rights, 'Guide on Article 8 of the European Convention on Human Rights. Right to respect for private and family life, home and correspondence' (Council of Europe/European Court of Human Rights 2025) <https://ks.echr.coe.int/documents/d/echr-ks/guide_art_8_eng> accessed 15 March 2025.

example, in cases concerning settled migrants, the ECtHR has held that, because Article 8 guarantees the right to establish and develop relationships with other people and the broader community and may at times encompass aspects of a person's social identity, the social ties linking such migrants with the communities in which they live fall within the concept of "private life".[205]

Article 8(2) sets out the conditions under which state interference with Article 8 rights may be justified. In particular, according to this article, state interference is legitimate only when its actions are lawful, are required in a democratic society, and are taken "in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". The ECtHR must therefore assess whether measures such as expulsion or refusal of entry, which interfere with an individual's family and/or private life, are proportionate to the legitimate aim pursued.[206] The Court has repeatedly emphasised that the fundamental objective of Article 8 is to protect individuals "against arbitrary action by the public authorities".[207] Accordingly, the Court must determine whether a "fair balance" has been struck between the interest of the individual and the public interest of the host society in refusing admission or ordering deportation.[208] More generally, when applying Article 8, the Court first determines whether the situation falls within the scope of Article 8(1),

---

[205] *A.H. Khan v UK* App no 6222/10 (ECtHR, 20 December 2011), para 32; *Üner v Netherlands* App no 46410/99 (ECtHR, Grand Chamber, 18 October 2006), para 59; *Maslov v Austria* App no 1638/03 (ECtHR, Grand Chamber, 23 June 2008), para 63.
[206] Alan Desmond, 'The Private Life of Family Matters: Curtailing Human Rights Protection for Migrants under Article 8 of the ECHR?' (2018) 29(1) The European Journal of International Law 261.
[207] *Tuquabo-Tekle and Others v Netherlands* App no 60665/00 (ECtHR, 1 December 2005), para 42; *Mustafa and Armağan Akin v Turkey* App no 4694/03 (ECtHR, 6 April 2010), para 20; *Jeunesse v Netherlands* App no 12738/10 (ECtHR, Grand Chamber, 3 October 2014), para 106; *Keegan v Ireland* App no 16969/90 (ECtHR, 26 May 1994), para 49.
[208] ibid.

and, if so, whether any interference can be justified under Article 8(2). This 'two-stage' analysis is specific to the structure of the ECHR.[209]

- **Article 8(1)**

Having, for completeness, briefly outlined Article 8(2) above, and given that this work is concerned with the scope of family life rather than with the justification of interferences, the discussion now returns to Article 8(1). This provision guarantees the fundamental right to respect for private and family life. It is generally accepted that the right to family life logically entails a right to family unity.[210] Accordingly, claims for family reunification are made on the basis of the right to family life, as set out in Article 8(1). A necessary step in understanding the protection afforded by the ECtHR to family life, and in particular to adult-adult relationships in the context of family reunification, is therefore to analyse the Court's definition of family in both migration and non-migration contexts.

This chapter now turns to examine how the ECtHR defines family across these contexts and, in particular, which relationships the Court recognises as falling within that notion. It will be shown that, while in non-migration cases the ECtHR has adopted a broad understanding of family that includes relationships beyond the nuclear family, in migration-related cases it has applied a much narrower definition, confining family essentially to that unit.

---

[209] By contrast, Article 17 ICCPR (n 66) protects private and family life without drawing such an explicit distinction, instead setting out the right and its limitation in a single provision.

[210] Nicholson (n 76); Alice Edwards, 'Human Rights, Refugees, and The Right "To Enjoy" Asylum' (2005) 17(2) International Journal of Refugee Law 293. On the concept of "family unity", see also Dallal Stevens, 'Asylum-seeking families in current legal discourse: a UK perspective' (2010) 32(1) Journal of Social Welfare & Family Law 5, citing Kate Jastram and Kathleen Newland, 'Family unity and refugee protection' in Erika Feller, Volker Türk and Frances Nicholson (eds), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press 2009); Jastram (n 60).

a) Relationships between parents and minor children in non-migration and migration contexts

The ECtHR has repeatedly underlined that "[b]y guaranteeing the right to respect for family life, Article 8 presupposes the existence of a family".[211] Desmond observes that the ECtHR's conceptualisation of family has thus far rested on the assertion that "the existence or non-existence of 'family life' is essentially a question of fact depending upon the existence in practice of close personal ties".[212] This flexible formulation has enabled the Court, in non-migration contexts, to include under such a heading not only the relationships between parents and their minor dependent children, but also — as will be shown below — those between close relations such as grandchildren and grandparents.[213] Likewise, Roagna underlines that family life has been found to exist "between parents and children born into second relationships, or those children born as a result of an extra-marital or adulterous affair, particularly where the paternity of the children has been recognised and the parties enjoy close personal ties", as well as "between adoptive/foster parents and children".[214] In fact, the ECtHR has stressed that "the notion of 'family life' in Article 8 is not confined solely to families based on marriage and may encompass other *de facto* relationships".[215] In particular, several factors may be important in determining whether a relationship can be considered to constitute "family life", among them: the fact that the couple live together, how long they have been together, and whether their commitment to one another has been manifested for

[211] *Marckx v Belgium* App no 6833/74 (ECtHR, 13 June 1979), para 31; *Abdulaziz, Cabales and Balkandali v UK* App nos 9214/80, 9473/81 and 9474/81 (ECtHR, 28 May 1985), para 62.
[212] Desmond (n 206); *K. and T. v Finland* App no 25702/94 (ECtHR, Grand Chamber, 12 July 2001), para 150.
[213] Desmond (n 206); *Marckx v Belgium* (n 211).
[214] Ivana Roagna, 'Protecting the right to respect for private and family life under the European Convention on Human Rights' (Council of Europe human rights handbooks, Council of Europe 2012).
[215] *X, Y and Z v UK* App no 21830/93 (ECtHR, Grand Chamber, 22 April 1997), para 36.

instance by having children or in other ways.[216] This characterisation of the term family life shows that the ECtHR does not intend to define such a concept narrowly.[217] In fact what is relevant is the "existence in reality of close personal or emotional ties" rather than legally established criteria. In particular, it has been observed that even though family life undoubtedly includes the ties between parents and their children and the relationships between couples, irrespective of whether such couples are related by marriage or not, it may also encompass bonds between other people, regardless of whether or not that relation is characterised by legal or genetic bonds.[218]

Thus, in line with social changes, the ECtHR has broadened the "family life" category to also include, for instance, the relationships between transgender people and their partners and/or children, as well as between cohabitating homosexual partners.[219] These developments illustrate that "the legal concept of the family is dynamic" and evolves over time.[220]

Desmond points out that the relationships between parents and dependent minor children attract the protection of Article 8 regardless of whether the parents are married or the members of that relationship live together, and that this is valid in migration and non-migration cases alike.[221] In particular, Desmond highlights that Article 8 — and in

---

[216] ibid; *Al-Nashif v Bulgaria* App no 50963/99 (ECtHR, 20 June 2002), para 112.
[217] Pieter Boeles, Maarten den Heijer, Gerrie Lodder and Kees Wouters, *European Migration Law* (2nd edn, Intersentia 2014).
[218] ibid.
[219] *X, Y and Z v UK* (n 215); *Schalk and Kopf v Austria* App no 30141/04 (ECtHR, 24 June 2010); Alastair Mowbray, *Cases, Materials, and Commentary on the European Convention on Human Rights* (3rd edn, Oxford University Press 2012); Georgios Milios, 'The Right to Family and Private Life in Migration and Asylum Cases (Article 8)' in David Moya and Georgios Milios (eds), *Aliens before the European Court of Human Rights. Ensuring Minimum Standards of Human Rights Protection* (Brill Nijhoff 2021).
[220] Sanna Mustasaari, 'The "nuclear family paradigm" as a marker of rights and belonging in transnational families' (2015) 21(4) Social Identities 359.
[221] Desmond (n 206); *Berrehab v Netherlands* App no 10730/84 (ECtHR, 21 June 1988), para 21; *L. v Netherlands* App no 45582/99 (ECtHR, 1 June 2004), paras 35-36.

particular the family life limb — has been successfully invoked, with reference to migrants, both in admission[222] and expulsion[223] cases.[224]

Thus, for instance, in relation to admission cases, the Court held that refusing to allow family reunification of a child who was left behind by its parents was in breach of Article 8 ECHR.[225] In particular, in the *Şen* case the ECtHR identified a major obstacle in returning the whole family to its country of origin (i.e. Turkey): the Court in fact stressed that the parents were granted a resident permit in the Netherlands where they established their life and where two more children were born and that in that country the latter lived their whole lives, having therefore little or no connection with Turkey.[226] These facts, in conjunction with the young age of the child (one of the applicants, named Sinem, was — as outlined above — left behind in Turkey), led the Court to conclude that the most appropriate way to develop family life was by allowing this child to join their family in the Netherlands. The ECtHR furthermore noted that the choice of the mother to join her husband in the Netherlands and leave their daughter behind had happened in the latter's early childhood, and it could not be seen as an irrevocable decision to choose Turkey as her daughter's country of residence, nor to abandon forever any idea of a future family reunion.[227] The Court followed the same reasoning in the *Tuquabo-Tekle* case.[228]

In relation to expulsion cases, the ECtHR has similarly found violations of Article 8. For example, the Court observed that even though a mother of a Dutch child was residing illegally in the Netherlands, the refusal to grant her a resident permit and the ordering

---

[222] See, e.g., *Şen v Netherlands* App no 31465/96 (ECtHR, 21 December 2001).
[223] See, e.g., *Rodrigues da Silva and Hoogkamer v Netherlands* App no 50435/99 (ECtHR, 31 January 2006).
[224] Desmond (n 206), 262.
[225] *Şen v Netherlands* (n 222); *Tuquabo-Tekle and Others v Netherlands* (n 207).
[226] *Şen v Netherlands* (n 222), para 40.
[227] ibid.
[228] *Tuquabo-Tekle and Others v Netherlands* (n 207).

of her expulsion to Brazil constituted a violation of Article 8 ECHR.[229] The Court, in fact, noted that such an expulsion would have caused tremendous consequences with reference to the responsibilities of the individual concerned as a mother and to her family life with her young daughter, and that it was certainly in the daughter's best interest for the mother to remain in the Netherlands.[230]

That Article 8 has been successfully invoked also in these cases seems to stem from the fact that, as Boeles *et al.* underline, "family life exists *ipso iure* between children and parents" — from the moment of the children's birth and "by the very fact of it" — and that its existence can only be broken in exceptional circumstances.[231] Boeles *et al.* also observe that these exceptional circumstances have not easily been found to be met by the ECtHR.[232] For instance the Court has not considered family life to be broken even in the event of a father not recognising his child until 10 months after his birth, not maintaining them and seeing them rarely,[233] nor when a father was held in prison or located in the origin country, and the child was looked after by his sister.[234] Boeles *et al.* further note, citing the case of *Keegan*, that even whether the child-parent relation is lawful does not assume any relevance.[235]

To conclude, both in migration and non-migration contexts, the notion of "family life" under Article 8 invariably encompasses the ties between parents and their minor dependent children, irrespective of whether the parents are married or in other *de facto*

---

[229] *Rodrigues da Silva and Hoogkamer v Netherlands* (n 223), paras 42, 44.
[230] ibid, para 44.
[231] Boeles and others (n 217); *Kroon and Others v Netherlands* App no 18535/91 (ECtHR, 27 October 1994), para 30; *Ahmut v Netherlands* App no 21702/93 (ECtHR, 28 November 1996), para 60; *Onur v UK* App no 27319/07 (ECtHR, 17 February 2009), para 43; *Boughanemi v France* App no 22070/93 (ECtHR, 24 April 1996), para 35.
[232] Boeles and others (n 217).
[233] *Boughanemi v France* (n 231), paras 33, 35.
[234] *C. v Belgium* App no 21794/93 (ECtHR, 7 August 1996), para 25.
[235] Boeles and others (n 217); *Keegan v Ireland* (n 207).

relationships. Moreover, in cases concerning the nuclear family, cohabitation is not regarded as an essential element for the existence of family life.[236]

b) Relationships beyond the nuclear family in the non-migration context

Turning to the relationships beyond the nuclear family and so to the ones between extended family members and focussing first on the non-migration context, it has been observed that such ties have also been recognised as constituting family life under Article 8. In particular, the bond of family life has been found to exist between grandparents and grandchildren, between uncles or aunts and their nephews or nieces, and between siblings.[237]

➤ **Relationships between grandchildren and grandparents**

Thus, in *Marckx v Belgium* the ECtHR stressed that the term "family life" in the context of Article 8 "includes at least the ties between near relatives", such as those linking grandparents and grandchildren, as those relatives may play a substantial role in family life and that "'respect' for family life" perceived as such entails for the state an obligation to act in a way which "allow[s] these ties to develop normally".[238]

Another case addressing the relationships between grandchildren and grandparents is the *Pla and Puncernau v Andorra*.[239] This case regarded the interpretation of a will which had the effect of preventing an adopted adult grandchild from inheriting his grandmother's estate. The ECtHR held that the facts fell under the remit of Article 8,[240]

---

[236] See, e.g., *Berrehab v Netherlands* (n 221), para 21; *Boughanemi v France* (n 231), para 35; *C. v Belgium* (n 234), para 25.
[237] Roagna (n 214); Draghici (n 202).
[238] *Marckx v Belgium* (n 211), para 45. See also *Scozzari and Giunta v Italy* App nos 39221/98 and 41963/98 (ECtHR, 13 July 2000), para 221.
[239] *Pla and Puncernau v Andorra* App no 69498/01 (ECtHR, 13 July 2004).
[240] ibid, para 55.

and so under the limbs of private and family life, without, however, engaging in further analysis.[241]

➤ Relationships between uncles/aunts and nephews/nieces

Furthermore, in *Boyle v UK* the now abolished European Commission on Human Rights (ECmHR) recognised the existence of family life between an uncle and his nephew placed in care.[242] This conclusion was based on the "frequent contact", the "considerable time" the two family members spent together, and the "significant bond" between them. The Commission therefore held that the prohibition on the applicant having contact with his nephew — save for one occasion — constituted an interference with his right to respect for family life under Article 8.[243]

➤ Relationships between siblings

With regard to the relationships between minor siblings, the ECtHR in *Olsson v Sweden* held that the decision to place two siblings in separate foster homes at a considerable distance from each other and from their parents breached Article 8.[244] The Court, in fact, observed that the care decision should have been considered as a "temporary measure" and that the final aim should have been to reunite the family concerned. Therefore, in the Court's view, the aforementioned decision had negatively affected the chances of contacts between those members, thereby weakening the bonds between them and the possibility of a successful reunification.[245]

The existence of family life has also been recognised between two siblings where one was over 18.[246] The siblings had lived together until their parents' divorce, after which

---

[241] Draghici (n 202).
[242] *Boyle v UK* App no 16580/90 (Commission Report, 9 February 1993).
[243] ibid, paras 44-45 and 47.
[244] *Olsson v Sweden* (n 200), paras 18, 52, 78, 83 and 84.
[245] ibid, para 81.
[246] *Mustafa and Armağan Akin v Turkey* (n 207).

each was placed in the custody of a different parent.[247] The ECtHR ruled that the decision to separate those siblings interfered with the applicants' (namely the father and the eldest son) right to respect for their family life, even though all individuals involved were living in the same neighbourhood. With particular reference to the relationship between brother and sister, the Court emphasised that the aforementioned decision impeded them from seeing each other and thus amounted to a violation of Article 8.[248]

Thus, while the jurisprudence concerning relationships beyond the nuclear family in the non-migration context remains relatively limited, the analysis of the above cases demonstrates that, in such a context, family life has been recognised beyond the nuclear unit, encompassing relationships between close relatives.

Draghici observes that in cases such as *Marckx v Belgium* and *Boyle v UK* — where, as shown above, relationships beyond the nuclear family were found to amount to family life — minors were involved.[249] However, Draghici interestingly notes that in those judgments, the minors' welfare or being economically dependent was not considered. What emerged instead was a broader concern to recognise social relationships developed between members of the "close family" and founded on care and support. To Draghici, it appears clear that "family life is not defined in terms of unilateral dependency" and that, therefore, the bonds between adult children and their parents should not be regarded as "less familial if built on interdependence".[250]

Moreover, cohabitation has not been treated as essential for establishing family life. In fact, in *Boyle v UK*, the Commission clarified that although cohabitation is a factor,

[247] ibid, paras 7 and 19.
[248] ibid, paras 18, 21, and 30.
[249] Draghici (n 202); *Marckx v Belgium* (n 211); *Boyle v UK* (n 242).
[250] Draghici (n 202).

often an important one, in assessing the existence of family bonds, it is not a "prerequisite".[251]

All this considered, these cases suggest that, in the non-migration context, family life between extended family members is recognised when close personal ties are present, irrespective of whether those involved are minors or adults. In fact, as noted above, when minors were involved, the Court did not base its finding of family life on economic dependency or cohabitation, but rather on the care and support provided by extended family members.

By contrast, the jurisprudence concerning adult relatives is not only more limited in scope but also less developed in its reasoning. In *Pla and Puncernau v Andorra*, the Court dealt with succession between "near relatives", ultimately finding a violation of Article 14 taken together with Article 8, without providing a detailed analysis of the scope of family life.[252] The Court observed more generally that matters relating to the succession between "near relatives" are "intimately connected with family life",[253] thereby rendering irrelevant in these contexts the existence of any real and active relationship between the individuals involved. Indeed, in *Pla* the ECtHR accepted the applicability of Article 8 even though the grandson had been adopted 20 years after his grandmother's death.

In conclusion, in non-migration cases involving minors, the Court has not grounded its reasoning on any factor specifically related to being underage. This indicates that adult-adult relationships should likewise fall within the scope of family life where the same requirement — namely the presence of close personal ties involving care and

[251] *Boyle v UK* (n 242), para 43.
[252] *Pla and Puncernau v Andorra* (n 239), paras 26, 63-64.
[253] ibid, para 26.

support — is satisfied. Such a requirement can equally characterise relationships between minors and adults, as well as those between adults.

To provide a complete picture of the Court's approach, the following section will examine how the relationships between members beyond the nuclear family have been addressed in the migration context, thereby enabling an assessment of the extent to which such ties are protected — or left unprotected — compared to the non-migration context.

c) The migration context and the non-nuclear family

While family life has been recognised by the ECtHR between extended family members — such as grandparents and grandchildren, uncles and nephews, and siblings — in non-migration cases, this work now considers how such relationships are treated in the migration context.

Desmond, Draghici, and Roagna highlight that when the ECtHR moves to the migration context, it has adopted a distinct, more restrictive definition of family.[254] In this context, family has generally been deemed to coincide merely with the nuclear family, consisting of parents and their minor dependent children. Consequently, in immigration cases, relationships such as those between parents and their adult children or between adult siblings do not enjoy the protection of Article 8 "without evidence of further elements of dependency, involving more than the normal, emotional ties".[255] Desmond, as will be discussed in detail in Section 2.2(d), adopts a strongly critical stance towards what he views as the ECtHR's discriminatory treatment of migrants compared with

[254] Desmond (n 206); Draghici (n 202); Roagna (n 214).
[255] ibid; *Javeed v Netherlands* (n 189), 5.

non-migrants under Article 14 ECHR, and calls on the Court to clearly justify its differential treatment.[256]

However, some scholars argue that even in the migration context, family life continues to exist between parents and children who have reached the age of majority and are no longer dependent, contending that the mere attainment of majority does not sever family ties.[257] This work will suggest, in light of the case law analysed below, that the cases on which these scholars rely in support of recognising family life between parents and children who have reached the age of majority in the migration context represent instead only exceptions — or, in certain instances, merely alleged exceptions — to the Court's otherwise narrow approach to adult-adult relationships.[258] These judgments concern the so-called "integrated aliens"[259] or long-resident second-generation migrants facing deportation who, in some instances, are young adults who have also not yet established their own family unit. In such circumstances, the ECtHR's nuclear family rule in the migration context appears to find an exception — or, in certain cases, only an alleged one — the details of which will be examined below. Yet, while some scholars regard the second-generation migrant cases referred to above as an exception to the Court's narrow approach, others limit the exception only to those specific cases involving young adults who have not yet formed independent family units, therefore leaving out of their analysis the 'broader' instances which concern second-generation migrants more generally.[260]

---

[256] Desmond (n 206), 265.

[257] See Boeles and others (n 217), 207, citing *Moustaquim v Belgium* App no 12313/86 (ECtHR, 18 February 1991), *Boughanemi v France* (n 231), *Bouchelkia v France* App no 23078/93 (ECtHR, 29 January 1997), *Nasri v France* App no 19465/92 (ECtHR, 13 July 1995), *El Boujaïdi v France* App no 25613/94 (ECtHR, 26 September 1997), *Boujlifa v France* App no 25404/94 (ECtHR, 21 October 1997).

[258] See analysis in Section 2.2(b)(I)-(III) below.

[259] *El Boujaïdi v France* (n 257), Dissenting opinion of Judge Foighel, para 2; *Beldjoudi v France* App no 12083/86 (ECtHR, 26 March 1992), Concurring opinion of Judge Martens, para 2.

[260] cf Draghici (n 202), 43, 47-48, who treats cases 'broadly' involving long-resident second-generation migrants facing deportation as exceptions to the Court's restrictive approach. Contrast Desmond (n 206), 266, who considers that, within that group, only young adults without independent families are to

Furthermore, it is useful to note here that Draghici underlines the “unrealistically high threshold” established by the Court for meeting the aforementioned dependency requirement in migration cases. According to her analysis, this requirement is satisfied only in extraordinary cases of dependency, interpreted by the Court strictly as situations of disability.[261]

The judgments in which the Court has not adhered to its narrow approach, as well as its restrictive interpretation of dependency, will be examined in detail below.[262]

To conclude, while in the non-migration context the ECtHR employs a broad definition of family encompassing relationships between extended family members, in migration cases it has applied a narrow definition, restricted to the nuclear family. One far-reaching consequence of this approach is the exclusion of adult-adult relationships from the Court’s concept of family life, save for the two limited exceptions outlined above — namely: i) the older line of cases, up to *Slivenko*, involving settled migrants or long-resident second-generation migrants facing deportation, which, however, as will later be argued, should not be regarded as a genuine exception because the Court’s recognition of family life was based on social integration and deep roots in the host society, elements now more properly analysed under ‘private life’; and ii) the narrower surviving exception within that same settled-migrant expulsion context, concerning young adults who have not yet established their own independent families. Both categories therefore arise in settled-migrant removal cases, but they are not identical. The first is broader and belongs to an older line of reasoning, because it reflects an integration-based use of family-life language that the Court later reclassified

be regarded as exceptions. Like Desmond, Draghici also acknowledges that these young adults received a ‘privileged’ assessment of family life. See further Section 2.2(b)(I)-(III).

[261] Draghici (n 202).

[262] See analysis in Sections 2.2(b)(I)-(III) and 2.2(e) below.

under ‘private life’; the second is narrower and more specific, and remains a recognised exception based on the applicant’s specific stage of life and continuing connection to the parental household.

As adult-adult relationships in the migration context represent the core focus of this work, the following section will analyse in detail both the restrictive approach taken by the ECtHR when dealing with these relationships and the exceptions in which it has departed from it.

2.2 The ECtHR’s treatment of adult-adult relationships in the migration context

a) The restrictive approach

Section 2.1 examined how the bonds between parents and their minor dependent children attract Article 8 protection in both non-migration and migration contexts, and noted that, while the ECtHR recognises family life between members beyond the nuclear unit in the non-migration context, it has unexpectedly and unjustifiably adopted a narrow approach in migration cases. Building on this, the present section focuses on the ECtHR’s treatment of the relationships between adult relatives in the migration context.

With regard to such relationships — particularly those between parents and their adult children — Draghici traces the restrictive approach to the ECmHR’s decision in *S. and S. v UK*.[263] However, an earlier example is found in *Family X. v UK*.[264] *S. and S.* concerned a widowed Indian woman who, after living for years with her adult son in

[263] Draghici (n 202); *S. and S. v UK* App no 10375/83 (Commission Decision, 10 December 1984).
[264] *Family X. v UK* App no 9492/81 (Commission Decision, 14 July 1982), 232-235.

the UK, was refused permission to rejoin him following a lengthy visit to India, despite medical evidence that her mental health had deteriorated due to separation. The ECmHR declared the complaint "ill-founded", reasoning that: "[g]enerally, the protection of family life under Article 8 involves cohabiting dependents, such as parents and their dependent, minor children. Whether it extends to other relationships depends on the circumstances of the particular case. [Adult-adult relationships] would not necessarily acquire the protection of Article 8 […] without evidence of further elements of dependency, involving more than the normal, emotional ties".[265] Draghici further highlights that this approach was followed by the ECtHR itself in numerous subsequent cases over a period of twenty years or so.[266] For example, the ECtHR has observed that "it has already held that there would be no family life, within the meaning of Article 8, between parents and adult children or between adult siblings unless they could demonstrate additional elements of dependence".[267]

The same approach has been applied in cases concerning the relationships between aunt/uncle and their adult niece/nephew. For instance, in *Javeed v Netherlands*, the ECtHR, while recognising the existence of family life between the aunt and her minor nieces, held that there was no proof of the aforementioned "further elements of dependency, involving more than the normal emotional ties" for the relationships between adult relatives — namely, the applicant and her brother and her adult niece — to attract Article 8 protection.[268] In particular, the Court stressed that the applicant had left her brother's house to live in her own apartment and had not provided evidence

[265] *S. and S. v UK* (n 263), 198.
[266] Draghici (n 202). See, e.g., *Ezzouhdi v France* App no 47160/99 (ECtHR, 13 February 2001), para 34 (French only); *Konstantinov v Netherlands* App no 16351/03 (ECtHR, 26 April 2007), para 52; *A.H. Khan v UK* (n 205), para 32; *Shevanova v Latvia* App no 58822/00 (ECtHR, 15 June 2006), para 67.
[267] *A.S. v Switzerland* App no 39350/13 (ECtHR, 30 June 2015), para 49.
[268] *Javeed v Netherlands* (n 189), 5.

that her adult niece was living with her.[269] It appears that the Court, by noting that cohabitation with the brother had ceased and that it had not been established with the adult niece, proceeded on the presumption that, had cohabitation been shown, the existence of family life would have been acknowledged. Thus, the judgment fails to provide a convincing justification for rejecting the family-life link in the case at hand. In fact, if the decisive factor was indeed the absence of cohabitation, this reasoning departs from the Court's non-migration jurisprudence, where — as noted above — cohabitation has not been regarded as an essential condition for a relationship to qualify as family life. Moreover, the reliance placed on cohabitation appears inconsistent with the Court's restrictive view of the dependency requirement in its migration case-law, applied when assessing whether "further elements of dependency involving more than the normal emotional ties" are satisfied.

The principle established in *S. and S. v UK* was later restated by the Grand Chamber in *Slivenko v Latvia*, its first expulsion case.[270] As will be shown below, the Grand Chamber emphasised both the distinction between members of the "core family" and relatives outside that unit, and the notion of dependency;[271] the ECtHR's interpretation of this latter concept will be examined in Section 2.2(e).

The *Slivenko* case concerned the expulsion from Latvia to Russia of Mrs Tatjana Slivenko, Mr Nikolay Slivenko and their daughter Karina. Tatjana had arrived in Latvia as an infant with her parents; Nikolay, a Russian national, had been transferred there as a Soviet military officer, where he later married; and Karina was born in Latvia. The expulsion followed Latvia's independence in 1991 and was carried out pursuant to the

[269] ibid.
[270] *S. and S. v UK* (n 263); *Slivenko v Latvia* App no 48321/99 (ECtHR, Grand Chamber, 9 October 2003); Draghici (n 202); Desmond (n 206).
[271] Draghici (n 202).

1994 Latvian-Russian treaty, which required Russian military and their families to leave Latvia.[272] It is worth noting that the Russian-speaking minority in Latvia is among the groups that have brought several challenges before the ECtHR, seeking to prevent disruption to their family lives.[273] The Grand Chamber, noting that in expulsion cases the Court generally confines family life to the "core family", held that the Slivenkos' removal did not interfere with their family life, since the entire family unit — Tatjana, Karina and Nikolay — was deported together and could continue family life in Russia. Indeed, the 1994 treaty obliged Russia to admit and permit the residence of the whole family, thereby preserving family unity.[274] As regards the links between the daughter/granddaughter and their parents/grandparents — who were residing in Latvia — the Grand Chamber held that these relationships did not fall within family life since those latter relatives were "adults who did not belong to the core family and who have not been shown to have been dependent members of the applicants' family". Those ties were instead to be considered under the applicants' "private life".[275] This approach — denying the existence of family life between adult relatives unless additional dependency is shown, and instead stating that such links will be examined under private life — was subsequently affirmed in cases such as *Sisojeva and Others v Latvia* and *Shevanova v Latvia*.[276] This shift from family life to private life[277] will be examined in 2.2(c).

Focusing instead, for present purposes, only on the aspect of this approach that concerns family life — and in particular on the criterion that family life is "normally

---

[272] *Slivenko v Latvia* (n 270).
[273] Peroni (n 197).
[274] *Slivenko v Latvia* (n 270), paras 94, 97 and 116. The Grand Chamber indeed stressed that their deportation, as a nuclear family, was "not aimed at breaking up the family, nor did [it] have such an effect".
[275] ibid, para 97.
[276] *Sisojeva and Others v Latvia* App no 60654/00 (ECtHR, 16 June 2005), para 103; *Shevanova v Latvia* (n 266), para 67.
[277] Draghici (n 202).

limited to the core family" and is not considered to exist between adult relatives unless additional elements of dependence are demonstrated —[278] it should be noted that this criterion was restated in other cases such as *Onur v UK*.[279] However, in *Omojudi v UK*, the ECtHR seemed hesitant to follow this view.[280] Having accepted the Government's concession that deportation interfered with the applicant's family life with his wife and two youngest children, the Court considered it "unnecessary to decide whether the close bond which the applicant undoubtedly had with his eldest [adult] son and his granddaughter was itself sufficient to give rise to family life between them".[281] Rather than applying its usual formula and categorically denying that such adult-adult ties constituted family life unless dependency was shown, the Court sidestepped the question, thereby displaying a degree of hesitation in following its restrictive approach. However, the *Slivenko* formula was reaffirmed in subsequent cases, such as *Senchishak v Finland* (to be examined below),[282] and, more recently, in *Kumari v Netherlands* and *Martinez Alvarado v Netherlands*.[283]

Thus, the case law demonstrates the stark divergence between the ECtHR's approach to family life in non-migration cases and its stance in the migration context. In the latter, the Court has relied — unexpectedly and without convincing justification — on a far more restrictive criterion requiring, for adult-adult relationships to attract recognition as family life under Article 8, proof of "further elements of dependency involving more than

[278] *Slivenko v Latvia* (n 270), paras 94 and 97.
[279] *Onur v UK* (n 231): case concerning the deportation of a long-term resident following serious criminal convictions, where the Court did not find that family life existed between the applicant and his mother and siblings, holding that "he has not demonstrated the additional element of dependence normally required to establish family life between adult parents and adult children" (para 45).
[280] *Omojudi v UK* App no 1820/08 (ECtHR, 24 November 2009); Draghici (n 202).
[281] *Omojudi v UK* (n 280), para 36.
[282] *Slivenko v Latvia* (n 270); *Senchishak v Finland* (n 190), para 55; Draghici (n 202).
[283] *Kumari v Netherlands* App no 44051/20 (ECtHR, Decision, 19 November 2024), para 35; *Martinez Alvarado v Netherlands* App no 4470/21 (ECtHR, 10 December 2024), para 36.

the normal emotional ties".[284] Moreover, both because the Court has held that, in the absence of such additional elements, those adult ties may be considered under private life — "depending", as shown below, "on the degree of social integration of the persons concerned" —[285] rather than under family life, and because the dependency threshold is set at a very high level, the practical applicability of this criterion is even more limited than it might first appear. Accordingly, in migration cases adult-adult relationships are recognised as family life only in very exceptional circumstances.

b) Exceptional — or allegedly exceptional — cases in which the ECtHR departed from its narrow migration-context approach to "family life"

Having set out the restrictive criterion applied by the ECtHR in migration cases for recognising "family life" between adult relatives (i.e., requiring additional elements of dependency), and before showing that its practical application is even narrower than it appears, this section examines the exceptional — or allegedly exceptional — instances in which the Court has not, or seems not to have, followed that approach. As outlined in Section 2.1(c), there are only two such instances, though their characterisation in the scholarship is not uniform.

I. Integrated aliens or long-resident second-generation migrants facing deportation

Draghici identifies a noteworthy exception to the Court's otherwise restrictive approach in its migration jurisprudence, namely its more sympathetic treatment of settled

[284] *Javeed v Netherlands* (n 189), 5.
[285] *Sarközi and Mahran v Austria* App no 27945/10 (ECtHR, 2 April 2015), para 61.

migrants or long-resident second-generation migrants (understood as immigrants who were born in, or arrived at a very young age in, the host state)[286] facing deportation.[287] Draghici, in particular, underlines that, in numerous appeals against deportation orders, long-term adult residents — typically migrants who arrived in the host country as very young children — have successfully invoked their right to family life with parents or adult siblings.[288] Draghici presents *Nasri v France* as an example of such an exception.[289] This work, however, will argue that the Court's treatment of long-resident second-generation migrants facing deportation does not, as such, constitute a proper exception. For this reason, it appears more accurate to classify *Nasri* within the 'narrower' exception concerning long-resident second-generation migrants facing deportation who are (also) young adults and have not yet formed their own family, a genuine exception examined below.

Indeed, the *Nasri* case[290] appears rather peculiar as the second-generation migrant against whom a deportation order was issued was also severely disabled. The applicant was an adult who was unable to hear or speak, and who was also illiterate and incapable of using any sign language. He had been born in Algeria and arrived in France with his family at the age of five, and the deportation order was issued on account of his criminal conduct. He had always lived with his parents and had never ceased ties with his family — he had 9 siblings — and had never left France since his arrival.[291]

[286] Milios (n 219).
[287] Draghici (n 202).
[288] ibid; *Boughanemi v France* (n 231); *Nasri v France* (n 257); *Boujlifa v France* (n 257); *Moustaquim v Belgium* (n 257); *El Boujaïdi v France* (n 257); *Ezzouhdi v France* (n 266).
[289] Draghici (n 202); *Nasri v France* (n 257).
[290] *Nasri v France* (n 257).
[291] ibid, paras 6 and 38.

The ECtHR, after stressing that "for a person confronted with such obstacles, the family is especially important, not only in terms of providing a home, but also because it can help to prevent him from lapsing into a life of crime", held that the applicant's deportation would violate Article 8.[292] The Court's decision was grounded on the adult child's severe disability and the consequent importance of his family for his well-being, together with the fact that most members of his family had acquired French nationality and had no ties with Algeria.[293]

Thym cites *Nasri* as an instance of the Court adopting a "wide understanding of family life" in the migration context.[294] Desmond, however, as will be highlighted in 2.2(b)(III), criticises this characterisation, contending that Article 8 protection in adult-adult relations continues to depend on "further elements of dependency beyond the normal emotional ties", which *Nasri* demonstrates through the applicant's severe disability.[295] Considering the applicant's situation, which combined his status as a second-generation migrant — who was also a young adult who had not yet established his own family — with that of a disabled adult, *Nasri* is peculiar because it can be read in two distinct ways, each permitting departure from the Court's narrow approach. It may be placed within the alleged second-generation migrant exception (as framed by Draghici), or — as suggested above — within the 'narrower' exception concerning young adults who have not yet formed their own family. Alternatively, it can be understood as a straightforward application of the dependency rule, satisfied here by the applicant's severe disability, an aspect emphasised by Desmond but to which

[292] ibid, paras 43 and 46.
[293] ibid, paras 44 and 46.
[294] Daniel Thym, 'Respect for Private and Family Life under Article 8 ECHR in Immigration Cases: A Human Right to Regularize Illegal Stay?' (2008) 57 International and Comparative Law Quarterly 87, 90 fn 11; Daniel Thym, 'Residence as De Facto Citizenship? Protection of Long-term Residence under Article 8 ECHR' in Ruth Rubio-Marín (ed), *Human Rights and Immigration* (Oxford University Press 2014), 113 fn 42.
[295] Desmond (n 206), 267 fn 33.

Draghici appears not to accord sufficient weight when examining the case. As will be shown in 2.2.(e)(II), being an adult child with a disability is, according to Draghici's[296] own general analysis and, to some extent, Desmond's,[297] recognised as satisfying the stringent dependency requirement applicable to adult relatives. The Court therefore had, *a fortiori*, to acknowledge the applicant's right to respect for family life with his parents and adult siblings, since either condition — his position as a young second-generation migrant without an independent family or his severe disability — would alone have sufficed to invoke that right under Article 8.

Draghici also cites *Boughanemi v France* in support of her argument that long-resident second-generation migrants facing deportation were able, in a number of instances, to invoke their right to family life with parents or adult siblings.[298] In this case, the ECtHR held that the applicant had "private and family life in France", without clearly distinguishing between them,[299] on two grounds: first, that he had a child, and secondly, that his parents and ten siblings were lawfully resident there and that there was "no evidence that he ha[d] no ties with them".[300] Looking at this case alongside others,[301] Draghici observes that the ECtHR appears to proceed on the assumption that second-generation migrants do possess family life with adult relatives lawfully residing in the host country, and that the burden lies with the state to demonstrate the absence of such ties.[302] However, the existence of family life in *Boughanemi* was most

[296] Draghici (n 202).
[297] Desmond (n 206), 267 fn 33. In fact, although in the *Nasri* case Desmond treats disability as a condition that fulfils the requirement of further elements of dependency beyond normal emotional ties, he does not appear to extrapolate from this a general principle.
[298] Draghici (n 202); *Boughanemi v France* (n 231).
[299] Draghici (n 202).
[300] *Boughanemi v France* (n 231), para 35.
[301] *Boujlifa v France* (n 257), para 36, where the ECtHR stressed that the applicant "seems to have remained in touch" with his parents and eight siblings.
[302] Draghici (n 202).

clearly supported by the applicant's relationship with his minor daughter, while the references to his parents and siblings residing lawfully in France appear more closely connected to his social integration and private life in the host State. The case therefore illustrates the ambiguity of the Court's pre-*Slivenko* reasoning in cases concerning long-resident migrants facing expulsion: although the Court used the language of "private and family life", the references to parents and siblings appear to have been tied more closely to the applicant's integration and private life in France than to any clear recognition of adult-adult family life. Nor can *Boughanemi* easily be placed within the narrower young-adult exception, since the applicant had already established an independent family life through his child. *Boughanemi* is therefore better read as an example of pre-*Slivenko* ambiguity than as clear authority for adult-adult family life.

Several cases show that integrated aliens facing deportation were able to successfully invoke family life with parents and adult siblings, even where the "effectiveness" of those ties was doubtful.[303] In particular, Article 8 was deemed applicable where parents and siblings were lawfully resident in the country where a deportation order was issued and the applicant "had never broken off relations with them",[304] "had remained in contact" with them,[305] or, in some instances, simply because the applicant's mother and siblings "resided there".[306] Some scholars, therefore, note that the conclusion of an interference with the applicant's right to respect for family life was "reached relatively quickly",[307] usually without a detailed analysis of the "depth and quality" of the family bonds[308] or without examining the existence of additional elements of dependence[309]

---

[303] ibid.
[304] *Moustaquim v Belgium* (n 257), para 36.
[305] *El Boujaïdi v France* (n 257), para 33.
[306] *Ezzouhdi v France* (n 266), para 26; Draghici (n 202).
[307] Ryszard Cholewinski, 'Strasbourg's "Hidden Agenda"?: The Protection of Second-Generation Migrants from Expulsion under Article 8 of the European Convention on Human Rights' (1994) 12(3) Netherlands Quarterly of Human Rights 287.
[308] Thym, 'Residence as De Facto Citizenship?' (n 294).
[309] Peroni (n 197).

that the Court ordinarily requires when applying its narrow approach. Indeed, family life was acknowledged between the applicants and their families even "despite government arguments that these ties had been strained and interrupted by the respective terms of imprisonment and absences from the country of residence".[310] The Court's approach in these cases has led some scholars to suggest that the social integration of these "integrated aliens" (referred to as "quasi-nationals" by Dembour)[311] in the host country automatically allowed them to invoke the existence of family life with adult relatives without having to satisfy any qualitative thresholds.[312] A comparable emphasis on the applicants' ties to the host country was also evident in a separate concurring opinion of a Commission member, which went further in arguing that, since those ties were in fact the true focus in the Court's reasoning, the analysis — as will be discussed further below — should properly have been conducted under the right to private life rather than family life.[313]

However, in cases where the majority found a violation of family life, dissenting judges who disagreed with that conclusion likewise failed to address the private-life limb — a stance that has been criticised in the literature. As Van Dijk observes, with reference to the dissent in the *Moustaquim* case,[314] it is striking that the judges "did not pay any attention to the fact that even if the applicant's family life had not been sufficiently established, certainly [the applicant's] private life was at issue", which it is likewise protected under Article 8.[315]

---

[310] Cholewinski, 'Strasbourg's "Hidden Agenda"?' (n 307), citing *Lamguindaz v UK* App no 16152/90 (Commission Report, 13 October 1992), para 37; *Moustaquim v Belgium* (n 257), para 35; *Djeroud v France* App no 13446/87 (Commission Report, 15 March 1990), paras 53-54.

[311] Marie-Bénédicte Dembour, 'Human Rights Law and National Sovereignty in Collusion: The Plight of Quasi-Nationals at Strasbourg' (2003) 21(1) Netherlands Quarterly of Human Rights 63.

[312] Draghici (n 202); see also Cholewinski, 'Strasbourg's "Hidden Agenda"?' (n 307).

[313] *Beldjoudi and Teychene v France* App no 12083/86 (Commission Report, 6 September 1990), Concurring opinion of Mr Schermers joined by Mrs Thune.

[314] *Moustaquim v Belgium* (n 257), Dissenting opinion of Judges Bindschedler-Robert and Valticos.

[315] Pieter van Dijk, 'Protection of "Integrated" Aliens against Expulsion under the European Convention on Human Rights' (1999) 1(3) European Journal of Migration and Law 293.

It was not until *Üner v Netherlands* that the Court recognised that the expulsion of integrated migrants may constitute an interference with the right to respect for private life even where family life in the host country has not been established.[316] In this judgement, in fact, the Grand Chamber accepted that the "totality of social ties" linking settled migrants to the community in which they live "constitute part of the concept of 'private life' within the meaning of Article 8".[317] The Court further indicated that whether the analysis proceeds under family life or private life depends on the circumstances of the case.[318]

Thus, until *Slivenko*[319] — where, as shown below, the Court "explicitly shifted" its focus from family life to private life —[320] the ECtHR did not apply — or appears not to have applied — in cases involving "integrated aliens" or long-resident second-generation migrants the narrow conception of family it ordinarily adopts in the migration context. Rather, without transposing the non-migration criteria, the Court nevertheless reached the same outcome as in non-migration cases, recognising as "family life" relationships between adult relatives extending beyond the nuclear unit. Although the ECtHR's pre-*Slivenko* openness to including such relationships within "family life" in cases involving second-generation migrants is welcome, this work will argue below that it does not constitute a genuine exception to the Court's approach to family life: properly analysed, the interference in those cases engages the "private life" limb rather than "family life",

[316] *Üner v Netherlands* (n 205), para 59; Charlotte Steinorth, '*Üner v The Netherlands*: Expulsion of Long-Term Immigrants and the Right to Respect for Private and Family Life' (2008) 8(1) Human Rights Law Review 185.
[317] *Üner v Netherlands* (n 205), para 59. See also *Maslov v Austria* (n 205), para 63.
[318] ibid.
[319] *Slivenko v Latvia* (n 270).
[320] Draghici (n 202).

a conclusion which, as noted above, had already been advanced in a separate concurring opinion by a member of the former Commission.[321]

At this stage, however, two questions arise from the Court's approach in cases concerning settled migrants or long-resident second-generation migrants. First, what evidential requirements, if any, did the Court impose for recognising family life between adult relatives in this line of cases? The case law discussed above suggests that the Court did not require specific, verifiable indicators of the depth or ongoing character of those ties. Rather, arrival in the host State at a very young age in a case involving a deportation order, together with the lawful residence of the applicant's adult relatives in the host state and the State's failure to demonstrate that any such ties were absent, appears to have been treated as sufficient for the Court to regard those relationships as falling within Article 8's "family life" limb. If those were the conditions for recognition, a related issue concerns what the Court, in practice, emphasised in reaching that conclusion. As outlined above and developed further below, the features on which the Court placed weight were often of a different kind. In *Moustaquim*, for example, the Court placed particular weight on the fact that the applicant had lived in Belgium from before the age of two until his deportation at twenty; had travelled to Morocco only on two occasions, each time on holiday; had been educated entirely in French; and that his immediate family (parents and siblings) had long resided in Belgium.[322] This divergence between a family-life framing and integration-oriented factors underpins the second question. Why, until *Slivenko*,[323] did the Court appear to have adopted what has been described as an exception specifically with respect to second-generation migrants? Some scholars observe that, when assessing whether the deportation of

[321] *Beldjoudi and Teychene v France* (n 313), Concurring opinion of Mr Schermers joined by Mrs Thune.
[322] *Moustaquim v Belgium* (n 257), para 45.
[323] *Slivenko v Latvia* (n 270).

such individuals was “necessary in a democratic society”, the Court and, earlier, the Commission emphasised (as mentioned above) the family-life limb, even though many of the factors to which they accorded weight — such as the depth of the individual’s roots and the length of residence in the host State — were not, in themselves, closely connected to family life but, as shown below, pertained instead to private life.[324] On this basis, Cholewinski argues that the “unique status” of “second-generation migrants” was itself a significant factor in deciding whether they could be expelled, and that the practice of the Commission and the Court reflects a “hidden agenda” to treat long-resident second-generation migrants as “*de facto* citizens”.[325] In a similar vein, in his separate concurring opinion in the *Beldjoudi* case, Judge Martens had maintained that nationality is not an “objective and reasonable justification” for treating second-generation migrants differently from nationals when the admissibility of expulsion is at stake.[326]

From an international-relations perspective, it has been argued that it is difficult to accept that the state of origin should “take care of, assist and promote the social integration” of a criminal who has never, or only briefly, lived there.[327] Responsibility properly lies with the host State in which the individual was brought up and where any criminal conduct occurred. Although not strictly a legal claim, it is morally troubling for the host country to retain ‘good’ immigrants (those who contribute to its prosperity) while expelling ‘bad’ ones (those who offend).[328] Moreover, for an “integrated alien”,[329]

---

[324] Cholewinski, ‘Strasbourg’s “Hidden Agenda”?’ (n 307). See also Yaël Ronen, ‘The ties that bind: family and private life as bars to the deportation of immigrants’ (2012) 8(2) International Journal of Law in Context 283.
[325] Cholewinski, ‘Strasbourg’s “Hidden Agenda”?’ (n 307).
[326] *Beldjoudi v France* (n 259), Concurring opinion of Judge Martens, para 2.
[327] *Beldjoudi and Teychene v France* (n 313), Concurring opinion of Mr Schermers joined by Mrs Thune.
[328] ibid.
[329] Draghici (n 202).

such expulsion may be experienced as a form of double punishment and, where ties to the State of nationality are weak or absent, as effective exile.[330]

The consequence of the above 'assimilation' of second-generation migrants to nationals is that expulsion of the former "can hardly ever be justified".[331] Judge Martens, in his dissenting opinion in the *Boughanemi* case, expressly argued that the expulsion of "integrated aliens" should, in principle, be treated in the same manner as the expulsion of nationals, while acknowledging that the expulsion of integrated aliens may nonetheless be justified in "very exceptional circumstances".[332] He recognised that, as a rule, the expulsion of integrated aliens constitutes a violation of their right to respect for private life.[333] This view had already been advanced in a separate concurring opinion of a Commission member, who stressed that "[a] second-generation immigrant is so deeply integrated into his new homeland that his expulsion necessarily destroys his private life"[334] — a broader concept of which "family life is a sub-category".[335] According to this line of reasoning, it is more accurate to characterise the deportation of such migrants as a violation of the right to respect for private life rather than of the right to respect for family life.[336] This is why, as argued below, the exception examined here does not in fact constitute a genuine one, since what is truly at stake is private life, not family life.

---

[330] Jean-Yves Carlier, 'Vers l'interdiction d'expulsion des étrangers intégrés?, note sous Cour européenne des droits de l'homme, 26 mars 1992 (Beldjoudi)' (1993) 15 Revue trimestrielle des droits de l'homme 449.

[331] Cholewinski, 'Strasbourg's "Hidden Agenda"?' (n 307). Indeed, the expulsion of nationals is prohibited by Article 3(1) of Protocol No. 4 to the ECHR: Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto [1963] ETS 46.

[332] *Boughanemi v France* (n 231), Dissenting opinion of Judge Martens, para 8. This view was later shared by Judge Foighel in his Dissenting opinion in *El Boujaïdi v France* (n 257), para 3.

[333] *Boughanemi v France* (n 231), Dissenting opinion of Judge Martens, para 8.

[334] *Beldjoudi and Teychene v France* (n 313), Concurring opinion of Mr Schermers joined by Mrs Thune.

[335] Jens Vedsted-Hansen, 'Migration and the right to family and private life' in V. Chetail (ed), *Mondialisation, migration et droits de l'homme: le droit international en question. Globalization, migration and human rights: international law under review* (vol II, Bruylant 2007); *Nasri v France* (n 257), Concurring opinion of Judge Wildhaber and partly dissenting opinion of Judge Morenilla, para 6.

[336] *Beldjoudi and Teychene v France* (n 313), Concurring opinion of Mr Schermers joined by Mrs Thune.

On the specific issue of the deportation of second-generation migrants as engaging the private-life rather than the family-life limb, Judge Martens elaborated further in his separate concurring opinion in *Beldjoudi v France*.[337] He emphasised that although not all "integrated aliens" facing expulsion are married, "they all have a private life" and their cases should therefore be examined under this heading. In his view, private life encompasses the social ties between the individual and the community of the host country, as well as relationships with relatives, friends, and others beyond a narrowly conceived "inner circle".[338] Scholars observe that Judge Martens' reasoning reflects a narrower conception of family life than that applied by the Court in numerous immigration cases at that time, confining family life to the "core family" and allocating all other relationships to the sphere of the immigrant's private life.[339] As shown above, the significance of *Slivenko* lies in the settled-migrant expulsion context: it re-categorised factors previously used to support findings framed in terms of family life — such as long residence, social integration, and deep roots in the host State — as matters more properly belonging to private life. In this way, *Slivenko* brought the settled-migrant line of cases into closer alignment with the Court's broader migration jurisprudence, in which family life has generally remained centred on the nuclear family, subject to limited exceptions. This does not mean that *Slivenko* introduced the Court's restrictive approach to family life in migration cases, which can already be traced to earlier Commission decisions discussed above; rather, it clarified the application of that restrictive approach in the specific context of settled migrants facing expulsion.[340]

---

[337] *Beldjoudi v France* (n 259), Concurring opinion of Judge Martens, para 3.
[338] ibid.
[339] Milios (n 219).
[340] cf Concurring opinion of Judge Martens, para 3, in *Beldjoudi v France* (n 259); *Slivenko v Latvia* (n 270); Milios (n 219).

The rationale behind the protection of this category of individuals was described as "hidden", since the justifications were "explicitly stated in the minority views but only implicit in the majority opinions and judgments".[341] Scholars at the end of the previous century noted that the view that second-generation migrants should be treated as nationals in deportation matters had, up to that point, remained confined to minority opinions within the ECtHR.[342] It was further emphasised that, had the Court openly adopted such an approach, states would have been prevented from expelling these migrants even in cases involving the most serious crimes.[343]

It is noteworthy that early Strasbourg jurisprudence often undertook a detailed interference analysis, asking whether family life could reasonably continue in the State of nationality of the person expelled, and concluding that, where this was possible, there was no interference with the right to respect for family life.[344] By contrast, the Court has more recently treated the expulsion of an integrated alien as an interference *per se* with Article 8, in light of the individual's "affiliation" with the host State.[345] The remaining question, addressed further below, is whether such interference concerns family life or private life.

Thus, to conclude, what appears to have justified the ECtHR in recognising, until *Slivenko*, an apparent exception to its narrow conception of family life in the case of second-generation migrants — or at least one possible rationale — was their *de facto*

[341] Cholewinski, 'Strasbourg's "Hidden Agenda"?' (n 307).
[342] Van Dijk (n 315).
[343] Cholewinski, 'Strasbourg's "Hidden Agenda"?' (n 307).
[344] Vedsted-Hansen (n 335). The so-called "elsewhere approach" (examined in Section 2.3). See, e.g., albeit outside the adult-relative paradigm beyond the nuclear family central to this work, *Abdulaziz, Cabales and Balkandali v UK* (n 211). By contrast, in *Beldjoudi v France* (n 259), the Court found that family life could not realistically be maintained abroad, given the French nationality and lifelong residence of the applicant's wife, and therefore, together with other circumstances, held the deportation order to be disproportionate and in violation of Article 8: paras 78-79.
[345] Vedsted-Hansen (n 335).

assimilation to nationals for purposes of protection against expulsion. In these cases, the Court and the Commission repeatedly placed weight on factors including long residence, early arrival, education, language, and the lawful residence of close relatives, thereby underscoring the individual's deep integration in the host society. Cholewinski has described this reliance on integration as part of a "hidden agenda" to treat such individuals as *de facto* members of the host community, with the consequence that their expulsion could scarcely ever be justified. Judge Martens gave explicit voice to this reasoning, maintaining that nationality could not serve as an objective justification for treating integrated second-generation migrants differently from nationals, since they too may be capable of calling the host country their "own country".[346]

As just discussed, one explanation for this apparent exception is the *de facto* assimilation of second-generation migrants to nationals for purposes of protection against expulsion. Another possible explanation could lie in the lack of agency inherent in this category: such migrants are either born in the host State or brought there at a very young age. Because they were not agents of their migration — that is, the decision to migrate was not theirs — the ECtHR may have been inclined to afford them more favourable treatment. This rationale accords with the factors the Court expressly weighs in expulsion proportionality — age at arrival, length of residence, and the depth of social roots — as developed in its Article 8 case law. In the case of second-generation migrants, these factors themselves reflect the absence of agency: the younger the age at arrival, the less the individual can be said to have chosen migration. Being born in the host State, or arriving there as a child, could naturally lead to long residence and deep social roots, which are not the product of a voluntary decision but

[346] *Beldjoudi v France* (n 259), Concurring opinion of Judge Martens, para 2.

of circumstances imposed upon the individual. This rationale echoes a view expressed in a dissenting opinion, which observed that second-generation migrants "did not choose [their] country of residence of [their] own free will" and grew up "under the same conditions as […] nationals".[347]

This reasoning, at least to some extent, parallels that applied to involuntary migrants, who likewise benefit from broader protection, including a "high degree of security of residence and right to family immigration, respectively, notwithstanding States' sovereignty in these policy matters".[348] Described as having a "diminished power of decision", and at times being "totally powerless", involuntary migrants are characterised by an absence of agency, manifested also in the "original absence […] of a desire or motivation to leave their place of residence".[349] The same lack of decision-making power in the migratory act can be attributed to second-generation migrants.

Accordingly, alongside *de facto* assimilation, the lack of agency in the migratory act could provide a second rationale that may help to explain the (apparent) more generous treatment accorded to second-generation migrants in expulsion cases. However, as outlined above and as will be argued in greater detail below, this so-called exception cannot properly be regarded as such.

---

[347] *El Boujaïdi v France* (n 257), Dissenting opinion of Judge Foighel, para 2.
[348] Vedsted-Hansen (n 335).
[349] Anthony Oliver-Smith and Art Hansen, 'Involuntary Migration and Resettlement: Causes and Contexts' in Art Hansen and Anthony Oliver-Smith (eds), *Involuntary Migration and Resettlement. The Problems and Responses of Dislocated People* (Routledge 1982).

II. Expulsion cases concerning young adult settled migrants who have not yet started their own family

Before turning to the reasons why the first exception cannot be considered genuine, and to the shift marked by *Slivenko*,[350] it is appropriate to address the second exception to the ECtHR's treatment of adult relationships in the migration context, namely cases involving young adult settled migrants who have not yet established a family of their own.

While the exception previously discussed has not been addressed by Desmond, this scholar — consistent with Draghici and, to some extent, Milios and Peroni — identifies a distinct category of expulsion cases in which the 'migrant nuclear family rule' has not been applied.[351] These cases could, 'in theory', be included within the 'broader' category of expulsion cases involving "integrated aliens" or long-resident second-generation migrants just examined — 'in theory' because, as will be argued below, such a category cannot in fact be regarded as a genuine exception — since they too involve the same group of individuals. What distinguishes this second category is that it concerns young adults — where the Court has accepted that a 26-year-old can be considered as such —[352] who have not yet established their own family.[353]

In *Maslov v Austria*, the Grand Chamber expressly recalled that the Court had accepted, in a number of cases, that relations between young adults who had not yet established a family of their own and their parents or other close relatives constitute

[350] *Slivenko v Latvia* (n 270); Draghici (n 202).
[351] Desmond (n 206); Draghici (n 202); Milios (n 219); Peroni (n 197).
[352] *Pormes v Netherlands* App no 25402/14 (ECtHR, 28 July 2020), para 48.
[353] *Maslov v Austria* (n 205), para 62; *Bouchelkia v France* (n 257), para 41; *El Boujaïdi v France* (n 257), para 33; *Ezzouhdi v France* (n 266), para 26; *Yeshtla v Netherlands* App no 37115/11 (ECtHR, Decision, 15 January 2019), para 32.

"family life".[354] A similar approach was followed in *Bousarra v France*.[355] However, in *A.A. v UK*, the Court did not appear to state this "unconditionally".[356] In this case, despite noting that its case law seems to indicate that such relationships constitute family life, the ECtHR ultimately left open the question of whether family or private life was at stake, since the protection of private life was clearly engaged — given that the case concerned the expulsion of a settled migrant — and because, in any event, the proportionality assessment is identical under both limbs.[357]

Desmond refers to this exception as a "flexible and commonsense approach", which acknowledges that family bonds do not automatically weaken upon children reaching majority.[358] This observation rightly highlights an important reason why the Court should adopt in the migration context — as it already does in the non-migration context — a broader understanding of family, one that protects, under the heading of family life, adult-adult relationships broadly and not only those falling within this exception. Desmond, however, appears to limit this reasoning to the exception concerning young adults who have not yet established their own families, an approach that could be read as implying — incorrectly — that the argument would not extend to adults who, whether or not deported, have established their own family unit. An in-depth discussion of why the ECtHR should adopt a broader understanding of family, encompassing adult-adult relationships in migration cases, will be undertaken later in this work.

What emerges from this 'narrower' exception is that, in applying it, the ECtHR did not rely on the concept of dependency. Rather, the Court appears to have sought to convey a definition of family in which an individual has only one 'protected' family —

---

[354] *Maslov v Austria* (n 205), para 62; *Bouchelkia v France* (n 257), para 41; *Ezzouhdi v France* (n 266), para 26.
[355] *Bousarra v France* App no 25672/07 (ECtHR, 23 September 2010), paras 38-39.
[356] *A.A. v UK* App no 8000/08 (ECtHR, 20 September 2011), para 49; Milios (n 219).
[357] ibid.
[358] Desmond (n 206).

either the family of origin or, upon establishing children of their own, the nuclear family. The implicit message, therefore, is that parental obligations or responsibilities are regarded to have ceased once a child forms their own family.[359]

This approach therefore excludes recognition of enduring intergenerational ties, notwithstanding evidence that such bonds persist — even when the adult child has formed their own family — alongside the nuclear family rather than being supplanted by it. The 'one protected family' idea is articulated in the context of parents and adult children, but it reflects the underlying assumption that only narrowly defined bonds deserve automatic protection as family life. By implication, this restrictive conception also helps explain the Court's refusal to recognise other adult-adult relationships — such as those between adult siblings or between an uncle or aunt and their adult niece or nephew — unless additional elements of dependency are shown.

The idea of only 'one protected family' also appears to resonate in Judge Jelić's concurring opinion in the recent case of *Savran v Denmark* (which will be considered in more detail below).[360] Judge Jelić stressed that the applicant's inability to create a family of his own (due to serious mental illness) was a factor that "consequently has an impact on the meaning of the right to respect for family life".[361] This appears to allude — at least on one reading — to the assumption that only the absence of a nuclear family, or the inability to create one, opens the possibility of recognising a broader definition of family. That this is the implication of Judge Jelić's words seems reinforced by her reference to *Dauphin v Canada*, where the UN Human Rights

[359] This reasoning reflects a dynamic also identified by Mustasaari in her critique of the "nuclear family paradigm" as manifested in the Family Reunification Directive, which excludes married minor children from the definition of family on the presumption that marriage creates an independent family unit (see Section 3.1(b)(II)). Although her analysis focuses on marriage, the underlying "binary notion of belonging" — either to the family of origin or to the new nuclear family — echoes the logic at work in the ECtHR's approach examined here, where protection of the family of origin appears to end once adult children establish a family of their own. See Mustasaari (n 220); Council Directive 2003/86/EC (n 77).
[360] *Savran v Denmark* App no 57467/15 (ECtHR, Grand Chamber, 7 December 2021).
[361] ibid, Concurring opinion of Judge Jelić, para 4.

Committee affirmed, with reference to settled migrants, that, for young individuals who have not formed a family of their own, "parents, brothers and sisters constitute [their] family under the Covenant".[362]

More recent judgments have clarified the application of the exception under examination, with the Court making two important statements. First, the requirement of additional elements of dependency — normally necessary to establish the existence of family life between adult relatives in migration cases — does not apply to the cases at issue, which involve young adults who have not yet established their own family.[363] This seems to confirm the exceptional nature of such cases, a characterisation which has now been expressly affirmed in the most recent case of *Martinez Alvarado v Netherlands*.[364]

Second, those young adults must still be living (full-time) with their parents for the exception to apply.[365] Whereas at an early stage of its case law, cohabitation was noted merely as a factual element (the Court simply recording that the individual concerned was still living with their parents),[366] the Court has more recently, as just noted, articulated it explicitly as a compulsory requirement.[367] This condition, however, appears questionable, since cohabitation — as shown in 2.1(a) — has not been treated as essential to family life in non-migration contexts.

In sum, this work has examined two situations identified as exceptions in which the Court appeared to depart, and in the second category has departed, from its otherwise

---

[362] ibid, Concurring opinion of Judge Jelić, para 7; *Dauphin v Canada* CCPR/C/96/D/1792/2008 (UNHRC, 28 July 2009), para 8.3.
[363] *Pormes v Netherlands* (n 352), para 47; *Savran v Denmark* (n 360), para 174.
[364] *Martinez Alvarado v Netherlands* (n 283), para 37. See also *Kumari v Netherlands* (n 283), para 36.
[365] *Pormes v Netherlands* (n 352), para 48; *Savran v Denmark* (n 360), para 177; cf, e.g., *Maslov v Austria* (n 205), para 62.
[366] *Maslov v Austria* (n 205), para 62.
[367] Indeed, the necessity of this requirement has been restated in the recent case of *Martinez Alvarado v Netherlands* (n 283), para 37. See also *Kumari v Netherlands* (n 283), para 36.

narrow approach to family life in migration cases when relationships between adult relatives are involved. Indeed, as the next subsection will argue, the first, 'broader', exception cannot be regarded as genuine, with the consequence that the claimed departure from the Court's restrictive approach to adult-adult relationships, in relation to that exception, cannot be sustained. By contrast, the second, 'narrower' exception — concerning young adults who have not yet formed their own families and, more recently, have been required still to be living with their parents — stands on firm ground,[368] though it reveals the Court's tendency to confine recognition of family life within carefully delimited and restricted parameters.

III. Questioning the existence of the first exception

Returning now to the 'broader' exception discussed above, it can be argued that the treatment afforded (until *Slivenko*)[369] to integrated aliens or long-resident second-generation migrants facing deportation cannot — contrary to Draghici —[370] be regarded as a genuine exception to the ECtHR's restrictive approach towards adult-adult relationships in the migration context, since — as the analysis in 2.2(b)(I) showed — when the Court did find a violation of family life in second-generation deportation cases, its reasoning was either extremely cursory as to the actual family ties or focused instead on the individual's length and depth of integration in the host State.

These two strands of reasoning require closer scrutiny. Where the former is the case, such judgments cannot credibly be regarded as creating an exception: the recognition of family life was based on an unsubstantiated or superficial analysis, falling short of

[368] Indeed, its existence has been confirmed recently in the *Martinez Alvarado* case: *Martinez Alvarado v Netherlands* (n 283), para 37.
[369] *Slivenko v Latvia* (n 270).
[370] Draghici (n 202), 43, 47-48.

the level of scrutiny the Court normally applies both under the more rigorous approach when assessing adult-adult relationships in migration cases and even under the less strict approach adopted in non-migration contexts. Where the latter is the case, the argument that no genuine exception exists is even stronger, as the factors relied upon relate to private life rather than family life. Thus, these cases represent misplaced invocations of family life and are more accurately understood under the heading of private life, as the Court was in substance engaging with private life considerations.

The view that the cases falling under the 'broader' exception cannot be regarded as a genuine exception seems to be further supported by recent ECtHR case law, where the Court, after stressing that, as a "general rule", relationships between adult relatives do not constitute family life unless additional elements of dependency are present, has held that such elements are not required in cases concerning young adults who are still living with their parents and have not yet formed their own family (the exception examined in 2.2(b)(II)).[371] Thus, although both categories arise within the settled-migrant expulsion context, only the young-adult category appears to survive as a genuine exception to the general rule. The cases falling under the so-called 'broader' exception have not been preserved as a distinct family-life exception in the Court's later reasoning;[372] rather, following *Slivenko*, they have been re-categorised under private life. Indeed, *a contrario*, had the Court considered the 'broader' exception to also constitute a genuine departure from its restrictive approach, it would have said so explicitly.

In any case, it has been noted that some scholars have been misled by this jurisprudence, in which the ECtHR, in the migration context, appeared to recognise,

---

[371] *Pormes v Netherlands* (n 352), para 47; *Savran v Denmark* (n 360), para 174.

[372] Indeed, this appears to be confirmed in the *Martinez Alvarado* case, where the Court referred only to "an exception", namely the 'narrower' one: *Martinez Alvarado v Netherlands* (n 283), para 37. See also *Kumari v Netherlands* (n 283), para 36.

without requiring the dependency threshold, the protection of relationships between adult relatives under the heading of family life, leading them into believing that the Court once embraced a broader view of family life in the migration field.[373] As Desmond observes, such confusion over the Court's definition of family life and its distinction from private life is understandable, given the recurring ambiguity that characterises its discussion in such cases.[374]

However, as outlined above and discussed further in the following section, a change occurred in *Slivenko* (the case described in Subsection 2.2(a)).[375] In this case, which concerned long-term residents (integrated aliens), the Court "refined its stance"[376] on the protection of relationships between adult relatives in the long-term-resident context, clarifying how such ties should be regarded — whether as part of family life or private life.

The re-categorisation effected in *Slivenko* (described in more detail below as treating adult ties without dependency as a matter of private life) appears to cast further doubt on the existence of the first, 'broader' exception: what previously appeared to be recognition of adult-adult family life is better understood as protection of private life rooted in long residence and social integration.

c) The shift in *Slivenko*: from "family life" to "private life"

The *Slivenko* case has been highlighted by Desmond as an illustration of the consequences of the ECtHR's approach to family and private life under Article 8 in the migration context. In his view, the judgment underlines "both the limitability of the right

[373] See Desmond (n 206), 267 fn 33, mentioning Thym, 'Respect for Private and Family Life' (n 294), 88, 90, and Thym, 'Residence as De Facto Citizenship?' (n 294), 113, as examples of this view.
[374] Desmond (n 206).
[375] *Slivenko v Latvia* (n 270).
[376] Draghici (n 202).

to respect for family life and the potential of the right to respect for private life to be deployed as a bar to deportation".[377]

With respect to the latter, the Court, by stressing that the applicants — the mother and her daughter, who was eighteen when required to leave — had been removed from a country (Latvia) where "they had developed, uninterruptedly since birth, the network of personal, social and economic relations", held that their removal "constituted an interference with their 'private life'".[378]

As to the former, it has already been shown in Section 2.2(a) that in *Slivenko* the Court reaffirmed that, in immigration cases, family life is "normally limited to the core family" and that, in order to establish family life outside this core, additional elements of dependence must be shown.[379] Yet the Court also "shifted" its focus when dealing with such adult ties to private life.[380] In particular, the Grand Chamber "refined its stance on this matter" by "explicitly" accepting that, where no additional elements of dependency are established, relationships between adult relatives cannot be relied upon as constituting family life, but "may" instead fall within the scope of private life, depending on the individuals' "degree of social integration".[381] The significance of this categorisation under private life has been questioned in the literature, a point that will be discussed in the following section.

In conclusion, following *Slivenko*,[382] the Court's predominant approach has been to assess the position of settled adult migrants under the heading of private life, unless

---

[377] Desmond (n 206).
[378] *Slivenko v Latvia* (n 270), para 96.
[379] ibid, paras 94, 97. See also *Sarközi and Mahran v Austria* (n 285), para 61; *Kwakye-Nti and Dufie v Netherlands* App no 31519/96 (ECtHR, Decision, 7 November 2000), 8-9; *Iyisan v UK* App no 7673/08 (ECtHR, Decision, 9 February 2010), 6; *A.W. Khan v UK* App no 47486/06 (ECtHR, 12 January 2010), para 32.
[380] Draghici (n 202).
[381] ibid; *Slivenko v Latvia* (n 270), para 97; *Sarközi and Mahran v Austria* (n 285), para 61.
[382] See also *Sisojeva and Others v Latvia* (n 276), para 103; *Shevanova v Latvia* (n 266), para 67.

additional elements of dependency "involving more than the normal, emotional ties"[383] are established.[384] Thus, notwithstanding the Court's statement (noted above) that the "existence or non-existence of 'family life' is essentially a question of fact depending upon the real existence in practice of close personal ties",[385] in the migration context it has 'normally' confined family life to the nuclear family.

d) Criticism of the ECtHR's approach

The restrictive approach developed by the Court with respect to family life in immigration cases has been subjected to strong criticism, both from within and outside the ECtHR.

With regard to criticism from within the Court itself, Judge Kovler's partly dissenting opinion in *Slivenko* underlined that by adopting such a narrow interpretation of family life — limited to the "core family" — the Court "departs" from the way in which it has constructed Article 8 in its jurisprudence.[386] In fact, recalling *Marckx*, Judge Kovler highlighted that the ECtHR has in its case law placed "emphasis on broader family ties". In his view, the Court in *Slivenko* failed to consider the "sociological and human aspects" of modern European families, particularly given that "the tradition of the 'extended family'" is firmly embedded in a number of Eastern and Southern European States, where it has been given recognition in their national constitutions. He concluded that family life was "plainly inconceivable for [the applicants] if they were denied the possibility of looking after [their] relatives".[387] Similarly, in his opinion in

[383] *S. and S. v UK* (n 263), 198.
[384] Milios (n 219).
[385] *K. and T. v Finland* (n 212), para 150.
[386] *Slivenko v Latvia* (n 270), Partly concurring and partly dissenting opinion of Judge Kovler.
[387] *Marckx v Belgium* (n 211); *Slivenko v Latvia* (n 270), Partly concurring and partly dissenting opinion of Judge Kovler.

Shevanova, Judge Spielmann expressed open disagreement with the Court's "unduly restrictive" conception of family life in migration cases — in contrast with its broader approach in the non-migration context — which he argued "greatly impoverishes the notion of 'family life'".[388] As will be examined below, Judge Spielmann also strongly criticised the dependency element[389] required by the ECtHR in order to extend protection under family life to adult relatives.

A broader understanding of family life has also appeared in later separate opinions. In *A.S. v Switzerland*, Judges Sajó, Vučinić and Lemmens accepted that the applicant and his adult sisters enjoyed family life, emphasising their previous effective family life in Syria, the fact that they appeared to be the only members of the family living in Switzerland, and the emotional support provided by the sisters following the applicant's traumatic experiences. Although they ultimately agreed that Article 8 had not been violated, their reasoning is significant because it treats adult sibling relationships, emotional support, and culturally different conceptions of family as relevant to the existence of family life.[390] In a related vein, in *Z.H. and R.H. v Switzerland*, Judge Nicolaou stressed that "family life" is "an autonomous Convention concept" and that its existence could not be exhausted by the formal recognition of the applicants' marriage under domestic law.[391] These opinions therefore reinforce the argument that the Court's restrictive migration-case approach is not inevitable, and that a broader, fact-sensitive understanding of family life has already been articulated within Strasbourg reasoning.

---

[388] *Shevanova v Latvia* (n 266), Partly concurring opinion of Judge Spielmann, paras 3 and 9.
[389] Partly concurring opinion of Judge Spielmann, joined by Judge Kovler, para 8, in *Kaftailova v Latvia* App no 59643/00 (ECtHR, 22 June 2006).
[390] *A.S. v Switzerland* (n 267), Joint concurring opinion of Judges Sajó, Vučinić and Lemmens.
[391] *Z.H. and R.H. v Switzerland* App no 60119/12 (ECtHR, 8 December 2015), Concurring opinion of Judge Nicolaou.

Criticism has also come from scholarship. Desmond, for instance, considers the Court's approach in the immigration context to be out of sync with the pluralist societies and cultural variation evident in European countries.[392] In a similar vein, Peroni, Askola and Draghici advance comparable criticisms.[393] Draghici, in particular, identifies a "notable gap" between societal conceptions of family in Europe and the legal definition of family life adopted by the ECtHR under Article 8 in the migration context. The Court's narrow approach in this context has been described as "a regrettable anomaly" in the ECtHR's jurisprudence: by overemphasising the nuclear family, the Court not only fails to reflect the arrangements developed by families in everyday life, but also stands in contrast — as noted above — to its own criteria for determining family life.[394]

Even outside the ECtHR context, and particularly in debates on states' family reunification policies, the view of the nuclear family as the typical model has been strongly criticised.[395] This model — widely regarded as a Western conception of family — not only excludes the diversity of family structures in which both immigrants and non-immigrants live, but also paradoxically no longer represents the reality of arrangements within contemporary Western families themselves.[396] Phenomena such as rising divorce rates, single parenting, and the recognition of same-sex relationships have contributed to what scholars describe as the "gradual dissolution" of the nuclear family model. By privileging this traditional, culturally specific model, family

[392] Desmond (n 206), 269.
[393] Peroni (n 197), 261; Heli Askola, '(No) Migrating for Family Care in Later Life: *Senchishak v Finland*, Older Parents and Family Reunification' (2016) 18 European Journal of Migration and Law 351, 371; Draghici (n 202), 43.
[394] Draghici (n 202), 43.
[395] Maria Lucinda Fonseca and Meghann Ormond, 'Defining "Family" and Bringing It Together: The Ins and Outs of Family Reunification in Portugal' in Ralph Grillo (ed), *The family in Question. Immigrant and Ethnic Minorities in Multicultural Europe* (Amsterdam University Press 2008); Kofman (n 1).
[396] Fonseca and Ormond (n 395).

reunification provisions risk discriminating against non-nuclear and non-Western family forms, and may in practice operate to keep families apart.[397]

Returning to critiques directed specifically at the ECtHR, Desmond argues that the inconsistent and "invidious" application of the concept of family — resulting in differential treatment between migrants and non-migrants — risks undermining the protective potential of Article 8 and may amount to a violation of the non-discrimination principle under Article 14 ECHR.[398] This inconsistency in the application of the concept of family life is particularly apparent when comparing the Court's treatment of the same adult relationships across contexts. Given the limited case law on adult relatives, the contrast between *Pla and Puncernau v Andorra* (a succession case in the non-migration context) and *Slivenko v Latvia* (an expulsion case in the migration context) is particularly instructive of the divergent approaches taken.[399] In *Pla*, the Court considered succession rights between near relatives — including grandparents and grandchildren — to be "intimately connected with family life",[400] notwithstanding the absence of any real personal relationship between the individuals concerned. Thus, in the non-migration context, the Court has been prepared to treat ties between adult relatives (in that case a grandmother and her grandson) as falling within family life without requiring dependency. By contrast, in *Slivenko* the Court refused to accept that the relationship between an adult granddaughter and her grandparents fell within family life unless additional dependency was demonstrated.[401] From this comparison, the inconsistency is stark: in the non-migration context of succession and private law,

[397] ibid. See also Nora V. Demleitner, 'How Much Do Western Democracies Value Family and Marriage?: Immigration Law's Conflicted Answers' (2003) 32(1) Hofstra Law Review 273.
[398] Desmond (n 206).
[399] *Pla and Puncernau v Andorra* (n 239); *Slivenko v Latvia* (n 270).
[400] *Pla and Puncernau v Andorra* (n 239), para 26.
[401] *Slivenko v Latvia* (n 270), para 97.

formal kinship suffices, whereas in the migration context additional dependency is demanded.

This variable treatment of adult family ties across migration and non-migration contexts might, in principle, be defended by reference to the margin of appreciation, a doctrine through which the Court affords national authorities a wider or narrower margin of discretion depending, among other factors, on the importance it attributes to the relationship concerned.[402] However, such a justification appears particularly unconvincing in the migration context. As Gerards has shown, the Court's application of the margin of appreciation is often inconsistent and lacks clear standards and, in many cases, operates as little more than a rhetorical device, with limited influence on the intensity or outcome of the proportionality analysis.[403] This limited and inconsistent application of the margin of appreciation is particularly evident in the Court's migration jurisprudence, where distinctions between family relationships are drawn in 'opaque' and culturally biased ways.

In addition, Desmond argues that by resolving the "tension between states' obligations to protect migrants' human rights and states' sovereign right to control immigration in favour of the latter", the Court reveals a dehumanising conception of migrants as "aliens subject to state control", rather than as individuals entitled to protection under the Convention.[404]

In a complementary critique, Peroni approaches the issue from a cultural perspective. She highlights that the Court's restrictive and culturally specific conception of the nuclear family privileges a particular cultural viewpoint — namely, the Western one, or

[402] See Janneke Gerards, 'Margin of Appreciation and Incrementalism in the Case Law of the European Court of Human Rights' (2018) 18(3) Human Rights Law Review 495.
[403] ibid.
[404] Desmond (n 206).

more precisely, as Honohan suggests,[405] that of Northern European cultures rather than all Western countries — thereby disadvantaging family lifestyles that do not conform to this narrow, nuclear model.[406] This approach, she argues, carries "negative egalitarian implications", as those lifestyles that fall outside the dominant model are either denied recognition and protection, or are "required to conform" to a model they may perceive as "entirely alien".[407]

Thus, according to Desmond, the Court's jurisprudence may not only discriminate between migrants and non-migrants, but also among migrants themselves, based on their socio-cultural background.[408]

This 'cultural-bias' critique — which implies that the Court tends to prioritise a culturally specific idea of family to the detriment of others — also finds confirmation in case law. In *Sisojeva*, the applicants "explicitly advance[d] their claims on a cultural basis",[409] emphasising that they belonged to the Udmurt ethnic group, for whom the bond between grandchildren and grandparents "was traditionally very close".[410] The Court, however, "simply overlook[ed] this aspect" and focused instead on the relationships between parents and their children and between siblings, concluding that family life did not exist as the applicants and the family's elder daughter were all adults.[411] Only Judge Kovler, in his partly dissenting opinion, gave weight to the cultural dimension of their claim, emphasising that applicants of Udmurt origin "traditionally have much

[405] Honohan (n 201).
[406] Peroni (n 197).
[407] ibid.
[408] Desmond (n 206).
[409] Peroni (n 197). See also *Konstantinov v Netherlands* (n 266), para 39; *Lakatoš v Czech Republic* App no 42052/98 (ECtHR, Decision, 23 October 2001), 5. In the latter case the applicant — during the domestic judicial proceedings — after underlining that he belongs to the Roma minority which is known to "live by tradition in larger families" compared to non-Roma people, highlighted that Roma people "maintain very close emotional, and very often also financial, relations with distant relatives, i.e. with uncles, aunts […]."
[410] *Sisojeva and Others v Latvia* (n 276), para 59.
[411] Peroni (n 197); *Sisojeva and Others v Latvia* (n 276), para 103.

stronger family ties between parents and adult children than is appreciated in western Europe".[412] A similar pattern occurred in *Senchishak v Finland* — a case discussed in depth below — where the applicant argued that, in Russian culture, grandparents were regarded as family members requiring protection and that adult children bore responsibility for their care, with the consequence that if one of the children was alive, it would have been impossible for the parent to obtain a place in an elderly care institution in Russia.[413] This cultural argument was likewise disregarded by the majority. In dissent, however, Judges Bianku and Kalaydjieva stressed that the majority had applied a narrow conception of family life, one which overlooked cultural variation and, in this case, worked to the applicant's disadvantage as an irregular migrant.[414] They observed that the notion of "core family" and the degree of emotional ties between parents and separated adult children vary significantly across European cultures and traditions and even among individuals within the same society.[415] This variation in interpretation of the term family therefore confirms scholarly arguments that a broader definition of family is required.[416]

Beyond reflecting cultural bias, the Court's restrictive conception of family produces tangible procedural effects. As Draghici notes, because family life is limited to the nuclear family and a high threshold of dependency (as will be discussed in 2.2(e)(II)) is imposed on adult relatives, claims brought by parents and adult children are dismissed at the admissibility stage. As a result, no examination is undertaken into

---

412 *Sisojeva and Others v Latvia* (n 276), Partly dissenting opinion of Judge Kovler; Peroni (n 197).
413 *Senchishak v Finland* (n 190), para 53.
414 *Senchishak v Finland* (n 190), Dissenting opinion of Judges Bianku and Kalaydjieva; Desmond (n 206).
415 *Senchishak v Finland* (n 190), Dissenting opinion of Judges Bianku and Kalaydjieva.
416 Georgios Milios, 'The Immigrants' and Refugees' Right to "Family Life": How Relevant are the Principles Applied by the European Court of Human Rights?' (2018) 25(3) International Journal on Minority and Group Rights 401.

whether state measures interfering with the normal development of such relationships are justified, thereby excluding them from judicial scrutiny.[417]

All the aforementioned criticisms support the conclusion that the Court's narrow approach fails to take account of the lived reality of many families across different countries and cultures, in which particular importance is often attached to individuals outside the nuclear family. In doing so, one particular conception of family life — rooted largely in Western traditions — is given priority over others. Accordingly, this work argues, in line with existing scholarship, that in the immigration context, the Court should adopt a broader definition of family that encompasses relationships between adult relatives. The final chapter will make explicit the normative argument underpinning this conclusion and propose a possible way forward for how the Court should reinterpret Article 8 in migration cases so as to provide more coherent and culturally sensitive protection to adult-adult family relationships.

Some scholars observe that, although the Court has stated that its narrow definition of family life applies in immigration cases,[418] it has not confined this approach to that context.[419] They point to *Emonet and Others v Switzerland*, concerning the adoption of a disabled adult child by her mother's partner.[420] In that case, the Court reaffirmed that "the relationships between parents and adult children do not fall within the protective scope of Article 8 unless 'additional factors of dependence, other than normal emotional ties, are shown to exist'", and found that such factors were present owing to the adult child's disability.[421]

---

[417] Draghici (n 202).
[418] See, e.g., *Slivenko v Latvia* (n 270), para 94; *Iyisan v UK* (n 379), 6.
[419] Peroni (n 197), 252; Desmond (n 206), 266 fn 28.
[420] ibid; *Emonet and Others v Switzerland* App no 39051/03 (ECtHR, 13 December 2007).
[421] *Emonet and Others v Switzerland* (n 420), paras 35 and 37.

A possible objection to the guiding thread of this work is that, although the Court has applied a broader definition of family in non-migration contexts, there are nevertheless cases where it has adopted a narrow definition even outside the migration field. According to this hypothetical objection, since the restrictive approach has also been applied beyond immigration, it cannot be explained as reflecting the tension between state sovereignty and the protection of migrants' human rights, nor as implying that migrants enjoy a weaker level of human rights protection than nationals. It might be further objected that even a single instance demonstrates that the Court does not regard the restrictive definition as confined to migration. Yet the rarity of such cases, and the fact that in *Emonet*,[422] as shown further below, the Court recognised protection under Article 8 rather than denying it, suggests that this cannot be taken as evidence of a consistent restrictive jurisprudential trend outside migration. Moreover, apart from *Emonet*[423] — on which further reflections follow — the other cases cited by scholars in support of the view that the restrictive definition is not confined to migration do not, as they themselves acknowledge, involve a genuine application of it, but at most an implicit reference.[424] Thus, this work argues that the Court's reliance on the narrow definition outside migration is very exceptional, if not virtually absent.

With regard to *Emonet* itself,[425] it remains unclear why the Court applied the narrow approach. One explanation may be linked to the high threshold (analysed in 2.2(e)(II)) for establishing dependency under this definition, which has meant that the Court has rarely found it satisfied. In *Emonet*, the disability of one of the applicants enabled the

[422] *Emonet and Others v Switzerland* (n 420).
[423] ibid.
[424] Peroni (n 197), 252-253, citing, e.g., *P.K., M.K. and B.K. v UK* App no 19085/91 (Commission Decision, 9 December 1992); *McCotter v UK* App no 18632/91 (Commission Decision, 9 December 1992); *Kinsella and Mulvaney v UK* App no 19200/91 (Commission Decision, 1 September 1993); *McCombe v UK* App no 19785/92 (Commission Decision, 1 September 1993).
[425] *Emonet and Others v Switzerland* (n 420).

Court to conclude that the requirement was met. The Court may therefore have seized a rare occasion to illustrate when the dependency criterion can in fact be fulfilled, without regard to the context (migration or non-migration). The judgment may thus reflect an unusual opportunity for the Court to demonstrate the operation of the dependency criterion, rather than an attempt to extend the narrow definition beyond migration cases. Accordingly, *Emonet* cannot convincingly be regarded as evidence that the Court has extended the narrow definition beyond the migration context. Stronger grounds for that objection would exist if the Court had applied the restrictive definition in a non-migration case but concluded — contrary to what happened in the case at hand — that the dependency requirement was not met. In that scenario, one could legitimately question why the Court had applied in a non-migration case a principle normally confined to migration, and underline that consistency with its non-migration case law would undoubtedly have required including the relationships involved under the heading of family life. Since the Court instead recognised the existence of family life under Article 8, the reliance on the narrow definition in *Emonet* cannot, by itself, substantiate the claim that the restrictive approach has been extended beyond the migration field.

This clarification is important because it confirms that the restrictive definition of family life has been applied almost exclusively in the migration field, reinforcing the argument developed in this work that its origins are to be found in the tension between state sovereignty and migrants' rights.[426]

[426] See Section 2.3.

The next issue to be considered is the Court's further practice of classifying adult relatives' ties under the heading of private life rather than family life, a shift that has also attracted substantial criticism.

Draghici argues that the Court's categorisation of adult-relative ties as part of private life is essentially redundant.[427] In cases such as *Slivenko* and *Shevanova*, the applicants were already long-term residents with extensive private-life ties (for example, long residence, education, and social integration), so their private life was established independently of family relationships. On this basis, recognising adult-relative ties as an additional element of private life contributes little to the analysis and plays only a marginal role in proportionality; in practice, such ties are treated as private life only where private life is "already amply demonstrated" on other grounds, "such as length of residence and education in the host country".[428]

While Draghici critiques this categorisation as "superfluous" — since adult-relative ties are treated as part of private life only where private life has already been amply established on other grounds —[429] this work argues that the problem runs deeper. Indeed, recognising such ties under private life risks depriving them of effective protection. As underlined above, what matters for the concept of private life to be established is the strength and length of the social ties that a settled migrant has with the host country. In other words, private life is protected only after a certain period of time and becomes increasingly relevant the longer the individual concerned has lived in that country and developed "personal, social, and economic relations" there.[430] Thus, it is clear that the focus in the Strasbourg Court's reasoning is on whether the applicant is settled, and this status is demonstrated by various factors such as those

[427] Draghici (n 202), 48.
[428] *Slivenko v Latvia* (n 270); *Shevanova v Latvia* (n 266); Draghici (n 202), 48.
[429] Draghici (n 202), 48.
[430] Thym, 'Respect for Private and Family Life' (n 294); *Slivenko v Latvia* (n 270), para 96.

outlined above. Consequently, the decision of whether private life exists attaches no real weight to the relationships that the applicant has or may have with their adult relatives. Indeed, the lack of importance attributed to these relationships can be demonstrated by addressing two questions.

First, could private life be recognised where a settled applicant has no relationships with adult relatives in the host country? The answer is yes: residence and integration suffice without those family bonds, with the result that the relationships between adult relatives are neither essential nor relevant to that finding in the Court's reasoning.

Second, could private life be recognised where a migrant has strong bonds with adult relatives in the host country but has not resided there for a sufficient period to be considered settled? The Court's jurisprudential approach makes clear that the answer is no: in the absence of social integration, such bonds fall outside the scope of private life. Thus, where private life cannot be independently established, relationships with adult relatives will not be taken into account and, even though they exist, they will not be protected as long as the ECtHR adheres to its criterion of examining them under the private life heading.

The same conclusion applies where the applicant's legal status in this second scenario has not been regularised and they are aware of their insecure situation in the host country. In dissent, Judges Bianku and Kalaydjieva observed that such awareness may be relevant in determining whether an applicant can be regarded as a settled migrant for the purpose of establishing private life in the host country.[431] If settlement is denied on this basis, private life cannot be established and, as a result, adult-relative ties — which would otherwise be classified under that heading if integration were demonstrated — would once again be deprived of protection. However, as those

[431] Dissenting opinion of Judges Bianku and Kalaydjieva in *Senchishak v Finland* (n 190).

judges rightly emphasised, awareness of irregular status should not erase the existence of emotional ties between adult relatives,[432] thereby underscoring the flaws in the Court's majority categorisation under private life, even in this context.

Moreover, in cases of family reunification where adult relatives remain in the country of origin, such relationships cannot logically be invoked under the heading of private life. A compelling reason for this conclusion is that the notion of private life refers to ties developed within the host country, whereas these relationships are maintained across borders. The result, once more, is that no real relevance or protection is attributed to them when considered under the private-life heading.

Taken together with the two scenarios discussed above, these considerations suggest that adult-relative ties carry little, if any, independent weight in the Court's analysis when assessed under the private-life heading. Where private life is otherwise established, such ties appear to add no real independent significance. Where integration-based private-life elements are absent, adult-relative ties do not appear capable, on their own, of establishing private life. In situations of irregular status or cross-border family reunification, the private-life route offers little or no effective protection. Accordingly, under the Court's current approach, adult-relative ties appear to be deprived of genuine and effective protection when assessed under the private-life heading. This analysis therefore stands in direct contrast to the position advanced by Thym, who argues that the restrictive 'redefinition' of family life (following *Slivenko*) "does not translate into a restriction of human rights protection", since it has been accompanied by the autonomous protection of broader social ties falling within the sphere of private life, not explicitly recognised by the Strasbourg Court until then.[433] In fact, the analysis undertaken here demonstrates that the restrictive definition of family,

[432] ibid.
[433] Thym, 'Respect for Private and Family Life' (n 294), 92-93.

coupled with the shift from family life to private life, clearly falls short of providing adequate protection to the relationships between adult relatives in the migration context.

A different form of defence is offered by Lambert, who approaches the issue from a sociological rather than a legal perspective. She contends that the shift reflects contemporary social realities, at least in Western countries, where family is no longer the primary focus of people's lives and friendships may be considered "the new family".[434] Such reasoning, however, rests on a Western-centric assumption and provides no legitimate legal basis for the Court's exclusion of adult relatives in migration cases, especially in light of the cultural diversity of the Council of Europe's Member States.

Related, to a certain extent, to the last scenario concerning cross-border family reunification is what Draghici terms a "bizarre inequity": the Court's "preferential" treatment of second-generation migrants facing deportation compared to naturalised citizens seeking admission for a parent in need of care but who resides abroad.[435] Whereas the former, even though convicted of offences, have been able to invoke adult-relative ties to avoid expulsion, the latter, despite being law-abiding, have not seen the ECtHR take account of the social ties they would lose in their adoptive country if required to relocate in order to care for an elderly parent. From the standpoint of private life, Draghici argues that naturalised citizens would ultimately lose as much as second-generation migrants if obliged to leave the host state to provide such care. Moreover, this double standard suggests that adult-family bonds with one's original family are treated as severed solely because of border-crossing.[436]

---

[434] Lambert (n 85); Honohan (n 201).
[435] Draghici (n 202), 48.
[436] ibid, 48-49.

However, these two categories of individuals cannot be compared in the manner suggested by Draghici, because the frame of reference for the comparison is different. In the case of second-generation migrants, those individuals avoided removal by invoking family life with adult relatives in the host country. Yet, as demonstrated in Subsections 2.2(b)(I) and (III), the Court's reasoning in such cases was not based on genuine recognition of adult-relative ties but on factors more properly belonging to private life. Thus, what was formally invoked was family life, but in substance, the Court was engaging with private-life considerations.

For naturalised citizens, by contrast, the Court applies the restrictive definition of family life. As a general principle, unless dependency on adult relatives can be established, such ties are relegated to private life,[437] which becomes the 'default' frame of analysis. In this specific context, however, where no dependency exists, these relationships cannot logically fall under private life either, since this heading relates to ties developed in the host state, whereas the relatives concerned reside abroad. Thus, in this situation, the bonds occupy a peculiar position: either dependency is shown, or they are excluded from protection altogether. Accordingly, although Draghici is correct to observe that naturalised citizens risk losing as much as second-generation migrants when required to leave the host state to care for parents, the difficulty with her assertion is that it conflates two categories in which adult-relative ties were protected under different headings. Her further point — that crossing a border results in the severance of adult-family bonds — is not only persuasive but also applies more broadly: it reflects the Court's general approach to adult-relative ties in migration cases, and is therefore not confined to naturalised citizens. As examined above, in the migration context, additional elements are required for family life to be recognised. This stands in sharp

[437] *Slivenko v Latvia* (n 270), para 97; *Sarközi and Mahran v Austria* (n 285), para 61.

contrast to the broader conception of family applied in the non-migration context, where such ties are more readily accepted. The underlying reason appears to be that the Court — wrongly — treats "family life" differently depending on whether it is lived within one state's borders or across them: adult ties are recognised when internal, but heavily restricted once they cross a frontier.

To conclude, these strands of criticism reveal a consistent pattern: the Court's restrictive conception of family life in migration cases not only diverges from its broader approach in non-migration contexts but also reflects a culturally specific and Western-centric vision of the family. By reducing protection to the nuclear unit, imposing a high threshold of dependency when adult relatives are concerned,[438] and shifting such ties into the private-life category where they carry almost no independent weight, the Court deprives many genuine adult-family relationships of effective recognition under Article 8, precisely in those situations where state interference is most acute. The consequences of this approach are not merely conceptual: by excluding adult relatives from family life at the admissibility stage, the Court prevents any judicial scrutiny of state measures that interfere with such bonds. Moreover, the assumption that protection under private life suffices is unfounded. A critique must also be directed at those scholars who contend that the distinction between family and private life is purely academic, since both are formally protected under Article 8.[439] This reasoning overlooks the fact that, in practice, the two headings do not receive equal protection. Adult-relative ties have not been afforded real and effective protection under the private-life limb, with the result that recognising their protection under one heading or the other is far from an academic question. Crucially, the two headings are activated

[438] See Section 2.2(e).
[439] Milios, 'The Right to Family and Private Life' (n 219), 148.

under different conditions: private life is protected only after a certain period of residence and becomes increasingly relevant the longer the individual remains in the host state and develops "personal, social, and economic" ties there, whereas family life is protected irrespective of its duration.[440] The regrettable consequence of the Court's shift is therefore that the protection of adult-relative bonds becomes contingent upon the passage of time, with the result that such ties may fall outside the scope of protection altogether where only a short period of residence has elapsed.

Accordingly, the Court's narrow approach fails to safeguard 'actual' family life, namely the enduring bonds between adult relatives that persist and carry social meaning across cultures. In light of the criticisms developed above, this work argues that such relationships should be recognised *per se* and not only exceptionally when additional elements of dependency are demonstrated — elements which, moreover, the Court rarely considers satisfied in practice.[441] These relationships ought to fall under the heading of family life, as they are in non-migration contexts, rather than being relegated to the 'precarious' and ineffective category of private life. The foregoing discussion underscores the need for a broader, more inclusive conception of family life in the migration context — a claim that will be substantiated in the normative framework advanced in the final chapter.

A further line of criticism concerns the Court's highly restrictive interpretation of the dependency requirement, which serves as the decisive condition for extending family-life protection to adult relatives in the migration context. The following section therefore will consider both the substance of the requirement — when the Court has found it to be met — and the critiques that have been directed against it.

---

[440] Thym, 'Respect for Private and Family Life' (n 294), 93; *Slivenko v Latvia* (n 270), para 96.
[441] See Section 2.2(e)(II).

e) Dependency

I. From a narrow lens to a multi-factor, yet still restrictive, test

As has already been noted on several occasions, according to the Court's approach, relationships between adult relatives fall under the family-life limb only where "additional factors of dependence, other than normal emotional ties are shown to exist".[442] The dependency requirement applies not only when an adult child seeks to invoke ties with their parents, but also in the reverse scenario — as illustrated in *Senchishak v Finland* — where parents seek to rely on their bonds with an adult child to obtain protection under Article 8.[443]

Earlier case law often gave the impression that the Court's dependency analysis revolved primarily around two axes: "financial" dependence[444] and "material" dependence, the latter possibly encompassing situations of "giving or receiving health care".[445] Thus, for instance, in *Kwakye-Nti and Dufie v Netherlands*, the Court declared the application manifestly ill-founded, noting that the adult children were not financially reliant on their parents and the younger son had been continuously cared for by other relatives, thereby excluding both forms of dependency.[446] At times, the Court's treatment of the dependency requirement has also been vague. For example, in *Sarközi and Mahran v Austria*, the Court, while alluding to a narrow view, gave no substantive guidance as to what the "particular dependency" requirement entails, simply holding that family life could not be considered to exist where the adults involved "ha[ve] not substantiated any particular dependency" between them.[447]

---

[442] See, e.g., *Slivenko v Latvia* (n 270), para 97; *Emonet and Others v Switzerland* (n 420), paras 35; *Sarközi and Mahran v Austria* (n 285), para 61; *Martinez Alvarado v Netherlands* (n 283), para 36.
[443] Milios, 'The Right to Family and Private Life' (n 219); *Senchishak v Finland* (n 190).
[444] E.g., *S. and S. v UK* (n 263).
[445] Peroni (n 197); *A.W. Khan v UK* (n 379).
[446] *Kwakye-Nti and Dufie v Netherlands* (n 379), 9.
[447] Draghici (n 202); *Sarközi and Mahran v Austria* (n 285), para 66.

More recent judgments,[448] however, clarify that whether "additional elements of dependency" exist must be determined on "a case-by-case basis", with findings often reflecting a "combination of elements" rather than a single factor. Serious illness or disability requiring continuous or daily care remains central, whereas less incapacitating conditions — such as asthma, diabetes or paranoid schizophrenia not amounting to incapacitation, as in *Savran*[449] — have been found insufficient to establish dependency. Financial support may contribute but has "never" been considered sufficient on its own to establish an additional dependency link; at most, it reinforces other forms of reliance. The Court has further observed that financial assistance can be "provided from a distance",[450] suggesting that co-residence or physical proximity is not invariably decisive in the dependency assessment. Situational features — including the availability of alternative carers, the persistence of substantial ties with the country of origin, or the fact that the person concerned is the only surviving relative — may also weigh in the assessment.[451] In sum, dependency requires an "individualised review" of the relationship and the wider context in which it operates.[452] While the Court now presents dependency as a case-by-case inquiry combining multiple elements — illness or disability, financial support, living arrangements, availability of alternative carers, and the wider relational context — the threshold remains very high. The following analysis shows how this ostensibly multi-factor approach has, in practice, been applied restrictively.

[448] *Martinez Alvarado v Netherlands* (n 283), paras 38-44. See also *Kumari v Netherlands* (n 283), paras 37-43.
[449] *Savran v Denmark* (n 360).
[450] *Martinez Alvarado v Netherlands* (n 283), paras 38-42. See also *Kumari v Netherlands* (n 283), paras 37-41.
[451] *Martinez Alvarado v Netherlands* (n 283), para 43. See also *Kumari v Netherlands* (n 283), para 42.
[452] *Martinez Alvarado v Netherlands* (n 283), para 44. See also *Kumari v Netherlands* (n 283), para 43.

II. The restrictive practice: denials and exceptional recognitions

This restrictive application is evident in the Court's frequent refusal to recognise alleged dependency ties between adult relatives.[453] By contrast, family life has been acknowledged only in a small number of cases, and even then only in circumstances of severe incapacity. The following analysis examines both strands — denials and exceptional recognitions — showing that recognition has been confined to such stringent conditions, thereby underscoring the narrowness of the dependency test.

The pattern of denials can be seen clearly in *A.W. Khan v UK*, where the Court found no family life between the 34-year-old applicant — a settled migrant who had recognised his girlfriend's baby as his daughter but with whom he did not cohabit — and his mother and brothers, despite acknowledging that their "relationship clearly entails an additional degree of dependence" arising from the parties' "relative ill-health".[454] The Court emphasised that, although the applicant resided with them and they suffered from various health issues, these factors did not constitute "a sufficient degree of dependence to result in the existence of family life". It further noted that Mr. Khan was not necessarily the sole carer for his relatives, given that he had three married sisters, and that the health problems in question were not "so severe as to entirely incapacitate" his family members.[455] This case has been read as the "obvious corollary" to the Court's approach in *Maslov* (discussed above in 2.2(b)(II)).[456] In fact, the Court's reasoning in *A.W. Khan* signals that, where expulsion is at stake, young adult applicants who have already formed their own family must demonstrate

[453] Peroni (n 197).
[454] *A.W. Khan v UK* (n 379), paras 32 and 43.
[455] ibid, para 32.
[456] Desmond (n 206); *Maslov v Austria* (n 205), para 62.

"additional elements of dependency" if they wish to have their relationships with parents or adult siblings recognised as family life.[457]

A more recent illustration of the Court's restrictive interpretation of dependency is *Savran v Denmark*, where the Grand Chamber found that family life did not exist between the young adult applicant and his mother and siblings, on the basis that their relationships only involved "normal ties of affection". While recognising that he suffered from paranoid schizophrenia, it held that this condition, though serious, did not "incapacitate him to the extent that he was compelled to rely on [his family members'] care and support in his daily life". The Court also noted that no claim had been made that the applicant was financially dependent on them.[458]

Judge Jelić, while concurring in the outcome, criticised the Court for neglecting the family-life dimension. She argued that the Court failed to consider "the specific meaning of the family in respect of vulnerable persons", thereby disregarding the applicant's particular vulnerability and departing from universal human rights case law, including that of the UN Human Rights Committee. In Judge Jelić's view, vulnerability — in this case, serious illness and the need for special care from a young age — has two consequences: first, the inability to "establish [one's own] family", with an "impact on the meaning of the right to respect for family life"; and second, a reliance on "only existing family members" — here, "his mother, siblings and niece and nephew". Indeed, Judge Jelić noted that when an individual is vulnerable, emotional ties with parents may be even stronger than in circumstances not marked by vulnerability. The applicant's particular situation — his serious illness, lack of family or private ties with

---

[457] Desmond (n 206).

[458] *Savran v Denmark* (n 360), para 178. See also *Kumari*, where the Court reached a similar conclusion, finding that neither the applicant's dependence on her adult son — linked to her own health issues — nor his dependence on her — linked to his post-traumatic stress disorder — met the threshold of "additional elements of dependency": *Kumari v Netherlands* (n 283), paras 47, 49 and 54.

the country of origin, inability to speak its language, and exclusive family and private ties to the host country — led Judge Jelić to conclude that he was dependent on those family members whom he perceived as family and who, in turn, regarded him as such.[459] Thus, recalling the UN Human Rights Committee's "broad interpretation" of family, which encompasses "all those comprising the family as understood in the society of the State party concerned", and its case law recognising parents and other close relatives as family, Judge Jelić argued that, where vulnerable individuals are involved, the "extended" definition of family and family life should be applied.[460]

Her concurring opinion is notable for suggesting a broader framework. Instead of relying solely on illness as a trigger for recognition of family life, she developed the concept of "vulnerability",[461] which, in *Savran*, she applied to the situation of a settled migrant. This encompassed not only serious illness but also the inability to establish one's own family and the absence of ties with the country of origin.[462] The outcome of this approach, in terms of recognising adult family ties for settled migrants, seems to resonate with aspects of the Court's pre-*Slivenko* jurisprudence, where second-generation migrants resisting expulsion successfully invoked family life with their parents or adult siblings. The analogy here is with the older, integration-based pre-*Slivenko* line of cases, not the narrower surviving exception for young adults who have not yet established an independent family of their own. As discussed in Subsections 2.2(b)(I) and (III), those cases were in reality linked to private-life considerations and did not constitute a genuine exception to the restrictive definition of family life in

[459] *Savran v Denmark* (n 360), Concurring opinion of Judge Jelić, paras 1 and 3-5.
[460] ibid, paras 4 and 7; UN Human Rights Committee, 'CCPR General Comment No 16: Article 17 (Right to Privacy). The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation' (8 April 1988) <https://www.refworld.org/docid/453883f922.html> accessed 4 March 2022, para 5; *Dauphin v Canada* (n 362).
[461] *Savran v Denmark* (n 360), Concurring opinion of Judge Jelić.
[462] ibid, para 5.

migration cases. Judge Jelić's opinion — particularly her reliance on factors such as settled status, absence of ties with the country of origin, and close family bonds in the host state —[463] can therefore be read as partially echoing that earlier line of reasoning and thus as pointing towards more favourable treatment for second-generation migrants, although it must be stressed that she did not explicitly frame it in such terms. Her approach, however, added an emphasis (absent in pre-*Slivenko* case law) on serious illness and the inability to form one's own family — criteria which, though already present in the Court's jurisprudence, have only exceptionally led to recognition of dependency between adult relatives. In relation to serious illness, this will be discussed further below; the 'young adult without their own family' criterion has already been analysed in Subsection 2.2(b)(II).

Judge Jelić's concurring opinion is therefore valuable in that it seeks to broaden the notion of family life through the lens of vulnerability, moving beyond the Court's narrow dependency test. Her approach captures important dimensions of migrant experience, such as serious illness, the inability to form one's own family, and the absence of ties with the country of origin. Yet precisely because it continues to hinge on these exceptional factors — already present, though rarely applied, in the Court's case law — her framework risks reinforcing rather than overcoming the exceptionalism that characterises the Court's recognition of family life between adult relatives.

A further criticism can be made of the Grand Chamber's reasoning in *Savran*. Both this case and *A.W. Khan*[464] reflect the Court's consistently highly restrictive approach to dependency in the migration context, an approach that has been reaffirmed in its most recent case law. As examined further below, dependency has generally been recognised only where an individual suffers from a physical or mental condition of such

[463] ibid.
[464] *A.W. Khan v UK* (n 379).

seriousness that it incapacitates them to the extent that they require constant or daily care and support to cope with everyday life.[465]

Yet the two cases are not identical. While both applicants were settled migrants, in *A.W. Khan* the applicant had a girlfriend and a daughter and had thus formed a nuclear family, albeit without cohabiting with them.[466] In *Savran*, by contrast, the applicant was a young adult suffering from a serious mental illness who had not established a family of his own.[467] In this context, the Grand Chamber's refusal to apply the 'young adult without a family of his own' exception (examined in 2.2.(b)(II)) appears overly formalistic. As discussed above, the Court has clarified that this exception in expulsion cases applies only where the individual is still living with their parents (a requirement whose validity as a decisive criterion has already been questioned). In *Savran*, however, the applicant's lack of cohabitation was not the result of personal choice or independence but stemmed from long-term institutional care necessitated by his illness.[468] Applying the cohabitation condition rigidly in such circumstances penalises vulnerability. As Judge Jelić emphasised, vulnerability of this kind should not weaken but, if anything, reinforce family bonds,[469] with the consequence that family life ought to be more readily acknowledged rather than denied.

The case cited as the "most conspicuous illustration" of the Court's restrictive approach to dependency is *Senchishak v Finland*.[470] The applicant, an elderly Russian national who had suffered a stroke that left her right side paralysed, applied for a residence permit in order to remain in Finland with her daughter, a naturalised Finnish citizen

[465] *Kumari v Netherlands* (n 283), paras 38 and 51; *Martinez Alvarado v Netherlands* (n 283), paras 39 and 50.
[466] *A.W. Khan v UK* (n 379).
[467] *Savran v Denmark* (n 360).
[468] ibid, paras 18, 24, 26 and 42-44.
[469] ibid, Concurring opinion of Judge Jelić, paras 3-4.
[470] Draghici (n 202); *Senchishak v Finland* (n 190).

resident there since 1988. Her husband had died, one daughter was missing and presumed dead, and for about five years she lived with and was cared for by her Finnish-based daughter, pending removal proceedings. The Court reaffirmed that relationships between parents and adult children fall outside the scope of "family life" unless "additional factors of dependence, other than normal emotional ties" are proved to exist. By a majority, it declared inadmissible her complaint under Article 8, reasoning that her family life with her daughter had been punctuated by a gap of at least twenty years, and that her five years in Finland with her daughter did not constitute "family life" since she had overstayed a tourist visa and was fully aware of her insecure status in the country.[471]

On the dependency requirement, the Court found that although the applicant suffered from health issues, she was not "necessarily dependent on her daughter" nor was care in Finland "the only option". Indeed, it noted that the applicant could receive care from public or private institutions in Russia or "hire external help", and that her daughter could support her financially or otherwise from Finland, given the geographic proximity. The Court therefore concluded that no "additional factors of dependence other than normal ties of affection" were present between the applicant and her daughter, with the result that no "family life" existed between the two.[472]

This reasoning has been strongly criticised. Draghici argues that the Court failed to explain why "age, disability, effective bonds, and co-residence" were insufficient to attract Article 8 protection, particularly given that the applicant had no other relatives in Russia able to provide the necessary care. Therefore, she considers the Court's approach excessively "dismissive" of the family bonds inherent in situations concerning

[471] *Senchishak v Finland* (n 190), paras 1, 7-8, 14, 55-56 and 58.
[472] ibid, para 57.

the care of elderly parents by their adult children.[473] Askola echoes this critique, emphasising that the Court ignored both the expectation of care parents place on adult children and the lived reality of transnational families. She argues that the judgment entrenches a rule whereby family life between parents and adult children ceases once the children reach majority, and certainly upon emigration, since geographic distance is treated as almost irreparably severing those bonds save in "unusual circumstances" involving "one-way dependence" (i.e. where the parent is entirely reliant on the adult child). As Askola notes, however, the Court in *Senchishak* treated this as requiring that parents remaining in their country of origin are expected to rely on institutional or private care in that country before a link of dependency with emigrated children can be recognised.[474]

Critics further highlight the Court's uncritical acceptance of the Finnish Government's position that the care provided by the applicant's daughter was "interchangeable" with state or private care in Russia.[475] Such an assumption is "highly partial", since even in those instances where the welfare state is highly developed, state and private institutions cannot substitute for the personal and emotional dimensions of family care.[476]

Empirical studies reinforce the critique of this conflation of family caregiving with institutional or external alternatives, underlining both the fundamental importance of family members in supporting ill individuals and the negative impact of their absence, particularly in situations of prolonged isolation in hospitals or care homes.[477] For

[473] Draghici (n 202), 45-46.
[474] Askola (n 393), 362-361.
[475] ibid, 366.
[476] ibid; Jane Lewis and Susanna Giullari, 'The adult worker model family, gender equality and care: the search for new policy principles and the possibilities and problems of a capabilities approach' (2005) 34(1) Economy and Society 76.
[477] See, e.g., Myra Piat, Judith Sabetti, Marie-Joséé Fleury, Richard Boyer and Alain Lesage, '"Who Believes Most in Me and in My Recovery": The Importance of Families for Persons With Serious Mental Illness Living in Structured Community Housing' (2011) 10(1) Journal of Social Work in Disability &

example, research on individuals with serious mental illness in structured community housing found that most regarded “family as their primary source of strength” and “crucial to their recovery”, even though they were living apart from relatives due to family burden, conflict, or difficulties in living independently.[478] These findings show that family members continue to play a vital role in supporting individuals with serious illness even where co-residence is not possible, demonstrating that the availability of institutional alternatives does not negate, nor diminish, familial dependence — a point overlooked in the Court’s reasoning.

The Covid-19 pandemic further highlighted this reality, as restrictions on hospital and care-home visits deprived patients of familial contact, with severe emotional consequences that generated widespread public debate about the indispensable role of family members in care. What, therefore, emerges consistently is the central role of family in sustaining those who are ill, a dimension disregarded by the Court’s dependency analysis, which equates institutional options with care provided by relatives.

Beyond the qualitative dimension, institutional care is often not a realistic alternative. Public facilities may involve lengthy waiting times, while private institutions can impose prohibitive financial burdens on families. In such cases, expecting relatives to rely on external arrangements risks leaving vulnerable individuals without timely or adequate support. Even where families can meet the costs, they bear a double burden: financial strain alongside the denial of their ability to provide direct personal and emotional care. Yet in *Senchishak* the Court did not consider these practical limitations and relied on

Rehabilitation 49; Debanjan Banerjee and Mayank Rai, ‘Social isolation in Covid-19: The impact of loneliness’ (2020) 66(6) International Journal of Social Psychiatry 525.

[478] Piat and others (477).

the mere existence of institutional and external options, without engaging with their accessibility or adequacy.

Indeed, the very inclusion of the availability of public and private care institutions or hired external assistance[479] as a criterion in the dependency assessment is problematic. Dependency, properly understood, concerns the actual relationship of reliance between specific family members. The fact that other forms of care may exist in theory does not alter that relationship and should not determine whether "family life" exists under Article 8. By focusing on the mere availability of institutional or external care, the Court overlooks the lived reality of familial caregiving and undermines the individual's right to decide how, and by whom, care is provided. The problem is thus not only the inclusion of institutional or alternative care as one factor within the Court's multi-factor framework, but also the restrictive manner in which it has been applied in practice.

In *Senchishak*, the Court observed that the applicant's daughter could support her "financially and otherwise from Finland" and relied also on this to conclude that the applicant's care needs did not establish dependency on her daughter in Finland, since they could be met through other means, and thus that no "additional factors of dependence" existed.[480] Yet the very need for such support is itself an indication of dependency. The fact that it could be provided across borders does not negate that reliance but rather shows that dependency persisted despite geographical separation. By construing the availability of long-distance assistance as a reason to deny dependency, the Court effectively turned a sign of reliance into an argument against recognising it.

---

[479] *Senchishak v Finland* (n 190), para 57.
[480] ibid.

Moreover, the Court's characterisation of the 250 km between Espoo and Vyborg as "not very far"[481] is also questionable. While it has since accepted that financial support may be "provided from a distance",[482] it gave no explanation for treating 250 km as a short distance, leaving unclear how geographical distance is weighed in the dependency analysis.

Desmond is also very critical of the reasoning in *Senchishak*, arguing that the Court's approach makes dependency nearly impossible to establish. He stresses that the Court's conclusion that five years of cohabitation between an elderly widowed mother in poor health and her daughter did not suffice to constitute family life illustrates how easily the Court can declare the non-existence of family life and thereby render a complaint under Article 8 inadmissible, avoiding examination of the merits and thus whether the deportation is justified.[483] This criticism aligns with Draghici, who, while acknowledging states' wide margin of appreciation in immigration matters, insists that citizens and long-term residents wishing to care for elderly foreign parents should not be forced to abandon their lives in order to do so.[484] Such cases should in fact be subject to a balancing exercise under Article 8(2), rather than being excluded altogether at the admissibility stage through an unduly restrictive interpretation of dependency, which precludes proper judicial scrutiny.[485]

The Court's interpretation of the dependency requirement has also been criticised by Peroni, who argues that the way in which the ECtHR has framed this requirement appears to "trivialise the emotional ties" within family life. She contends that such trivialisation arises because, on the one hand, the Court makes it clear that the ties

---

[481] ibid.
[482] *Martinez Alvarado v Netherlands* (n 283), para 42.
[483] Desmond (n 206).
[484] Draghici (n 202).
[485] ibid.

between adult relatives are "not *per se* enough" to constitute family life, and, on the other, it prioritises financial or material considerations over affective bonds.[486] This type of criticism echoes concerns that had already been voiced by Judge Spielmann, who criticised the Court's prioritisation of dependency over "normal affective ties", describing it as "a very artificial approach to determining the existence of 'family life'". He considered it "inconceivable" that the majority had attributed "so little importance […] to the affective ties" between parents and their adult children that "they can fall outside the scope of 'family life'".[487]

Some scholars writing before *Senchishak* also underline in their discussion of Article 8 that prolonged voluntary separation may create a presumption that the individuals involved "do not feel the need" for a close family bond.[488] In family-related cases, however, they emphasise the need to consider factors such as who decided on the separation, the nature of ongoing contact, and the family traditions within the religious, ethnic, or cultural context of the individuals concerned. In many cultures, for instance, it is considered "a self-evident obligation" for a grandchild, after the death of their parents, to adopt their grandparents into their households even after many years of separation between grandchildren and grandparents. Moreover, it has been observed that the degree of dependence — both material or immaterial — between children and their parents or other adult relatives must be taken into account. In any case, the fact that a person has reached the age of majority, or even married in the meantime, does not imply that they cease to enjoy the protection of the family unit to which they belonged as children.[489] Thus, while the Court treated a twenty-year gap — apparently

[486] Peroni (n 197).
[487] Partly concurring opinion of Judge Spielmann, joined by Judge Kovler, para 8, in *Kaftailova v Latvia* (n 389).
[488] Pieter van Dijk and G.J.H. van Hoof, *Theory and Practice of the European Convention on Human Rights* (3rd edn, Kluwer Law International 1998).
[489] ibid.

inferred from the fact that the applicant and her daughter had not lived together since 1988 —[490] as severing family life, these earlier reflections emphasise that separation should instead be assessed in light of multiple factors, with culture, traditions, and patterns of contact forming an integral part of the analysis.

A further element in *Senchishak* concerned the applicant's irregular and precarious immigration status. It can be argued that the Court treated this as a rather central consideration influencing its finding of no family life, rather than as merely one factor among others. In particular, the Court discounted the significance of the five years the applicant had spent living with her daughter in Finland, on the ground that she had not been lawfully resident during that period and was aware of her insecure status.[491]

This reading is consistent with the dissent of Judges Bianku and Kalaydjieva, who criticised the majority for allowing irregular status to influence the family life assessment, in contrast to earlier case law such as *Jeunesse v Netherlands*, where family life was recognised even though one member lacked regular status.[492] They stressed that although an applicant's awareness of irregular status may be relevant to determining whether they qualify as a "'settled migrant' for the purposes of […] 'private life'", it appears "irrelevant" to the question of whether family life exists.[493]

In *Jeunesse*, however, the Court's conclusion rested on a particular constellation of factors — including Dutch nationality at birth later lost not by her choice, prolonged residence, a tolerated stay while repeatedly submitting residence requests, and the presence of three young children. On this basis, the Court found that the Netherlands authorities were under a duty to grant her a residence permit, regularising her stay in

[490] *Senchishak v Finland* (n 190), para 56.
[491] ibid.
[492] Dissenting opinion of Judges Bianku and Kalaydjieva in *Senchishak v Finland* (n 190); *Jeunesse v Netherlands* (n 207).
[493] Dissenting opinion of Judges Bianku and Kalaydjieva in *Senchishak v Finland* (n 190).

order to secure respect for her family life. It emphasised both that her position could not "be simply considered to be on a par with that of other potential immigrants who have never held" the nationality of the host country, and that whenever children are involved, "their best interests are of paramount importance".[494]

The same child-centred emphasis is evident in *Rodrigues da Silva and Hoogkamer v Netherlands*, where the presence of a minor child seemed decisive: the Court condemned the "excessive formalism" of denying residence to the mother and found a violation of Article 8, thereby requiring that she be granted residence despite her irregular status.[495]

Unlike in *Jeunesse* and *Rodrigues da Silva*, where the Court found that respect for family life required residence to be secured despite irregular status, in *Senchishak* irregular status appears to have carried particular weight against recognising such life. Moreover, in *Senchishak* the applicant was a Russian national, never Finnish, and no minor children were involved. The cases are therefore not directly comparable, which may help to explain why the outcome differed.

Even so, the dissent[496] underscored that, although the Court avoided explicitly framing irregular status as decisive, its reasoning appeared to give immigration considerations greater weight than other elements of dependency, with the effect of excluding the claim from Article 8 protection. The reasons for the Court's choice to give weight to irregular status may lie in its reluctance to interfere with States' powers in such a sensitive domain as immigration control — an issue discussed in more detail below — where, as has been argued,[497] effective deterrence and the punishment of unlawful entry and stay are regarded as essential to preserving the "credibility of the overall

---

[494] *Jeunesse v Netherlands* (n 207), paras 105, 115-118 and 122.
[495] *Rodrigues da Silva and Hoogkamer v Netherlands* (n 223), para 44.
[496] Dissenting opinion of Judges Bianku and Kalaydjieva in *Senchishak v Finland* (n 190).
[497] Thym, 'Respect for Private and Family Life' (n 294).

system". This concern resonates with the argument that the Court must be "entitled to take into account" an applicant's overstay, since otherwise states would risk being confronted with a "*fait accompli*", whereby a prolonged irregular stay could later be invoked under the right to "family life" to resist removal.[498] Against the argument that the applicant's irregular status was decisive, it might be said that, had this been the case, the Court could have stated it openly. Yet had the Court done so, it would have risked accusations of excessive formalism and, more seriously, of allowing state sovereignty and immigration control to prevail explicitly over human rights protection.

The judgment leaves unclear the precise weight accorded to irregular residence in adult-adult cases, yet it suggests that immigration control considerations tend to carry greater weight in the dependency analysis when only adult relatives are involved, in contrast to cases concerning children, where family life receives stronger protection.

While the Court has often refused, as the foregoing analysis has shown, to recognise dependency between adult relatives, Draghici underlines that Article 8 has been applied to such relationships only in very few instances.[499]

Drawing on *Anam v UK*, *F.N. v UK*, and *Emonet and Others v Switzerland* — the latter a non-immigration case — she observes that Article 8 has been applied to adult family relationships only in exceptional circumstances, where dependency is understood strictly as disability.[500]

In these cases, the factors that led the Court to recognise bonds between adult relatives as family life were, respectively, the "diagnosed mental health problems" of

[498] Draghici (n 202).
[499] ibid.
[500] ibid; *Anam v UK* App no 21783/08 (ECtHR, Decision, 7 June 2011); *F.N. v UK* App no 3202/09 (ECtHR, Decision, 17 September 2013); *Emonet and Others v Switzerland* (n 420).

the adult child (*Anam*),[501] the fact that "the applicant lived with and was more than usually dependent on her aunt as a result of her vulnerable mental state" (*F.N.*),[502] and — as mentioned above — the paraplegic status of the adult child (*Emonet*).[503] Draghici therefore argues that, in practice, it is only in cases where one of the family members — typically the adult child — is physically or mentally disabled that the ECtHR considers the threshold of dependency between two adult relatives to be met. She concludes that this position suggests the Convention treats adult children as sharing family life with their parents only where an implicit analogy can be drawn with the level of dependency that disabled adults share with minors.[504]

It is, however, noteworthy that in *I.M. v Switzerland* the "additional elements of dependency" were found to exist between a disabled father — assessed as 80% disabled — and his three adult children.[505] Unlike the previous cases, the disability here affected the parent rather than the adult child. Nonetheless, the Court adhered to the same approach: additional elements of dependency are established only where a family member is severely incapacitated.[506] The Court stressed that the relevant factors were met insofar as the father relied on external help to cope with everyday life. In particular, he was financially dependent on his three adult children and lived with two of them, who not only provided personal care (washing and dressing him) but also assisted with broader tasks such as household chores and shopping.[507]

This restrictive understanding of dependency, which Draghici identified through earlier case law,[508] has recently been made explicit by the Court itself. In particular, the Court

---

[501] *Anam v UK* (n 500), 8.
[502] *F.N. v UK* (n 500), para 36.
[503] *Emonet and Others v Switzerland* (n 420), paras 11 and 37.
[504] Draghici (n 202).
[505] *I.M. v Switzerland* Appl no 23887/16 (ECtHR, 9 April 2019).
[506] See, e.g., *Emonet and Others v Switzerland* (n 420), para 37; *A.W. Khan v UK* (n 379), para 32; *Savran v Denmark* (n 360), para 178.
[507] *I.M. v Switzerland* (n 505), para 62.
[508] Draghici (n 202).

has affirmed that dependency is accepted only where an adult suffers from a “physical or mental disability or illness of sufficient seriousness” that it “incapacitate[s]” them to the extent that they require “constant care and support from other family members” “in order to cope with their everyday life”.[509] This approach was confirmed in *Martinez Alvarado*, where the Court found dependency to exist because the applicant, who had an intellectual disability functioning at the level of an eight-year-old child, was entirely reliant on the daily care and support of his four sisters.[510]

To conclude, while the Court now formally frames dependency as a multi-factor, case-specific inquiry, in practice it is applied so restrictively that recognition of family life between adult relatives remains confined almost exclusively to cases of severe incapacity requiring indispensable daily support from relatives. Other factors — such as financial support or co-residence — are treated merely as reinforcing elements and never as sufficient on their own. The threshold is thus exceptionally high: although adult-adult family relationships are recognised to a limited extent in principle under Article 8, in practice they succeed only in rare, exceptional circumstances, leaving them on the periphery of Strasbourg jurisprudence. As a result, a broad spectrum of genuine adult family relationships is excluded from Article 8 protection. In effect, the Court refuses to protect adult family relationships simply on the basis that they exist, treating “normal emotional ties”[511] as insufficient to bring them within the scope of Article 8.

---

[509] *Martinez Alvarado v Netherlands* (n 283), paras 39 and 50; *Kumari v Netherlands* (n 283), paras 38 and 51.
[510] *Martinez Alvarado v Netherlands* (n 283), paras 47 and 50.
[511] See, e.g., *Emonet and Others v Switzerland* (n 420), para 35; cf *Savran v Denmark* (n 360), para 178.

This restrictive approach "trivialise[s]"[512] emotional and relational ties, conflates institutional or external alternatives with family support, and is further entrenched by the Court's treatment of geographic separation, which is invoked without clear criteria (for example, the unexplained treatment of 250 km as "not very far"[513]). In addition, irregular immigration status seems to have been allowed to shape the threshold for assessing whether 'family life' exists. In cases such as *Senchishak*,[514] this appears to mean that immigration control concerns are taken into account at the Article 8(1) stage. Yet immigration control is properly a consideration under Article 8(2), where it has been treated by the Court as a legitimate aim against which the individual's right to family life is proportionately balanced.[515] When such concerns seep into the Article 8(1) inquiry, the effect seems to be that family life is denied at this stage and the application declared inadmissible, so that the Court never moves on to the second step — the proportionality assessment required under Article 8(2). In this way, immigration considerations, being considered prematurely, effectively collapse the usual 'two-stage structure' of Article 8 and place adult-adult claims at a structural disadvantage.

This does not mean that immigration status is irrelevant. Rather, its relevance should be located at the correct stage of the Article 8 analysis. For the purposes of Article 8(1), legal status should not determine whether "family life" exists between adult relatives; that question should turn on the substance of the relationship. However, irregular or precarious status may be highly relevant at the Article 8(2) proportionality stage.

---

[512] Peroni (n 197), 262.
[513] *Senchishak v Finland* (n 190), para 57.
[514] *Senchishak v Finland* (n 190).
[515] *Abdulaziz, Cabales and Balkandali v UK* (n 211), paras 67-68; *Boultif v Switzerland* App no 54273/00 (ECtHR, 2 August 2001), paras 45-46; *Üner v Netherlands* (n 205), para 54; *Jeunesse v Netherlands* (n 207), para 100.

Its significance may also differ depending on which family member is irregularly present. Where the sponsor is irregularly present in the host State, the claim to adult-adult family reunification will ordinarily be weaker, since the sponsor lacks a secure right to remain on which a reunification claim can be anchored. Where, by contrast, the sponsor is lawfully and securely resident but the adult relative seeking admission or regularisation has irregular or precarious status, that status may weigh against the claim in the proportionality assessment, but should not negate the existence of family life at the threshold stage. The central point is therefore not that legal status is irrelevant, but that it should not be allowed to collapse the Article 8(1) threshold inquiry into the Article 8(2) justification analysis.

The Court's current approach creates a double restriction. In migration cases it demands "additional elements" not required in non-migration cases, with the result that adult family relationships appear to warrant less protection merely because they arise in an immigration setting. At the same time, it interprets dependency so narrowly that only complete or near-complete incapacity qualifies, overlooking, for example, the many situations in which individuals affected by serious physical or mental illness are still able to perform some daily activities but remain substantially dependent on family support.

The result is a dependency test that appears holistic in theory, but, in practice, operates so narrowly that only rare cases of near-total incapacity are recognised. On a more principled view, the very fact of conditioning recognition of adult family life on a threshold of 'dependency' is problematic, and the final chapter will propose a reconceptualisation of the concept of family that is, among other aspects, more inclusive, consistent, and aligned with social realities. For present purposes, however, if the Court is to persist with such a requirement in assessing the existence of family

life under Article 8(1), then dependency should at least be understood more broadly: not as full or near-total reliance linked to incapacitation, but as encompassing the diverse ways in which family members support one another, including relational, emotional, and care-related dimensions. Factors such as the theoretical availability of institutional substitutes or the mere fact that relatives live across borders — considerations that do not in themselves speak to dependency — should not be treated as reasons to deny its existence. Where plausible indicators of such family reliance are present, the proper course should be to recognise family life and proceed to a proportionality assessment under Article 8(2). Otherwise, as is currently the case, claims between adult relatives are, in the majority of cases, excluded at the admissibility level, either because the strict incapacity-based standard for "additional elements of dependency" is not met or, in certain cases, because immigration control considerations appear to influence the threshold test, so that the merits are not examined.

f) Consequences on family reunification

The *Senchishak* case[516] illustrates, as examined above, the Court's restrictive approach to dependency, but also underscores this approach's broader impact on family reunification policies. As noted earlier, several scholars observe that the Court's narrow construction of family life in migration cases sits uneasily with the lived realities of families.[517] Developing this line of critique, Askola draws on *Senchishak* to demonstrate how the Court's very limited recognition of adult-adult ties illustrates this "discrepancy" in practice and, moreover — as shown below — how it ultimately

[516] *Senchishak v Finland* (n 190).
[517] See Section 2.2(d); Draghici (n 202), 43; Desmond (n 206), 269; Peroni (n 197), 261.

translates into concrete burdens for immigrant families. This discrepancy becomes evident when elderly parents seeking entry to their adult children's naturalised country encounter the obstacle of no longer being regarded as part of their adult children's family.[518] The result is a striking lack of protection for adult-adult relationships in the migration context,[519] a lack that is not confined to the Court's case law but also extends to family reunification policies. As a consequence of the restrictive definition of family embedded in many EU states' family reunification policies — which generally reflect the Court's narrow, nuclear-family conception — migrants are prevented from relying on their support networks, which often extend beyond the nuclear family.[520] This concern is also reflected in Resolution 2243 (2018) of the Parliamentary Assembly of the Council of Europe, which calls on national authorities to move beyond traditional and narrow definitions of family in this area to address this discrepancy.[521] The significance of this resolution should not be underestimated. Although Parliamentary Assembly resolutions are not binding, they form part of the wider Council of Europe materials to which the ECtHR may have regard when interpreting Article 8. Indeed, in *Üner*, the Grand Chamber referred to a Parliamentary Assembly recommendation in its Article 8 assessment of the expulsion of a long-term immigrant.[522] Resolution 2243 (2018) is therefore relevant not merely as a political statement, but as persuasive evidence of the Council of Europe's concern that family reunification law should respond to the diversity of contemporary family forms. Its call for an "enabling

[518] Askola (n 393).
[519] Draghici (n 202); Desmond (n 206); Peroni (n 197); Askola (n 393).
[520] Kofman (n 1).
[521] Parliamentary Assembly of the Council of Europe, 'Family reunification of refugees and migrants in the Council of Europe member States' (Resolution 2243 (2018), 11 October 2018), para 3 <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25185&lang=en> accessed 5 February 2022.
[522] *Üner v Netherlands* (n 205), paras 35 and 37, referring to Parliamentary Assembly Recommendation 1504 (2001) on the non-expulsion of long-term immigrants.

approach"[523] reinforces the argument advanced in this thesis that the Court's restrictive treatment of adult-adult family ties sits uneasily with both sociological understandings of family and wider Council of Europe guidance on family reunification.

Askola further stresses that this discrepancy between lived family realities and restrictive legal definitions imposes "heavy costs" on immigrant families, costs which, as the following discussion shows, take both practical and gendered forms.[524] Elderly parents often seek to reunite with their adult children abroad out of need for care and support in old age, and many European states respond with restrictive policies aimed at preventing what they view as a "future economic burden" on their welfare system, given that such parents are at or near the end of their working lives.[525] Notwithstanding international conventions, such policies are facilitated by the high degree of sovereignty and discretion states retain in determining the conditions that migrants must meet in order to exercise the right to family reunification.[526] Indeed, the provisions on this matter in international conventions are generally weakly formulated, often referring only in general terms to the right to family life and thereby leaving states broad margins of manoeuvre as to the measures to adopt in order to facilitate that right.[527]

This way of viewing elderly relatives devalues their potential contributions.[528] Rising life expectancy and improved health in old age mean that elderly parents — even in

[523] Parliamentary Assembly, Resolution 2243 (2018) (n 521), para 3.
[524] Askola (n 393).
[525] ibid. See also Honohan (n 201), who notes that, in addition to concerns about economic non-productivity and welfare burden, States may be reluctant to admit older people because they "may face language barriers and other difficulties in integration".
[526] Kofman (n 1); Lahav (n 39).
[527] ibid. See, for example, ICCPR (n 66), arts 17 and 23, which protect against arbitrary or unlawful interference with family life and recognise the family as entitled to protection, but do not prescribe specific family-reunification obligations; ICESCR (n 69), art 10(1), which refers broadly to the "widest possible protection and assistance" for the family; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3, art 44(2), which requires States to take measures only as "they deem appropriate" and "within their competence to facilitate" family reunification.
[528] Askola (n 393); Honohan (n 201).

cases where they do not access the labour market — may provide valuable childcare, reduce the isolation of younger family members, and act as agents of integration.[529]

In light of *Senchishak*,[530] Askola underscores the consequences that restrictive family reunification policies impose on naturalised citizens and their elderly parents. Such tight restrictions disregard not only the significance of parental ties and the bonds of dependency — particularly where elder care is involved — but also impose unfair costs upon naturalised citizens who wish to care for their parents living abroad.[531] This is not to suggest that naturalised citizens are formally subject to less favourable family reunification rules than native-born citizens; in systems such as the UK, both may be subject to the same criteria when sponsoring adult relatives from abroad.[532] Rather, the disadvantage is structural: "citizens of immigrant background"[533] — including many naturalised citizens — are more likely to have close adult relatives outside the host state, meaning that their family ties are more frequently exposed to restrictive immigration controls. By contrast, equivalent ties among many native-born citizens are more likely to be domestic and therefore sustained without passing through the gatekeeping mechanisms of family migration law. In this sense, Askola argues that these hardships can be understood as producing a form of "second-class citizenship" for some citizens of immigrant origin.[534]

This broader inequality is compounded by gendered dynamics of care, as transnational care is predominantly carried out by women, and the costs of frequent cross-border travel to care for elderly parents can be significant and difficult to bear. Providing such

---

[529] ibid.
[530] *Senchishak v Finland* (n 190).
[531] Askola (n 393).
[532] See Home Office, 'Immigration Rules: Appendix Adult Dependent Relative' (*GOV.UK*) <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-adult-dependent-relative> accessed 8 June 2026, paras ADR 4.2 and ADR 5.1-5.2.
[533] Askola (n 393).
[534] ibid.

care often makes it harder to maintain regular employment and can strain family relationships in the country of residence. Because the pressure to provide care falls disproportionately on women, restrictive policies undermine gender equality and may compromise women's equality as citizens.[535]

Moreover, women are also more penalised than men by family reunification rules. It is undeniably more difficult for women to meet conditions — such as stable income or adequate housing — that are required when they wish to bring in family members, especially if they cannot rely on their families to contribute the necessary resources.[536]

States have therefore pursued restrictive family reunification policies in order to shield welfare systems from perceived economic burdens, but the price is high. Such policies distort the meaning of family life and the caregiving it entails, devalue the roles elderly relatives can play, and perpetuate structural gender inequality. They also compromise the equal citizenship of naturalised migrants and, more broadly, of citizens of immigrant background, whose family ties are not recognised on the same terms as those of native-born citizens. Overall, these effects illustrate the "heavy costs"[537] that Askola identifies: costs borne not only by elderly parents excluded from reunification, but also by naturalised citizens struggling to care for them, and by women in particular, who shoulder a disproportionate share of transnational caregiving responsibilities. These heavy costs take the form of what Askola terms "largely unacknowledged burdens"[538] — emotional, financial, and gendered — that fall on immigrant families themselves rather than being addressed within state policy.

---

[535] ibid.
[536] Kofman (n 1).
[537] Askola (n 393).
[538] ibid.

These dynamics, in turn, bring into focus a deeper issue that runs through migration law: the tension between state sovereignty in regulating immigration and the protection of migrants' human rights. It is to this conflict that the following section now turns.

2.3 Conflict between state sovereignty and human rights protection for migrants

From the perspective of nation-states, immigration policy is shaped both by economic needs and political considerations.[539] Economic migrants from lower-income countries are frequently portrayed as a burden on welfare systems, a threat to national political culture, or as competitors for jobs in the domestic labour market, and receiving states typically prioritise the rights and prospects of their own citizens over those of migrants.[540] Accordingly, immigration rules are often designed with flexibility, permitting the admission of workers when labour shortages arise but allowing states to retract access when political or economic conditions change. Scholars describe this shift as a move from "blurred" to "brittle" borders: while "blurred" borders permit relatively easy mobility and access to residence, "brittle" borders impose strict restrictions on entry, residence, and family reunification.[541] In this sense, border regimes exemplify the broader tension between state sovereignty and human rights protection — a tension that, as will now be shown, also pervades the ECtHR's migration jurisprudence.

---

[539] Bryceson (n 22).
[540] ibid.
[541] The framework also includes "broken borders", which arise when restrictive regimes push migrants to adopt irregular strategies to bypass barriers, such as entering without authorisation or remaining after a visa has expired: Bryceson (n 22).

Protection for migrants under the ECHR was slow to develop: the ECtHR did not rule on its first migration case until 1985.[542] This delay reflected the Convention's original design, aimed at protecting Europeans — conceived as its beneficiaries — rather than all human beings, against a recurrence of wartime abuses, the dangers of arbitrary government, and the advance of communism.[543] Some scholars, however, attribute the Court's long silence to states' decision to preserve their ability to control migration "without a supranational human rights superstructure".[544]

It has also been observed that discussing immigration under the ECHR has always been controversial, since it entails the interference of an international convention in an area traditionally reserved to domestic legislatures and state authorities.[545] Even once the Court began to hear such cases, migrants' protection under the Convention remained patchy, not least because the ECtHR generally privileges state sovereignty over migrant rights, with the result that it rarely finds in their favour.[546] Indeed, in its migration jurisprudence, the Court has typically opened its reasoning with a preliminary statement affirming that states enjoy "as a matter of well-established international law and subject to their treaty obligations", the right "to control the entry, residence and expulsion of aliens".[547] Desmond specifies that a state's power to control who may

---

[542] Marie-Bénédicte Dembour, 'The Migrant Case Law of the European Court of Human Rights' in Başak Çali, Ledi Bianku, and Iulia Motoc (eds), *Migration and the European Convention on Human Rights* (Oxford University Press 2021); *Abdulaziz, Cabales and Balkandali v UK* (n 211).

[543] Dembour, 'The Migrant Case Law' (n 542); Marco Duranti, *The Conservative Human Rights Revolution. European Identity, Transnational Politics, and the Origins of the European Convention* (Oxford University Press 2017); Andrew Moravcsik, 'The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe' (2000) 54(2) International Organization 217.

[544] Thym, 'Respect for Private and Family Life' (n 294).

[545] Milios, 'The Right to Family and Private Life' (n 219).

[546] Dembour, 'The Migrant Case Law' (n 542).

[547] See, e.g., *Moustaquim v Belgium* (n 257), para 43; *Üner v Netherlands* (n 205), para 54. This principle can already be found in *Abdulaziz, Cabales and Balkandali v UK* (n 211), para 67, although it was not used to open the Court's reasoning: see Dembour, 'The Migrant Case Law' (n 542). See also Roagna (n 214); Mark Arnoldus Karel Klaassen, *The right to family unification. Between migration control and human rights* (Leiden University 2015); Marie-Bénédicte Dembour, *When Humans Become Migrants. Study of the European Court of Human Rights with an Inter-American Counterpoint* (Oxford University Press 2015); Ann Sherlock, 'Deportation of aliens and Article 8 ECHR' (1998) 23 European Law Review (Human Rights Survey) 62.

enter and reside legally in its territory is an essential feature of national sovereignty.[548] This observation may help to explain why the Court so often foregrounds this principle. Yet scholars underline that such foregrounding is odd for a human rights court.[549] The ECtHR's fundamental tasks are to safeguard human rights, ensure that the guarantees of the Convention are respected, and serve as its ultimate referee. It would therefore be more logical for the Court to begin its reasoning with the Convention provision that needs to be interpreted.[550] By opening its reasoning — although not from the very beginning of its jurisprudence — with the "principle of state control", the Court, even if not necessarily implying that state interests will always prevail over those of migrants, nonetheless establishes a "default position" tilted towards the state and away from the migrant applicant.[551] Scholars describe this approach as the "Strasbourg reversal", referring to the Court's practice of foregrounding state sovereignty and thereby positioning it as the norm, while relegating human rights to the status of exceptions.[552] This *modus operandi* highlights an "incongruous" logic: by giving prominence to a state prerogative, the Court neither affirms human rights nor bases its approach on the text of the Convention it is tasked to interpret and apply.[553]

This pattern of privileging sovereignty has been widely criticised. Costello describes the Court as "too timid", and Dembour attributes this deference in migration cases to its "fear of upsetting states".[554] In Dembour's analysis, this results in rulings finding a violation being narrowly confined to the facts of the case, while rulings of no violation tend to acquire broader precedential force.[555] Building on this critique, Draghici argues

[548] Desmond (n 206).
[549] Dembour, 'The Migrant Case Law' (n 542).
[550] ibid.
[551] ibid.
[552] ibid; Dembour, *When Humans Become Migrants* (n 547).
[553] Dembour, 'The Migrant Case Law' (n 542).
[554] Cathryn Costello, *The Human Rights of Migrants and Refugees in European Law* (Oxford University Press 2016); Dembour, *When Humans Become Migrants* (n 547).
[555] Dembour, *When Humans Become Migrants* (n 547); Dembour, 'The Migrant Case Law' (n 542).

that in migration contexts, the Court's narrow conception of family life reflects a statist position, one that treats immigration as a politically sensitive area and allows Article 8 only limited impact on sovereign discretion, particularly in first-entry cases.[556] Desmond goes further, emphasising that only in exceptional cases has the Court upheld migrants' right to family life; together with Dembour, he criticises the Court for almost invariably deferring to state sovereignty.[557]

The Court's repeated description of the "principle of state control" as "well-established in international law" has likewise been challenged as "spurious" on historical and legal bases.[558] Historically, no inherent right of states to control and limit migration was recognised before the twentieth century; legally, state authority over admission is not unlimited but must be directed towards legitimate aims, so it is mistaken for states to assume that they may refuse entry to migrants without providing justification for such exclusion.[559]

Beyond these historical and legal critiques, scholars have also highlighted the consequences of sovereignty-first reasoning. Wolcher, in particular, uses the "paradox of remedies" to argue that judicial rulings on human rights may bolster rather than restrain state sovereignty. In his view, whenever the ECtHR finds no violation of the Convention, it effectively legitimises the state's conduct. He contends that such rulings are infused with violence; yet because this violence is unseen, it cannot be grieved.[560] Dembour regards the deportation of quasi-nationals as a particularly powerful

[556] Draghici (n 202); Carmen Draghici, *The Legitimacy of Family Rights in Strasbourg Case Law: 'Living Instrument' or Extinguished Sovereignty?* (Hart Publishing 2017). See also Costello (n 554).
[557] Desmond (n 206); Dembour, *When Humans Become Migrants* (n 547).
[558] Dembour, 'The Migrant Case Law' (n 542).
[559] Dembour, *When Humans Become Migrants* (n 547); Bas Schotel, *On the Right of Exclusion. Law, Ethics and Immigration Policy* (Routledge 2012).
[560] Louis E. Wolcher, 'The Paradox of Remedies: The Case of International Human Rights Law' (2000) 38(3) Columbia Journal of Transnational Law 515.

illustration of this dynamic, showing how the Court's case law can validate coercive state action.[561]

This sovereignty-centred reasoning does not remain at the level of abstract framing but is reflected in the Court's doctrinal choices. One of the clearest examples is the so-called "elsewhere doctrine", first developed by the ECmHR when it began handling complaints under Article 8 concerning the admission of migrants, and subsequently adopted by the Court.[562] Under this approach, a refusal of admission is not regarded as a violation of Article 8 where family life can, in principle, be pursued in another country.[563] Klaassen observes that by adopting this doctrine, the Court effectively displaced the proportionality test contained in Article 8(2), thereby wilfully overlooking the fact that the Convention already provides a specific framework for assessing justification.[564] The effect is that refusal of admission becomes the "default position", with interference in family life acknowledged only in exceptional circumstances.[565] It has been stressed that if the Court interprets Article 8 as not obliging states to respect a couple's choice of residence, a refusal of admission is not treated as a lack of respect for family life where family life could be pursued elsewhere.[566] On this basis, migrants are denied any right "to choose where they should live".[567] Moreover, when the Court frames such cases in terms of positive obligations — that is, duties to adopt measures to secure respect for family life — it grants states a wide margin of appreciation in deciding how to act.[568] In both respects, the Court's reasoning privileges state

[561] Dembour, 'Human Rights Law and National Sovereignty' (n 311).
[562] Klaassen (n 547).
[563] ibid; Costello (n 554); Steve Peers, 'Family Reunion and Community Law' in Neil Walker (ed), *Europe's Area of Freedom, Security, and Justice* (Oxford University Press 2004).
[564] Klaassen (n 547).
[565] Costello (n 554).
[566] Milios, 'The Right to Family and Private Life' (n 219); *Abdulaziz, Cabales and Balkandali v UK* (n 211), paras 68-69.
[567] Dembour, 'The Migrant Case Law' (n 542).
[568] Milios, 'The Right to Family and Private Life' (n 219).

sovereignty and narrows the protection available to migrants. In advancing the critique of the ‘elsewhere doctrine’ and the Court’s sovereignty-first reasoning, it is not suggested that states lack sovereign authority to regulate entry and residence; rather, the concern lies in how that authority is positioned within the Court’s reasoning and the extent to which this framing constrains meaningful proportionality review under article 8(2).

Scholars further criticise this approach as “erroneous”, since it relies on factors extraneous to family life, such as the possibility of relocation, and is moreover, incompatible with the freedom to choose one’s residence guaranteed to lawful citizens in many constitutions and international conventions.[569] Costello adds that the state is not compelled to provide any specific, individual justification for refusing admission, with the result that migrants are effectively placed at the mercy of the receiving state, a stance she argues “sits uneasily in a human rights context”.[570]

The critique of the ‘elsewhere approach’ has been pushed even further. It has been argued that the doctrine itself “falls outside the scope of the right to family life” and “set[s] the threshold of protection particularly low”. Moreover, it has been emphasised that a strict application produces indirect discrimination between migrants according to their status, an outcome incompatible with the scope of Article 8 and with the Convention as a whole.[571] This line of criticism highlights the restrictive logic underpinning the elsewhere approach; for adult-adult relationships, the problem is even more acute, as such ties are often excluded at the threshold of Article 8(1) and consequently remain outside the Court’s conception of “family life”.

---

[569] ibid.
[570] Costello (n 554).
[571] Milios, ‘The Immigrants’ and Refugees’ Right to “Family Life”’ (n 416).

In the admission context, it has also been argued that where a legally resident parent is refused permission for their child to join them in the host country, this in itself constitutes an interference with the state's duty to respect family life owed to that parent.[572] However, others contend that coherence would require extending this reasoning across the full range of family relationships encompassed within Article 8,[573] even though they leave undefined which relationships should fall within the notion of family.

Beyond admission, the same question of whether family life can be enjoyed in another country also arises in expulsion cases.[574] Here, however, the Court addresses it within the proportionality framework of Article 8(2),[575] rather than through the elsewhere doctrine it applies in admission cases. Under this framework, interference with family life may be justified if it is "in accordance with the law", "in pursuit of a legitimate aim", and "necessary in a democratic society".[576] In response to criticism of ambiguity in its Article 8 jurisprudence, particularly regarding the application of the proportionality test, the Court developed the "Boultif criteria" — a set of principles intended to guide the assessment of expulsion cases — later expanded in *Üner*.[577] These include factors that echo the elsewhere logic, namely the difficulties family members might face if forced to relocate to the applicant's country of origin.[578]

While the Court has relaxed the elsewhere approach in cases concerning children — shifting from a strict requirement that admission be the "only way"[579] to pursue family

[572] Nicholas Blake and Raza Husain, *Immigration, Asylum and Human Rights* (Oxford University Press 2003).
[573] Milios, 'The Right to Family and Private Life' (n 219).
[574] ibid.
[575] ibid.
[576] ibid.
[577] ibid; Sherlock (n 547); *Boultif v Switzerland* (n 515), para 48; *Üner v Netherlands* (n 205), para 58.
[578] *Boultif v Switzerland* (n 515), para 48; *Üner v Netherlands* (n 205), para 58.
[579] *Gül v Switzerland* App no 23218/94 (ECtHR, 19 February 1996), para 39.

life to a more flexible standard of the "most adequate way" —[580] it has not extended any comparable protection to adult-adult relationships, which, as noted above, are often excluded at the threshold of Article 8(1).

From a human rights perspective, the Court's sovereignty-first reasoning reveals a deeper normative problem. The Court's overriding priority should be to ensure respect and protection for human rights, with considerations of state sovereignty occupying only secondary importance.[581] This reflects the logical hierarchy whereby the human being must take paramount position,[582] and states' powers of exclusion are recognised only subordinately and within the limits set by human rights norms. Only when the ECtHR does not begin its reasoning with the "principle of state control" can it proceed from the premise that migrants are first and foremost human beings holding rights, and only secondarily, from a legal point of view, also aliens over whom states may exercise powers of exclusion within those rights-based constraints.[583] Scholars therefore call for a 're-orientation' of the Court's jurisprudence: it should have the "courage" to adopt a more protective approach towards migrants so that 'migrants' human rights' does not become an "empty" formula in its case law — a result that runs directly counter to the Court's *raison d'être*: the safeguarding of human rights.[584] This is not merely aspirational. As Desmond underscores, states' powers over immigration are already subject to important limits under treaty commitments, most notably the prohibition of refoulement in Article 3.[585] Moreover, since *Abdulaziz* case, the Court has recognised

[580] *Şen v Netherlands* (n 222), para 40; *Tuquabo-Tekle and Others v Netherlands* (n 207), para 47; Costello (n 554).
[581] Dembour, *When Humans Become Migrants* (n 547); Dembour, 'The Migrant Case Law' (n 542).
[582] ibid.
[583] Dembour, 'The Migrant Case Law' (n 542).
[584] ibid.
[585] Desmond (n 206).

that migration law and policy fall within the scope of Article 8,[586] meaning that states cannot claim an area of absolute discretion immune from human rights scrutiny.

This chapter examined the ECtHR's interpretation of "family life" under Article 8 ECHR across migration and non-migration contexts. It showed that, in both domains, the Court recognises family life between parents and minor dependent children, irrespective of marital status or cohabitation.

Beyond the nuclear family, the analysis demonstrated a clear divergence. In non-migration contexts, the Court has acknowledged family life between relatives outside the nuclear family, including adult relatives, where close personal ties are present. Importantly, in cases involving minors, the Court does not ground its reasoning on factors intrinsically linked to minority as such, implying that adult-adult relationships marked by sustained care and support should likewise qualify as family life.

By contrast, in the migration context, the Court adopts a markedly restrictive approach, largely confining family life to the nuclear family and subjecting adult-adult relationships to a demanding dependency requirement. The particularly high threshold imposed effectively excludes almost all adult-adult relationships from the scope of Article 8 family life. This divergence has attracted sustained judicial and academic criticism.

Where no additional elements of dependency are established, such relationships may instead be examined under private life, subject to an assessment of social integration, a shift that has itself been the subject of criticism. The chapter thus highlighted a structural inconsistency in the Court's jurisprudence, whereby the protection afforded to adult familial relationships varies significantly depending on the context in which they arise (migration versus non-migration).

---

[586] *Abdulaziz, Cabales and Balkandali v UK* (n 211); Desmond (n 206).

3 Comparative study of the protection afforded to adult-adult family relationships under EU law

The previous chapter examined the ECtHR's interpretation of "family" under Article 8 ECHR, showing that while the Court adopts a broader notion in non-migration contexts, in migration cases it confines "family" to the nuclear unit. In this context, the narrow definition, combined with the shift from family to private life and the imposition of a stringent dependency threshold, leaves adult-adult relationships protected only in rare and exceptional instances.

This chapter turns to EU law to investigate how "family" is defined and what protection is afforded to family relationships, particularly those between adult relatives. It first examines the two most relevant Directives in the field — the Citizenship Directive 2004/38/EC and the Family Reunification Directive 2003/86/EC —[587] together with the relevant case law of the Court of Justice of the European Union (CJEU), which elucidates the key notions and conditions that shape the EU law understanding of "family". It then compares the protection of such relationships under EU law with that afforded by the ECHR. The ultimate aim is to identify elements within EU law that can contribute to a normative argument that the ECtHR should adopt a broader definition of "family" in migration cases, or at least to provide guidance towards that end. At the outset, it should be acknowledged that the two courts' approaches are shaped by different institutional logics. The CJEU's protection of third-country national family members under the Citizenship Directive is largely derivative of the need to secure EU

[587] 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 amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L 158/77; Council Directive 2003/86/EC (n 77).

citizens' effective free movement. By contrast, the ECtHR's migration jurisprudence is shaped by the tension between migrants' family-life claims and state immigration-control powers. The comparison is therefore not intended to present EU law as a direct model for Article 8 ECHR, but to illuminate how different legal frameworks recognise, or fail to recognise, adult family relationships in the migration context.

3.1 The EU legal framework

a) The Citizenship Directive

Directive 2004/38/EC, also known as the "Citizenship Directive" or the "Free Movement Directive" (hereafter CD), primarily concerns EU citizens who have exercised their right to move freely within the EU.[588] As an indirect consequence of such exercise of free movement, and because geographical separation of the family should not constitute a barrier to that freedom, the citizen's relatives are also granted rights in a derived capacity.[589]

In *Metock*, the CJEU emphasised that preventing an EU citizen from pursuing normal family life in the host Member State would seriously infringe the freedoms enshrined in the Directive.[590] Costello therefore observes that, under this Directive, family rights form an integral part of securing mobility and residence rights for Union citizens.[591]

---

[588] Directive 2004/38/EC (n 587); Case C-423/12 *Reyes v Migrationsverket* [2013] ECLI:EU:C:2013:719, Opinion of AG Mengozzi, para 31.
However, the CJEU has made clear that "EU family rights" may apply even where the EU citizen has not physically moved between Member States. It is sufficient that they reside in a Member State other than that of their nationality, which may arise, for example, when an EU citizen is born in one Member State while holding the nationality of another: Georgios Milios, 'Defining "Family Members" of EU Citizens and the Circumstances under Which They Can Rely on EU Law' (2020) 39(1) Yearbook of European Law 293; Case C-86/12 *Adzo Domenyo Alokpa, Jarel Moudoulou, Eja Moudoulou v Ministre du Travail, de l'Emploi et de l'Immigration* [2013] ECLI:EU:C:2013:645.
[589] Case C-423/12 *Reyes*, Opinion of AG Mengozzi (n 588), para 31.
[590] Case C-127/08 *Blaise Baheten Metock and Others v Minister for Justice, Equality and Law Reform* [2008] (Grand Chamber) ECR I-6241, para 62.
[591] Costello (n 554).

When family reunification claims fall within the scope of the CD, third-country national (TCN) relatives obtain a compelling right to enter and reside in the EU.[592] Costello further notes that the CJEU's reasoning in *Metock* — namely that the right to "normal family life" in the CD precludes states from even encouraging a mixed TCN/EU citizen family to relocate elsewhere to enjoy family life — invites comparison with, and may be read as tacit criticism of, the ECtHR's "elsewhere approach" examined in Section 2.3.[593]

The CD distinguishes between members of the "immediate family"[594] (Article 2(2)) and "other categories of family members", also referred to as "extended family members"[595] (Article 3(2)).

According to Article 2(2), the former includes (a) the spouse; (b) the partner, when the conditions set out in Article 2(2)(b) are met; (c) "direct descendants […] under the age of 21 or […] dependants" (including those of the spouse or partner, as identified in Article 2(2)(b)); and (d) "dependent direct relatives in the ascending line" (including those of the spouse or partner, as defined in Article 2(2)(b)).[596]

It is noteworthy that, apart from spouses and partners, the relationships listed in Article 2(2) are vertical relationships (e.g. parent-child). By contrast, as will be shown below,

---

[592] Cathryn Costello, '*Metock*: Free Movement and "Normal Family Life" in the Union' (2009) 46 Common Market Law Review 587.
[593] Case C-127/08 *Metock* (n 590); Costello, *The Human Rights of Migrants* (n 554).
[594] Costello, '*Metock*' (n 592). Elspeth Guild, Steve Peers and Jonathan Tomkin, *The EU Citizenship Directive: A commentary* (2nd edn, Oxford University Press 2019) define these members as "core family members".
[595] Guild, Peers and Tomkin (n 594).
[596] The Commission's Report on the application of the CD highlighted that the transposition by Member States of the definition of family members set out in Article 2(2) of the CD was "satisfactory": Commission, 'Report from the Commission to the European Parliament and the Council on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States' COM(2008) 840 final, s 3.1, 4.

horizontal relationships — such as siblings — may be included only under Article 3(2), subject to the conditions specified therein.

The CJEU clarified the meaning of "direct descendants". In *SM*, it held that the term covers only a "parent-child relationship" and includes both biological and adopted children of an EU citizen.[597] Scholars criticise this interpretation as narrow and somewhat "surprising", since a literal reading of "descendants" would extend beyond children to include all direct descendants of EU citizens, such as grandchildren.[598] This restrictive approach contrasts with the Family Reunification Directive (hereafter FRD), examined in Section 3.1(b), which explicitly refers to "children" rather than the broader term "descendants".[599]

Members of the "immediate family" enjoy "an automatic right to entry and residence in the host Member State".[600]

The "other categories of family members",[601] set out in Article 3(2), are "narrowly defined".[602] An individual may qualify under three routes:[603] by being, irrespective of nationality, a dependant or member of the household of the EU citizen in the country of origin;[604] by being a relative for whom "serious health grounds strictly require"

[597] Case C-129/18 *SM v Entry Clearance Officer, UK Visa Section* [2019] ECLI:EU:C:2019:248, paras 52 and 54.
[598] Milios, 'Defining "Family Members"' (n 588).
[599] ibid.
[600] cf Directive 2004/38/EC (n 587), Recital 6 (Preamble).
[601] Guild, Peers and Tomkin (n 594).
[602] Case C-423/12 *Reyes*, Opinion of AG Mengozzi (n 588), para 36.
[603] cf ibid.
[604] Directive 2004/38/EC (n 587), art 3(2)(a). The CJEU clarified that "members of the household" are those individuals whose relationship of dependence is based on "close and stable personal ties" extending "beyond a mere temporary cohabitation" of convenience: Case C-22/21 *SRS, AA v Minister for Justice and Equality* [2022] ECLI:EU:C:2022:683, para 30.

personal care from the Union citizen;[605] or by being the partner in a "duly attested" durable relationship.[606]

Unlike the immediate family in Article 2(2), these individuals are not automatically entitled to entry and residence. Instead, Member States retain a "degree of discretion", being required only to "facilitate" [their] entry and residence" "in accordance with [their] national legislation".[607] Facilitation requires "an extensive examination" of the applicant's personal circumstances, including the relationship with the EU citizen and factors "such as their financial or physical dependence" on that citizen.[608] By contrast, the Directive contains no provisions on control procedures or evidentiary requirements for nuclear family members.[609] Nevertheless, it accords with the intent of the CD that, in practice, the Union legislature sought to favour the position of the nuclear family.[610] A further distinction lies in the evidentiary threshold: while "proof of the need for material support" for Article 2(2) members may be provided by any suitable means, relatives under Article 3(2) are assessed under a more demanding evidentiary framework.[611]

---

[605] Directive 2004/38/EC (n 587), art 3(2)(a).
With respect to the "other family members" referred to in Article 3(2)(a), the Commission clarified that this provision does not impose any restriction on their "degree of relatedness": Commission, 'Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States' COM(2009) 313 final, s 2.1.3, 5.

[606] Directive 2004/38/EC (n 587), art 3(2)(b).
The Commission's Report on the application of the CD highlighted that Member States' transposition of the rights of Article 3(2) family members was "less satisfactory", noting that thirteen Member States failed to implement the provision correctly. By contrast, ten Member States adopted a more favourable approach by extending the automatic right to reside also to these family members: COM(2008) 840 final (n 596), s 3.1, 4.

[607] Guild, Peers and Tomkin (n 594); Case C-83/11 *Secretary of State for the Home Department v Rahman and Others* [2012] (Judgment) ECLI:EU:C:2012:519, paras 18 and 20-21; Directive 2004/38/EC (n 587), art 3(2).

[608] Directive 2004/38/EC (n 587), Article 3(2) and Recital 6 (Preamble).

[609] Case C-423/12 *Reyes*, Opinion of AG Mengozzi (n 588), para 37.

[610] ibid.

[611] ibid, paras 55-56; Case C-1/05 *Jia v Migrationsverket* [2007] ECLI:EU:C:2007:1, para 43.

Taken together, these features create a hierarchy between the types of relationships: vertical relationships in Article 2(2) receive privileged treatment over the horizontal ones in Article 3(2). This differential treatment derives from the nature of the relationship rather than from the actual level of need or dependency.

In *Rahman*, the CJEU addressed the meaning of "facilitate".[612] Klaassen notes that the Court offered little guidance, limiting its holding to two points: first, that "facilitation" obliges Member States to "confer a certain advantage" on applicants under Article 3(2) compared with TCNs outside the scope of the CD; and second, that although Member States retain "wide discretion" as to the factors to be considered, their legislation must contain criteria consistent with the ordinary meaning of "facilitate" and must not render Article 3(2) ineffective in practice.[613]

I. The concept of "dependency"

A key issue arising from the legal framework analysed in the previous section concerns the interpretation of the term "dependant" of an EU citizen. This concept has been the subject of extensive debate before the CJEU.[614]

The first examination was undertaken in *Lebon*, where the Court defined dependency as the "result of a factual situation" existing whenever the individual receives assistance or support from the sponsor.[615] The reasons for relying on such support, or whether the individual could end dependency through paid employment, are

[612] Case C-83/11 *Rahman* (n 607).
[613] Klaassen (n 547); Case C-83/11 *Rahman* (n 607), paras 21 and 24.
[614] Chiara Berneri, *Family Reunification in the EU. The Movement and Residence Rights of Third Country National Family Members of EU Citizens* (Hart Publishing 2017).
[615] Case C-316/85 *Centre public d'aide sociale de Courcelles v Marie-Christine Lebon* [1987] ECLI:EU:C:1987:302, para 22, in which the meaning of that term was interpreted under Articles 10(1) and (2) of Regulation No 1612/68; Case C-423/12 *Reyes*, Opinion of AG Mengozzi (n 588), para 41.

considered irrelevant.[616] Being dependent does not also presuppose a right to maintenance.[617]

In *Jia*, the Court refined and expanded this definition.[618] First, it held that dependency must be assessed in light of the individual's financial and social circumstances in order to determine whether they are unable to provide for themselves. Second, the need for material support must exist in the applicant's home state or in the state from which the application is made, and proof of that need may be furnished by "any appropriate means". This interpretation, which the Court emphasised once again does not require any inquiry into the reasons for support, was justified as necessary to safeguard the freedoms guaranteed by the EC Treaty and to preserve the effectiveness of directives designed to eliminate barriers to free movement.[619]

Berneri also observes that the same commitment to facilitating free movement has been reaffirmed in more recent CJEU case law.[620] In *Reyes*, the Court, addressing the interpretation of the term "dependent" under Article 2(2)(c), recalled the principles established in *Lebon* and *Jia*.[621] On this basis, the Court underscored that regular financial contributions made by an EU citizen to the applicant over a considerable period, enabling the latter to sustain themselves, are sufficient to establish a genuine relationship of dependence between them. Consequently, applicants are not required to demonstrate unsuccessful efforts to secure employment, attempts to obtain support from welfare institutions in their home country, or endeavours to sustain themselves

---

[616] Case C-316/85 *Lebon* (n 615), para 22.
[617] ibid, para 21.
[618] Berneri (n 614); Case C-1/05 *Jia* (n 611). In this case, the Court was called upon to interpret the concept of dependency under Article 1(1)(d) of Council Directive 73/148/EEC of 21 May 1973.
[619] Case C-1/05 *Jia* (n 611), paras 36-37, 40 and 43. Treaty establishing the European Community (EC Treaty), as recast and renumbered by the Treaty on the Functioning of the European Union (TFEU): Consolidated Version of the Treaty establishing the European Community [1997] OJ C340/03; Consolidated Version of the Treaty on the Functioning of the European Union [2016] OJ C202/49.
[620] Berneri (n 614).
[621] Case C-423/12 *Reyes v Migrationsverket* [2014] (Judgment) ECLI:EU:C:2014:16, paras 20-23; Case C-316/85 *Lebon* (n 615); Case C-1/05 *Jia* (n 611).

independently. The CJEU reasoned that requiring such additional evidence would render the right of residence excessively difficult to obtain. Furthermore, because dependence must exist in the country from which the applicant comes at the time of the application, the possibility that the applicant might obtain employment in the host Member State — thereby ceasing to be dependent on the EU citizen after reunification — is irrelevant to determining the existence of a dependency link prior to reunification. To hold otherwise would effectively restrict applicants from seeking employment in the host Member State, in violation of Article 23 CD, which expressly permits those granted residence to engage in employment or self-employment. The Court therefore concluded that personal factors such as age, education and health, which might suggest favourable employment prospects in the host Member State, together with the individual's intention to take up work there, should not be regarded as impediments to establishing a dependency link.[622]

Although first articulated in relation to Article 2(2)(c) CD, this interpretation of "dependant" should apply equally to family members falling under Article 2(2)(d)[623] and Article 3(2)(a) CD.[624]

---

[622] Case C-423/12 *Reyes* (Judgment) (n 621), paras 24-26, 30-33.

[623] Guild, Peers and Tomkin (n 594). In particular, Berneri argues that treating these family members differently would amount to "unjustified discrimination", since, like those referred to in Article 2(2)(c), they are included in the category of "core family members": see Chiara Berneri, 'When is the family member of an EU citizen "dependent" on that citizen?' (*EU Law Analysis*, 19 January 2014) <http://eulawanalysis.blogspot.com/2014/01/when-is-family-member-of-eu-citizen.html> accessed 12 September 2023.
The Court has recently addressed the relationship between dependency, in relation to relatives in the ascending line, and eligibility for social assistance in Case C-488/21 *GV v Chief Appeals Officer and Others* [2023] ECLI:EU:C:2023:1013.

[624] Case C-83/11 *Secretary of State for the Home Department v Rahman and Others* [2012] ECLI:EU:C:2012:174, Opinion of AG Bot, paras 94-100. In *Rahman*, the AG (para 98) emphasised that no plausible grounds existed for adopting a distinct interpretation of that term in relation to Article 3(2)(a). Scholars also note that the subsequent judgment in *Reyes* confirms this conclusion, with the Court assuming an "identical interpretation" of the term for the purposes of Article 3(2)(a): Guild, Peers and Tomkin (n 594); Case C-423/12 *Reyes* (Judgment) (n 621). Furthermore, the Court in *Rahman* acknowledged that, although Member States enjoy some discretion to specify how dependency is assessed in practice, this must remain consistent with the ordinary meaning of the term and cannot undermine the effectiveness of Article 3(2)(a): Case C-83/11 *Rahman* (Judgment) (n 607), para 40.

Indeed, with respect to those covered by Article 2(2)(d), the Court has very recently further refined its dependency test in *XXX v État belge*.[625] Building on *Lebon*, *Jia*, and *Reyes*, it clarified that where several years separate a family member's departure from their country of origin and the submission of a residence card application, the competent authority must assess dependency both at the time of arrival in the host Member State (reflecting the situation in the country of origin) and at the time of the application.[626] Importantly, the Court held that documents evidencing dependency in the country of origin, even if issued years earlier, cannot be rejected as "too old". Moreover, it ruled that the fact that a family member resides illegally under national law at the time of the application does not affect the assessment of dependency: what matters is the factual situation of material support.[627] In this way, the Court adapted its earlier case law to situations involving delayed applications, confirming that dependency remains a "factual situation" while extending the temporal framework for its assessment and preventing Member States from excluding applicants on the basis of procedural delays or irregular residence.

In conclusion, the CJEU's case law — *Lebon*, *Jia*, and *Reyes*, and, more recently, *XXX v État belge* — defines dependency as a factual situation in which an individual, unable to sustain themselves, receives material support from an EU citizen. Financial contributions alone are sufficient to establish such a link, without requiring proof of job-seeking efforts, and personal factors such as age, education, or health should not preclude recognition of dependency. Although first developed in relation to family

[625] Case C-607/21 *XXX v État belge* [2025] ECLI:EU:C:2025:264.
[626] ibid, paras 35, 38 and 46. In its provisional text, the Court in para 46 appears to impose a cumulative requirement of proving dependency both at arrival and at the time of application. By contrast, para 59 states that the competent authority must take into account "both […] or […]", an awkward formulation that may reflect a drafting inconsistency. However, as it stands, this wording could be read as framing the test more flexibly, allowing assessment at either point in time.
[627] ibid, paras 58, 62-63 and 65-66.

members under Article 2(2)(c), this quite broad interpretation of "dependant" applies equally to those falling under Articles 2(2)(d) and 3(2)(a), and has been extended to situations involving delayed applications, thereby confirming both the factual and temporal breadth of the concept.

II. Atypical dependency cases

It has been emphasised that, in a typical dependency case, a family member asserts dependency on an adult EU citizen who is exercising their right to free movement within the EU.[628] By contrast, where the EU citizen is a minor, it is the child who depends on another individual, and it is that individual who seeks recognition as a "family member" under the Directive.[629] Thus, although the CD defines "family" on the assumption that the EU citizen exercising free movement rights is an adult, the CJEU has also considered cases in which those rights are exercised by a minor.[630]

In *Zhu and Chen*,[631] a Chinese national arrived in the UK while six months pregnant and subsequently moved to Northern Ireland, where her child was born and automatically acquired Irish nationality. Relying on the daughter's status as an EU citizen with the right to free movement, the mother sought residence rights in the UK for them both. The CJEU held that the child was entitled to be accompanied by their "primary carer", who must be granted a right of residence in the host Member State for the duration of the child's residence.[632] This case illustrates an atypical form of dependency and suggests that being a relative of the sponsor does not appear to be

[628] Milios, 'Defining "Family Members"' (n 588).
[629] ibid.
[630] ibid.
[631] Case C-200/02 *Kunqian Catherine Zhu, Man Lavette Chen v Secretary of State for the Home Department* [2004] ECR I-9925.
[632] ibid, para 45.

necessary to qualify as the primary carer.[633] By recognising that family protection extends beyond traditional definitions of kinship and thereby is not limited to relatives, let alone to those within the "core family" structure,[634] the Court seems to have broadened the scope of individuals eligible for protection under the CD.

Ordinarily, elderly dependants in the collateral line fall within Article 3(2)(a), which presupposes that the EU citizen acts as sponsor while the dependent relative seeks residence rights under a facilitation regime. In *Zhu and Chen*, by contrast, the EU citizen (a minor) was the dependent, and the non-EU parent derived a mandatory right of residence as primary carer. The reasoning raises the question whether, in atypical adult scenarios where the EU citizen is an elderly dependent in the collateral line, a primary carer might also be envisaged as deriving a mandatory right of residence directly from the EU citizen's Treaty right to move and reside freely under Article 21 TFEU.[635] Although this extension has not been recognised in the case law, it illustrates how the dependency logic in *Zhu and Chen* could potentially strengthen the protection available in atypical adult scenarios, including cases involving adult relatives.

While the dependency of a minor EU citizen on a primary carer is inherently assumed, dependency in the case of elderly EU citizens is often treated as qualitatively different, being regarded as contingent and, in principle, capable of being met through alternative or state-provided care.[636] In the latter case, dependency does not automatically imply reliance on a specific individual, raising questions as to when a primary carer might be regarded as indispensable for the effective exercise of free movement rights. However, this distinction between minors and elderly EU citizens is

[633] Milios, 'Defining "Family Members"' (n 588).
[634] ibid.
[635] TFEU (n 619).
[636] cf *Senchishak v Finland* (n 190), para 57; see Section 2.2(e)(II).

not always convincing. In practice, elderly EU citizens — particularly in cases involving severe cognitive impairment or profound physical frailty — may experience levels of dependency comparable to those of minors, requiring continuous and personalised care from a specific individual. Where such dependency is factual — that is, demonstrated by actual reliance in practice — intensive, and non-substitutable, reliance on state-provided assistance may not suffice to ensure the practical effectiveness of the EU citizen's free movement rights. In those circumstances, the logic underpinning *Zhu and Chen* — namely, that separation from a primary carer would deprive the EU citizen's right of residence of any useful effect — may become relevant. In practice, the analogical extension of *Zhu and Chen* logic to elderly dependency cases advanced here is more likely to arise where refusal of residence would disrupt an existing and demonstrable relationship of care upon which the elderly EU citizen in fact depends. Where admission is sought in order to establish, rather than continue, such a relationship, the analogy is considerably more difficult to sustain, given the additional evidential challenges (particularly the difficulty of demonstrating reliance on a specific caregiver where the relationship has not yet operated in practice) and the implications for immigration control. The principle that EU citizenship rights must remain practically effective may be understood as suggesting that it is factual dependency, rather than age as such, that performs the decisive role in triggering derived protection in exceptional circumstances.

Moreover, unlike the mainstream dependency jurisprudence analysed above, which is grounded on material or financial support, the Court's reasoning in *Zhu and Chen* appears to rest on care-based dependency.[637]

[637] Guild, Peers and Tomkin (n 594).

To conclude, the CD establishes a differentiated regime of protection that privileges the "immediate family"[638] (namely spouses, partners, and family members in the ascending and descending line, where the prescribed conditions are met), who enjoy automatic rights under Article 2(2), while relegating other relatives (such as collateral ones) to the more discretionary facilitation framework of Article 3(2). Nonetheless, by treating dependency as a fact-based notion grounded in material (financial) support, interpreted quite broadly and with temporal flexibility, and by indicating in atypical cases such as *Zhu and Chen* a willingness, where care functions are at stake, to extend family protection beyond formal kinship categories, the Court's case law can be read as softening the rigidity of the CD and potentially offering a somewhat stronger position to collateral adult relatives within Article 3(2). At the same time, *Zhu and Chen* suggests that, at least in atypical cases, the Court is willing to look beyond financial aspects, recognising care functions as sufficient to establish dependency.

b) The Family Reunification Directive

Unlike the CD, which is grounded in the protection of free movement for Union citizens, the FRD[639] constitutes the sole EU legislative instrument specifically devoted to the right to family reunification.[640] As discussed in detail below, it applies to third-country nationals (TCNs) legally resident in a Member State.

[638] Costello, '*Metock*' (n 592).
[639] Council Directive 2003/86/EC (n 77).
[640] Klaassen (n 547).

The legislative process leading to the FRD was complex, unfolding through three successive proposals.[641] The first proposal[642] was presented shortly after the European Council meeting in Tampere, reflecting the Council's conclusion that TCNs should enjoy rights "comparable to those of EU citizens".[643] To secure approval from the Member States, however, the third and final version introduced a number of "derogation clauses" and "optional" provisions.[644] The articles analysed below bear clear traces of these compromises.

As Ruffer observes, the evolution of the FRD also reflected shifts in its perceived purpose.[645] Originally envisaged as "an instrument of integration" through the promotion of family life, it was subsequently transformed into a tool for controlling migration and limiting the admission of unwanted immigrants,[646] thereby serving to safeguard the interests of the Member States.[647]

---

[641] Jonas Bornemann, Caroline Arévalo and Tobias Klarmann, 'Family Reunification Directive 2003/86/EC' in Daniel Thym and Kay Hailbronner (eds), *EU Immigration and Asylum Law. Article-by-Article Commentary* (3rd edn, Beck/Hart/Nomos 2022); Costello, *The Human Rights of Migrants* (n 554).

[642] Commission, 'Proposal for a Council Directive on the right to family reunification' COM(1999) 638 final, OJ 2000 C 116 E/66, s 7.1, 9.

Subsequent versions of the proposal can be found in: Commission, 'Amended proposal for a Council Directive on the right to family reunification' COM(2000) 624 final, OJ 2001 C 62 E/99, and in Commission, 'Amended proposal for a Council Directive on the right to family reunification' COM(2002) 225 final, OJ 2002 C 203 E/136.

[643] 'Tampere European Council 15 and 16 October 1999. Presidency Conclusions' (*European Parliament*), para 18 <https://www.europarl.europa.eu/summits/tam_en.htm#a> accessed 18 January 2024.

[644] Dora Schaffrin, 'Which Standard for Family Reunification of Third-Country Nationals in the European Union?' in Jean-Yves Carlier and Philippe de Bruycker (eds), *Immigration and Asylum Law of the EU: current debates* (Bruylant 2005); Bornemann, Arévalo and Klarmann (n 641).

[645] Galya Benarieh Ruffer, 'Pushed Beyond Recognition? The *Liberality* of Family Reunification Policies in the EU' (2011) 37(6) Journal of Ethnic and Migration Studies 935.

[646] ibid.

[647] Helen Oosterom-Staples, 'The Family Reunification Directive: A Tool Preserving Member State Interest or Conducive to Family Unity?' in Anneliese Baldaccini, Elspeth Guild and Helen Toner (eds), *Whose Freedom, Security and Justice? EU Immigration and Asylum Law and Policy* (Bloomsbury 2007).

The final Directive has consequently been described as "much less ambitious"[648] than the earlier drafts and criticised for the "huge reduction in the standards proposed by the Commission".[649]

The FRD was intended to harmonise Member State rules so that the right to family reunification would not depend on the Member State of residence;[650] in practice, however, it establishes only "minimum standards",[651] leaving national authorities free to adopt more favourable provisions should they choose to do so.[652]

The Directive defines the conditions under which TCNs legally resident in a Member State may exercise the right to family reunification.[653] According to Article 2(a), TCNs[654] — identified in Article 2(c) as "sponsors" — include any person who is not a Union citizen under Article 17(1) EC Treaty.[655] The FRD is therefore not applicable to Union citizens, and it does not apply in Ireland and Denmark, as those Member States are not bound by the Directive.[656]

---

[648] Bornemann, Arévalo and Klarmann (n 641).
[649] Steve Peers, *EU Justice and Home Affairs Law* (5th edn, Oxford University Press 2023) vol I, *EU Immigration and Asylum Law*.
[650] Oosterom-Staples (n 647). The purpose of harmonisation is to establish broadly uniform conditions for family reunification for TCNs across the Member States, thereby preventing them from choosing a particular country solely on account of more lenient national rules: COM(1999) 638 (n 642), s 7.4.
[651] This results from Article 3(4) and (5) of the FRD. Oosterom-Staples (n 647); Costello, *The Human Rights of Migrants* (n 554).
[652] Steve Peers, 'Family reunion, the rights of the child and effective remedies: latest CJEU judgment' (*EU Law Analysis*, 28 July 2020) <http://eulawanalysis.blogspot.com/2020/07/family-reunionthe-rights-of-child-and.html> accessed 26 July 2023; Oosterom-Staples (n 647).
[653] Council Directive 2003/86/EC (n 77), Article 1.
[654] For the purpose of this Directive, the definition of TCN also includes stateless persons: COM(1999) 638 (n 642), 11; Bornemann, Arévalo and Klarmann (n 641); Oosterom-Staples (n 647).
[655] Treaty establishing the European Community (EC Treaty) (n 619), Article 17(1), now Article 20(1) of the Treaty on the Functioning of the European Union (TFEU) (n 619).
[656] Council Directive 2003/86/EC (n 77), Recitals 17 and 18.
For the sake of completeness, it should be noted that the FRD does not also apply to requests for family reunification made by Union citizens with their TCN family members: see Case C-256/11 *Murat Dereci and Others v Bundesministerium für Inneres* [2011] (Grand Chamber) ECLI:EU:C:2011:734.

The initial proposal of the FRD was broader: it excluded only the family members of Union citizens exercising their right to free movement,[657] leaving within its scope Union citizens who had not exercised that right,[658] the so-called "non-mobile"[659] or "static"[660] Union citizens. However, this latter category was subsequently removed from the Directive's scope following opposition from Member States seeking to retain restrictive provisions for their own nationals.[661] As such individuals also fall outside the scope of Union free movement law — owing to the absence of the necessary cross-border element — family reunification rights for them are governed exclusively by national legislation.[662] Where the treatment accorded under national rules to a Union citizen who remains in their own Member State (a "static" citizen) — and is therefore in a purely internal situation — is less favourable than that guaranteed by Union law to a Union citizen who moves to another Member State, the phenomenon of "reverse discrimination" arises.[663] Although the Commission, after excluding "non-mobile" Union citizens from the FRD proposal, suggested the adoption of a separate legislative instrument to regulate their position, no such measure has been adopted.[664]

As noted above, "static" Union citizens fall outside both the FRD and the CD, with their situation governed exclusively by national law and potentially giving rise to "reverse discrimination". The substantive analysis of this chapter therefore focuses on

[657] COM(1999) 638 (n 642), art 3(3), 13. These individuals are now covered by Directive 2004/38/EC, as analysed in Section 3.1(a).
[658] COM(1999) 638 (n 642), art 2(d), 12.
[659] Bornemann, Arévalo and Klarmann (n 641).
[660] Costello, *The Human Rights of Migrants* (n 554).
[661] Bornemann, Arévalo and Klarmann (n 641).
[662] Oosterom-Staples (n 647); Kees Groenendijk, 'Family Reunification as a Right under Community Law' (2006) 8(2) European Journal of Migration and Law 215; Tineke Strik, Betty de Hart and Ellen Nissen, *Family Reunification: A Barrier or Facilitator of Integration? A Comparative Study* (European Commission, Wolf Legal Publishers 2013); Bornemann, Arévalo and Klarmann (n 641).
[663] Valérie Verbist, *Reverse Discrimination in the European Union. A Recurring Balancing Act* (Intersentia 2017); Guild, Peers and Tomkin (n 594); Block (n 38); Oosterom-Staples (n 647); Bornemann, Arévalo and Klarmann (n 641).
[664] Bornemann, Arévalo and Klarmann (n 641).

individuals who have migrated — either Union citizens exercising their free movement rights (examined in Section 3.1(a) under the CD) or TCNs moving into the EU (examined here under the FRD). It should also be noted, however, that naturalisation can create complications and paradoxically reduce protection: a TCN who acquires the nationality of a Member State may, by becoming a static citizen, lose the derivative family reunification rights that had previously been available under Union law when moving from another country.

A comprehensive analysis of the FRD lies beyond the scope of this work. What is relevant here is the Directive's definition of family and, in particular, the extent of protection afforded to adult-adult relationships. The following two sections will therefore examine the admission categories set out under the FRD, demonstrating that Member States are obliged to grant family reunification to certain categories of family members, while for others reunification remains optional.

I. Article 4(1) and the obligation to grant family reunification to members of the nuclear family

According to the FRD, the right to family reunification — defined as "the entry into and residence in a Member State by family members of a third country national […] in order to preserve the family unit, whether the family relationship arose before or after" that TCN's entry —[665] must be granted to members of the nuclear family. The Directive therefore adopts a "narrow" definition of family, which corresponds to a "traditional"

[665] Council Directive 2003/86/EC (n 77), Article 2(d).
In *Chakroun*, the CJEU held that family reunification also encompasses "family formation", namely situations where the family is constituted after the sponsor's entry into the host Member State: Case C-578/08 *Rhimou Chakroun v Minister van Buitenlandse Zaken* [2010] ECR I-1839, paras 59-62; Peers, *EU Justice* (n 649).

understanding of the term, and its derogations may further curtail the range of individuals recognised as family members under the Directive.[666]

Article 4(1) stipulates that, for the purposes of family reunification, Member States must allow entry and residence of the sponsor's spouse, while Article 4(5) permits the imposition of a minimum age requirement. In addition, they must authorise the entry and residence of any unmarried minor children, whether joint or of either spouse, provided that in the latter case the parent concerned has custody and the children are dependent on him or her,[667] including adopted children.

Accordingly, the sponsor's spouse, and the unmarried minor children meeting the requirements of Article 4(1)(b)-(d),[668] are entitled to family reunification, which Member States are obliged to grant "without […] a margin of appreciation".[669]

However, Article 4 is the product of significant changes made during the negotiation process.[670] The two earlier proposals envisaged a broader personal scope, extending family reunification to categories of family members beyond the nuclear family. For example, the initial proposals included — among others and with reference to the relationships central to this work — dependent relatives in the ascending line of the

---

[666] Georgios Milios, 'A Re-examination of the Family Reunification Directive in the post-Lisbon Fundamental Rights Scene' (2018) 12(1) Vienna Journal on International Constitutional Law 85; Damian Chalmers, Gareth Davies and Giorgio Monti, *European Union Law: Cases and Materials* (2nd edn, Cambridge University Press 2010).

[667] For the list of cases in which these further elements are required, and for the regime applicable where custody is shared, see Article 4(1)(b)-(d). For a detailed analysis of these instances, see Bornemann, Arévalo and Klarmann (n 641).

[668] According to the second subparagraph of Article 4(1), national law determines whether a child is to be regarded as a minor. As a general rule, however, majority is attained at the age of 18: see Oosterom-Staples (n 647).

[669] Case C-540/03 *Parliament v Council* [2006] (Grand Chamber) ECLI:EU:C:2006:429, para 60; Commission, '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, 2.

[670] Bornemann, Arévalo and Klarmann (n 641).

sponsor, spouse, or partner who lacked other family support in the country of origin,[671] and adult children who were "objectively unable" to provide for themselves on account of their "state of health".[672]

In response to Member State opposition, the Commission concluded that it was not possible "to extend the obligation to allow entry and residence" beyond the nuclear family.[673] As a counterbalance to this restrictive choice, optional provisions were incorporated into Articles 4(2) and 4(3)[674] — which will be analysed in Section 3.1(b)(II) — permitting, but not obliging, Member States to grant family reunification to family members outside the nuclear family. As Klaassen observes, this optional regime is "curious", as it resulted from a "compromise" reached at Council level, under which categories such as dependent adult children or dependent relatives in the ascending line, fully covered on a mandatory basis in the Commission's first two proposals, have now been relegated to a weaker, optional framework.[675]

Thus, the development of Articles 4(1)-(3) exemplifies the 'broader' negotiation process that shaped the FRD as a whole, as illustrated above.

Before turning to the optional provisions, one further element of Article 4 warrants attention. This article contains two derogation clauses concerning minor children, which have been cited as "representative of the narrow conception of family" adopted by the EU legislature in relation to the family reunification of TCNs.[676] The first

---

[671] COM(2000) 624 (n 642), art 5(1)(d), which reflects the previous art 5(1)(d) of COM(1999) 638 (n 642).
[672] COM(2000) 624 (n 642), art 5(1)(e); see also art 5(1)(e) of COM(1999) 638 (n 642).
[673] Bornemann, Arévalo and Klarmann (n 641); Commission, 'Amended proposal for a Council Directive on the right to family reunification' (Explanatory Memorandum), COM(2002) 225 final, 6, noting that no agreement could be reached owing to variations in national law concerning those entitled to family reunification.
[674] Bornemann, Arévalo and Klarmann (n 641).
[675] Klaassen (n 547).
[676] Milios, 'A Re-examination of the Family Reunification Directive' (n 666).

derogation, in Article 4(1), third subparagraph, permits Member States, before authorising the entry and residence of a minor child over the age of 12 who arrives independently from their family, to require that the child satisfy a "condition for integration". The second derogation, set out in Article 4(6), permits Member States to request that applications for family reunification of minor children be submitted before the age of 15; applications submitted thereafter must be considered "on grounds other than family reunification". Both provisions are subject to a "standstill clause", which stipulates that the derogations must already have been part of national legislation on the date of the Directive's implementation (3 October 2005).[677] Thus, after this date, introducing new restrictions or amending age thresholds is prohibited.[678] As a result of the presence of the standstill clauses, the practical importance of these provisions today has largely diminished,[679] since Member States cannot invoke them unless they had already been incorporated into national law at the time of implementation.

In conclusion, the mandatory provisions in Article 4(1) impose an obligation on Member States to grant family reunification only to the nuclear family, while the relegation of broader categories of relatives to an optional regime reveals the extent of the political compromise underpinning the Directive. This leaves a framework that formally enshrines a narrow conception of family.

Although the two derogations (Article 4(1), third subparagraph, and Article 4(6)) may appear to curtail even further the scope of the mandatory obligation of family

[677] Commission, 'Report from the Commission to the European Parliament and the Council on the application of Directive 2003/86/EC on the right to family reunification' COM(2008) 610 final, s 4.1, 5-6.
[678] Bornemann, Arévalo and Klarmann (n 641).
The first derogation has been invoked in Germany and Cyprus. However, as Cyprus adopted it after the FRD's implementation date, it is invalid. No Member State has implemented the second derogation: COM(2008) 610 (n 677), s 4.1, 5.
[679] Bornemann, Arévalo and Klarmann (n 641).

reunification by excluding certain minor children, their practical significance has been neutralised by the standstill clauses. The Directive, therefore, continues to oblige Member States to authorise family reunification with the nuclear family, and these derogations do not in practice alter this duty. By contrast, the optional provisions in Articles 4(2) and 4(3) introduce a different dynamic, allowing — but not obliging — Member States to extend family reunification beyond the nuclear family.

II. Article 4(2) and (3): the "optional" admission regime

As noted above, when transposing the FRD into national law, Member States may — but are not obliged to — extend the right to family reunification to three categories of relatives beyond the nuclear family: (a) parents of the sponsor or spouse (Article 4(2)(a)), (b) adult unmarried children unable to support themselves for health reasons (Article 4(2)(b)), and (c) unmarried partners together with certain of their children (Article 4(3)). Scholars have therefore described these provisions as constituting an "optional admission"[680] or a "facultative regime",[681] since the extension of protection to a wider range of family relationships is left entirely to national discretion, in contrast to the compulsory obligations in Article 4(1), examined in the previous section. Under this facultative regime, the family members eligible for family reunification may therefore vary between Member States; where Member States do not extend reunification rights to these categories, such family members remain governed by national law.[682]

According to Article 4(2)(a), Member States may authorise the entry and residence of first-degree relatives in the direct ascending line (i.e. parents) of either the sponsor or

[680] ibid.
[681] Klaassen (n 547).
[682] Oosterom-Staples (n 647).

the sponsor's spouse, provided that they are dependent on them and lack adequate family support in their country of origin.[683]

Regarding the dependency requirement, the Commission's Administrative Guidelines state that the notion of dependency has "an autonomous meaning under EU law".[684] Although this concept was developed in the context of the CD, the Guidelines emphasise that the CJEU's language does not suggest that its findings were confined to that Directive. While acknowledging that the two Directives differ in "context and purpose", the Guidelines indicate that the criteria identified under the CD may, "*mutatis mutandis*", serve "as guidance" for Member States when assessing "the nature and duration of dependency" under Article 4(2)(a).[685] On this basis, Klaassen concludes that the concept should be interpreted in the same manner as under the CD.[686]

The Guidelines therefore recall the criteria developed by the Court on dependency in the context of the CD (analysed in Section 3.1(a)(I-II)). In particular, they state that, according to the Court, dependency is a "factual situation" in which the sponsor (or his or her spouse or partner) provides "legal, financial, emotional, or material support" to the family member concerned, citing CJEU case law by analogy.[687] In practice, however, the Court's jurisprudence under the CD has — as shown above — consistently defined dependency in terms of material or financial support, with the exception of *Zhu and Chen*,[688] which appears to illustrate that care functions may also establish dependency. The references to "legal" and "emotional" dependency in the

[683] Council Directive 2003/86/EC (n 77), Article 4(2)(a): "first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin".
[684] COM(2014) 210 (n 669), s 2.2, 6. See also Case C-519/18 *TB v Bevándorlási és Menekültügyi Hivatal* [2019] ECLI:EU:C:2019:1070, para 44.
[685] COM(2014) 210 (n 669), s 2.2, 6.
[686] Klaassen (n 547).
[687] COM(2014) 210 (n 669), s 2.2, 6.
[688] Case C-200/02 *Zhu and Chen* (n 631).

Guidelines originate from the Union citizenship jurisprudence, namely *O. and S.*,[689] where the Court considered the position of minor Union citizens in relation to their TCN parents. By contrast, unlike *Zhu and Chen*, this strand of case law arose under Article 20 TFEU (*Ruiz Zambrano*),[690] rather than under the CD.

Peers observes, however, that the Commission's Guidelines fail to mention the earlier judgment in *Reyes*, which, as shown in Section 3.1(a)(I), clarified important aspects of dependency.[691] The Court subsequently addressed this gap in *TB v Bevándorlási*, where it explicitly cited *Reyes* and confirmed the position, already advanced in the Guidelines, that the interpretation of "dependent" family member developed under the CD also applies to the FRD.[692] While the Guidelines stressed that the CD and FRD differ in "context and purpose", the Court in that case emphasised that they nonetheless "pursue similar objectives", namely to ensure or encourage family reunification of EU citizens and third-country nationals lawfully residing in the host Member State.[693]

With respect to the separate requirement of "no proper family support", it has been underlined that this condition is fulfilled where, in the country of origin, there are no other family members who provide support, either "by law or *de facto*". Moreover, the concept of "proper family support" is not limited to material assistance and allows Member States a margin of discretion in determining what level of support should be regarded as adequate, assessed in light of the specific circumstances of the case.[694]

---

[689] Cases C-356/11 and C-357/11 *O and S v Maahanmuuttovirasto* and *Maahanmuuttovirasto v L* [2012] ECLI:EU:C:2012:776, para 56.
[690] TFEU (n 619); Case C-34/09 *Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm)* [2011] (Grand Chamber) ECLI:EU:C:2011:124.
[691] Steve Peers, 'Family Reunion for Third-Country Nationals: Comments on the Commission's new guidance' (*EU Law Analysis*, 4 April 2014) <http://eulawanalysis.blogspot.com/2014/04/family-reunion-for-third-country.html> accessed 12 September 2023; cf COM(2014) 210 (n 669). Case C-423/12 *Reyes* (Judgment) (n 621).
[692] Case C-519/18 *TB* (n 684), paras 48-49; cf COM(2014) 210 (n 669), s 2.2, 6.
[693] See COM(2014) 210 (n 669), s 2.2, 6; Case C-519/18 *TB* (n 684), para 49.
[694] COM(2014) 210 (n 669), s 2.2, 7.

Under Article 4(2)(b), Member States may authorise the admission of adult unmarried children of the sponsor or of the sponsor's spouse, provided it is "objectively" demonstrated that they are unable to support themselves due to their "state of health".[695] Despite requests made during the negotiations, it has not been required that such a state of health be "serious" or result in "incapacity for work".[696]

The text of this provision makes clear that family reunification for adult unmarried children is envisaged only where their inability to provide for their own needs arises from health reasons. While the choice of a health-based parameter in Article 4(2)(b) is reasonable, given that poor health typically precludes an individual from providing for their own basic needs independently, limiting the possibility of reunification solely to such circumstances excludes other situations in which adult unmarried children are likewise unable to support themselves. An example is the case of an adult child who, owing to an involuntary lack of education — for instance, because the family lacked the financial means to provide schooling during childhood or early adulthood — lacks sufficient means of subsistence. It can be argued that such individuals would in practice require material support from their family of origin and should therefore also be eligible for reunification.

A possible objection is that, rather than granting family reunification, parents could support such children through remittances. Against this view, it can be counter-argued that allowing family reunification generally reduces costs and facilitates support: it is easier and more affordable for parents to provide financial and material assistance

[695] Council Directive 2003/86/EC (n 77), Article 4(2)(b): "the adult unmarried children of the sponsor or his or her spouse, where they are objectively unable to provide for their own needs on account of their state of health". This wording makes clear that the children need not be common to both; they may be children of either the sponsor or the sponsor's spouse: Bornemann, Arévalo and Klarmann (n 641).

[696] Council of the European Union, 'Amended proposal for a Council Directive on the right to family reunification - Outcome of proceedings of the Working Party on Migration and Expulsion' Doc 6450/01 (6 March 2001), 8 fn 1.

when they and their children live in the same household within the same country, rather than maintaining separate households across borders.[697] Furthermore, employment opportunities are often more accessible in host Member States than in sending countries. Thus, family reunification would not only facilitate support but could also, over time, enable the adult child to lessen or, in some cases, even overcome their inability to provide for their own needs.

Articles 4(1), second subparagraph, and 4(2)(a) and (b) give rise to a number of interpretative and practical issues, discussed below.

Article 4(3) provides that Member States may authorise the entry and residence of an unmarried third-country partner, who is either in a proven long-term relationship with the sponsor or linked to the sponsor through a registered partnership under Article 5(2). The provision also extends to their unmarried minor children, including adopted children, and to unmarried adult children who are objectively unable to support themselves on health grounds. As the category of unmarried partners falls outside the scope of this work, the provision will not be examined further.

Klaassen describes the introduction of the "facultative regime" as "questionable", noting that Article 3(5) FRD already permits Member States "to adopt or maintain more favourable provisions". According to this view, Member States are already entitled, by virtue of that article, to authorise family reunification for the categories of relatives listed in Articles 4(2) and 4(3).[698] Other scholars, by contrast, advance a related but broader

[697] This may not hold in every case, particularly in situations of extreme poverty. Yet in such contexts, structural conditions — such as persistent poverty, lack of education, and scarce resources — generally mean that the individual remains unable to support themselves, so the broader argument remains valid.
[698] Klaassen (n 547).

interpretation of Article 3(5), relying on the Court's case law.[699] They argue that the provision cannot be used to expand the Directive's personal scope, but instead it empowers Member States, through national legislation, to grant more favourable treatment to TCNs who fall outside it.[700] Thus, the decisive difference lies in the source of protection: relatives explicitly mentioned in the FRD fall within its personal scope and derive protection directly from it, whereas those included only by virtue of Article 3(5) are protected solely under national law, rather than the Directive itself. Such extensions, therefore, do not alter the Directive's own definition of family members.

In any case, with reference to the family members mentioned in Articles 4(1), second subparagraph, and 4(2)(a) and (b), a few considerations are necessary.

The first consideration concerns the family members referred to in Article 4(2)(a). The first and second proposals of the FRD used the broader expression "relatives in the ascending line",[701] without specifying degree. Under those proposals, both parents and grandparents could, for example, have fallen within this category. The final version of the FRD, however, restricted the personal scope of this group by limiting it to "first-degree relatives" in the ascending line in practice covering only parents.[702] In relation to this category of family members, it is plausible to suggest that — consistent with the regime change for these family members from mandatory inclusion to optional admission discussed in Section 3.1(b)(I) — the subsequent restriction to first-degree

[699] Bornemann, Arévalo and Klarmann (n 641); Case C-519/18 *TB* (n 684), para 43. See also Costello, *The Human Rights of Migrants* (n 554).
[700] Bornemann, Arévalo and Klarmann (n 641). See also Costello, *The Human Rights of Migrants* (n 554).
[701] COM(2000) 624 (n 642), art 5(1)(d), which reflects the previous art 5(1)(d) of COM(1999) 638 (n 642).
[702] Council Directive 2003/86/EC (n 77), Article 4(2)(a). See Explanatory Memorandum where the Commission noted that relatives in the ascending line "have been defined more precisely" so as to include only those in the first degree: Explanatory Memorandum, COM(2002) 225 (n 673), 6.

ascendants only resulted from Member States' insistence on further narrowing the personal scope of the Directive, in order to retain greater control over admission.

This restriction underscores the particularly narrow conception of family adopted by Article 4(2)(a) FRD, which — by limiting eligibility to first-degree ascendants of the sponsor or of their spouse — excludes both grandparents and the ascendants of a partner, even where the partnership is legally recognised. By contrast, Article 2(2)(d) CD — mentioned in Section 3.1(a) — applies more broadly to dependent direct relatives in the ascending line and expressly includes those of a registered partner of the Union citizen, provided the host Member State recognises the partnership. The FRD, therefore, adopts an even narrower conception of family than the CD, privileging marriage over other forms of family life and confining eligible ascendants to the first degree only.

A second consideration arises in relation to children who are married. From the text of Article 4(1), second subparagraph, read together with Article 4(2)(b), it is clear that married children — whether minors or adults — do not enjoy protection under the FRD. Some scholars have noted that this approach stems from the idea that family reunification, when children are concerned, should ensure that they are cared for by those upon whom they are dependent.[703] On this basis, they conclude that a married child is, "by definition, not regarded as being dependent on the parents' care", since they have a spouse.[704] While this reasoning holds in many cases, it must be acknowledged that situations do exist in which a married child remains dependent on their parents.

[703] Bornemann, Arévalo and Klarmann (n 641). See also Oosterom-Staples (n 647).
[704] Bornemann, Arévalo and Klarmann (n 641).

One example is where the child is still a student or lacks stable employment, and the spouse's income is insufficient to meet the household's financial needs. Another situation may arise where a married child suffers from a disability or chronic illness, rendering them reliant on their parents' financial and practical support despite being married. Although adult dependent children are, in principle, covered by Article 4(2)(b) where they are objectively unable to provide for their own needs due to health reasons, this protection is explicitly lost upon marriage, leaving such children without entitlement under the FRD. In certain cultural contexts, it is also common for married children — together with their spouses and offspring — to continue residing in the parental household, relying on pooled resources for economic security.[705] Similarly, one spouse may be temporarily absent — for instance, due to labour migration — leaving the married child dependent on their family of origin for housing, childcare, or subsistence. In all these scenarios, the married child's dependency on their parents persists notwithstanding the existence of a marital bond.

The consequences of an outright exclusion based solely on marital status are therefore significant. It disregards the diverse forms of dependency that may continue after marriage — financial, health-related, cultural, and practical — and exposes families to the risk of forced separation. Moreover, it reinforces a narrow and formalistic conception of dependency, treating marriage as a decisive legal cut-off and disregarding the actual circumstances of the individuals concerned. This approach stands in contrast with the Court's broader jurisprudence (examined above), which consistently defines dependency as a factual situation to be assessed in light of the

[705] Empirical studies show that in Southern and Eastern European countries multigenerational co-residence — particularly with grandparents — often serves as a protection against poverty for children. While these findings are not specifically linked to marriage, they illustrate the persistence of intergenerational households in which resources are pooled across family units: see Eleni Karagiannaki and Tania Burchardt, 'Living Arrangements, Intra-Household Inequality and Children's Deprivation: Evidence from EU-SILC' (2024) 17 Child Indicators Research 2319.

applicant's real conditions, rather than treating the fact of marriage as a decisive legal category for determining dependency, irrespective of whether dependency actually exists in practice. By ignoring this factual nature, the Directive replaces a nuanced case-by-case inquiry with a rigid formal rule, thereby excluding families whose dependency relationships remain genuine and substantial. By failing to accommodate these realities, it ultimately deprives both married children and their families of any legal avenue for reunification, leaving them without protection in precisely those circumstances where support from the family of origin remains indispensable. This approach further reflects the problematic logic — also evident in the ECtHR's jurisprudence (examined in Section 2.2(b)(II)) — that only "one" family is protected: in the FRD scenarios, either the family of origin or, upon marriage, the new family unit. As Mustasaari has observed, the exclusion of married minor children from the Directive's definition of family presumes that marriage automatically creates an independent family unit. The law thus operates on an "extremely binary notion of belonging", in which recognition as part of one family simultaneously entails exclusion from another.[706] This binary framework is particularly problematic in contexts where family ties overlap. In practice, dependency and support may continue to flow across both the family of origin and the new family unit, demonstrating that belonging is not as exclusive as the Directive assumes.

It is also noteworthy that the requirement of being unmarried was absent from the first two proposals for the Directive. Thus, it is plausible to suggest that — consistent with the regime change for these family members from mandatory inclusion to optional admission discussed in Section 3.1(b)(I), and in line with the restriction imposed on

[706] Mustasaari (n 220).

ascendants in the direct line discussed above — the subsequent inclusion of this additional requirement, which further narrowed the personal scope of the category, resulted from the insistence of Member States seeking greater control over admission.

Moreover, in the context of married and unmarried children, a category whose treatment under the FRD appears, at least at first glance, ambiguous is that of individuals who were married but have subsequently divorced or become widowed at the time of their application for family reunification.

According to the reasoning articulated by some scholars and mentioned above, the dependency of an individual on their spouse is presumed to arise from the act of marriage.[707] Yet this raises the question: what occurs when the marriage is dissolved through divorce or widowhood? In such circumstances, if the individual had been financially dependent on their spouse, the dissolution may create substantial challenges for self-sufficiency and independent living. This predicament may compel them to seek support from their family of origin, leading to an application for family reunification with members of that family. However, as the FRD refers respectively to minors who “must not be married” and to “adult unmarried children”,[708] it is unclear whether such requests would fall within its scope of protection.

At least with respect to minors, it has been argued that a literal reading of the provision entails that marital status at the time of the application or admission should be decisive.[709] On this basis, it has been concluded that such an interpretation — aligned with the best interests of the child as required by Article 5(5) FRD — should be preferred, particularly where the child, having married at a very young age, is still

[707] Bornemann, Arévalo and Klarmann (n 641).
[708] Council Directive 2003/86/EC (n 77), Article 4(1) subparagraph 2 and Article 4(2)(b).
[709] Oosterom-Staples (n 647).

considered a minor by Western standards when the marriage is dissolved and thereby becomes dependent on the family member with whom reunification is sought.[710] In accordance with this reasoning, if at the time of the application or at the time of admission the marriage is deemed dissolved, a divorced or widowed minor may have their request for family reunification granted.

This literal reading appears equally applicable to adult children. Article 4(2)(b) limits their admission to cases where they are objectively unable to provide for their own needs on account of health, a restriction that, as argued above, is itself unduly narrow. Yet even within this restrictive personal scope, there is no express limitation that would preclude extending the same reasoning applied to minors. Consequently, if adult children who satisfy the requirement laid down in Article 4(2)(b) are divorced or widowed at the time of the application or admission, their requests for reunification with members of their family of origin should likewise be granted. To hold otherwise would disregard the reality that divorced or widowed adult children may remain in a situation of dependency and would create an unjustifiable distinction between them and their unmarried counterparts, since both may remain in situations of health-related dependency but only the former would be excluded solely on the basis of marital history. Moreover, such an exclusion would be incongruous, as it would place divorced or widowed adults who meet the health-related requirement set out in Article 4(2)(b) in a less favourable position than unmarried adults admitted under that provision, despite their circumstances being comparable. Beyond this internal inconsistency, rejecting the application of this reasoning to adults would also disregard the profound human impact of family dissolution which carries serious consequences irrespective of the age of the individuals affected.

---

[710] ibid.

An additional ambiguity arises in cases of *de facto* separation, where the marital bond formally persists but the relationship has effectively ended, often accompanied by a cessation of spousal support. In such circumstances, the individual may in practice revert to dependency on the family of origin. Yet the Directive offers no indication as to whether such applicants should, for the purposes of Article 4, be treated as still "married" and thus excluded under its terms, or as effectively "unmarried" where dependency has in fact returned to the family of origin. For minors, the latter reading would bring them within Article 4(1), while for adults it would only operate within the already restrictive personal scope of Article 4(2)(b), namely where they are unable to provide for themselves on account of health. This lacuna further illustrates the rigidity of the Directive's reliance on formal marital status, at the expense of recognising dependency as a factual situation, as consistently emphasised in the CJEU's jurisprudence under the CD.

More broadly, the difficulties and uncertainties identified above point to an underlying ambiguity in Article 4(2) itself, which is not entirely clear regarding the extent of Member State discretion, particularly as to whether the conditions it sets out are mandatory limits or merely indicative criteria; therefore, reference to the preamble is justified. In line with the interpretative approach recognised by the International Court of Justice in *Case concerning Rights of Nationals of the United States of America in Morocco*,[711] the preamble may be relied upon to clarify the purpose and scope of provisions whose wording is ambiguous or unclear.

Thus, with regard to the categories of individuals referred to in Articles 4(2)(a) and 4(2)(b), a comparative analysis between Recital 10 of the FRD's Preamble and those

[711] *Case concerning Rights of Nationals of the United States of America in Morocco (France v United States of America)* Judgment [1952] ICJ Rep 176.

provisions proves instructive. Recital 10 provides certain indications of the Directive's scope, omitting, for instance, siblings from the list of individuals eligible for family reunification. However, with respect to "relatives in the direct ascending line", the recital neither restricts this category to those of the "first degree", as stipulated in Article 4(2)(a), nor specifies, unlike the article, that such individuals must be "dependent" and without adequate family support in the country of origin. Similar considerations apply to "adult unmarried children", since the recital does not confine this category to those who are objectively unable to provide for themselves on health grounds. On this basis, it may be argued that Member States, given that the Directive merely lays down "minimum standards", retain the discretion not to impose the conditions set out in Articles 4(2)(a) and (b), the only constraints being those reflected in Recital 10. The wording of the recital indeed appears to allow for a broader interpretation of the family members covered under Article 4(2). Accordingly, it seems plausible to suggest that, at least in respect of these categories of individuals, they should fall within the scope of the "minimum standards" clause, such that compliance with the conditions specified in Article 4(2) is not strictly required.

To contrast this conclusion, reference may be made to the case of *X v Belgium*.[712] Yet this judgment is not directly pertinent. While the Court there referred to Article 3(5) FRD, it simultaneously appeared to preclude Member States from exercising greater generosity, thereby leaving unresolved whether the "minimum standards" are prohibited or permissible. It is noteworthy, however, that the case did not concern the admission of broader categories of family members, but rather an administrative delay in the processing of an application.

[712] Case C-706/18 *X v Belgische Staat* [2019] ECLI:EU:C:2019:993.

In any event, the conclusion suggested above — namely, that Member States are not obliged to admit such family members only when the conditions of Article 4(2) are satisfied — has also been advanced by some scholars.[713] For these scholars, however, the decisive basis lies in the permissive "may clause" in Article 4(2), which they interpret as evidence that the strict conditions attached to relatives in the ascending line and adult unmarried children do not limit Member State discretion to admit them more generously.[714] By contrast, the argument developed here rests on a comparative reading of Recital 10 and Article 4(2).

It can be concluded that the final FRD represents a considerably 'shrunk' version of the earlier two proposals. The adopted Directive not only reduces the number of family-member categories for which Member States are obliged to grant family reunification — replacing some of these obligations with discretionary provisions — but also introduces additional restrictions on the personal scope, adding requirements that were absent from the previous drafts. Consequently, the overall outcome, particularly in relation to adult relatives, is a narrower definition of family and a correspondingly weaker protection of those family members.

As has been shown, Member States, depending on the category of family member concerned, are under an obligation (with respect to the nuclear family, under Article 4(1)) or merely enjoy an option (for limited categories beyond that unit, under Articles 4(2) and 4(3)) to grant family reunification. In any case, the Court has clarified that "authorisation of family reunification is the general rule", that any restrictions must be interpreted strictly, and that Member States' margin for manoeuvre must not be

[713] See Costello, *The Human Rights of Migrants* (n 554).
[714] ibid.

exercised in a manner that undermines the Directive's objective of promoting family reunification.[715]

The Directive expressly acknowledges that "[f]amily reunification is a necessary way of making family life possible".[716] Yet despite this recognition, its personal scope remains largely confined to the nuclear family, offering only very limited protection for adult relatives (first-degree ascendants and adult unmarried children who are objectively unable to provide for themselves on health grounds). As currently drafted, the FRD does not permit Member States to extend its scope to members of the extended family, including those linked by horizontal relationships such as siblings, thereby further restricting the categories of family members eligible for entry. This approach is potentially discriminatory, particularly on cultural grounds, as it fails to afford protection to demographic groups that traditionally cohabit or maintain strong kinship ties beyond the nuclear family unit.[717]

The case law developed under the CD, which should guide the interpretation of the FRD, and the Commission's Guidelines on the FRD both frame dependency as a factual situation. Nevertheless, the Directive's text treats marital status as a rigid cut-off, producing exclusions (notably for married children) that sit uneasily with that factual approach.

Read together with Recital 10, Article 4(2) appears open to a broader interpretation that does not require the automatic application of all conditions in every case, consistent with the Directive's nature as an instrument laying down minimum standards.

---

[715] Case C-578/08 *Chakroun* (n 665), para 43; COM(2014) 210 (n 669), s 1, 3; Commission, 'Report from the Commission to the European Parliament and the Council on the implementation of Directive 2003/86/EC on the right to family reunification' COM(2019) 162 final, s II, 7.
[716] Directive 2004/38/EC (n 587), Recital 4 (Preamble).
[717] Peers, *EU Justice* (n 649).

Overall, the FRD's optional regime reflects a restrictive conception of family, leaving significant discretion to Member States and creating notable gaps in protection for family relationships that extend beyond the nuclear model.

III. Preferential treatment for refugees and derogations from the FRD in other EU Directives

This section examines the preferential provisions on family reunification found in the FRD with respect to refugees and then considers other EU legislative instruments that include derogations ("waivers"[718]) from the FRD for specific categories of TCNs. The purpose is to assess whether, and to what extent, these provisions and instruments affect the FRD's underlying conception of "family".

Although refugees fall outside the scope of this work, it is nevertheless important to note that the Directive provides preferential and more favourable treatment regarding the exercise of the right to family reunification where the sponsor is a refugee.[719] This preferential treatment primarily takes the form of derogations from the general rules laid down in the Directive and is justified by the refugee's particular situation and needs.[720] As Recital 8 of the FRD explains, the rationale for granting "more favourable conditions" to this category of persons is rooted in "the reasons which obliged them to flee their country and prevent them from leading a normal family life there".[721]

---

[718] ibid.
[719] Bornemann, Arévalo and Klarmann (n 641).
[720] COM(2008) 610 (n 677), s 4.6, 14; Bornemann, Arévalo and Klarmann (n 641).
[721] See also UNHCR, 'Statement on family reunification for beneficiaries of international protection. Issued in the context of the preliminary ruling reference to the Court of Justice of the European Union in the case of *CR, GF, TY v. Landeshauptmann von Wien* (C-560/20)' (22 June 2021), ss 3.1.3 and 3.1.4, 3 <https://www.refworld.org/jurisprudence/amicus/unhcr/2021/en/123879> accessed 13 March 2024; Case C-560/20 *CR, GF, TY v Landeshauptmann von Wien* [2024] ECLI:EU:C:2024:96, para 32.

An example of this preferential treatment relevant to the present discussion — namely, how family is understood in the FRD, and particularly which family members may qualify for reunification — is found in Article 10(2). This provision, which forms part of the optional regime, grants Member States a discretionary power to authorise family reunification with any other family members of the refugee not included in Article 4, provided that they are dependent on the refugee. Thus, for instance, siblings, aunts, uncles, cousins, or even grandparents and grandchildren may be reunited with the refugee, provided the dependency requirement is satisfied. It has been emphasised that no restrictions exist as to the "degree of relatedness" of the individuals concerned.[722] This observation appears to be in line with the CJEU's interpretation of Article 10(2), according to which Member States enjoy "significant latitude" when deciding which members of a refugee's family may be granted family reunification.[723] However, this discretion is constrained by the requirement that such family members must, in fact, be dependent on the refugee.[724]

Another example of favourable treatment accorded to refugees is contained in Article 10(3)(a). Where the refugee is an unaccompanied minor, the right to family reunification with their parents is neither left to Member State discretion nor subject to the conditions set out in Article 4(2)(a).[725]

---

[722] COM(2014) 210 (n 669), s 6.1.1, 22.

[723] Case C-519/18 *TB* (n 684), para 40.

[724] ibid, para 41.

[725] Case C-560/20 *CR, GF, TY* (n 721), paras 33 and 52.

With regard to unaccompanied minors who have been granted refugee status and the special protection afforded to them, it is pertinent to refer to the recent judgment in case C-560/20, previously cited. In this case, the refugee's adult sister, suffering from a serious illness, was "totally and permanently dependent" on her parents' assistance, to such an extent that they could not leave her alone in Syria. It should be noted that she was incapable of accessing any social assistance network in that country.

The Court first observed that Article 10(3)(a) aims to "promote the reunification of unaccompanied minor refugees with their parents", thereby ensuring "additional protection" for these vulnerable minors. It further held that this provision imposes a positive obligation on Member States to authorise such reunification. In the case at hand, the Court noted that the parents could not join their refugee son in Austria without bringing their daughter.

On that basis, the Court concluded that the only feasible way for the unaccompanied minor refugee to exercise his right to family reunification with his parents was by granting an entry and residence permit

It should be noted that the EU Qualification Directive (Directive 2011/95/EU) operates alongside the FRD: while it defines who qualifies as a refugee or as a beneficiary of subsidiary protection and requires Member States to ensure family unity (Article 23), it does not confer a specific right to family reunification.[726]

Consequently, the FRD's more favourable provisions apply only to refugees, not to beneficiaries of subsidiary protection, revealing the fragmented nature of EU family-reunification law and its limited personal scope, as the latter group remains outside the Directive's favourable regime despite comparable protection needs.

It is also worth noting that the FRD has been indirectly amended through other EU legislative instruments which establish special, more favourable regimes for family reunification applicable to particular categories of TCNs, such as Blue Card holders or researchers.[727]

An example is Directive 2009/50/EC (the "Blue Card Directive"), which governed the admission of TCNs for the purpose of "highly qualified employment".[728] This Directive

---

to his adult sister. A conclusion limiting family reunification to the parents would, in effect, have deprived the refugee of the right to family reunification with his parents, thereby "rendering the exercise of [that] right impossible in practice" (paras 51-52 and 54-56; UNHCR, 'Statement on family reunification' (n 721), s 4.4.5, 10). The parents would thus have been confronted with an insurmountable dilemma: either leave their dependent child behind or renounce their right to family reunification (UNHCR, 'Statement on family reunification' (n 721), s 4.4.5, 10). As the Court made clear, a refusal to grant the sister entry would have been "incompatible with the unconditional nature" and effectiveness of the right to family reunification under Article 10(3)(a) (para 57).
This case thus underscores the Court's broader interpretation of family and its more lenient approach in situations involving unaccompanied refugees.

[726] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [2011] OJ L 337/9.

[727] Peers, *EU Justice* (n 649). See: Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment [2009] OJ L155/17, now repealed by Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC [2021] OJ L 382/1; Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing [2016] OJ L 132/21.

[728] Council Directive 2009/50/EC (n 727), art 1.

introduced six derogations — or "waivers" — from the FRD, intended to enhance the attractiveness of the EU for highly skilled workers.[729] These derogations, however, are not directly relevant to the present analysis, as they did not modify the meaning of the term "family", which is the focus of this work. Indeed, Article 2(f) of the Blue Card Directive expressly referred to the notion of family members as defined in Article 4(1) FRD, thereby maintaining the Directive's narrow, predominantly nuclear-family model. Although Directive 2009/50/EC has subsequently been repealed and replaced by Directive (EU) 2021/1883, the recast Blue Card Directive retains this approach, continuing to rely on the definition of "family members" contained in the FRD.[730] Accordingly, while such instruments indirectly amend the FRD by offering enhanced protection to certain categories of TCNs, they do not alter the underlying definition of "family members" contained therein. For this reason, no further examination of such Directives will be undertaken here.

To conclude, while other instruments, such as the Blue Card and Researchers Directives, introduce more favourable regimes for specific categories of TCNs without altering the definition of "family", the preferential provisions contained in the FRD for refugees, particularly under Articles 10(2) and 10(3)(a), are the only ones that imply a potentially broader conception of family, extending beyond the nuclear model in light of refugees' specific situation. The Directive thus continues to reflect a narrow and essentially nuclear-family conception, with the sole exception of the particular treatment accorded to refugees.

[729] Peers, *EU Justice* (n 649).
[730] See Council Directive 2009/50/EC (n 727), art 2(f); Directive (EU) 2021/1883 (n 727), art 2(6).

3.2 Comparative analysis: the CD and the FRD

Having examined the CD and the FRD separately, it is now necessary to undertake a comparative analysis with the aim of assessing the protection afforded to adult-adult relationships within the EU legal framework. This analysis seeks to determine whether such protection can serve as a model for expanding the scope of the protection of family under the ECHR in the migration context.

Before comparing the substantive protection granted by the two Directives, it must first be recalled that, although both, as recognised by the Court, pursue "similar objectives" — namely, to ensure or encourage family reunification within the host Member State — they do so within distinct regulatory frameworks and with different immediate purposes.[731]

As discussed in Section 3.1(a), the CD primarily safeguards Union citizens' right to move and reside freely within the EU.[732] The rights of family members under it are "derived", arising as an indirect consequence of the citizen's exercise of that right of free movement and intended to ensure that family separation does not hinder its effective enjoyment.[733]

By contrast, as seen in Section 3.1(b), the FRD is the only EU instrument directly regulating family reunification for TCNs lawfully residing in a Member State. Although its stated aims are to protect the family unit and facilitate the integration of TCNs[734] — on the understanding that family reunification contributes to these objectives — the

[731] See Case C-519/18 *TB* (n 684), para 49; COM(2014) 210 (n 669), s 2.2, 6.
[732] Case C-423/12 *Reyes*, Opinion of AG Mengozzi (n 588), para 32; Directive 2004/38/EC (n 587), Recital 1 (Preamble).
[733] Case C-423/12 *Reyes*, Opinion of AG Mengozzi (n 588), paras 31-32; Case C-127/08 *Metock* (n 590), para 62.
[734] Council Directive 2003/86/EC (n 77), Article 2(d); Recitals 2 and 4 (Preamble); 'Family reunification' (*EUR-Lex*, 5 June 2018) <https://eur-lex.europa.eu/EN/legal-content/summary/family-reunification.html> accessed 27 September 2023.

Directive emerged from a legislative process shaped by migration-control considerations. The result is a framework of minimum standards that leaves wide discretion to Member States. Whereas the CD treats family unity as ancillary to the exercise of free movement, the FRD subordinates it to the logic of immigration management.

This divergence in purpose also explains their personal scopes. The CD applies to Union citizens who have exercised, or are deemed to have exercised, their right to free movement, and to their family members, including TCN relatives. The FRD, conversely, applies only to TCN sponsors and their family members, expressly excluding Union citizens.

The two Directives construct markedly different conceptions of family. Under the CD, family members are divided into two categories: those listed in Article 2(2) — the "immediate family" —[735] who enjoy an automatic right of entry and residence; and those covered by Article 3(2) — "other categories of family members" —[736] whose admission Member States must merely "facilitate". This structure creates a hierarchy of relationships in which vertical ties occupy the privileged position of automatic protection, while horizontal ties fall within the discretionary facilitation regime.[737] Nevertheless, the CD's inclusion of partners in a durable relationship and other dependants demonstrates a relative openness that extends protection beyond the strictly nuclear model. Moreover, in *Zhu and Chen*,[738] the Court held that the EU citizen child's primary carer must be granted a right of residence, reasoning which does not

[735] Costello, '*Metock*' (n 592).
[736] Guild, Peers and Tomkin (n 594).
[737] See Section 3.1(a).
[738] Case C-200/02 *Zhu and Chen* (n 631).

seem to make kinship a necessary condition, and can be read as broadening eligibility — at least where care functions are at stake — under the CD.

By contrast, the FRD codifies a narrow[739] and essentially nuclear conception of family, restricting mandatory reunification to spouses and unmarried minor children and rendering the inclusion of relatives mentioned in Articles 4(2) and 4(3) merely optional. It excludes members of the extended family, including ascendants beyond the first degree, such as grandparents, and horizontal relatives such as siblings, except in the refugee context. Consequently, the few adult-adult relationships recognised under the Directive receive protection, if at all, only under its facultative provisions.

From a comparative perspective, the CD grants considerably wider "family migration rights" than the minimum standards set out in the FRD.[740] While still privileging the nuclear family, the CD nevertheless provides a limited framework for the admission of collateral relationships and — at least in light of *Zhu and Chen* — appears to allow an extension of protection to situations of care-based dependency, even where the relationship is not based on kinship.[741]

The FRD, by contrast, adopts a more restrictive[742] and formal conception of family, treating the existence of marriage, legally defined kinship degree, and formal status as decisive eligibility criteria. As a result, relationships that may be recognised and

---

[739] Milios, 'A Re-examination of the Family Reunification Directive' (n 666); Chalmers, Davies and Monti (n 666).

[740] Block (n 38); Peers, 'Family Reunion for Third-Country Nationals' (n 691).

[741] It has been observed that the family migration opportunities provided by the CD are among "the most extensive" in Europe, often surpassing those afforded to static citizens. Thus, in most Member States, citizens are entitled to sponsor only their spouses and minor children, whereas mobile Union citizens under the Directive may be joined not only by spouses or registered partners, but also by children up to the age of 21, older dependent children, and dependent ascendants: Block (n 38); Directive 2004/38/EC (n 587), art 2(2). While the CJEU has expanded, as illustrated in *Ruiz Zambrano*, the protective scope of Union citizenship to cover certain scenarios involving "static" citizens — thus establishing a new path to safeguard the residency rights of EU citizens and their TCN family members — it remains the case that, typically, migrant Union citizens who have exercised their free-movement rights enjoy a higher level of protection: Costello, *The Human Rights of Migrants* (n 554); Case C-34/09 *Ruiz Zambrano* (n 690).

[742] Costello, *The Human Rights of Migrants* (n 554); Milios, 'Defining "Family Members"' (n 588).

facilitated under the CD on the basis of genuine dependency or care — rather than formal legal status — fall outside the FRD's scope (for example, an adult sibling or other collateral relative who relies on the sponsor for support or care).

Thus, although the CD defines family more broadly than the FRD, its conception remains essentially formal[743] and affords only limited, discretionary recognition to *de facto* relationships.[744] Moreover, even though it encompasses, to some extent, both vertical and horizontal relationships, the criteria for incorporating the latter are notably stringent. These observations may have led some scholars to stress that the definition of family in the CD remains "rather narrow"[745] and "based on a formal and traditional model of family".[746] In any case, the concept of family underpinning the CD does not fully reflect the inclusivity found in sociological understandings of the term, as it remains centred on legally recognised and primarily vertical relationships. Consequently, many relationships that sociology typically regards as part of family — such as cohabiting or unmarried partners, adult siblings, and other extended or care-based ties — are taken into account under the Directive only where specific conditions are met, and even then, they do not enjoy an automatic right of entry or residence.

Although neither Directive captures the full sociological breadth of the term 'family' — remaining rooted in a formal and status-based conception of family ties — in light of the foregoing analysis of the FRD, the disparity becomes particularly evident when the broader sociological conception of family is juxtaposed with the Directive's restrictive definition.

---

[743] Milios, 'Defining "Family Members"' (n 588), 316-317, noting the absence of any consideration of *de facto* relationships.
[744] cf Directive 2004/38/EC (n 587), art 3(2)(b); Milios, 'Defining "Family Members"' (n 588), 317.
[745] Kristine Kruma, 'Family reunification. A tool to shape the concept of EU citizenship' in Maribel González Pascual and Aida Torres Pérez (eds), *The Right to Family Life in the European Union* (Routledge 2017).
[746] Milios, 'Defining "Family Members"' (n 588).

Both Directives partly rely on the concept of 'dependency', yet they operationalise it differently.

Under the CD, dependency has been consistently defined by the CJEU as a factual situation in which a family member receives material or financial support from the Union citizen.[747] Proof may be furnished through any suitable means, and personal factors such as age, education, or employability cannot negate it. The Court — at least in the atypical case of *Zhu and Chen* —[748] has also gone beyond this purely material understanding of dependency, recognising a care-based dependency between a minor EU citizen and her non-EU primary carer.[749] Emotional or affective support, by contrast, is not considered under the Directive.

With regard to the FRD, although the Commission's 2014 Guidelines explicitly state that the CJEU's definition under the CD applies "*mutatis mutandis*" to the FRD, and the Court confirmed this alignment in *TB*, the Directive's text treats marital status as a rigid cut-off, producing exclusions (notably for married children) that sit uneasily with that factual approach.[750]

Thus, while the CD adopts a flexible and relatively broad understanding of dependency, enabling the inclusion of a wider range of family members, the FRD conveys a rigid and restrictive definition that may exclude even those who are genuinely dependent.

In conclusion, the comparison between the CD and the FRD shows that the two instruments adopt distinct approaches to family protection within the EU legal order.

---

[747] Case C-316/85 *Lebon* (n 615); Case C-1/05 *Jia* (n 611); Case C-423/12 *Reyes* (Judgment) (n 621); Case C-607/21 *XXX v État belge* (n 625).
[748] Case C-200/02 *Zhu and Chen* (n 631).
[749] See Sections 3.1(a)(I)-(II).
[750] See Section 3.1(b)(II); COM(2014) 210 (n 669), s 2.2, 6; Case C-519/18 *TB* (n 684), para 49.

Comparable family relationships may receive markedly different levels of protection depending on whether the sponsor is a mobile EU citizen or a TCN, reflecting the differing scopes and purposes of the two Directives. This divergence reveals the internal limits of the EU's conception of 'family' and provides an important reference point for evaluating the ECtHR's narrowly framed protection in the migration context.

3.3 Broadening the scope of the comparison: EU Directives and the ECHR

a) The FRD and the ECHR

The comparison between the FRD and the ECHR is crucial to assessing whether EU law, as reflected here in the FRD, embodies a more expansive conception of family that could inform a broader interpretation of Article 8 ECHR in the migration context. Both instruments are concerned with the protection of family life,[751] though they approach it from different perspectives: the ECHR recognises it as a fundamental right, whereas the FRD facilitates its exercise by regulating the family reunification of TCNs. Although the two instruments belong to distinct legal systems and are applied by different courts, they can nevertheless be meaningfully compared. Recital 2 of the FRD expressly refers to Article 8 ECHR and the Charter of Fundamental Rights of the European Union (CFREU),[752] stating that the Directive should be interpreted in light of the rights enshrined in those instruments. This cross-reference reveals a close conceptual link between the Directive and the ECHR framework, thereby justifying a comparative analysis. Building on the preceding analysis of how each framework defines 'family', the following discussion compares their respective approaches, with

[751] See Article 8 ECHR; Council Directive 2003/86/EC (n 77), Recital 4 (Preamble).
[752] Charter of Fundamental Rights of the European Union [2012] OJ C 326/391.
On the relationship between the FRD and the CFREU, see Section 3.4 below.

particular attention to adult-adult relationships, in order to assess whether the Directive reflects a more expansive conception of family than that adopted by the ECtHR in its migration case law, and whether it offers any persuasive guidance for a broader interpretation of Article 8 in that context.

With reference to the relationship between the FRD and the ECHR, it has been argued that "[g]enerally, the [FRD] provides a much higher standard than Article 8 ECHR".[753] In particular, it has been noted that the former "grants more rights and protection" than the latter.[754] For instance, the FRD — unlike the ECHR — confers upon the family members listed in Article 4(1) a "directly applicable" right to family reunification in the host country, provided that the TCN residing there meets the conditions set out in the Directive.[755] In conjunction with this right, Member States are, in the cases falling under Article 4(1), under a positive obligation to authorise family reunification, with no margin of appreciation.[756] Other scholars, therefore, contend that the two instruments are not directly comparable, as their starting points differ.[757] In particular, it is maintained that the right to family life — guaranteed, *inter alia*, by Article 8 ECHR and by Article 7 of the CFREU — "is not to be equated with a right to family reunification", and that the latter has not yet been created as an autonomous right under international law, where no provision expressly recognises it.[758]

---

[753] Groenendijk (n 662). See also Strik *et al.*, who likewise characterise the FRD as offering "a substantially higher level of protection" than Article 8 ECHR: Strik, de Hart and Nissen (n 662).
[754] Groenendijk (n 662). See also Erjona Bana, 'The Right of Family Reunification in Albania' (2022) 11(1) Perspectives of Law and Public Administration 39.
[755] Groenendijk (n 662).
[756] Case C-540/03 *Parliament v Council* (n 669), para 60.
[757] Betty de Hart, 'Book Launch - Article 8 ECHR, Family Reunification and the UK's Supreme Court: Family Matters?' (*YouTube*, 24 May 2023) <https://www.youtube.com/watch?v=yZbxcz_P05k> accessed 6 January 2024.
[758] Anja Wiesbrock, 'The Right to Family Reunification of Third-Country Nationals under EU Law - Is Directive 2003/86/EC in Compliance with the ECHR?' (2011) 5(2) Human Rights & International Legal Discourse 138. See also Anderfuhren-Wayne (n 61); Richard Plender, *International Migration Law* (rev 2nd edn, M. Nijhoff 1988).

Another example of the FRD's enhanced protection can be found in Articles 16 and 17, which afford detailed safeguards against expulsion for family members admitted to the host country.[759]

However, it has also been observed that certain provisions of the FRD "appear to allow Member States to go below the minimum level of Article 8" ECHR,[760] thereby creating a risk of incompatibility between the two instruments.[761]

Among these provisions, attention has been paid to those related to the definition of family adopted by the FRD, including the derogation clause — examined in Section 3.1(b)(I) — contained in the third subparagraph of Article 4(1).[762] In particular, it has been noted that integration does not appear to be included among the legitimate grounds for justification set out in Article 8(2) ECHR. Consequently, by subjecting the admission of underage children to integration conditions, the FRD infringes Article 8(2) ECHR.[763]

Moreover, while the ECtHR recognises stable non-marital relationships as equivalent to marriage for the purposes of Article 8 ECHR, the FRD relegates such relationships to Member State discretion.[764] The position of unmarried couples was indeed contentious during the negotiation process of the FRD: although they — including same-sex partners — were equated with spouses in early drafts,[765] they were subsequently moved to the optional regime, as mandatory inclusion proved politically unacceptable for several Member States.[766] In any case, excluding unmarried partners from the compulsory regime has been strongly criticised, not only as "socially

[759] Groenendijk (n 662).
[760] ibid. Similarly, Milios, 'A Re-examination of the Family Reunification Directive' (n 666).
[761] Milios, 'A Re-examination of the Family Reunification Directive' (n 666).
[762] ibid.
[763] ibid.
[764] ibid.
[765] However, this had to be recognised in national legislation: see COM(1999) 638 (n 642), 14.
[766] Oosterom-Staples (n 647).

inadequate" but also for failing to reflect international and national legal systems that accord equivalent treatment to married and unmarried couples.[767] Among the international standards which the FRD is considered to violate, Article 8 ECHR — protecting the right to family life regardless of whether the ties are legal or *de facto* — has been explicitly cited.[768]

Thus, in defining "family", the FRD reflects an "even more traditional" approach than the ECHR.[769] Indeed, the latter follows a more flexible approach, one that places greater emphasis on *de facto* family relationships, which have little relevance under the FRD, thereby confirming concerns about the Directive's compatibility with Article 8 ECHR.[770]

Furthermore, the Directive's "strictly formal model" for identifying family members eligible for reunification has been described as "problematic".[771] On the one hand, some individuals with close familial bonds are unable to secure reunification because they "do not fit" the Directive's definition of family; on the other hand, others, in order to pursue reunification, feel compelled to conform to a legal model of family that does not reflect their lived reality.[772]

Thus, some scholars, after criticising the definition of family contained in the FRD for being "strictly formal", "traditional", and based on a European conception of that term, have proposed the inclusion of a new provision in the Directive.[773] This provision, whose implementation would be compulsory, would allow individuals who do not

---

[767] ibid, 469-470; Constança Urbano de Sousa, 'Le regroupement familial au regard des standards internationaux' in François Julien-Laferriere, Henri Labayle and Örjan Edström (eds), *The European Immigration and Asylum Policy: Critical assessment five years after the Amsterdam Treaty* (Bruylant 2005), 133.
[768] Oosterom-Staples (n 647).
[769] Milios, 'A Re-examination of the Family Reunification Directive' (n 666).
[770] ibid.
[771] ibid.
[772] ibid.
[773] ibid.

belong to the "core family" but have strong and genuine emotional ties with the TCN to obtain family reunification. According to these scholars, such a clause — covering *de facto* family relationships that fall outside the notion of "core family" — would be "more compatible" with Article 8 ECHR and the *de facto* approach adopted by the ECtHR in its interpretation of that provision. In response to concerns about potential issues of "legal uncertainty and equal treatment" that the proposed provision might entail, they argue that the risk of incorrect administrative implementation cannot justify refraining from adopting legislation aimed at addressing and remedying existing disparities.[774] The significance of this proposal lies in its explicit move away from a strictly formal conception of family towards an assessment more centred on the substance of personal ties.

In any case, a "tension" has been observed between the FRD and the ECtHR's so-called "elsewhere approach" in its Article 8 case law (examined in Section 2.3), under which the Court considers it legitimate to require the sponsor to return to their country of origin.[775] By contrast, the FRD is premised on the principle that protecting sponsors' rights entails respecting their ties to the Member State of residence — a consideration disregarded in the ECtHR's "elsewhere approach".[776]

To conclude, when comparing the FRD and the ECHR, it is only partially valid to regard the rights they enshrine as entirely distinct and, consequently, the two instruments as not directly comparable. In substance, the two rights are functionally interconnected: as noted above and emphasised in Recital 4 FRD, the enjoyment of the right to family life is contingent upon the ability to exercise the right to family reunification.

[774] ibid.
[775] Costello, *The Human Rights of Migrants* (n 554).
[776] ibid.

Accordingly, although the right to family life and the right to family reunification are distinct, a comparative analysis of the two instruments is both justified and warranted. The analysis above demonstrates that the FRD adopts a narrower definition of 'family' than the ECHR as interpreted by the ECtHR, especially in its non-migration case law. Whereas, as noted above, the ECtHR recognises *de facto* relationships as part of family, the FRD (under Article 4(3)) affords only weak and optional protection to such ties. The Directive (as examined in Section 3.1(b)(II)) also fails to protect relationships between adult relatives, whether vertical (e.g. grandparents) or horizontal (e.g. siblings), and provides only optional and highly restrictive protection for relationships between adult children and their parents, limited to cases where the unmarried adult child is objectively unable to provide for themselves on health grounds. By contrast, the ECHR extends protection to adult relatives, although, as shown in Chapter 2, such protection has been recognised almost exclusively in non-migration contexts.

However, the restrictive "elsewhere approach" adopted by the ECtHR is not mirrored in the FRD. This discrepancy calls for a reconsideration of that approach in view of its detrimental impact on families who are compelled to relocate, thereby severing established ties in the host country.

Before turning to the comparison between the CD and the ECHR, it bears reiterating that the FRD adopts a definition of family narrower than that endorsed by the ECtHR in non-migration contexts. However, the ECtHR's interpretation of that term in migration cases proves to be even more restrictive than that of the FRD. Although the Court now formally frames dependency as a multi-factor, case-specific inquiry that takes into account elements such as financial support, in practice it still applies this notion so narrowly that adult relationships fall within "family life" (as demonstrated in

Section 2.2(e)(II)) almost exclusively in exceptional cases of complete or near-complete incapacity, typically involving indispensable daily support from relatives. By contrast, the FRD extends reunification rights to dependent parents who lack adequate family support in their country of origin — a socioeconomic and factual criterion rather than one limited to total incapacity — and to adult unmarried children who are unable to provide for themselves on health grounds, implying serious health issues but not necessarily total incapacity. The FRD therefore expressly recognises some, albeit very limited, adult family relationships in principle, subject to a dependency test that is broader than the ECtHR's, since it includes (especially for parents) socioeconomic dependence. The ECtHR, by contrast, extends the protection of family life to such relationships only in exceptional cases of extreme dependency, notwithstanding its formal characterisation of dependency as a multi-factor, case-specific assessment. Accordingly, although both the FRD and the ECHR, as interpreted in the migration context, adopt a restrictive conception of family, the threshold of dependency required under the ECHR proves to be even higher than that under the FRD.

Thus, as the FRD's framework itself exposes the need to strengthen human rights protection — particularly with respect to adult relatives, both in vertical and horizontal relationships — it cannot, by its own restrictive design, offer meaningful guidance for broadening the ECHR's definition of 'family' in the migration context, especially regarding adult-adult relationships.

It is therefore now necessary to consider whether the CD offers a broader and potentially more instructive framework that could inform the interpretation of 'family' under Article 8 ECHR in the migration context.

b) The CD and the ECHR

Based on the analysis carried out in Chapter 2 and in this chapter — particularly in Section 3.1(a) — the term ‘family’ is defined more broadly in the CD than under the ECHR, as interpreted by the ECtHR in the context of immigration. Under the CD, the definition of family encompasses, within the limits set forth in the Directive, both vertical and horizontal relationships between adults, although the CD establishes a differentiated regime that affords stronger protection to vertical relationships. By contrast, when the ECHR is interpreted in migration cases, the definition of ‘family’ — as illustrated in Chapter 2 — remains largely confined to the nuclear family, leaving relationships between adult relatives, except in very exceptional cases, with almost no protection, as also emphasised in the previous section.

This divergence in the definition of ‘family’ and in the scope of protection afforded reflects the differing aims and underlying rationales of the two instruments. The ECHR, as an instrument of international human rights law, pursues the protection of fundamental rights, but, when applied to migration, its interpretation of ‘family’ has been narrowed by deference to state sovereignty, leading the Court to focus primarily on the nuclear unit. As already noted, this restrictive interpretation has resulted in a diminution of human rights protection for adult relationships, despite the fundamental character of the right to family life itself. By contrast, the CD, which forms part of EU law and is designed to facilitate the free movement of mobile EU citizens, adopts a somewhat broader conception of family to ensure the effectiveness of that freedom.

Furthermore, remaining within a comparative perspective, Klaassen observes that the provisions governing the “right to family unification”[777] under EU law are more detailed

[777] This scholar distinguishes between “family reunification” and “family unification”. According to Klaassen, the former presupposes that the family has lived together as a unit prior to the submission of the application for family unification. For him, this is not a prerequisite for family unification, as it is entirely possible that the family relationship began at a time when the family did not live together. Family

and structured than those found in international and European human rights law, particularly regarding the content and scope of this right. This difference is reflected in the fact that, while the ECtHR has consistently emphasised state sovereignty and thus the right of Member States to control the entry and residence of non-nationals, EU law goes a step further by imposing positive obligations on Member States to facilitate family reunification for certain categories of family members.[778] Nevertheless, some scholars have cautioned that comparing the CD with a human rights convention such as the ECHR remains difficult, since international human rights law does not recognise (as noted above) an explicit right to family reunification.[779]

A further and particularly significant point of divergence concerns the notion of dependency. Under the CD (as examined in Section 3.1(a)(I-II)), dependency is understood as a fact-based concept grounded in material, particularly financial, support, and has been interpreted by the CJEU in a quite broad and temporally flexible manner. Moreover, in *Zhu and Chen*,[780] the Court appeared willing — at least in atypical cases — to look beyond purely financial aspects, recognising that care functions may suffice to establish dependency.

By contrast, when adult relationships are at issue in the migration context, the ECtHR, although now formally framing dependency as a multi-factor, case-specific assessment encompassing elements such as financial ties, still applies this notion in practice far more restrictively, not only than suggested in its own formulation but also than under the CD. Indeed, the protection of adult relationships as "family life" under Article 8

unification, by contrast, is defined as the process of bringing together a family that previously lived in different states, encompassing all forms of families reuniting after residing separately in different states: Klaassen (n 547).

[778] ibid.

[779] Milios, 'Defining "Family Members"' (n 588).

[780] Case C-200/02 *Zhu and Chen* (n 631).

ECHR in the migration context is generally confined to exceptional cases of complete or near-complete incapacity, where one relative's support is typically indispensable for daily life.

Thus, while the CJEU's interpretation treats dependency as a factual situation that may include care-based functions, the ECtHR, despite its formal acknowledgment of a multi-factor approach, continues to apply an exclusively medicalised or incapacity-based notion, thereby setting a considerably higher threshold for recognition.

A further point of contrast concerns the treatment of irregular residence. Under the CD — as noted in Section 3.1(a)(I) — the CJEU has made clear that the fact that a family member resides illegally under national law at the time of the application does not affect the assessment of dependency: what matters is the factual situation of material support.[781] By contrast, in *Senchishak*,[782] the ECtHR — as observed in Section 2.2(e)(II) — appeared to treat the applicant's irregular immigration status as a rather central consideration influencing its finding that no "family life" existed within the meaning of Article 8, discounting five years of cohabitation with her daughter on the basis of that status and the applicant's awareness of its precarious nature. This contrast illustrates that, while the CD adopts a factual approach to dependency, irrespective of immigration status, the ECtHR seems to incorporate immigration status into the very assessment of family life when adult relatives are involved. This divergence is not merely doctrinal, but reflects the different imperatives animating the two regimes. The CD is primarily concerned with ensuring the effective exercise of EU citizens' free movement rights, whereas the ECtHR's migration jurisprudence is more

[781] Case C-607/21 *XXX v État belge* (n 625), paras 62-63 and 65-66.
[782] *Senchishak v Finland* (n 190), para 56.

directly shaped by state sovereignty and immigration-control concerns, especially where the applicant's immigration status is irregular or precarious.

Despite the challenges in comparing the CD with the ECHR, given the latter's absence of specific provisions on the right to family reunification, it follows that the CD offers a more expansive conception of family, extending — albeit within defined limits — to both vertical and horizontal relationships. This stands in contrast to the narrower protection afforded by the ECtHR's interpretation of family under the ECHR in the migration context, which remains largely confined to the nuclear family. The CD's comparatively advanced protection of certain categories of extended family members is reflected in its imposition on Member States of a positive obligation to "facilitate" family reunification, an obligation absent under the ECHR.

Moreover, regarding the nuclear family, the CD, unlike the ECtHR's approach, does not adopt — as already noted — the "elsewhere approach", under which a host Member State may refuse residence if family life could be pursued in another country, but instead obliges Member States to enable family reunification within the host State. Thus, while the CD would benefit from stronger and broader protection for relationships falling within its facultative regime and from a more genuinely *de facto* orientation, it nevertheless provides, overall, a higher level of protection for family, and particularly for adult-adult relationships, than the ECHR as interpreted in the migration context.

In conclusion, the examination of the CD reveals certain elements that might, at least in principle, inform a broader conception of "family" within the ECtHR's migration jurisprudence when adult relationships are involved.

The CD's duty to "facilitate" entry for some extended family members reflects recognition that meaningful family life can extend beyond the nuclear unit and should be assessed with attention to the substance of relationships rather than their formal status. This element, though confined to a narrow personal scope and subject to restrictive conditions, nevertheless points towards an understanding of family that is, at least within the migration context, broader and more attuned to the substance of relationships than the one presently applied by the ECtHR. In any case, it should be recalled that the obligation itself remains limited in scope, as it imposes only a discretionary duty on Member States to facilitate, rather than an obligation to guarantee, family reunification.[783]

Moreover, the CJEU's interpretation of dependency as a factual condition — concerned with the existence of actual (material or financial) support rather than the reasons behind it — illustrates a more flexible and humane approach than that applied in practice by the ECtHR in migration cases. Indeed, in cases involving adult relationships, the ECtHR applies the notion of dependency in a highly restrictive manner, treating it in practice as entailing near-total incapacity, typically requiring indispensable daily support from relatives. However, the contrast between the two Courts also lies in their conceptualisation of the notion, even though the ECtHR now expressly defines dependency as a multi-factor, case-specific assessment. As indicated in Section 2.2(e)(II), factors such as the theoretical availability of institutional substitutes or the mere fact that relatives live across borders — considerations that do

[783] The CJEU's rejection of the "elsewhere approach", particularly in *Metock* (see Section 3.1(a)), underscores the Court's concern to remove obstacles to the effective exercise of EU citizens' free movement rights. In this sense, the protection afforded to the TCN family member is derivative of the need to protect the EU citizen's mobility, and any advantage accruing to the TCN family member is incidental to that free-movement rationale. This reinforces the protection of the nuclear family by precluding Member States from requiring EU citizens and their family members to relocate elsewhere to preserve family unity. However, it does not bear directly on the recognition of the adult family relationships central to this work, which are often excluded at the threshold of Article 8(1) ECHR.

not in themselves speak to dependency — should not, contrary to the ECtHR's approach, be treated as reasons to deny its existence. Accordingly, if the ECtHR persists in conditioning the existence of family life on such a requirement, dependency must at least be interpreted more broadly, encompassing the diverse ways in which family members support one another, including relational, emotional, and care-related dimensions — some, though not all, of which are already reflected in the CJEU's interpretation of the term.

Consequently, dependency, as interpreted in the CD, can be regarded as a partial reference point capable of informing a broader conception of family within the ECtHR's migration jurisprudence.

However, more generally, it is worth noting that the ECtHR's own non-migration jurisprudence already provides a broader substantive conception of family than the CD, as adult relatives appear to be regarded as falling within the scope of Article 8 family life whenever close personal ties involving care and support are established. Strengthening consistency between these strands of case law could bring the Court's migration jurisprudence into closer alignment with both the CD's partial protection of adult family ties and contemporary understandings of family life. The value of the comparison is therefore not that the ECtHR could be required to transpose the EU free movement model into Article 8 ECHR; nor should the CD's limits be overlooked, since it is shaped by a different legal logic and remains structured by a category-based and partly formal conception of family. Rather, the comparison serves a critical and illustrative function: it shows that, even within a migration-related framework, certain adult family relationships can be recognised beyond the nuclear family, dependency can be assessed as a factual condition, and immigration status need not be treated as

determinative of the existence of the family relationship itself. In particular, the CJEU's factual approach to dependency provides a partial reference point if the ECtHR continues to condition the recognition of adult family life on dependency. Overall, the CD offers a useful but limited external reference point: it helps show that the ECtHR's restrictive approach is not inevitable, while the stronger foundation for reform remains the Court's own non-migration jurisprudence.

3.4 The FRD and the CFREU

Having compared the two Directives both with each other and with the ECHR, it is appropriate to turn briefly to the relationship between the FRD and the CFREU. While the previous sections examined how EU secondary legislation conceptualises 'family' and how that conception compares with the approach adopted by the ECtHR in its interpretation of the ECHR, this final section turns to the internal coherence of EU law, focusing on the FRD in light of the Charter. In particular, it considers the extent to which Article 7 of the Charter can and should inform the interpretation of the FRD following the Charter's elevation to binding primary law after the Lisbon Treaty.[784]

As noted above, Recital 2 FRD expressly refers to Article 8 ECHR and to the CFREU, stating that the Directive should be interpreted in the light of the rights enshrined in those instruments. It is therefore warranted to examine briefly the relationship and compatibility between the FRD and the CFREU, in light of the adoption of the Lisbon Treaty in 2009, when the Charter acquired the same binding legal value as the EU Treaties.

[784] See Consolidated Version of the Treaty on European Union [2016] OJ C 202/13, art 6(1).

In the context of this work, the relevant Charter provision is Article 7, which provides for the "right to respect […] for […] family life". Following the Lisbon Treaty, this right has been codified in "primary EU law", and some scholars argue that, in light of this 'upgrade', there is a pressing need to reformulate the FRD.[785] In particular, a "recasting" of the FRD, which would entail both a strengthening of the right to family reunification enshrined therein and a restriction of the margin of discretion currently afforded to Member States in this area, would also be consistent with the binding force of the Charter.[786] Moreover, alongside such a "recast", the CJEU should interpret the FRD in light of Article 7 of the Charter.[787] Yet, in practice, when delivering preliminary rulings on family reunification cases under the FRD, the Court has tended to rely on the scope of the Directive or on its own prior case law on comparable issues, rather than referring directly to Article 7 of the Charter.[788]

The EU legislature's and the CJEU's reluctance so far to adopt a more Charter-oriented and protective approach to immigrants' right to family life has been attributed to several causes.[789] Among the reasons identified are the prevailing political situation in Europe and the tendency of several Member States to adopt a "more domestic" stance on migration, reflected in increasingly restrictive migration policies even after the adoption of the Lisbon Treaty. Additional contributing factors include the absence of constitutional protection for the right to family life in some national systems and the doubts expressed by certain constitutional courts regarding the CJEU's competence to interpret fundamental rights.[790] Finally, drawing on Article 52(3) of the Charter,[791] it

[785] Milios, 'A Re-examination of the Family Reunification Directive' (n 666); Wiesbrock (n 758).
[786] Wiesbrock (n 758).
[787] Milios, 'A Re-examination of the Family Reunification Directive' (n 666).
[788] ibid.
[789] ibid.
[790] ibid.
[791] Which provides that, in so far as the Charter contains rights corresponding to those guaranteed by the ECHR, their meaning and scope shall be the same as those laid down by the latter, without prejudice to the possibility that EU law may provide more extensive protection.

has been argued that an interpretation of the FRD informed by Article 7 of the Charter could, or indeed should, ensure broader and stronger protection than that currently afforded under Article 8 ECHR, whose protection has been weakened, for instance, by the ECtHR's restrictive "elsewhere approach".[792]

In sum, while the Charter provides a framework capable of strengthening the protection of family life within EU migration law, its potential remains largely unrealised. The CJEU's cautious stance, combined with the political sensitivities surrounding migration and the discretion afforded to Member States under the FRD, appears so far to have limited the Charter's role as an instrument for expanding substantive protection in this field.

[792] Milios, 'A Re-examination of the Family Reunification Directive' (n 666).

4 Basis for a normative argument advocating a broader right to family life encompassing adult-adult relationships in the migration context

As demonstrated in Chapter 2, the ECtHR has, in migration-related cases, adopted a markedly narrower conception of family life than in its non-migration jurisprudence, limiting protection almost exclusively to the nuclear family. Consequently, except for the very limited exceptions discussed above,[793] the Court has, in migration contexts, excluded relationships between adult relatives from its definition of 'family'.

However, for the reasons set out in Chapter 2, this exclusion lacks both conceptual coherence and normative justification. Building also on the findings of Chapter 1, which demonstrated that, from a sociological perspective, adult relatives are regarded as included within the notion of family, this work therefore contends that adult-adult relationships should be recognised within the ECtHR's definition of family in the migration context. In any case, for the purposes of this chapter, what matters is that, by failing to do so, the Court has, in effect, indirectly exacerbated the phenomenon of family separation in cases involving adult relatives. Indeed, as those adult family members are unable to have their applications for family reunification granted — or even duly heard — they are left to live separated across national borders indefinitely. In effect, the restrictive approach adopted by the ECtHR in cases involving adult relatives means that the migration of some of these family members almost invariably entails the distressing phenomenon of family separation.

In view of the above, this chapter will demonstrate why, when dealing with adult-adult relationships in the migration context, there is a compelling and urgent need to break

[793] See Sections 2.2(b)(II) and 2.2(e)(II).

the vicious cycle that leads inexorably to the detrimental and effectively unavoidable separation of families.

To this end, the chapter will first examine the negative effects of family separation for individuals — migrants and those left behind, respectively — including when such separation results from restrictive migration laws. It will then explore the benefits that arise when adult family members are permitted to reunite. These benefits are experienced primarily by the individuals concerned but also, to a certain extent and indirectly, by the receiving society more broadly, since the improvements in well-being and stability fostered by family unity can, over time, enhance social cohesion and integration.

Ultimately, this chapter aims to lay the foundations for a normative argument in favour of a broader conception of 'family' under Article 8 ECHR in the migration context — one that encompasses relationships between adult relatives, adequately reflecting the lived realities of contemporary families, and upholding the fundamental principle of family unity (already recognised as inherent in the right to family life),[794] which must be protected even across borders. The discussion that follows will therefore demonstrate, on normative grounds informed by the analysis developed in the following sections, why the reasoning underpinning the ECtHR's migration jurisprudence, examined in Chapter 2, warrants revision.

[794] See Section 2.1.

4.1 Effects of family separation on migrants

As underlined in Section 2.2(f), in recent years many states have adopted increasingly restrictive laws and policies aimed at limiting family reunification.[795] This trend has narrowed the definition of family members eligible for reunification, reflecting — at least to some extent — the ECtHR's similarly restrictive approach to the notion of family in the migration context.

This shift in national policies adopted by various states has been criticised for being "often incompatible with the letter or spirit of human rights standards".[796]
In any case, in the discussion of both recent family reunification policies and the ECtHR's definition of family in migration cases, it is clear that the narrow conception of family has inflicted even more hardship on migrants and the family members left behind. The following subsections, therefore, examine the consequences of family separation for adult migrants when restrictive migration laws or broader economic and practical barriers prevent them from living with their adult relatives.

a) Adverse mental-health consequences of family separation on migrants

Although the literature assessing the impact of migration — and the often resulting phenomenon of family separation — on the mental health of both migrating adults and

[795] Nils Muižnieks, 'Ending restrictions on family reunification: good for refugees, good for host societies' (*Council of Europe*, 26 October 2017) <https://www.coe.int/en/web/commissioner/-/ending-restrictions-on-family-reunification-good-for-refugees-good-for-host-societies> accessed 18 November 2020; Block (n 38).
Those policies have also become "increasingly stratified". Family migration is now regulated through a growing set of complex admission requirements and overlapping legal frameworks, with the result that factors such as nationality, income and level of education increasingly determine whether individuals can reunite with their families — readily, only with difficulty, or not at all: Block (n 38).
[796] Muižnieks (n 795).

the adult family members left behind remains limited,[797] more recent scholarship has begun to partially address this gap. This includes systematic-review evidence on the mental-health consequences of family separation associated with migration policies, as well as recent empirical work on transnational parental separation among immigrants in France.[798] While much of this recent literature concerns parent-child separation rather than adult-adult relationships, it is nevertheless relevant insofar as it documents the psychological effects of prolonged family separation in migration contexts. Because the evidence specifically concerning the impacts of family separation caused by restrictive migration laws — particularly where adult-adult relationships are involved — remains comparatively limited, the following analysis considers the impacts of separation more broadly. In particular, this and the following

[797] See, for instance, with reference in general to adult migrant men's mental health: Bethany L. Letiecq, Joseph G. Grzywacz, Katie M. Gray and Yanet M. Eudave, 'Depression Among Mexican Men on the Migration Frontier: The Role of Family Separation and Other Structural and Situational Stressors' (2014) 16 Journal of Immigrant and Minority Health 1193; Joseph G. Grzywacz, Sara A. Quandt, Haiying Chen, Scott Isom, Lisa Kiang, Quirina Vallejos and Thomas A. Arcury, 'Depressive Symptoms among Latino Farmworkers across the Agricultural Season: Structural and Situational Influences' (2010) 16(3) Cultural Diversity & Ethnic Minority Psychology 335.
Regarding, instead, in general the mental health of those adult family members left behind, see, for example: Yao Lu, Peifeng Hu and Donald J. Treiman, 'Migration and depressive symptoms in migrant-sending areas: findings from the survey of internal migration and health in China' (2012) 57 International Journal of Public Health 691; Jacqueline M. Torres and Joan A. Casey, 'The centrality of social ties to climate migration and mental health' (2017) 17 BMC Public Health 600 <https://doi.org/10.1186/s12889-017-4508-0> accessed 7 November 2022; Russell King and Julie Vullnetari, 'Orphan pensioners and migrating grandparents: the impact of mass migration on older people in rural Albania' (2006) 26 Ageing & Society 783.
The majority of studies conducted to date focus, in fact, on the impact of migration on children and adolescents rather than on adult family members. See, for instance: Chenyue Zhao, Feng Wang, Xudong Zhou, Minmin Jiang and Therese Hesketh, 'Impact of parental migration on psychosocial well-being of children left behind: a qualitative study in rural China' (2018) 17 International Journal for Equity in Health 80; Chenyue Zhao, Feng Wang, Leah Li, Xudong Zhou and Therese Hesketh, 'Long-term impacts of parental migration on Chinese children's psychosocial well-being: mitigating and exacerbating factors' (2017) 52 Social Psychiatry and Psychiatric Epidemiology 669; Naomi A. Schapiro, Susan M. Kools, Sandra J. Weiss and Claire D. Brindis, 'Separation and Reunification: The Experiences of Adolescents Living in Transnational Families' (2013) 43 Current Problems in Pediatric and Adolescent Health Care 48; Shruti Simha, 'The Impact of Family Separation on Immigrant and Refugee Families' (2019) 80(2) North Carolina Medical Journal 95.
[798] Mitra Naseh, Yingying Zeng, Eunhye Ahn, Flora Cohen and Mustafa Rfat, 'Mental Health Implications of Family Separation Associated with Migration Policies in the United States: A Systematic Review' (2024) 352 Social Science & Medicine 116995; Claudia Brunori, 'Parenting from Abroad: Transnational Separation from a Child and Mental Health Among Immigrants in France' (2025) International Migration Review <https://doi.org/10.1177/01979183251329038> accessed 6 June 2026.

subsection, together with Section 4.2, address the effects of family separation on adult migrants and on their adult family members left behind, not only when such separation arises from restrictive migration policies, but also when the impossibility of reunion is 'simply' caused by other significant barriers. A common scenario is one in which, without the economic support provided by those who have migrated, the survival of the entire family — both the migrants abroad and the relatives left behind — would be at serious risk.

Numerous studies, particularly among Latino migrants, underline that separation from family members compromises their mental health, leading, for instance, to higher levels of depression, anxiety, and stress.[799] It has been observed that these migrant men may experience emotional strain when faced with the choice between remaining in their country of origin to protect their family members and play an active role in their lives, or migrating abroad to work and thereby provide for their families left behind.[800] The phenomenon whereby migrants experience conflicting feelings concerning the desirability of these two competing options when deciding whether to migrate has been defined as "family-related ambivalence".[801]

The psychological pressure and conflicting moral sentiments experienced by those who emigrate, and associated with the aforementioned choice, may be even more intense in countries such as Albania, where it is considered both a customary duty and "highly honourable" for the youngest son and his wife to look after his parents as they

[799] Letiecq and others (n 797); Grzywacz and others (n 797); Louise S. Ward, 'Farmworkers at Risk: The Costs of Family Separation' (2010) 12 Journal of Immigrant and Minority Health 672; Joseph G. Grzywacz, Sara A. Quandt, Julie Early, Janeth Tapia, Christopher N. Graham and Thomas A. Arcury, 'Leaving Family for Work: Ambivalence and Mental Health Among Mexican Migrant Farmworker Men' (2006) 8(1) Journal of Immigrant and Minority Health 85.
[800] Ward (n 799); Letiecq and others (n 797).
[801] Ward (n 799). See also Grzywacz and others, 'Leaving Family for Work' (n 799).

age,[802] or in countries where social protection for older adults is limited and family members are expected to provide financial and physical support.

In any case, “profound human costs” on immigrant families have also been documented in Canadian society following the introduction of restrictive family-reunification policies. In such cases, “incredible stress and anxiety” have been reported as affecting immigrants living there who see themselves as “accountable to ageing relatives ‘back home’” while also worrying about raising their children in the destination country without the support of extended family members.[803]

In the context of migrant Latino farmworkers, it has been observed that maintaining telephone contact with relatives left behind can play a beneficial role in protecting their mental health.[804] However, in some cases, such contact may have the opposite effect: through these communications, farmworkers may learn about the hardships their families are facing in their country of origin or become aware that they were, unfortunately, absent during important family events.[805]

Research focusing on Mexican migrant men has characterised family separation as an “enduring, long-term stressor”, especially in light of the strain that recent U.S. policies have placed on cross-border movement.[806] Those living alone in the U.S. and remitting money to Mexico exhibited high levels of depressive symptoms, whereas symptoms were lower among those migrants who were married and accompanied by their spouses to the U.S..[807]

---

[802] King and Vullnetari (n 797).
[803] Bragg and Wong (n 48).
[804] Grzywacz and others, ‘Depressive Symptoms’ (n 797); Grzywacz and others, ‘Leaving Family for Work’ (n 799).
[805] Grzywacz and others, ‘Depressive Symptoms’ (n 797).
[806] Letiecq and others (n 797).
[807] ibid.

These findings align with earlier research on migrant Latino farmworkers, which found that levels of depressive symptoms were lowest among those who were married and migrated with their spouses, likely because they were spared the emotional challenges of separation.[808]

Drawing on the findings of the study discussed above on Mexican migrant men, it can be argued that the 'moral' obligation to send remittances back home constitutes one of the factors negatively affecting migrants' mental health. For some migrants — including those from poor or disadvantaged areas without access to a "formal safety net" — sending remittances or providing emotional support to family members left behind can represent a major source of strain.[809] At the same time, however, for others, remitting money may be seen as a practical and often more affordable way of caring for family members, compared with bringing them to live in a host country with a higher cost of living.

Among the negative effects of family separation on migrants' well-being, it is important to mention not only depression, stress, and anxiety (as discussed above), but also "reduced social and material support".[810] Moreover, separated migrants may experience "substantial social isolation and marginalisation" in destination countries.[811] These obstacles, together with the "societal stigma" that migrants often carry with them, make the development of "novel social ties" particularly challenging.[812]

[808] Grzywacz and others, 'Depressive Symptoms' (n 797).
[809] Torres and Casey (n 797).
[810] ibid.
[811] ibid.
[812] ibid. See also King and Vullnetari (n 797).

Furthermore, poorer mental health may also result from a “reduced sense of belonging” within familial or ethnic communities as a consequence of family separation.[813] Recent qualitative research on Brazilian migrants in the U.S. further shows that legal barriers to return can generate long-term psychosocial stress for undocumented migrant siblings and require care for ageing parents to be reorganised among migrant and non-migrant siblings across borders.[814]

In any case, the negative impacts of migration, particularly those arising from family separation, on migrants’ mental health have been shown to affect — both in the short and long term — “populations in motion” more generally,[815] and thus apply to migrants beyond the primarily Latino contexts discussed above.

However, the impact of family separation can vary among migrants. Indeed, research has shown that its negative consequences may differ according to gender.[816] For example, a study on recent Mexican migrants living in the U.S. found that, overall, migrant women reported poorer “emotional well-being” than men.[817] In particular, the data revealed that women exhibited a “higher prevalence” of “sadness, anxiety, feeling down and/or tired, and headache and neck pain” than men.[818] This outcome may be linked to the social structure in Mexico, where men are regarded as “primary breadwinners”, and women hold a “reverential, almost sacred role as caregivers”. Hence, the greater negative impact on women may be explained by concerns related

[813] Torres and Casey (n 797).
[814] Dora Sampaio and Rui F. Carvalho, ‘Transnational families, care and wellbeing: The role of legal status and sibling relationships across borders’ (2022) 3 Wellbeing, Space and Society 100097.
[815] Torres and Casey (n 797).
[816] Erika Arenas, Jenjira Yahirun, Graciela Teruel, Luis Rubalcava and Pablo Gaitán-Rossi, ‘Gender, family separation, and negative emotional well-being among recent Mexican migrants’ (2021) 83 Journal of Marriage and Family 1401.
[817] ibid.
[818] ibid.

to supporting and caring for children and parents from abroad, as well as by distress over their parents' deteriorating health or potential death while they are away.[819] It can therefore be assumed that such concerns and distress affect men to a lesser extent.

In conclusion, the evidence discussed above demonstrates that family separation has a detrimental impact on migrants' mental health. Separated migrants commonly experience elevated levels of depression, stress, and anxiety, and for some, poorer mental health may also be linked to the 'moral' obligation to remit money to relatives remaining in the country of origin. Moreover, separated migrants, when assessed in destination communities, often experience isolation and marginalisation, which make not only their stay but also the development of new social bonds particularly challenging. Overall, the adverse effects of family separation appear to be more pronounced among women than among men, reflecting gendered expectations surrounding caregiving and familial responsibility.

Nevertheless, the adverse effects on the health of migrants separated from their families extend beyond "emotional distress".[820] Indeed, "disadvantages"[821] in several other areas may compromise their overall well-being, as will be demonstrated in the following section.

[819] ibid.
[820] Ward (n 799).
[821] ibid.

b) Other disadvantages of family separation affecting migrants' health

It should be emphasised that migrants who are geographically separated from their family members are exposed to heightened risks not only psychologically, but also physically.[822]

A study conducted on Hispanic migrant farmworkers who moved to the U.S. for work showed that those separated from their families experienced "disadvantages" in several areas compared with those who were accompanied by their family members.[823] In particular, the findings indicated that the former faced greater social hardships (for example, they were more likely to experience precarious working and housing conditions) and encountered more difficulties and barriers in accessing medical care in the U.S., and that these disadvantages were associated with increased health-related vulnerability.[824] As the study was "cross-sectional"[825] in design, it did not establish that family separation itself caused these disadvantages; rather, it identified associations that pointed to the greater vulnerability often experienced by migrants living apart from their families.

Finally, it has been demonstrated that separated migrant farmworkers have also been found to have a greater likelihood of adopting "unhealthy behaviours",[826] including excessive alcohol consumption or even alcohol abuse.[827] Research conducted on the drinking behaviour of migrant farmworkers in New York State highlighted that the lack

[822] ibid.
[823] ibid.
[824] ibid.
[825] ibid.
[826] ibid.
[827] Peter S.K. Chi and Janet McClain, 'Drinking, Farm, and Camp Life: A Study of Drinking Behavior in Migrant Camps in New York State' (1992) 8(1) The Journal of Rural Health 41.

of social support — represented by the absence of family members at the camp — had a strong influence on the alcohol consumption of these individuals.[828]

By contrast, migrants who lived in the camp with their family members were found to be less likely to drink. It was therefore suggested that the "social support and emotional comfort" provided to this second group by their relatives substantially diminished their "need" to turn to alcohol, and that the presence of family members further contributed to reducing consumption by exerting a positive influence and a degree of social control over drinking behaviour.[829]

It can therefore be argued that family separation is a significant factor in any assessment of migrants' overall well-being.[830] Unaccompanied migrants have been shown to experience "both physical and psychological poor health, unhealthy behaviours, elevated levels of stress, and psychological ambivalence".[831] In contrast, migrants who migrate together with their families do not face the same degree of hardship and instead benefit from a mutual sense of solidarity, support, and encouragement, as well as from a less intense pressure to send remittances back home.[832]

In conclusion, when migration entails family separation, it has an adverse impact not only on migrants' mental health but also on their overall well-being. Separated migrants, in addition to facing mental health problems, often experience disadvantages across multiple areas — such as in the social sphere and in their access to medical

---

[828] ibid.
[829] ibid.
[830] Letiecq and others (n 797); Grzywacz and others, 'Depressive Symptoms' (n 797); Ward (n 799); Grzywacz and others, 'Leaving Family for Work' (n 799).
[831] Letiecq and others (n 797).
[832] ibid.

care — which, in turn, can further compromise their health. Moreover, separation can lead to unhealthy behaviours, including excessive alcohol consumption or abuse.

Taken together, these findings highlight the profound human costs of family separation in the migration context and underscore the need to recognise its health implications within broader discussions of family unity and migration policy. They also indirectly highlight the crucial importance of family unity for safeguarding migrants' physical and psychological health. Accordingly, these findings support the argument — developed in greater detail in Section 4.5 — that the ECtHR should adopt a broader and more inclusive understanding of 'family', one that accounts for the lived experiences and emotional interdependencies of migrants and their relatives.

However, family separation has adverse consequences not only for migrants but also, as will be shown in the following section, for the family members left behind in the country of origin.

4.2 Migration, family separation and their negative impacts on the mental health of those left behind

The disruption of family ties that migration often entails can negatively affect the well-being — and, in particular, the mental health — not only of those who migrate but also,

as only a limited number of studies have examined,[833] of the family members who are left behind.[834]

For example, it has been observed that the migration of spouses or adult children is associated with a significant increase in levels of depression and stress, as well as in feelings of loneliness among family members remaining in the country of origin.[835] Indeed, a study conducted among Chinese adults found that those living in households where some family members have migrated were more likely to experience mental health issues, such as depression, compared to individuals living in non-migrant households.[836] This outcome was attributed to the considerable disruption caused by the departure and consequent absence of some family members.[837] The migration of some family members, in particular, can weaken the mutual social support that typically exists among family members, making everyday life events and decisions more challenging to manage.[838] It can also become an additional source of stress, as those who are left behind must assume greater responsibilities to compensate for the loss of help with household chores and agricultural work resulting from the absence of migrant

[833] See, e.g., Lu and others (n 797); King and Vullnetari (n 797); Deependra Kaji Thapa, Denis Visentin, Rachel Kornhaber and Michelle Cleary, 'Migration of adult children and mental health of older parents "left behind": An integrative review' (2018) 13(10) Plos One e0205665 <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0205665> accessed 20 September 2022; Francisca M. Antman, 'Adult Child Migration and the Health of Elderly Parents Left Behind in Mexico' (2010) 100(2) The American Economic Review 205; Chesmal Siriwardhana, Kolitha Wickramage, Sisira Siribaddana, Puwalani Vidanapathirana, Buddhini Jayasekara, Sulochana Weerawarna, Gayani Pannala, Anushka Adikari, Kaushalya Jayaweera, Sharika Pieris and Athula Sumathipala, 'Common mental disorders among adult members of "left-behind" international migrant worker families in Sri Lanka' (2015) 15 BMC Public Health 299 <https://doi.org/10.1186/s12889-015-1632-6> accessed 20 September 2022.

[834] Torres and Casey (n 797).

[835] Alexis Silver, 'Families Across Borders: The Emotional Impacts of Migration on Origin Families' (2014) 52(3) International Migration 194.

[836] Lu and others (n 797). In a similar vein, a study conducted in Sri Lanka found a "high prevalence" of common mental disorders — namely, depression, anxiety, and somatoform disorder — among adult family members left behind (specifically, in this study, spouses and non-spouse caregivers) following the international migration of their relatives: see Siriwardhana and others (n 833).

[837] Lu and others (n 797).

[838] ibid; Silver (n 835).

family members.[839] Moreover, migration often brings not only an increased burden of responsibilities but also changes in family roles.[840] The higher levels of stress observed among left-behind members have therefore also been linked to the need to "take on [...] roles previously performed by migrants".[841] Such changes in roles can at times alter or even undermine the dynamics of family relationships.[842]

However, it has also been argued that the receipt of remittances seems to partly "mitigate" some of the negative impacts of family separation.[843] In particular, depressive symptoms were found to be higher in households with left-behind members that did not receive remittances compared to those that did. This outcome has been suggested — although not further analysed — to be due to the fact that receiving remittances either improves living conditions and the utilisation of health services by left-behind family members or fosters a "sense of connection" between migrants and those members.[844]

An example of the first positive effect mentioned above — namely, the improvement of living conditions and utilisation of health services — can be seen in the reduction of the "risk of low birth weight" among children born in migrant households in Mexico.[845]

---

[839] Silver (n 835); Lu and others (n 797); Nikita Bhattarai, Naresh Manandhar, Santripti Shrestha, Renu Twanabasu, Shruti Shah, Isha Amatya, Sabita Jyoti and Sunil Kumar Joshi, 'Status of Migration and Its Perceived Effects in Khopasi, Kavrepalanchowk District: A Descriptive Cross-Sectional Study' (2020) 10(2) International Journal of Occupational Safety and Health 124.

[840] Silver (n 835).

[841] ibid.

[842] For example, when women are the ones who migrate first, the overall migration experience may make them more confident and independent. Once reunited with their husbands, this change can be perceived by the latter as a threat to the relationship: Ruth Marsden, 'Voices of Strength and Pain. Impacts of Separation, Loss and Trauma on Health and Wellbeing of Reuniting Refugee Families' (British Red Cross 2016) <https://assets.redcross.org.uk/82b1e254-5524-0172-0612-9ce813c7824c/c1ac16b7-727f-4788-b997-187aa491ebee/British-Red-Cross-Voices-of-Strength-and-Pain.pdf> accessed 18 August 2022.

[843] Lu and others (n 797).

[844] ibid.

[845] Reanne Frank and Robert A. Hummer, 'The Other Side of the Paradox: The Risk of Low Birth Weight among Infants of Migrant and Nonmigrant Households within Mexico' (2002) 36(3) International Migration Review 746.

Families in Mexico receiving remittances from relatives who migrated to the U.S. were less likely to have infants with low birth weight compared to both non-migrant households and migrant households that did not receive remittances.[846]

In any case, as will be shown in greater detail below, women — particularly mothers and wives — tend to be more negatively affected than men by the migration of family members.[847] It has also been noted that, although communication (by phone or other means) plays an important role in maintaining cross-border family ties, high levels of stress associated with family separation persist despite ongoing contact.[848]

In sum, the migration of some family members also has serious repercussions for the health and well-being of those left behind. This is because migration is associated with stress and difficulties arising from family separation, the erosion of social support networks, and the need for those left behind to assume new responsibilities and roles. Among these adverse effects, heightened levels of stress, depression, and loneliness have been reported, although remittances seem to partly alleviate some of these negative impacts.

The following subsections will focus on a specific subgroup of the left behind — older parents — showing how the migration of adult children exposes them to even greater vulnerability. In particular, Subsection (a) will examine the especially vulnerable situation of elderly parents and the negative association between children's migration

[846] ibid.
[847] Silver (n 835). See Section 4.2(a).
[848] Silver (n 835); Leah Schmalzbauer, 'Searching for Wages and Mothering from Afar: The Case of Honduran Transnational Families' (2004) 66(5) Journal of Marriage and Family 1317.

and their health, while Subsection (b) will consider the few specific contexts in which research has identified positive (or, in limited cases, neutral) effects.

a) The vulnerable position of elderly parents left behind: evidence of a negative association with adult children's migration

If the literature on the effects of migration on the health and well-being of those left behind is, as indicated above, limited, it is even more restricted in relation to those left behind when they are elderly parents.[849] However, since the early 2010s, the relationship between adult children's migration and the health of their elderly parents left behind has become "a growing area of research".[850]

It has been observed that in several developing countries, and in those with economies in transition, elderly parents are often left behind in rural areas or small towns as some or all of their children migrate, mainly for economic reasons.[851] The phenomenon,

[849] Thapa and others (n 833); Marcus H. Böhme, Ruth Persian and Tobias Stöhr, 'Alone but better off? Adult child migration and health of elderly parents in Moldova' (2015) 39 Journal of Health Economics 211; Ramesh Adhikari, Aree Jampaklay and Aphichat Chamratrithirong, 'Impact of children's migration on health and health care-seeking behavior of elderly left behind' (2011) 11 BMC Public Health 143 <https://doi.org/10.1186/1471-2458-11-143> accessed 8 November 2022; Helen B. Miltiades, 'The social and psychological effect of an adult child's emigration on non-immigrant Asian Indian elderly parents' (2002) 17 Journal of Cross-Cultural Gerontology 33; Zachary Zimmer and John Knodel, 'Older-age parents in rural Cambodia and migration of adult children. A case study of two communes in Battambang province' (2013) (9)2 Asian Population Studies 156; Michaella Vanore, Melissa Siegel, Franziska Gassmann and Jennifer Waidler, 'Adult Child Migration and Elderly Multidimensional Well-Being: Comparative Analysis Between Moldova and Georgia' (2018) 40(7) Research on Aging 599; Saruna Ghimire, Devendra Raj Singh, Dhirendra Nath, Eva M. Jeffers and Maheshor Kaphle, 'Adult Children's Migration and Well-being of Left Behind Nepalese Elderly Parents' (2018) 8(3-4) Journal of Epidemiology and Global Health 154; Francisca M. Antman, 'The impact of migration on family left behind' in Amelie F. Constant and Klaus F. Zimmermann (eds), *International Handbook on the Economics of Migration* (Edward Elgar 2013).

[850] Antman, 'Adult Child Migration' (n 833); Maria Evandrou, Jane Falkingham, Min Qin and Athina Vlachantoni, 'Children's migration and chronic illness among older parents "left behind" in China' (2017) 3 SSM - Population Health 803.

[851] United Nations, 'Report of the Second World Assembly on Ageing' (Madrid, 8-12 April 2002) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/397/51/PDF/N0239751.pdf?OpenElement> accessed 10 September 2022; King and Vullnetari (n 797); Thalil Muhammad, Madathil K. Sulaiman and Shobhit Srivastava, 'Migration of adult male children and associated depression among community-dwelling older parents: A cross-sectional gender analysis from Longitudinal Ageing Study in India, 2017–2018' (2022) 37(2) International Journal of Geriatric Psychiatry <https://doi.org/10.1002/gps.5675>.

characterised by households composed solely of elderly parent(s) whose adult children have migrated, is known as an "empty nest"[852] and, as will now be shown, has several adverse repercussions on the well-being of the former.

Studies have indicated that adult children's migration has a "significant" negative impact on the mental health of their elderly parents left behind.[853] Among these negative consequences, depression, anxiety, guilt, loneliness, loss of basic support, social isolation, and cognitive decline have been documented.[854]

That "sense of depression and abandonment" frequently experienced by such parents left behind after their children's migration has led to them being described as "orphan pensioners" or "elderly orphans".[855]

Moreover, that sense of isolation felt by those elderly parents is even deeper when their children are undocumented migrants and therefore unable to return freely to their home country at times when their parents are facing hardship — for example, illness or depression.[856] As border controls have tightened — for instance, between the U.S. and Mexico, particularly after the terrorist attacks of 11 September — the cost of smuggling has risen concomitantly, unintentionally prolonging the stay of undocumented migrants abroad.[857] As a result, in these cases, family separation — once a "temporary stage in the migration process" — has become considerably longer.[858] Consequently, members of such transnational families have had to

[852] Thapa and others (n 833).
[853] ibid; Muhammad, Sulaiman and Srivastava (n 851).
[854] Thapa and others (n 833); Muhammad, Sulaiman and Srivastava (n 851); Miltiades (n 849).
[855] King and Vullnetari (n 797); Hermine De Soto, Peter Gordon, Ilir Gedeshi and Zamira Sinoimeri, *Poverty in Albania: A Qualitative Assessment* (World Bank 2002).
[856] King and Vullnetari (n 797).
[857] Silver (n 835); Arenas and others (n 816).
[858] Arenas and others (n 816); Silver (n 835).

“restructure” their relationships, replacing face-to-face interactions with less intimate forms of “distance communication”.[859]

Furthermore, a deeper feeling of isolation can be experienced by older parents when, conversely, it is they who are unable to visit their children or grandchildren abroad because of restrictive migration policies.[860]

Thus, many elderly individuals, particularly those living in remote areas, not only feel depressed but also worry about their ability to support themselves without their offspring’s contribution.[861]

In particular, the “intergenerational extended family” has been highlighted as fundamental to the well-being of older parents, especially in developing countries that neither provide social security nor other forms of welfare support for them.[862] Indeed, in some cultures, the co-residence of elderly parents with their adult children reflects “filial piety”, a central moral tenet underpinning family relations in societies where intergenerational bonds hold great significance.[863] Accordingly, elderly parents in these contexts maintain close emotional ties with their adult children and hold high expectations that the latter will provide physical, financial, instrumental, and emotional support.[864] When those parents are unable to live with their children, as a result of being left behind, they experience — as noted above — a sense of loneliness and abandonment, as well as “emotional ambivalence”, disappointment, and anger.[865]

In contrast, it has been noted that where elderly parents reside with their adult children, they benefit from more instrumental and emotional support, which in turn contributes

[859] Silver (n 835).
[860] King and Vullnetari (n 797).
[861] ibid.
[862] Thapa and others (n 833).
[863] ibid.
[864] ibid.
[865] ibid.

to improved health and overall well-being.[866] Consistent with these findings, some studies — though not conducted in a migration context — have shown that adult children have a beneficial impact on their parents' mental health. While these studies concern elderly parents in general, they reinforce the significance of adult familial relationships and indirectly support the argument that separation, even from non-nuclear family members, has detrimental effects on the well-being of older parents. In particular, these studies have demonstrated an improvement in older parents' mental health when "close contact and emotional cohesion"[867] with their children are present. For example, Dutch elderly women who saw one or more of their children at least once per week experienced lower levels of emotional and social loneliness than those who did not interact with that frequency.[868] Similarly, research on older parents in Europe has shown that those who saw or spoke to their children more often than once per week reported significantly lower levels of depression.[869] These findings highlight the importance of close and sustained interaction with adult children for elderly parents' well-being, a dynamic that becomes more difficult to maintain when migration leads to long-term separation.

Returning to the migration context, if being separated from their children is distressing enough for elderly parents, separation from grandchildren is often even more

[866] ibid; Maria Victoria Zunzunegui, Francois Béland and Angel Otero, 'Support from children, living arrangements, self-rated health and depressive symptoms of older people in Spain' (2001) 30(5) International Journal of Epidemiology 1090; Qian Song, 'Facing "Double Jeopardy"? Depressive Symptoms in Left-Behind Elderly in Rural China' (2017) 29(7) Journal of Aging and Health 1182.
[867] Thapa and others (n 833).
[868] Pearl A. Dykstra and Jenny de Jong Gierveld, 'Gender and Marital-History Differences in Emotional and Social Loneliness among Dutch Older Adults' (2004) 23(2) Canadian Journal on Aging 141.
[869] Isabella Buber and Henriette Engelhardt, 'Children's impact on the mental health of their older mothers and fathers: findings from the *Survey of Health, Ageing and Retirement in Europe*' (2008) 5 European Journal of Ageing 31.

tormenting.[870] This is particularly evident in countries such as Albania, where grandparents typically share very strong bonds with their grandchildren.[871]

For older parents, therefore, family separation not only leads to a sense of abandonment, isolation, and lack of support, but also to the feeling that it is impossible to "fulfil their role".[872] In particular, they are unable to help their children, offer guidance to them or care for their grandchildren, or act as heads of a multigenerational family.[873] Moreover, as migrant adult children settle abroad and establish families of their own, the likelihood of their return diminishes. Consequently, older parents left behind — especially those still in relatively good health — often wish, for the reasons indicated above, to join their children and grandchildren abroad, longing "desperately" for family reunification.[874]

Empirical evidence from developing and middle-income countries further confirms the negative association between separation and elderly well-being. Several studies have reported that elderly parents left behind exhibited "higher levels" of mental health issues than those who continued to live with their children in the country of origin.[875] Specifically, they experienced "higher depressive symptoms, higher levels of loneliness, lower life satisfaction, lower cognitive ability, and poorer psychological health".[876] For instance, a study conducted in Mexico found that, compared with elderly

---

[870] King and Vullnetari (n 797).
[871] ibid.
[872] Melanie Abas, Kanchana Tangchonlatip, Sureeporn Punpuing, Tawanchai Jirapramukpitak, Niphon Darawuttimaprakorn, Martin Prince and Clare Flach, 'Migration of Children and Impact on Depression in Older Parents in Rural Thailand, Southeast Asia' (2013) 70(2) Jama Psychiatry 226; King and Vullnetari (n 797).
[873] King and Vullnetari (n 797).
[874] ibid.
[875] Thapa and others (n 833); Adhikari, Jampaklay and Chamratrithirong (n 849).
[876] Thapa and others (n 833). See also Min Gao, Yanyu Li, Shengfa Zhang, Linni Gu, Jinsui Zhang, Zhuojun Li, Weijun Zhang and Donghua Tian, 'Does an Empty Nest Affect Elders' Health? Empirical

parents whose children had not migrated, those whose adult children had migrated to the U.S. displayed poorer mental and physical health outcomes.[877] These included self-reported "poor health quality and poor mental quality", as well as higher incidences of "heart attack or stroke".[878]

Further research corroborates this negative association between adult children's migration and the health of parents left behind. In India, a study found that the migration of adult sons was associated with a higher risk among older parents of developing "lifestyle-related chronic diseases", such as hypertension, diabetes, and heart disease, compared with parents whose children had not migrated.[879] Similarly, in China, elderly parents with a migrant son exhibited higher rates of "diagnosed conditions of chronic stomach or other digestive diseases" than those whose children lived with them or nearby.[880] These findings may be explained by the fact that, as underlined above, elderly parents with migrant children tend to experience higher levels of stress, develop unhealthy behaviours, and are less likely to access healthcare services.[881]

In any case, it should be noted that in countries such as India and China, where the last two studies were conducted, residing with or near a son has traditionally been considered a "major source of old-age security".[882] Being separated from their sons may therefore lead elderly parents to feel lonely, sad, and isolated, which in turn can

---

Evidence from China' (2017) 14(5) International Journal of Environmental Research and Public Health 463 <https://doi.org/10.3390/ijerph14050463> accessed 1 November 2022; Man Guo, Maria P. Aranda and Merril Silverstein, 'The impact of out-migration on the inter-generational support and psychological wellbeing of older adults in rural China' (2009) 29 Ageing & Society 1085.

However, a study conducted on older parents in Thailand, while finding that adult children's migration has a strong negative impact on the mental health of elderly parents left behind, reported no significant association between such migration and their physical health: see Adhikari, Jampaklay and Chamratrithirong (n 849).

877 Antman, 'Adult Child Migration' (n 833).

878 ibid.

879 Jane Falkingham, Min Qin, Athina Vlachantoni and Maria Evandrou, 'Children's migration and lifestyle-related chronic disease among older parents "left behind" in India' (2017) 3 SSM - Population Health 352.

880 Evandrou and others (n 850).

881 ibid.

882 ibid.

contribute to worry, depression, and, in the long term, deteriorating physical health.[883] The most detrimental mental health effects were found among older parents whose children all lived outside the province, who cohabited with no other children, and who resided in extremely poor communities lacking social support.[884]

A study specifically focused on depression among the elderly first identified significant gender differences: older women were more likely to be depressed than older men (male: 7.5%, female: 9.7%; $p<0.001$).[885] Consistent with the findings discussed above, which indicate a negative association between adult children's migration and the well-being of older parents left behind, the study also found that elderly parents with a migrant son had a "26% significantly higher likelihood" of being depressed than those whose sons had not migrated. Moreover, older women with a migrant son were the most affected group, having a "76% significantly higher likelihood" of experiencing depression compared to older men in the same situation.[886]

In Mexico, the greater negative impact of migration on women than on men has been linked to the more central role that families and homes play in women's lives — a result of the structure of the labour market in Mexico and, more broadly, in Latin America, where men dominate formal employment, while women participate mainly in informal or flexible work arrangements and often occupy marginal positions in the labour market.[887]

Recent evidence from Nepal adds a comparative dimension to this gendered pattern, finding that international, compared with internal, migration of adult children was

[883] ibid.
[884] Song (n 866).
[885] Muhammad, Sulaiman and Srivastava (n 851).
[886] ibid.
[887] Silver (n 835).

associated with higher anxiety and stress among older parents left behind, with mothers particularly affected.[888]

Adult children's migration can also affect the health and well-being of elderly parents left behind by increasing their responsibilities. As discussed in the previous section, with reference more generally to adults left behind, these elderly parents may be compelled to take on additional duties — such as caring for grandchildren or performing more agricultural or household labour — once their children migrate.[889]

In the previous section, it was noted that studies suggested — consistent with "conventional wisdom" —[890] that remittances appear to partly offset some of the negative consequences of migration. However, there is limited evidence on the proportion of remittances directed to elderly parents, particularly when adult children have established their own families abroad.[891] Indeed, some studies indicated a sharp decline in remittances sent to elderly parents once their children had established their own families abroad.[892]

The relevance and significance of remittances also vary with the age and background of recipients. For example, several elderly Albanians did not consider remittances "very important", nor something that could "compensate" for the loss of "privileges and roles"

[888] Deependra Kaji Thapa, Denis Visentin, Rachel Kornhaber and Michelle Cleary, 'Internal and International Migration and the Mental Health of "Left-Behind" Older Parents' (2024) 58(1) International Migration Review 37.
[889] Zehan Pan and Weizhen Dong, 'Can money substitute adult children's absence? Measuring remittances' compensation effect on the health of rural migrants' left-behind elderly parents' (2020) 79 Journal of Rural Studies 216; Congzhi He and Jingzhong Ye, 'Lonely Sunsets: Impacts of Rural-urban Migration on the Left-behind Elderly in Rural China' (2014) 20(4) Population, Space and Place 352.
[890] Antman, 'Adult Child Migration' (n 833).
[891] ibid.
[892] King and Vullnetari (n 797).

associated with old age — particularly those linked to grandparenting and those involving physical proximity.[893]

In any case, the relevance of remittances — and, in particular, their potential role in compensating elderly parents for the deterioration of their health caused by their adult children's migration — remains a subject of debate. As discussed above, among the studies reporting that adult children's migration is associated with a decline in the physical and mental health of those left behind, some suggest that remittances seem to partly mitigate certain adverse effects, while others conclude that they cannot compensate for the harm caused by family separation.

However, a recent study in rural China sheds light on the limits of the compensatory effect of remittances.[894] Although it found that "the compensation effect of remittances does occur", remittances were able to compensate for "only [...] a fraction of the loss [in] elderly parents' self-rated health and mental status", and showed no compensatory effect for other health indicators, such as body mass index. Given that the compensation effect of remittances on the health of elderly parents left behind appears "very limited", adult children's migration — and the consequent long-term family separation — entails a "high health cost" for those parents.[895] These findings, therefore, stand in contrast to studies examined in the section below that report a positive association between migration and elderly well-being, where the observed benefits are often attributed to remittance income.[896]

---

[893] ibid.
[894] Pan and Dong (n 889).
[895] ibid.
[896] ibid.

In conclusion, this section has explored the negative association between adult children's migration and the health and well-being of their elderly parents left behind. Elderly parents with migrant children generally experience poorer mental and physical health outcomes, such as higher levels of depressive symptoms and chronic illness. In particular, these effects stem from the loss of intergenerational support and the inability of elderly parents to perform traditional family roles when separated from their children and grandchildren. Furthermore, evidence indicates that adult children's migration affects older women left behind more severely than older men, making them the most vulnerable group. Finally, even when remittances are present, the health cost for the elderly left behind remains high, as the compensatory effect of remittances is very limited.

By contrast, the following section will examine the few studies that have reported a positive association between adult children's migration and the well-being of their elderly parents left behind.

b) Examining claims of a positive association between adult children's migration and the well-being of left-behind older parents

While the previous section has demonstrated that most studies associate children's migration with adverse effects on the health and well-being of elderly parents left behind — who tend to fare significantly worse than those whose children have not migrated — a smaller body of literature points in the opposite direction.[897] The following

[897] See, e.g., Randall S. Kuhn, 'A longitudinal analysis of health and mortality in a migrant-sending region of Bangladesh' in Santosh Jatrana, Mika Toyota and Brenda S.A. Yeoh (eds), *Migration and Health in Asia* (Routledge 2005); Randall Kuhn, Bethany Everett and Rachel Silvey, 'The Effects of Children's Migration on Elderly Kin's Health: A Counterfactual Approach' (2011) 48 Demography 183; Melanie A. Abas, Sureeporn Punpuing, Tawanchai Jirapramukpitak, Philip Guest, Kanchana Tangchonlatip,

discussion reviews these studies and critically assesses the contexts and explanations advanced to support claims of a positive association between adult children's migration and the well-being of their older parents.

Kuhn's research, in particular, demonstrated a positive association between children's internal and international migration and the health and survival of their left-behind parents in rural Bangladesh.[898] Elders living in migrant households were found to be more likely both to be in good health and to survive during the follow-up period compared to those in non-migrant households.[899]

Similar results were reported in a subsequent study conducted on elderly parents left behind in rural Indonesia.[900] Kuhn *et al.* found that the internal migration of adult children positively affected elders' health.[901] They suggested that this positive impact could partly be explained by parents' "propensity" to have children who migrate. In particular, migration appeared to have greater beneficial effects among older parents with a "high propensity" to have a migrant child than among those with "low propensity".[902]

Enhanced well-being — specifically, lower levels of depression — among older parents left behind was also observed in a study conducted in rural Thailand.[903] This "first prospective study" showed, in contrast to the literature examined in Section 4.2(a), that parents with all children living outside the district had, after a year, "less than half the odds of depression" compared to those with no or only some migrant children. Thus,

---

Morven Leese and Martin Prince, 'Rural–urban migration and depression in ageing family members left behind' (2009) 195(1) The British Journal of Psychiatry 54; Abas and others, 'Migration of Children' (n 872).

[898] Kuhn, 'A longitudinal analysis' (n 897).

[899] ibid.

[900] Kuhn and others, 'The Effects of Children's Migration' (n 897).

[901] ibid.

[902] ibid.

[903] Abas and others, 'Migration of Children' (n 872).

the study suggested that, for the elderly in rural Thailand, having all children migrate may have a beneficial rather than an adverse impact. The authors, however, cautioned that these results "[could not] be extrapolated to international migration", since only 2% of the migrants in that study lived overseas.[904]

It should be noted that the study in question concerned internal migration, where separation between parents and children is generally the result of economic or personal choice rather than legal constraint. The experience of separation in such cases, therefore, differs substantially from that of families who wish to reunite but are prevented from doing so by restrictive migration laws. In the latter scenario, distress stems not only from geographical distance but from the structural impossibility of reunion, which transforms separation into a legally imposed and potentially prolonged condition.

Leaving aside this distinction and returning to the findings themselves, several explanations have been offered for that result. One relates to preexisting distinctions between migrant and non-migrant households.[905] Another concerns the potential benefits migration may bring: for instance, the migration of all children has been found to be closely linked with higher remittance inflows, providing both financial support and an enhanced "sense of security and family solidarity".[906] This link — namely, that having all children migrated leads to greater remittances — is not necessarily valid in all migration contexts. In countries such as Albania, for example, evidence shows that migrants tend to send more remittances to their parents when they are single or, if married, have migrated alone, but these — as noted in Section 4.2(a) — "decrease sharply" once they marry and have their children with them abroad.[907] Moreover, in the

[904] ibid.
[905] ibid.
[906] ibid.
[907] King and Vullnetari (n 797).

Albanian context, remittance practices have been described as “highly gendered”. Following marriage and migration, a woman joins her husband’s family and loses control over her share of remittances, which are redirected to her in-laws rather than to her own parents.[908] Thus, if in a household the only migrant children are married daughters, it is highly unlikely that their parents left behind receive remittances. These observations, therefore, cast doubt on the validity of the remittance-based explanation. In any case, the aforementioned Thai study[909] seems to lend support, at least to some extent, to the view that remittances may be one of the reasons for the positive association between migration and older parents’ health. In a similar vein, the study by Böhme *et al.* placed even greater emphasis on this link, explicitly highlighting that the positive association between adult children’s migration and the physical health of left-behind elderly parents was partly due to remittances.[910] As a result of this “income”, elders were able to eat better and to have more time for rest and leisure rather than work, which in turn improved certain dimensions of physical health, namely body mass index, mobility, and self-reported health.[911] This study, however, unlike the one mentioned above,[912] found no significant effect of migration on the mental health or cognitive capacity of those elderly.[913]

Another relevant study was conducted in a rural area of Cambodia that had experienced considerable out-migration.[914] The area examined was characterised by the fact that most elderly parents interviewed, despite having migrant children, also

[908] ibid.
[909] Abas and others, ‘Migration of Children’ (n 872).
[910] Böhme, Persian and Stöhr (n 849).
[911] ibid.
[912] Abas and others, ‘Migration of Children’ (n 872).
[913] Böhme, Persian and Stöhr (n 849).
[914] Zimmer and Knodel (n 849).

had some children living with or near them. It was found that those elders benefited from remittances from migrant children without being deprived of other types of support, and therefore did not feel “physically abandoned” or left alone.[915]

This study can only be partly considered consistent with the literature analysed in this section. While it does indicate a positive impact of migration on the health of older parents, this conclusion is reached only “on balance”.[916] The authors stress that elders’ experiences of belonging to a migrant household vary greatly: whether children migrate internally or internationally affects remittance amounts and thus parental well-being. They also note that when all children are migrants, parents tend to be “poor and landless”.[917] In this respect, the study partly aligns with the opposite view examined in Section 4.2(a), which suggests that children’s migration has adverse effects on the parents left behind.

In any case, the positive association between adult children’s migration and the well-being of older parents identified in that study should be regarded as a context-dependent finding. Although some children had migrated, the elderly parents were not left alone, as others continued to live with them or nearby. The presence of non-migrant children thus appears to have acted as a ‘buffer’, mitigating or preventing the negative impacts that migration would otherwise provoke. The results of that study, therefore, cannot be considered reflective of the actual well-being of those who are truly left behind, since the elders examined cannot properly be regarded as such. The study can instead be viewed, at least to this extent, as indirectly confirming that older parents benefit from living with or near their children.

---

[915] ibid.
[916] ibid.
[917] ibid.

This ‘buffer effect’, exerted by adult children who did not migrate, also seems to be revealed in the study by Ghimire *et al.* as a possible explanation for not finding — except for loneliness — any significant association between adult children’s migration and the “self-reported physical health and depressive symptoms” of left-behind Nepalese older parents.[918] In that study, the majority of elderly parents were living in a “joint/extended family structure”. Thus, despite having a migrant child, they continued to reside with other family members in the same household and therefore benefited from their care and support. The authors stressed that, in understanding the link between children’s migration and elderly parents’ well-being, “context is critical”. In such a context, even when some children migrate, the remaining (non-migrant) children “are likely to substitute and make up for migrants’ contribution to the elderly”, so that migration “does not necessarily mean that elderly parents lose their care and support”. The remittances sent by migrant children and the care provided by those who remained allow older parents to “receive both income and care”.[919]

It was therefore concluded that Nepal’s joint/extended family structure may have significantly influenced these findings, and that such results may be only temporary given the country’s gradual shift towards a nuclear family model.[920] Such a conclusion, therefore, seems to imply that if parents were truly left alone — that is, if all the children with whom they had been living migrated — the adverse repercussions for their well-being would likely be much greater.

Finally, to provide a more comprehensive review of the literature on the effects of adult children’s migration on elderly parents’ well-being, it should be noted that a few studies

[918] Ghimire and others (n 849).
[919] ibid.
[920] ibid.

have found no significant impact of migration on the mental or physical health of left-behind parents.[921]

From all the literature examined in this section, it appears difficult to sustain the claim of a positive association between children's migration and the health and well-being of left-behind older parents in contexts where family separation results from restrictive migration laws rather than from personal choice. The explanations advanced in the studies discussed above in support of such a claim appear, in this context, overly generic — such as the "propensity" to have migrant children and the preexisting distinctions between migrant and non-migrant households — or questionable, as in the case of the one related to increased remittances.

As discussed above, migration does not necessarily lead to increased financial support for those left behind. Remittances often decrease sharply once migrants marry and establish families abroad, and they may be negligible or entirely absent when the migrants are married daughters. Moreover, migration is frequently driven by economic necessity, and even 'settled' migrants often struggle to make ends meet. As stressed in Section 4.1(a), sending remittances can therefore be a considerable challenge, and when they are sent, the amounts are often too modest to constitute a meaningful income or to significantly improve recipients' living conditions. Justifying improvements in the health of those left behind on this basis thus appears questionable.

The other two explanations — the "propensity" to have migrant children and preexisting distinctions between migrant and non-migrant households — are overly generic and

[921] See Franziska Gassmann, Melissa Siegel, Michaella Vanore and Jennifer Waidler, 'The Impact of Migration on Elderly Left Behind in Moldova' (2013) UNU-MERIT Working Paper 82/2012 <https://migration.unu.edu/publications/working-papers/the-impact-of-migration-on-elderly-left-behind-in-moldova.html> accessed 8 August 2022; Jennifer Waidler, Michaella Vanore, Franziska Gassmann and Melissa Siegel, 'Does it matter where the children are? The wellbeing of elderly people "left behind" by migrant children in Moldova' (2017) 37(3) Ageing & Society 607.

equally unconvincing in the present context, where family separation is imposed by restrictive migration laws. When a family remains separated against its wishes because of such laws, the notion of a "propensity" to have migrant children is inapplicable; indeed, that hypothetical "propensity" would be undermined by the family's desire for reunification. Arguing in those cases that those left behind experience better health on that basis, therefore, seems incompatible with the realities of their situation, in which they endure the distress of involuntary separation.

The same conclusion applies to the second explanation. Preexisting differences between migrant and non-migrant households amount to a broader reformulation of the previous argument, since the alleged "propensity" to have migrant children can itself be seen as one of those preexisting differences. Arguing, therefore, that migration is positively associated with the health of those left behind on the basis of such differences is not relevant in the present context, where — despite experiencing migration — the families involved seek reunification. These families, wishing to end separation as soon as possible, cannot be characterised by features such as a "propensity" to have migrant children, which, according to the studies discussed above, are said to underpin better health outcomes among those left behind.

Finally, it is worth reiterating that one of the studies[922] discussed in this section explicitly cautioned that its findings could not be extrapolated to international migration — the focus of this work — further undermining claims of a positive association. More broadly, the studies reviewed here concern predominantly internal and voluntary forms of migration, where family separation does not result from legal barriers. In contrast, the context of this research — international migration constrained by restrictive family

[922] Abas and others, 'Migration of Children' (n 872).

reunification regimes — creates a qualitatively different form of separation, one that is experienced as involuntary and legally enforced. The psychological and social repercussions in such cases are therefore more severe than those observed in voluntary, internal migration settings.

To conclude, while some limited evidence points to potential benefits of adult children's migration for parents' health and well-being, such effects are highly context-dependent and unlikely to apply where family separation results from restrictive migration policies rather than voluntary mobility. In addition, where apparent benefits are observed, they typically occur in households that retain co-resident or nearby non-migrant children, suggesting that continued family proximity rather than migration itself underlies those outcomes.

In any case, the literature reviewed here appears inconclusive regarding the association between migration and the mental health of older parents: while some studies report a positive relationship, others find none, even where they identify improvements in physical health.

4.3 Family separation due to restrictive migration laws: an 'endless' arrangement; consequences of the delay or denial of family reunification

The sections above examined, respectively, the negative effects of family separation on adult migrants (Section 4.1) and on the adult family members left behind (Section 4.2). While a few studies discussed in Section 4.2(b) suggested possible benefits of adult children's migration for the well-being of parents remaining in the country of origin, the evidence was shown to be limited, context-dependent, and unlikely to apply

to situations of international migration where separation is imposed by restrictive family reunification laws.[923] In such contexts, where separation is not voluntary but legally enforced, the repercussions for both migrants and those left behind are predominantly adverse.

The mental health effects of migration on individuals depend not only on how disruptive migration is to existing social and kinship ties but also on other factors, such as whether it represents a temporary or a permanent arrangement.[924] Against this background, it may be argued that the ECtHR's persistent failure to recognise, in migration contexts,[925] relationships between adult relatives as constituting 'family life' effectively renders the ensuing separation a permanent, unwanted, and involuntary arrangement. In fact, in these instances, requests for family reunification are typically not only denied but, in most cases, not even heard.

Accordingly, when family separation stems from restrictive migration laws, its negative repercussions — already severe in cases of voluntary or temporary separation such as those examined above — are further exacerbated by both the passage of time and the lack of agency and unfulfilled desire to reunite that characterise such legally imposed separations. In these circumstances, the adverse effects on health and well-being discussed earlier are not only prolonged — and often indefinite — but also intensified by the awareness that reunion depends not on the family's will but on the

[923] The literature reviewed in Sections 4.2(a)-(b) therefore reveals substantial variation in both the degree and direction of the association between adult children's migration and the well-being of left-behind elderly parents. Outcomes are shaped by factors such as the voluntariness of migration, the role of remittances, and the presence of non-migrant children who remain nearby.

[924] Torres and Casey (n 797).

[925] Although, as examined in Chapter 2, the Court has recognised such relationships in a few exceptional cases.

discretion of the state, exercised through restrictive legal barriers, transforming what might otherwise be a temporary separation into a legally imposed and enduring one.

Building on the previous analysis, this section focuses on this specific form of separation, examining what occurs when family separation becomes a *de facto* permanent arrangement due to the prolonged delay or denial of reunification.

The Council of Europe Commissioner for Human Rights has emphasised that restricting or delaying family reunification causes avoidable human hardship and hinders successful integration.[926] In particular, the Commissioner notes that families wishing to reunite but prevented from doing so experience "severe stress, social isolation and economic difficulties", making a normal life impossible for both migrants and those left behind. Moreover, as already noted, restrictive migration laws that delay family reunification also "delay and undermine integration", particularly for families from less-developed countries.[927] Such separation deprives migrants of the daily emotional and practical support that fosters inclusion and stability in the host society.

Research on Canadian immigration policy has similarly shown the harmful impact of the increasingly restrictive family reunification measures introduced in recent years, which have included temporary suspensions and strict limits on the sponsorship of parents and grandparents.[928] Grandparents, it has been observed, play a "critical role in supporting settlement and integration" within immigrant families residing in Canada by providing childcare that enables their children to participate in the labour market, thereby improving the family's economic stability. Beyond this, they offer stability, support, and a "sense of belonging" to both children and grandchildren as they navigate

---

[926] Thomas Huddleston, 'Time for Europe to get migrant integration right' (Issue paper, Council of Europe Commissioner for Human Rights May 2016) <https://www.refworld.org/docid/5756ecc54.html> accessed 6 November 2022.
[927] ibid.
[928] Bragg and Wong (n 48).

a new society.[929] When family reunification is denied or substantially delayed, immigrants' "feelings of nonbelonging and being an outsider" are reinforced.[930] Prolonged separation can also leave family life in a state of uncertainty, "imped[ing] aspirations for life-course progression and shared futures".[931] Moreover, recent guidance from the Office of the United Nations High Commissioner for Human Rights frames family reunification as part of regular migration pathways, emphasising that broader access to reunification can preserve family unity and reduce reliance on unsafe irregular movement.[932] Limiting or obstructing lawful channels, such as family reunification, drives people desperate to reunite with their families towards irregular and often dangerous routes, including sea journeys organised by smugglers.[933] Yet it has been observed that "the longer the period of separation, the poorer the outcomes when the family reunites and the harder it is to regain its balance".[934] Even though modern technologies offer an array of means of maintaining contact despite being physically distant, they cannot fully prevent the gradual erosion of emotional bonds. Over time, some ties "simply may quietly weaken", and prolonged separation risks creating a "gap" between family members.[935] Indeed, as has been emphasised,

[929] ibid.
[930] ibid.
[931] Katharine Charsley and Helena Wray, 'Kept apart: Routine family separation in the UK family immigration system as times of crises' (2023) 11(3) Migration Studies 380.
[932] UN Office of the High Commissioner for Human Rights, 'Leveraging Regular Migration Pathways for Human Rights' (2025) <https://www.ohchr.org/sites/default/files/documents/issues/migration/pathways/ohchr-leveraging-regular-migration-pathways.pdf> accessed 6 June 2026.
[933] Muižnieks (n 795).
[934] Ruth Marsden and Catherine Harris, '"We started life again": Integration experiences of refugee families reuniting in Glasgow' (British Red Cross 2015) <https://assets.redcross.org.uk/82b1e254-5524-0172-0612-9ce813c7824c/b38618cc-8ddd-46ed-9a1d-d228c97a6507/British-Red-Cross-We-Started-Life-Again.pdf> accessed 18 November 2022; Marsden (n 842).
[935] Louise Ryan, Amanda Klekowski von Koppenfels and Jon Mulholland, '"The distance between us": a comparative examination of the technical, spatial and temporal dimensions of the transnational social relationships of highly skilled migrants' (2015) 15(2) Global Networks 198.

extended separation can “rupture shared social experiences or the ‘common world of signification’” that sustains familial intimacy.[936]

To conclude, when separation — in this context, the result of delayed or denied family reunification — is prolonged and legally enforced, it causes increasing hardship both for migrants and those left behind and can weaken or even sever certain relationships altogether. In doing so, prolonged separation and isolation can prevent them from leading stable and fulfilling lives.[937] As shown in Sections 4.1(a) and 4.2(a), women — whether migrants or those remaining behind — appear particularly vulnerable to the negative health and well-being effects of family separation, a pattern that can be expected to persist across different migration contexts, including those where separation is legally enforced. Furthermore, the delay or denial of family reunification, by impeding integration and indirectly encouraging irregular migration, ultimately harms not only the individuals concerned but also the host societies themselves.[938] These findings underscore the profound human and social costs of treating family life among adult relatives as legally irrelevant in migration contexts. By refusing to recognise such relationships under Article 8, the ECtHR effectively legitimises forms of separation that the evidence discussed above identifies as destructive and enduring.

---

[936] ibid.

[937] International Labour Organization, ‘International Labour Conference, 59th Session 1974: *Migrant Workers*, Report VII (1)’ (Geneva 1973), 27 <https://webapps.ilo.org/public/libdoc/ilo/1973/73B09_350.pdf> accessed 10 January 2023.

[938] Muižnieks (n 795).

4.4 Benefits for individuals and for the receiving country when adult family members are allowed to live together

This section turns to the opposite scenario: the benefits that arise when adult family members are permitted to live together.

The preceding sections examined the negative consequences of family separation on adult individuals — both migrants and those left behind — and on the receiving society as a whole. As reported in a comparative study, prolonged separation often leaves migrants feeling that their lives are “on hold” and “void of sense”, producing intense emotional stress and, in some cases, leading to depression or other serious health issues.[939] In Section 4.1(a), it was also shown that, conversely, migrants who were accompanied by their spouses when moving to the destination country reported, for instance, lower levels of depressive symptoms. From the analysis above, it is therefore possible to infer *a contrario* — and this inference is also explicitly supported by several sources —[940] that allowing family reunification among adult relatives benefits not only the individuals concerned but, as shown in detail below, over time and indirectly, also the receiving community.

Family reunion has been shown to improve individuals’ mental health and overall well-being.[941] Not only, as noted above, do migrants’ depressive symptoms diminish, but

[939] Strik, de Hart and Nissen (n 662).

[940] See, e.g., Thomas Huddleston and Jasper Dag Tjaden, ‘Immigrant Citizens Survey: How immigrants experience integration in 15 European cities’ (King Baudouin Foundation and Migration Policy Group May 2012) <https://www.svr-migration.de/wp-content/uploads/2014/11/ICS_ENG_Full.pdf> accessed 5 September 2022; Marsden (n 842) (on reuniting refugee families); Cholewinski, ‘Family Reunification’ (n 13).

[941] Judith Connell, Gareth Mulvey, Joe Brady and Gary Christie, ‘“One Day We Will Be Reunited”: Experiences of Refugee Family Reunion in the UK’ (Scottish Refugee Council 2010) <https://www.scottishrefugeecouncil.org.uk/wp-content/uploads/2019/10/%E2%80%9COne-day-we-will-be-reunited%E2%80%9D-Experiences-of-Refugee-Family-Reunion-in-the-UK.pdf> accessed 18 September 2022, (on refugee family reunification). See also International Labour Organization (n 937), 27.

their levels of stress and anxiety also decline.[942] Indeed, once reunited with their family members, migrants are relieved of the constant worry and emotional strain they experienced when those relatives were left behind, arising from concerns about their health, loneliness, safety, and financial situation in the country of origin.[943]

Importantly, the positive effects of reunification extend beyond the migrants themselves. A positive impact can also be inferred *a contrario* from the findings presented in Section 4.2 with regard to those left behind. As discussed there, adults living in households where some family members have migrated are more likely to experience mental health issues, such as depression, than those living in non-migrant households. Indeed, as highlighted in Section 4.2(a), older parents who reside with their adult children benefit from greater instrumental and emotional support, leading to improved well-being. It is therefore reasonable to conclude that, once family members are reunited, the well-being of those previously left behind can also improve.[944]

Family reunification can also indirectly benefit the destination country, particularly through its positive effects on migrants' integration and household stability. As shown in Section 4.3, delaying or denying reunification negatively affects migrants' integration into the host society, hindering their ability to feel part of it. Reunification, by contrast, constitutes a fundamental step towards successful integration within receiving communities,[945] as it "provide[s] the individual[s] with a meaning, a justification and a

---

[942] With reference to the latter point, and on refugee family reunification: Connell and others (n 941).
[943] ibid, (on refugee family reunification). See also Strik, de Hart and Nissen (n 662).
[944] See, e.g., International Labour Organization (n 937), 27.
[945] Huddleston and Tjaden (n 940); Honohan (n 201); Cholewinski, 'Family Reunification' (n 13); Bragg and Wong (n 48).
Block also stressed that this view is reflected in the FRD, Recital 4: Block (n 38).
See, e.g., on the importance of refugee family reunification: Marsden and Harris (n 934); Marsden (n 842); Brooke McDonald-Wilmsen and Sandra M. Gifford, 'Refugee resettlement, family separation and Australia's humanitarian programme' (Research Paper No 178, UNHCR Policy Development and

direction for the future".[946] Indeed, being reunited with family members can motivate individuals to seek employment and improve their living conditions;[947] they often perceive family life as "much easier", as mutual support enables them to face everyday challenges with greater resilience.[948] Once reunited, family members can feel part of the destination community and are more likely to participate in community life — for example, through involvement in schools, associations, and local initiatives — thus helping to strengthen the social fabric of the host society.[949] As illustrated by one migrant who described feeling like "a visitor" in the host country and "just [here] to work" while separated from her parents, the absence of family can severely undermine a sense of belonging.[950] Reunification, by contrast, enables migrants to feel truly part of the society in which they live and work.[951]

Reunification can also enhance households' overall stability, as shared income and mutual support within the family may help mitigate financial vulnerability, even where some members are economically inactive.[952] In fact, family migrants often provide unpaid care, undertake household responsibilities, or offer informal but significant support to family-run businesses, thereby strengthening the household's functioning and resilience.[953] Recent research further demonstrates that when adult family members reunite and reside together, the pooling of income, shared costs, and reciprocal support can reduce economic vulnerability and facilitate asset accumulation

---

Evaluation Service 2009) <https://www.unhcr.org/research/working/4b167ae59/refugee-resettlement-family-separation-australias-humanitarian-programme.html> accessed 15 September 2022.

[946] Kwok B. Chan and Lawrence Lam, 'Resettlement of Vietnamese-Chinese Refugees in Montreal, Canada: Some Socio-psychological Problems and Dilemmas' (1983) 15(1) Canadian Ethnic Studies 1.

[947] Connell and others (n 941).

[948] Huddleston and Tjaden (n 940). See also Honohan (n 201); Connell and others (n 941); Bragg and Wong (n 48).

[949] Huddleston and Tjaden (n 940); Connell and others (n 941); Cholewinski, 'Family Reunification' (n 13); Honohan (n 201); Strik, de Hart and Nissen (n 662).

[950] Bragg and Wong (n 48).

[951] See, e.g., ibid; Strik, de Hart and Nissen (n 662).

[952] See, e.g., McDonald-Wilmsen and Gifford (n 945).

[953] Block (n 38); Honohan (n 201).

and improved housing outcomes. In particular, evidence on immigrant homeownership in the U.S. shows that members of extended and multigenerational households often pool resources to overcome financing barriers and save collectively for down payments and home repairs.[954] Such shared living arrangements have been found to help immigrants "cope with the challenges of finding affordable housing and becoming homeowners", while also alleviating poverty-related hardship, lowering collective housing costs, and enabling wealth-building despite financial constraints.[955]

Together, these findings highlight the protective role of family unity, illustrating how co-residence and cooperation among adult family members can generate not only emotional but also significant material advantages. Even where some reunited family members are not economically active, the stabilising effects of family unity can enhance the overall integration capacity of migrant households, thereby generating indirect advantages for the receiving state.

Although these improvements occur primarily at the individual and family levels, they can collectively foster social cohesion and community participation, contributing indirectly over time to the broader stability and inclusiveness of the host society.

Moreover, studies on intergenerational outcomes among immigrant families suggest that family unity and stability can foster higher educational attainment and occupational mobility among the second generation.[956] In this sense, family reunification may yield

---

[954] Sharon Cornelissen and Livesey Pack, 'Immigrants' Access to Homeownership in the United States: A Review of Barriers, Discrimination, and Opportunities' (Joint Center for Housing Studies of Harvard University July 2023) <https://www.jchs.harvard.edu/research-areas/working-papers/immigrants-access-homeownership-united-states-review-barriers> accessed 18 November 2024.

[955] ibid.

[956] See, e.g., Leah Boustan, Mathias Fjællegaard Jensen, Ran Abramitzky and others, 'Intergenerational Mobility of Immigrants in 15 Destination Countries' (Discussion Paper No. 17711, IZA - Institute of Labor Economics February 2025) <https://docs.iza.org/dp17711.pdf> accessed 20 October 2025; OECD/European Commission, *Indicators of Immigrant Integration 2023: Settling In* (OECD Publishing 2023); Demetrios G. Papademetriou, Will Somerville and Madeleine Sumption, 'The Social Mobility of Immigrants and Their Children' (Migration Policy Institute June 2009)

long-term social benefits, as the improved integration and upward mobility of descendants of immigrants contribute over time to a more cohesive and inclusive host society.[957]

It should be noted, however, that family migration has sometimes been argued to "hamper integration" of both the sponsor and the family member joining them.[958] This view, which concerns primarily spousal migration involving members of ethnic minority communities, rests on the assumption that such unions "contribute to self-reproducing" segregated communities and thus have adverse effects on minority integration.[959] Yet, as just stressed, this line of argument is generally linked to the "marriage behaviour" of second- or third-generation migrants who seek partners from their ancestral country of origin.[960] In the context of this work — adult relatives who are not spouses — such concerns therefore appear largely inapplicable.

To conclude, the evidence presented in this section indicates that family reunification among adult relatives yields multidimensional benefits. While its immediate effects are felt primarily by the individuals and families concerned, these improvements can, over time, strengthen social cohesion, enhance integration, and promote intergenerational mobility within the receiving society. Although not all reunited relatives are economically active, the household stability and sense of belonging fostered by family unity can nonetheless indirectly reinforce social cohesion within the host society.

<https://www.migrationpolicy.org/sites/default/files/publications/soialmobility2010.pdf> accessed 10 October 2024.

[957] See, e.g., ibid.

[958] Block (n 38).

[959] ibid.

[960] ibid.

Taken together with the preceding analysis of the adverse effects of separation, these findings demonstrate that ensuring and facilitating adult family unity produces tangible gains that extend beyond the private sphere, contributing to the broader stability and cohesion of host societies. They therefore strengthen the case for a legal framework that affords genuine protection to adult-adult family relationships. It is against this background that the next section considers why the ECtHR should develop a broader definition of 'family' in the migration context — one that, as already recognised in non-migration cases, encompasses those relationships.

4.5 A normative argument based on empirical evidence for a broader ECtHR definition of family in migration cases

Building on the empirical findings discussed in the previous sections — particularly those concerning health, well-being, integration, and social cohesion, and the contrasting effects of family separation and reunification — this part substantiates the normative argument for why the ECtHR should adopt a broader definition of 'family' in migration cases, one that, as in the non-migration context, encompasses relationships between adult relatives.

Chapter 2 (particularly Section 2.2(d)) criticised the Court's restrictive conception of family in the migration field and advanced compelling reasons for a more inclusive understanding of the term, emphasising the need to recognise adult family ties which, as Chapter 1 demonstrated, are vital for the individuals involved. The present section, therefore, complements that critique by demonstrating, through empirical evidence, that recognising such relationships would advance not only the interests of the individuals concerned but also, indirectly, those of the receiving societies.

Indeed, in the migration context, adults rarely have the opportunity to benefit from the close presence of their adult relatives, as they are instead separated across borders. As demonstrated in Sections 4.1-4.3, family separation has detrimental effects not only on migrants' mental and physical health but also on the well-being of those left behind, particularly elderly parents. Moreover, prolonged separation, by hindering integration, also negatively affects the receiving country.

The Court should therefore be aware that its findings of non-existence of family life between adult relatives in the migration context have far-reaching implications. By entailing that the individuals concerned will remain almost permanently separated from their families, such rulings cause, as shown above, profound personal suffering and deteriorate individuals' well-being, with wider adverse repercussions that extend to integration and social cohesion.

In contrast to the negative effects of family separation, Section 4.1(a) showed that migrants who were accompanied by their spouses when moving to the destination country reported, for instance, lower levels of depressive symptoms. Section 4.3(a) demonstrated that when elderly parents reside with, or live nearby to, their adult children, they benefit from greater instrumental and emotional support, which in turn contributes to improved health and well-being. These findings are consistent with the conclusions reached in Section 4.4, namely that family reunification enhances the well-being of adult family members, and support the inference that geographical proximity among adult relatives has a positive impact on their overall health.

For the purposes of this section, it is important to emphasise that the health disorders mentioned above — such as depression, anxiety, and loneliness — have

repercussions not only at the individual level but also at the broader societal level. Abundant literature links mental disorders to negative outcomes across multiple aspects of life.[961] For instance, mental ill-health — and depression in particular — has been associated with numerous chronic diseases that compromise "psychosocial functioning and quality of life".[962] Depression itself has also been linked to increased mortality.[963]

Beyond these individual impacts, mental disorders also have significant indirect negative effects on society, particularly in the areas of employment, productivity, public expenditure and healthcare utilisation. For example, workers affected by depression and anxiety have been shown to experience "poor labour market outcomes".[964] In particular, studies document that individuals suffering from depression face higher unemployment rates, more frequent absences, and "at-work performance deficits and productivity loss" compared with non-depressed workers.[965] Mental disorders likewise entail considerable costs for states, in terms of expenditure on sickness benefits and increased use of healthcare services.[966]

It follows that, were the ECtHR to include adult-adult relationships within its definition of 'family' in the migration context as well, it would avoid not only the detrimental effects of family separation on individual health examined in the sections above, but also those

---

[961] Anna Linder, Ulf-G. Gerdtham, Nadja Trygg, Sara Fritzell and Sanjib Saha, 'Inequalities in the economic consequences of depression and anxiety in Europe: a systematic scoping review' (2020) 30(4) European Journal of Public Health 767.

[962] ibid; George I. Papakostas, Timothy Petersen, Yasmin Mahal, David Mischoulon, Andrew A. Nierenberg and Maurizio Fava, 'Quality of life assessments in major depressive disorder: a review of the literature' (2004) 26 General Hospital Psychiatry 13; L. R. Cornelius, J. J. L. van der Klink, J. W. Groothoff and S. Brouwer, 'Prognostic Factors of Long Term Disability Due to Mental Disorders: A Systematic Review' (2011) 21(2) Journal of Occupational Rehabilitation 259.

[963] Linder and others (n 961); Pim Cuijpers, Nicole Vogelzangs, Jos Twisk, Annet Kleiboer, Juan Li and Brenda W. Penninx, 'Is excess mortality higher in depressed men than in depressed women? A meta-analytic comparison' (2014) 161 Journal of Affective Disorder 47; Cornelius and others (n 962).

[964] Linder and others (n 961).

[965] Debra Lerner and Rachel Mosher Henke, 'What Does Research Tell Us About Depression, Job Performance, and Work Productivity?' (2008) 50(4) Journal of Occupational and Environmental Medicine 401.

[966] Linder and others (n 961).

additional societal costs generated indirectly when such separation is associated with mental ill-health among migrants in the receiving society. These consequences — both human and economic — are likely to grow in an "age of both global migration and surging mental illness"[967].

A final consideration concerns the long-term benefits of migration for receiving states. Research indicates that both low- and high-skilled migrants can, over time, have positive effects on host societies by "increasing income per person and living standards", primarily through gains in productivity per worker.[968] In particular, high-skilled migrants "bring diverse talent and expertise", while low-skilled migrants fill roles affected by domestic labour shortages, often positions regarded by local workers as "unattractive or lacking career prospects".[969] Thus, while the productivity gains associated with high-skilled migrants may appear self-evident, low-skilled migrants may likewise play a relevant role in enhancing productivity, provided their skills complement those of native workers.[970] Moreover, it has been observed that the economic gains associated with migration are not confined to a limited segment of the population but "seem to be broadly shared across the population", as both high- and low-skilled migrants contribute to higher average income levels while leaving overall income inequality largely unchanged.[971]

---

[967] Lu and others (n 797).
[968] Florence Jaumotte, Ksenia Koloskova and Sweta Saxena, 'Migrants Bring Economic Benefits for Advanced Economies' (*International Monetary Fund*, 24 October 2016) <https://www.imf.org/en/Blogs/Articles/2016/10/24/migrants-bring-economic-benefits-for-advanced-economies> accessed 5 October 2022; Florence Jaumotte, Ksenia Koloskova and Sweta Chaman Saxena, *Impact of Migration on Income Levels in Advanced Economies* (Spillover Notes No. 8/2016, International Monetary Fund 2016).
[969] ibid; 'Is migration good for the economy?' (Migration Policy Debates, Organisation for Economic Co-operation and Development May 2014) <https://www.oecd.org/content/dam/oecd/en/publications/reports/2014/05/is-migration-good-for-the-economy_82387ff9/ee27eb0d-en.pdf> accessed 5 October 2022.
[970] Jaumotte and others, *Impact of Migration* (n 968).
[971] ibid.

It follows that, when migrants are able to integrate into the host society, their contributions to the labour market also benefit the receiving country. Therefore, family reunification between adult family members serves not only the interests of the individuals concerned but also, to some extent and indirectly, those of the state itself — through reduced healthcare costs, higher productivity among economically active migrants, and the promotion of social cohesion. By improving the health and well-being of those concerned, family reunification would ultimately also — for the reasons mentioned above — translate into greater stability and inclusiveness within the host society.

This chapter, therefore, provides an essential foundation for the normative argument that the ECtHR should adopt, in the migration context as well, a broader definition of family encompassing relationships between adult relatives. As long as the Court fails to do so, the resulting separation generates adverse effects not only on the individuals' health and well-being but also on the receiving country as a whole. These negative effects on the latter are compounded by the fact that the mental disorders affecting separated migrants have further repercussions for the host society, through increased healthcare utilisation, sickness benefits, and productivity losses arising from barriers to integration. As underlined above, successful integration appears realistically possible only when adult migrants are permitted to live with their adult relatives, rather than remain separated across borders.

To conclude, in light of the central role that adult-adult relationships play in people's everyday lives, the evidence and considerations presented in this chapter, together with those developed in Chapter 2, should lead the Court to urgently reconsider its

current approach to family life between adult relatives in migration cases. While the primary motivation for urging such a shift is the protection of individuals' well-being, the broader benefits that this change would bring to receiving societies should not be underestimated.

Building on the critical analysis developed in Chapter 2, this chapter has provided empirical support for a normative reconsideration of the ECtHR's restrictive approach in migration cases. By demonstrating that family separation among adult relatives undermines individual well-being and entails measurable social and economic costs for receiving societies, it strengthens the case for a broader interpretation of the notion of 'family' under Article 8 ECHR. The Court's current approach — examined in Chapter 2 — thus appears increasingly disconnected from both contemporary family realities and the empirical evidence discussed here, reinforcing the need for its revision.

5 Towards a broader definition of family in migration law: a normative argument and pathways for reform

This final chapter begins by consolidating the evidence and arguments developed in the preceding chapters to demonstrate why a change in the ECtHR's approach to the definition of 'family' for the purposes of Article 8 is necessary in the migration context, particularly to include adult-adult kinship ties. It then turns to how such change might be realised in practice, examining various legal and doctrinal pathways that could support a broader, more inclusive understanding of family and assessing their respective strengths and limitations. The chapter concludes by proposing how the ECtHR should interpret this notion in order to provide more coherent and culturally sensitive protection to family relationships in migration cases.

5.1 Challenging the exclusion of adult-adult kinship ties in the migration context: a normative foundation for redefining family

This first section sets out the case for reforming the ECtHR's interpretation of 'family' for the purposes of Article 8 in the migration context. Building on the evidence and analysis developed in the preceding chapters, it seeks to demonstrate that a change is both necessary and urgent. The current legal framework, grounded in a narrow, nuclear conception of family, fails to reflect the lived realities of many migrants and imposes unjustified exclusions on adult-adult kinship ties. This disconnect between legal doctrine and social reality not only undermines effective rights protection but also exposes the approach as internally inconsistent with the Court's broader family jurisprudence in non-migration cases. By exposing these tensions, this section lays the

normative foundation for a more inclusive and socially responsive interpretation of ‘family’ under Article 8.

Chapter 1 questioned the assumption that the concept of family is fixed or universally defined. Drawing on sociological and historical perspectives, it highlighted the diversity of family forms across time and cultures. It also emphasised that States and legal institutions determine which familial relationships are legally recognised, and only those relationships are granted rights such as family reunification. While early sociologists often treated the nuclear family as the dominant model, Chapter 1 showed that this is neither a universal nor empirically prevailing structure in contemporary society.

Combining historical and sociological analysis with expert interviews, the chapter demonstrated that — despite the absence of a universally agreed definition of family — adult-adult relationships, particularly those between parents and adult children, siblings, and grandparents, play a vital role in family life, with those members consistently regarded by interviewees as legitimate components of the family. The experts interviewed also widely agreed that familial bonds do not end when a child reaches adulthood. On the contrary, in light of one interviewee’s reference to the sociological concept of an “elongated transition to adulthood”, parental support frequently extends well beyond childhood, meaning that parent-child relationships often retain their significance throughout adult life.

The chapter also examined transnational families, showing that, despite geographical separation, they continue to perform core familial functions comparable to those of families residing in the same country. Transnational families maintain enduring bonds

through various forms of contact and persist as meaningful family units across borders, even in the absence of regular cohabitation or frequent and direct interaction.

The findings of Chapter 1 challenge the rigid, narrow, and structure-based legal definition of family — one examined in detail in Chapter 2 with a specific focus on the migration context — and call for a more functionally oriented conception of family. They also dispute the assumption that geographical separation fundamentally disrupts family life and expose the inadequacy of strict evidentiary standards used to assess the presence or absence of meaningful contact.

Chapter 2 analysed the interpretation of “family life” under Article 8 ECHR in both migration and non-migration contexts. It demonstrated that in both domains the ECtHR recognises ties between parents and minor dependent children as constituting “family life”, regardless of the parents’ marital status or cohabitation arrangements. This approach makes clear that cohabitation is not treated by the Court as a decisive factor in establishing the existence of family life within the nuclear family.

The chapter further demonstrated that, in non-migration contexts, the ECtHR has acknowledged “family life” between relatives beyond the nuclear family — whether minors or adults — provided that close personal ties are present. Notably, in cases involving minors, the Court does not ground its reasoning on factors intrinsically linked to the individual’s status as a minor, implying that adult-adult relationships marked by sustained care and support should likewise qualify as family life.

However, a stark contrast emerges in the migration context, where the ECtHR adopts a far more restrictive approach. In this context, “family life” is generally limited to the nuclear family, and adult-adult relationships are recognised only if “further elements of

dependency involving more than the normal emotional ties"[972] are present. The imposition of this additional requirement, combined with the particularly high threshold for satisfying it, effectively excludes almost all adult-adult relationships from the scope of Article 8 family life. This restrictive approach has drawn substantial criticism, both judicial and academic, for failing to reflect contemporary family diversity and for privileging a Western-centric model. Moreover, by imposing the additional requirement of dependency exclusively in migration cases, the Court creates an unjustified disparity in the protection of adult familial relationships — one that stems solely from the fact that these relationships arise in a migration rather than a non-migration context. Finally, this differential treatment between migrants and non-migrants raises serious concerns that it may amount to a violation of the principle of non-discrimination enshrined in Article 14 of the Convention. Where no additional elements of dependency are established, relationships between adult relatives may instead fall within the scope of "private life", depending on the individuals' "degree of social integration".[973] This shift too has been the subject of sustained criticism.

Chapter 3 explored the legal definition and scope of 'family' under European Union law, focusing on the CD and the FRD. While both instruments provide a legal basis for family reunification, they diverge significantly in scope, structure, and the degree of protection afforded to adult relatives.

The CD distinguishes between "immediate"[974] and "extended"[975] family members. While the former enjoy an automatic right of entry and residence, the admission of the latter remains subject to Member State discretion, with Member States merely required

[972] *Javeed v Netherlands* (n 189), 5.
[973] *Sarközi and Mahran v Austria* (n 285), para 61.
[974] Costello, '*Metock*' (n 592).
[975] Guild, Peers and Tomkin (n 594).

to “facilitate” their entry and residence. The CD’s inclusion of partners in a durable relationship and other dependants demonstrates a relative openness that extends protection beyond the strictly nuclear model.

By contrast, under the FRD, only spouses and unmarried minor children must be admitted for family reunification. A few limited categories of family members beyond that unit — namely, unmarried adult children, parents, and unmarried partners — fall, when stringent conditions are met, under an “optional admission”[976] regime in which discretion is left to Member States. The FRD does not permit Member States to extend its scope to members of the extended family, whether vertical (e.g. grandparents) or horizontal (e.g. siblings), thereby further restricting the categories of family members eligible for entry.

Compared with earlier drafts, the final text of the FRD reflects a markedly narrower approach, both in its scope and in the obligations it places on Member States. The overall outcome is, therefore, a restrictive and formal conception of family.

Thus, although the CD defines family more broadly than the FRD, its conception remains essentially formal and affords only limited, discretionary recognition to *de facto* relationships. Moreover, even though it encompasses, to some extent, both vertical and horizontal relationships, the criteria for incorporating the latter are notably stringent. While neither Directive captures the full sociological breadth of the term ‘family’ — remaining rooted in a formal, status-based conception of family ties — the disparity becomes particularly evident when the FRD’s narrow definition of family is juxtaposed with broader sociological conceptions of family.

[976] Bornemann, Arévalo and Klarmann (n 641).

Both Directives partly rely on the concept of dependency: while under the CD it is understood as a factual situation and has been interpreted quite broadly, enabling the inclusion of a wider range of family members, the FRD — although intended to apply the same definition as under the CD — conveys a rigid and restrictive approach, treating marital status as a categorical cut-off and thereby producing exclusions, notably for married children, that sit uneasily with that factual understanding.

When compared with the ECHR, the FRD adopts a definition of family that is narrower than that endorsed by the ECtHR in non-migration contexts. However, the ECtHR's interpretation of this term in migration cases is even more restrictive than that of the FRD, recognising adult relationships as constituting "family life" almost exclusively in exceptional cases of complete or near-complete incapacity, typically involving indispensable daily support.

The chapter concluded by arguing that, while the CD may serve as a partial external reference point for a more inclusive understanding of family in migration cases — when compared with the ECtHR's definition of family in that context — the ECtHR's own non-migration jurisprudence already provides a broader substantive conception of family than the CD, recognising adult relatives as falling within Article 8 family life where close personal ties involving care and support exist.

Chapter 4 examined the human and social consequences of family separation, focusing on its effects on the health and well-being of the individuals involved. First, it demonstrated that prolonged separation — often the result of restrictive family-reunification policies — has severe adverse impacts on migrants, including higher

levels of depression, anxiety, and stress, as well as increased social isolation and marginalisation in destination societies. It further examined evidence of additional vulnerabilities associated with family separation, including barriers to healthcare, precarious living and working conditions, and an increased likelihood of unhealthy behaviours.

The chapter then turned to the repercussions of family separation for those left behind, particularly elderly parents, whose physical and mental health often deteriorate following the migration of adult children. Older parents experience heightened loneliness, stress, and depression, especially in contexts where intergenerational co-residence constitutes the primary form of social and emotional support.

The effects of separation were also shown to be gendered, with women — especially older mothers — bearing a disproportionate emotional and physical burden.

Although remittances may partly alleviate material hardship, their compensatory effect on health and well-being remains limited and insufficient to offset the negative consequences of prolonged separation.

A small body of literature has suggested potential positive associations between children's migration and the well-being of left-behind parents, but these claims were found to be highly context-dependent and unlikely to apply to situations where separation is involuntary or prolonged by restrictive migration laws.

The chapter then explored how delays or denials of family reunification create situations of *de facto* permanent separation that deepen psychological distress, weaken family bonds, impede integration, and can even encourage irregular migration.

By contrast, the chapter showed that when adult family members are permitted to live together, family unity enhances mental health and household stability, supports integration and community participation, and, indirectly over time, contributes to greater social cohesion within receiving societies.

Building on the evidence developed in the preceding sections, the chapter advanced the normative claim that the ECtHR should align its migration jurisprudence with its broader non-migration approach by recognising family life between adult relatives. Doing so would avoid documented individual harms, prevent the wider societal repercussions of mental ill-health and hindered integration, and more accurately reflect contemporary family realities. The chapter, therefore, underpins the thesis's overall argument that the Court's restrictive migration-context approach is conceptually inconsistent with its broader non-migration jurisprudence and undermined by the empirical findings and analysis presented in this chapter.

Taken together, the preceding chapters have revealed the fundamental shortcomings of the ECtHR's current approach in the migration context and provide a compelling foundation for reform. The evidence demonstrates that the prevailing legal model — rooted in a narrow, nuclear, Western-oriented conception of family — fails to reflect social realities, misrepresents the lived experiences of migrants, and undermines both individual rights and public policy objectives. By disregarding adult-adult relationships and applying inconsistent standards in migration cases, the Court not only perpetuates hardship but also reinforces an outdated and exclusionary vision of family life. A shift in approach is therefore essential, not least because it is difficult to justify, whether from a rational perspective or from the standpoint of fundamental human rights

principles, the requirement that migrants — who by definition come from diverse cultural and national backgrounds — conform to Western or supposedly European family norms, especially given that the Court itself adopts a broader understanding of family in non-migration contexts. The ECtHR's approach is therefore both exclusionary and internally inconsistent.

The Court's narrow understanding of family is also difficult to justify in light of Raz's theory of "value pluralism",[977] as applied to the family context by Bainham.[978] In such a context, value pluralism implies that all intimate and family relationships that are "valuable" — as marked by love, affection, support and commitment — should be treated "even-handed[ly]" by the state.[979] Following this view, it is unjustified to afford strong protection to some biological family ties (such as those between parents and minor children) while demanding a higher threshold of proof — such as exceptional dependency — for others, like those between adult relatives. This creates a hierarchy of family bonds that privileges certain relationships without principled justification, undermining the fairness and neutrality that "value pluralism" demands.[980]

The following section examines potential routes for legal development in the recognition of adult-adult relationships under the definition of family in the migration context. It begins by analysing litigation before the ECtHR, which provides the procedural foundation for the Court's evolutive interpretation of the Convention — both

[977] This theory holds that there exist multiple, incompatible but valuable ways of life: Joseph Raz, *The Morality of Freedom* (Oxford University Press 1988).
[978] Andrew Bainham, 'Family Rights in the Next Millennium' (2000) 53(1) Current Legal Problems 471.
[979] ibid.
[980] According to Bainham, in fact, "value pluralism" "involves rejecting a hierarchy of family values and family forms" and recognising that different types of relationships can hold equal weight in the lives of those involved: Bainham (n 978). As shown in Section 2.2(d), the ECtHR's migration jurisprudence does not reflect this even-handed approach, since adult family ties are treated less favourably in migration cases than in comparable non-migration contexts.

of which are examined as interconnected components of this first path to legal development. The discussion then turns to developments that may occur at the national level, before concluding with those that might arise through EU law. Each of these pathways could contribute to a more inclusive and socially responsive understanding of family.

5.2 Legal and interpretative pathways for broadening the definition of family in migration law

Having established the normative case for broadening the legal definition of 'family' in the migration context under Article 8 ECHR to encompass adult-adult relationships, this section considers how such an inclusive understanding might be realised in practice. It examines three main potential routes to legal development: first, litigation before the ECtHR, which could provide the basis for the Court's evolutive interpretation of the Convention as a living instrument; second, developments at the national level; and third, legal change within the framework of EU law. Other possible pathways are acknowledged briefly where relevant.

Thus, while multiple routes to legal development theoretically exist, the following analysis ultimately suggests that, although immediate change is unlikely, the most promising trajectory lies in the ECtHR's evolutive interpretation of the Convention. Through its living instrument doctrine — enabled by the cases brought before it, particularly those shaped by "strategic litigation"[981] — the Court retains the capacity to

[981] Helen Duffy, *Strategic Human Rights Litigation: Understanding and Maximising Impact* (Hart Publishing 2018).

progressively reinterpret the notion of 'family' in a manner that more accurately reflects contemporary social realities.

a) The role of the ECtHR: litigation and evolutive interpretation

As previously outlined, one potential route to legal development within the ECtHR involves the interplay between litigation and the Court's evolutive interpretation of the Convention. This work begins with this path as it involves the direct application of Article 8, the central provision governing the protection of family life in migration-related cases.

The analysis opens with litigation, which directly engages the ECtHR in its adjudicative role in determining the scope of that provision. Litigation offers a concrete mechanism for testing whether adult-adult relationships can be recognised as falling within the protection of Article 8, making it essential to assess whether the Court's current jurisprudence leaves space for such recognition.

Indeed, litigation provides the procedural foundation upon which the Court may build interpretative developments. The doctrine of evolutive interpretation is based on the principle that the ECHR is not a static instrument. Rather, the Court has consistently affirmed that it is a "living instrument which [...] must be interpreted in the light of present-day conditions".[982] Through this living instrument doctrine, the Court has the capacity to gradually adapt the definition of family to reflect evolving social realities. These two components are closely interconnected: while litigation serves as the

[982] *Tyrer v UK* App no 5856/72 (ECtHR, 25 April 1978), para 31.
For a detailed examination of the doctrine of evolutive interpretation see, e.g., George Letsas, *A Theory of Interpretation of the European Convention on Human Rights* (Oxford University Press 2007), ch 3; George Letsas, 'The ECHR as a living instrument: its meaning and legitimacy' in Andreas Føllesdal, Birgit Peters and Geir Ulfstein (eds), *Constituting Europe: The European Court of Human Rights in a National, European and Global Context* (Cambridge University Press 2013).

necessary procedural gateway, it is through the Court's evolutive interpretation that a broader and more inclusive understanding of family may progressively emerge.

In practice, such litigation involves lawyers, NGOs, or advocates bringing cases concerning adult relatives to test whether these relationships qualify as "family life" under Article 8 ECHR in the migration context. Typically, this route relies on a "strategy" based on selecting cases with compelling fact patterns,[983] with the aim of encouraging the Court to extend its interpretation of the definition of family under Article 8 to include such ties in a manner that appears both incremental and justified by the facts. In this way, advocates bring carefully selected cases before the Court in an effort to prompt the gradual development of the law through the use of evolutive interpretation, as the following analysis illustrates. As Duffy notes, the impact of "strategic litigation" tends to unfold incrementally over time, rather than resulting from a single decisive outcome.[984] This gradual approach, she explains, is reflected in litigation strategies that are "flexible and incremental, pursuing perhaps modest impacts at each stage of a longer journey".[985] Such an approach is particularly well suited to prompting the ECtHR's doctrine of evolutive interpretation of the Convention, which itself advances progressively rather than through radical shifts.

An early example of evolutive interpretation of 'family life' under Article 8 can be found in *Marckx v Belgium*,[986] where the Court held that denying legal recognition to children born out of wedlock violated the right to family life. In reaching this conclusion, the Court observed not only changes in the domestic laws of Council of Europe Member States and the content of relevant international instruments, but also noted an

[983] Duffy (n 981).
[984] ibid.
[985] ibid.
[986] *Marckx v Belgium* (n 211).

evolution in social attitudes towards non-marital families.[987] Notably, in *Marckx*, the Court adopted an early form of what would later become the "new"[988] Court's approach (discussed below) to the living instrument doctrine: it moved away from relying solely on consensus in domestic legislation among Member States, and instead considered broader developments — such as shifts in social attitudes and the existence of relevant international treaties, even when those treaties had not been widely ratified — as sufficient to establish common ground capable of justifying a shift in interpretation.[989] The method of evolutive interpretation has also allowed the ECtHR to recognise new forms of relationships — such as same-sex partnerships or transgender identities — as falling within the scope of protected rights, even where such recognition would have been inconceivable at the time the Convention was drafted. Through this method, the Court avoids being constrained by the moral and legal understandings of the 1950s, allowing Convention rights to develop in response to evolving social and legal realities.[990] For instance, in *Goodwin v UK,* the Court departed from its previous case law to recognise the rights of a transgender woman under Articles 8 and 12, citing international trends and the growing importance of personal autonomy and gender identity in human rights discourse.[991] Similarly, in *Oliari and Others v Italy*,[992] the Court found that the absence of legal recognition for same-sex couples violated Article 8. Its reasoning relied on a combination of international trends, repeated calls from Italy's highest courts, growing public support, and the legislature's prolonged inaction — despite acknowledging the need for such recognition. It concluded that Italy had

[987] ibid, para 41.
[988] Letsas, 'The ECHR as a living instrument' (n 982).
[989] Letsas, *A Theory of Interpretation* (n 982), ch 3.
[990] See, e.g., ibid; Letsas, 'The ECHR as a living instrument' (n 982); *Marckx v Belgium* (n 211), para 41; *Christine Goodwin v UK* App no 28957/95 (ECtHR, 11 July 2002), para 74.
[991] *Goodwin v UK* (n 990), paras 74-75, 77, 85, 90 and 93.
[992] *Oliari and Others v Italy* App nos 18766/11 and 36030/11 (ECtHR, 21 July 2015).

overstepped its margin of appreciation and failed to ensure practical and effective protection for the applicants.[993]

The Court's commitment to evolutive interpretation has not been confined to issues of gender and sexuality; it has also been evident in cases concerning cultural identity and minority rights.

In *D.H. and Others v Czech Republic*,[994] the Grand Chamber found that the placement of Roma pupils in schools for children with mental disabilities amounted to indirect discrimination. Rather than limiting itself to a formalist analysis of the law, the Court assessed how seemingly neutral education policies operated in practice, highlighting the absence of procedural safeguards that took into account the applicants' "special needs" as members of disadvantaged communities, and acknowledging that educational arrangements which isolate and stigmatise Roma children "compound their difficulties and compromise their subsequent personal development". It concluded that the arrangements for Roma pupils lacked reasonable justification and were disproportionate to the aim pursued.[995]

This judgment illustrates the Court's willingness to move beyond abstract legal standards and consider how laws affect marginalised communities in practice.[996] In doing so, it marked a shift from a purely "formal" conception of equality — concerned solely with identical treatment for all — towards a more "substantive" approach, which

[993] ibid, paras 178-187.
[994] *D.H. and Others v Czech Republic* App no 57325/00 (ECtHR, Grand Chamber, 13 November 2007).
[995] ibid, paras 184-195 and 207-208.
[996] ibid, paras 184-195.

examines whether laws, though "neutral"[997] in appearance, produce unequal or harmful effects for disadvantaged groups.[998]

Similar attention to the lived realities of minority groups is found in the dissenting opinion in *Chapman v UK*.[999] Although the majority found no violation of Article 8, the dissenting judges argued that the applicant's traditional Roma lifestyle — living in a caravan on her own land — deserved protection under Article 8, as an expression of her cultural identity. They emphasised that she had attempted to comply with official expectations by purchasing land for her family, yet was still refused planning permission, despite the acknowledged absence of lawful alternatives. In their view, evicting her in these circumstances was disproportionate and failed to respect the distinct needs and way of life of the Roma community. They called for recognition of the emerging European consensus on protecting minority ways of life, and argued that the refusal to accommodate the applicant's circumstances reinforced the structural disadvantage faced by the Roma community.[1000]

The Court has therefore already demonstrated a dynamic interpretive method in response to evolving social conditions. A similar approach should be adopted in relation to the concept of "family life". Rather than clinging to a Western nuclear family model as the presumed neutral standard, the Court should interpret Article 8 in light of how families function across diverse social, cultural, and migration contexts.

Indeed, the two cases just discussed reflect signs of the Court's increased sensitivity to non-majoritarian ways of life and a partial willingness to interpret Convention rights

---

[997] ibid, para 184.

[998] See: Colm O'Cinneide, 'The Uncertain Foundations of Contemporary Anti-Discrimination Law' (2011) 11(1-2) International Journal of Discrimination and the Law 7; Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (Oxford University Press 2008), ch 7; Oddný Mjöll Arnadóttir, *Equality and Non-Discrimination under the European Convention on Human Rights* (Brill Nijhof 2002), ch 2.

[999] *Chapman v UK* App no 27238/95 (ECtHR, Grand Chamber, 18 January 2001), Joint dissenting opinion of Judges Pastor Ridruejo, Bonello, Tulkens, Strážnická, Lorenzen, Fischbach and Casadevall.

[1000] ibid, paras 2-5 and 9.

in light of social realities and minority experiences. This interpretive trend, characterised by greater attention to the lived experiences of marginalised groups and the conditions that shape them, offers a compelling analogy. Just as the Court has expanded its understanding of "private life" and "home" under Article 8, read in conjunction with Article 14, to protect cultural practices of marginalised communities such as the Roma, it can — and should — adopt a similarly inclusive interpretation of "family life". In *D.H.* and *Chapman*, the Court engaged Article 14 ECHR — particularly on the grounds of ethnic origin and, more broadly, on aspects of cultural identity — and implicitly affirmed the importance of an approach based on substantive equality, one that is sensitive to the systemic disadvantage experienced by certain groups and the disproportionate burdens that may result from apparently neutral laws.[1001]

By contrast, in migration cases, the Court continues to apply a narrow, formalistic view of "family life", routinely excluding adult-adult relationships and thereby failing to reflect the familial arrangements and obligations that structure the lives of many migrants. This, too, has a discriminatory effect: migrants are indirectly penalised due to their national origin, migration status, or association with non-Western family structures. This bifurcated approach — in which adult-adult relationships are recognised in non-migration cases but excluded in migration contexts — disproportionately affects migrants and risks perpetuating unequal treatment and entrenched disadvantage.

Given this inconsistency — where the Court has expanded Article 8 protections in cultural identity cases but maintains a restrictive stance in migration contexts — a substantive equality approach grounded in Article 14 would require the Court to interrogate the indirect discrimination embedded in its current restrictive interpretation

---

[1001] *D.H. and Others v Czech Republic* (n 994); *Chapman v UK* (n 999).
See Geoff Gilbert, 'The Burgeoning Minority Rights Jurisprudence of the European Court of Human Rights' (2002) 24(3) Human Rights Quarterly 736.

of “family life” in migration cases. Just as it has expanded the scope of “private life” and “home” to better reflect the realities of Roma individuals, it should likewise broaden its conception of “family life” to encompass the diverse and culturally embedded familial forms experienced by migrants.

This inconsistency is particularly evident when comparing how the Court has addressed Article 8 claims in cases involving ethnic minorities within a domestic context, as opposed to those arising in the migration context — even within the same national setting, as illustrated by the UK cases discussed below. In the former, the Court has shown a greater willingness to interpret Article 8 in light of applicants’ structural vulnerability and cultural identity, often engaging — at least implicitly — with equality-based concerns more typically associated with Article 14. In migration cases, by contrast, the Court tends to adopt a narrower, more formalistic approach, with no attention to the indirect discriminatory impact of its reasoning.

A striking example lies in *Connors v UK*,[1002] where the Court found a violation of Article 8 in relation to the eviction of a Gypsy family from a local authority site. Although the Court declined to examine Article 14 as a separate issue, it explicitly acknowledged the applicant’s ethnicity and the structural vulnerability of the Gypsy community. It emphasised that the lack of procedural safeguards was particularly problematic in light of this vulnerability, rendering the eviction disproportionate under Article 8. The Court also took account of the real-life consequences of eviction on the applicant’s family, including the disruption to their health, the care of young children, and the continuity of the children’s education.[1003] This reflects a functional and socially grounded understanding of family life — sensitive to caregiving arrangements and structural

[1002] *Connors v UK* App no 66746/01 (ECtHR, 27 May 2004).
[1003] ibid, paras 84-85, 95 and 97.

disadvantage — that is markedly absent in the Court's migration jurisprudence. By contrast, in *A.W. Khan v UK*,[1004] a deportation case involving an adult Pakistani national who had entered the UK at the age of three (discussed in Chapter 2), the Court adopted a far more restrictive approach. It found that his relationships with his mother and adult brothers did not amount to "family life" under Article 8, despite acknowledging that their "relationship clearly entails an additional degree of dependence which results from the relative ill-health of all of the parties".[1005] Here, the Court's analysis was strikingly formalist, with no reference to the applicant's ethnic background, cultural integration, or the broader structural disadvantage likely to have shaped his life. Unlike *Connors*, the familial ties were seen through a narrow legal lens, shaped by a restrictive interpretative approach that the Court tends to apply in migration contexts.

This divergence illustrates precisely the kind of doctrinal tension that strategic litigation could expose. The Court has recognised an Article 8 violation in a domestic case involving ethnic disadvantage (*Connors*), where it accepted that cultural identity and vulnerability shape the lived experience of family life and directly affect how state interference with that life should be assessed. Yet it upheld a highly formalist interpretation of family life in a migration case, applying a far stricter threshold for recognising family ties between adult relatives (*A.W. Khan*). This places the Court in a judicial cleft stick: once it accepts that ethnicity and cultural vulnerability are relevant under Article 8 in one setting — even without delivering a finding under Article 14, having nonetheless acknowledged its relevance — it becomes increasingly difficult to justify a different standard in another, especially when that different standard disproportionately affects migrants from ethnic minorities. If Articles 8 and 14 are to

[1004] *A.W. Khan v UK* (n 379).
[1005] ibid, paras 32 and 43.

operate together as guarantees of substantive equality, the Court must confront the discriminatory consequences of applying them inconsistently. At present, it adopts a more responsive and socially attuned approach in Article 8 cases involving ethnic and cultural vulnerability, while maintaining a more restrictive stance in the migration context, even where similar forms of disadvantage are present. Aligning its migration jurisprudence with the more dynamic reasoning seen in cases like *Connors* would represent a step towards doctrinal coherence. Strategic litigation that highlights this inconsistency — by urging a broader, culturally sensitive interpretation of family life in migration cases — could play a pivotal role in bridging this divide.

The Court's understanding and use of evolutive interpretation has not always followed a consistent path.[1006]

In earlier periods, the Court placed considerable weight on the existence of a clear consensus among Member States as a precondition for expanding rights.[1007]

More recently, however, the Court has adopted a more assertive and value-oriented approach to evolutive interpretation.[1008] It now often interprets the Convention in light of emerging trends and shared values in international law — even when these sources are not binding or widely ratified — and even in the absence of consensus among all or most Member States.[1009] Key cases — such as *Goodwin v UK*, *Demir and Baykara v Turkey*, *Rantsev v Cyprus and Russia*, *E.B. v France*, and *Hirst v UK* — illustrate this shift, demonstrating the Court's increasing willingness to restrict the margin of

[1006] Letsas, 'The ECHR as a living instrument' (n 982).
[1007] See ibid. For example, in *Sheffield and Horsham v UK*, the Court placed decisive weight on the absence of a consensus among contracting states and ultimately found no violation of the Convention: *Sheffield and Horsham v UK* App nos 22985/93 and 23390/94 (ECtHR, Grand Chamber, 30 July 1998), paras 58 and 61.
[1008] Referred to as the "new" Court's approach: Letsas, 'The ECHR as a living instrument' (n 982).
[1009] ibid. As Letsas observes, this marks a shift away from the Court's earlier approach, exemplified by *Sheffield and Horsham*, and aligns more closely with the reasoning adopted in *Marckx*. *Sheffield and Horsham v UK* (n 1007); *Marckx v Belgium* (n 211).

appreciation and to require particularly weighty justifications from states when core Convention rights are at stake.[1010] While references to consensus and the margin of appreciation still appear in some judgments (e.g. *Schalk and Kopf v Austria*), the Court now treats reliance on the absence of consensus as a justification for granting a margin of appreciation as the exception rather than the rule.[1011]

The doctrine of evolutive interpretation thus reflects the Court's commitment to keeping the Convention responsive to evolving human rights developments. As established in the case law discussed above, a clear trend and broader shifts in European legal and social standards can justify a change in interpretation; consensus in domestic legislation among all or even most Member States is not a necessary precondition. In this light, and through this method, the Court should be able to expand the notion of 'family' for the purposes of Article 8 to reflect changing conceptions of family, which increasingly include adult-adult relationships based on emotional closeness, mutual support, and interdependence. This work has already demonstrated that, from a sociological perspective, there is a clear trend towards a broader definition of family, one that encompasses adult-adult relationships. Since the Court's more recent approach to evolutive interpretation does not require consensus among Member States as a necessary precondition for doctrinal development, this social evolution can, in principle, justify a shift in interpretation under the Court's living instrument doctrine. This argument must, however, be situated within the current restrictive political climate surrounding migration and Article 8. Recent developments, including the Chişinău

[1010] Letsas, 'The ECHR as a living instrument' (n 982), citing *Goodwin v UK* (n 990); *Demir and Baykara v Turkey* App no 34503/97 (ECtHR, Grand Chamber, 12 November 2008); *Rantsev v Cyprus and Russia* App no 25965/04 (ECtHR, 7 January 2010); *E.B. v France* App no 43546/02 (ECtHR, Grand Chamber, 22 January 2008); *Hirst v UK* App no 74025/01 (ECtHR, Grand Chamber, 6 October 2005).
[1011] Letsas, 'The ECHR as a living instrument' (n 982), citing *Schalk and Kopf v Austria* (n 219).

Declaration,[1012] reflect Member States' renewed emphasis on state sovereignty, immigration control, and the margin of appreciation in migration matters. This gives rise to a legitimacy concern: if the Court were to move too far ahead of Member States in this politically sensitive field, its evolutive interpretation could be perceived as undermining subsidiarity or exceeding its judicial role. The argument advanced here is therefore not that the absence of consensus is irrelevant, but that it should not, by itself, prevent the Court from correcting an exclusionary threshold definition of "family life" under Article 8(1). This context helps explain why Article 8 migration claims are likely to remain difficult, particularly at the Article 8(2) stage, where the Court balances individual rights against the State's interest in immigration control. As Sections 5.2(b) and 5.2(c) will show, this restrictive political climate may also make broader state or EU-level acceptance of the combined model difficult. However, this does not remove the Court's power to interpret Article 8 evolutively, nor does it provide a principled reason for excluding adult-adult kinship ties from "family life" at the Article 8(1) threshold.

A further limitation must be acknowledged. Even where migrants rely on relationships within the Court's existing nuclear-family model, Article 8 claims in the migration context are rarely successful. This is particularly evident in admission cases, where the clearest successful examples, *Şen v Netherlands* and *Tuquabo-Tekle v Netherlands*,[1013] concerned the reunification of minor children with parents lawfully resident in the host State. The difficulty faced by migrants under Article 8 therefore does not arise solely from the Court's restrictive definition of family life. It also arises

[1012] Committee of Ministers, 'Chişinău Declaration' (CM(2026)99-final, 135th Session of the Committee of Ministers, Chişinău, 15 May 2026).
[1013] *Şen v Netherlands* (n 222); *Tuquabo-Tekle and Others v Netherlands* (n 207).

because, even where family life is recognised, the Court may still find refusal of entry or removal justified by the State's interest in immigration control. For that reason, the argument advanced in this thesis should not be understood as claiming that a broader definition of family life would, by itself, transform the outcome of Article 8 migration cases. Recognition of adult-adult kinship ties under Article 8(1) would not guarantee family reunification or prevent removal: the State could still argue, under Article 8(2), that refusal of entry, removal, or other interference with family life is justified by immigration-control interests. The practical value of the proposed approach is therefore not that it would guarantee success, but that it would change the structure of the Court's analysis. Adult-adult family ties would no longer be excluded at the threshold before any proportionality assessment is carried out, thereby preserving the two-stage structure of Article 8.

In any case, the potential of the doctrine of evolutive interpretation to bring about change is contingent on litigation, since only cases that reach the Court can 'trigger' evolutive interpretation. When it comes to adult-adult relationships in the migration context, this pathway faces significant constraints, particularly at the litigation stage. As discussed in Chapter 2, the ECtHR frequently declares such cases inadmissible on the grounds that these relationships fall outside its traditionally recognised concept of family, which — in the migration context — centres on the nuclear family model. These cases are therefore often dismissed at the admissibility stage, without a substantive hearing or detailed reasoning. This creates a substantial barrier to the development of jurisprudence, as the absence of full judgments prevents the kind of incremental doctrinal shift that "strategic litigation"[1014] typically seeks to achieve.[1015]

[1014] Duffy (n 981).
[1015] See, e.g., ibid.

Moreover, the Court's consistent practice of early dismissal may have a "chilling effect"[1016] — that is, a deterrent effect — on future litigation concerning adult relatives in migration cases, given the low likelihood that such claims will be treated as falling under the heading of "family life". As shown in Chapter 2.2(c)-(d), the Court has instead tended to classify these ties under the notion of "private life", with the consequences already discussed.

More fundamentally, the Court's current admissibility practice — which prevents the vast majority of such claims from proceeding to the merits stage — is not merely a procedural filter. Rather, it reflects a deeper inconsistency in the Court's interpretation of Article 8. In non-migration contexts, the ECtHR has shown a willingness to assess the existence of family life based on close personal ties, even among adult relatives. Yet in migration contexts, these same types of relationships are routinely excluded without substantive assessment. This divergence creates a double standard that calls into question the coherence of the Court's Article 8 jurisprudence and the consistency with which it applies its own interpretive principles, thereby weakening the credibility of its reasoning.

Thus, while the doctrine of evolutive interpretation theoretically offers a pathway towards expanding the Court's understanding of family life under Article 8, its practical application is obstructed in migration cases involving adult-adult relationships. This is particularly so where adult-adult ties are advanced as a standalone basis for Article 8 protection, since the Court's current admissibility practice may prevent such cases from reaching the merits stage, where evolutive interpretation could be meaningfully

[1016] Laurent Pech, *The Concept of Chilling Effect: Its Untapped Potential to Better Protect Democracy, the Rule of Law, and Fundamental Rights in the EU* (Open Society Foundations 2021).

applied. However, adult-adult relationships could still be brought to the Court's attention in cases admissible on other grounds, for example because they also involve a spouse, minor child, or another relationship within the Court's established nuclear-family model. In such cases, applicants' representatives and, where present, third-party interveners could expressly frame the adult-adult dimension of the claim, inviting the Court to consider whether those ties should themselves fall within the scope of family life under Article 8.

In practical terms, evolutive interpretation could become viable in this context if any one of the following scenarios were to materialise. One possibility is that the Court revises its threshold approach to admissibility. Another is that external normative pressures succeed in shifting its interpretive stance. Such pressures may take various forms: legal scholarship exposing doctrinal inconsistencies; comparative jurisprudence recognising broader family configurations; sociological evidence demonstrating the functional significance of adult sibling or intergenerational relationships; and persuasive litigation strategies that, even if unsuccessful at the admissibility stage, serve to highlight — for instance — the human costs of excluding adult-adult relatives from family protection. A further possibility is that a case already admissible because of its nuclear-family dimension provides the Court with an opportunity to address the adult-adult ties also involved.

Alternatively, a standalone adult-adult test case might exceptionally pass the admissibility stage and, if supported by robust third-party interventions, create the conditions for doctrinal evolution through substantive adjudication. Change may also occur, albeit gradually, through shifts in the Court's composition that lead to a transformation in its ideological or interpretive orientation.

Until one of these shifts takes place, however, evolutive interpretation remains more "aspirational" than "operational"[1017] in the context of adult-adult relationships in migration law.

Thus, while formal recognition of adult-adult relationships in the migration context may not be immediate — due both to the Court's current admissibility practices in cases where such ties are advanced as a standalone basis for Article 8 protection and to the incremental nature of legal development — the doctrine of evolutive interpretation remains normatively important and offers a potential basis for challenging the *status quo* and guiding the gradual expansion of the interpretation of Article 8. This doctrine would enable the Court to uphold its commitment to interpreting the Convention in a manner that is "practical and effective" rather than "theoretical or illusory".[1018] Conversely, a failure to pursue an evolutive approach would risk rendering the Court itself an obstacle to legal and social progress.[1019]

In light of these limitations, the question arises whether a more structural and formal reform of the Convention framework could offer a clearer and more direct route to recognising adult-adult relationships as falling within the scope of 'family' for the purposes of Article 8. One such possibility would be the adoption of a new Protocol to the ECHR.

[1017] For the use of the aspirational versus operational distinction in legal scholarship, see, e.g., Monica Hakimi, 'Human Rights Obligations to the Poor' in Krista Nadakavukaren Schefer (ed), *Poverty and the International Economic Legal System: Duties to the World's Poor* (Cambridge University Press 2013); Surya Deva, 'UN's Human Rights Norms for Transnational Corporations and Other Business Enterprises: An Imperfect Step in the Right Direction?' (2004) 10(2) ILSA Journal of International and Comparative Law 493.

[1018] *Goodwin v UK* (n 990), para 74.

[1019] ibid.

A new Protocol could expand the scope of Article 8 by explicitly stating that: "*The notion of family, within the meaning of Article 8, includes relationships between adult relatives characterised by emotional, caregiving, or dependent ties*". This deliberately broad formulation reflects a functional understanding of family relationships and would allow courts to assess claims based on the actual substance of those ties, rather than limiting protection to predetermined categories of relatives.

While the adoption of a new Protocol does not require unanimity, it typically depends on broad political consensus among the Member States of the Council of Europe — the 46 countries party to the ECHR. Even if such a Protocol were adopted, it would only become legally binding on those states that choose to ratify it, as ratification is voluntary under the rules governing the Convention. These two factors — the need for political agreement at the adoption stage and the voluntary nature of ratification — make the adoption and implementation of a Protocol broadening family ties to include those between adult relatives particularly unlikely in the current political climate, where migration-related issues remain highly sensitive. Nonetheless, the very proposal of such a Protocol would carry significant normative weight, signalling a willingness among Member States to recognise diverse and evolving family forms — particularly relationships between adult relatives — as deserving of legal protection. If adopted and ratified, it would not only offer a clear and binding articulation of which relationships constitute 'family' for the purposes of Article 8, but also represent a step towards greater coherence, both among Member States and between legal understandings and the lived realities of family in contemporary Europe.

This section has examined the pathway to legal development through litigation before the ECtHR and the evolutive interpretation it may trigger. However, this route remains constrained by procedural barriers, particularly at the admissibility stage.

The prospect of a new Protocol to the Convention also appears politically remote.

The next section therefore turns to the national level to assess whether the route available at this level offers a more plausible and immediate opportunity for legal change in this context.

b) National-level developments

An alternative path to legal development could occur at the national level. This pathway would involve national courts and legislatures taking the lead — through case law and legislation respectively — in adopting a more inclusive interpretation of 'family', one that recognises adult-adult relationships as part of this unit, or in extending family reunification rights to such relationships, even before the ECtHR is ready to do so.[1020]

[1020] A notable example of a broader, state-led approach was the United Kingdom's "Ukraine Family Scheme" (March 2022 - February 2024), introduced in response to the war in Ukraine: see Home Office, 'Ukraine Family Scheme' (Version 6.0, 19 February 2024) <https://assets.publishing.service.gov.uk/media/65ccc3c21d9395001294665e/Ukraine+Family+Scheme+Guidance.pdf> accessed 24 April 2025. The scheme allowed a wide range of Ukrainian relatives of UK-based sponsors to join them in the UK — including adult children, adult siblings, parents, grandparents, aunts, uncles, nieces, and nephews — with no age restrictions specified. Notably, it did not require proof of dependency or prior cohabitation; eligibility was determined solely by the existence of a family tie (Home Office, 'Ukraine Family Scheme').
While temporary and exceptional in nature, the scheme demonstrates that states can, in practice, treat "extended" (Home Office, 'Ukraine Family Scheme') kinship ties — and not solely nuclear relationships — as constituting 'family' for migration purposes, reflecting an openness that may hold interpretive significance. The UK, although no longer a member of the European Union, remains a signatory to the ECHR. As such, the scheme provides an example of how a state bound by the Convention recognised a broader range of family relationships in the migration context — a recognition that contrasts with the ECtHR's restrictive approach in migration cases, but which could inform a more inclusive, evolutive interpretation of Article 8.

Closely linked to these potential national-level developments — particularly those involving domestic courts — is the concept of "judicial dialogue",[1021] which offers another possible route for legal change aimed at broadening the definition of 'family' in the migration context. This refers to the ongoing dialogue and mutual influence between national courts of Member States and the ECtHR, which do not operate in isolation but rather in dynamic interaction.[1022] National courts frequently look to ECtHR judgments for guidance, while the ECtHR, in turn, considers how national courts interpret and apply the ECHR, especially when their judgments reflect an emerging consensus or offer persuasive interpretations of Convention principles.[1023] Over time, this interaction allows for reciprocal influence between the national and international levels.

Thus, even if the ECtHR is currently reluctant to recognise adult relatives as falling within the definition of 'family' in the migration context, Member States could nonetheless take the lead by expanding recognition and protection at the national level. If a number of national courts begin to treat such ties as constitutive of family, this could gradually help construct a persuasive body of national jurisprudence which, while not determinative, may influence the ongoing dialogue between domestic and international

---

[1021] European Court of Human Rights, 'Dialogue with national courts' (*European Court of Human Rights*) <https://www.echr.coe.int/dialogue-with-national-courts> accessed 26 April 2025; Paul Mahoney, 'The Relationship between the Strasbourg Court and the National Courts' (2014) 130 Law Quarterly Review 568.

[1022] See, e.g., Luis López Guerra, 'Dialogues between the Strasbourg Court and National Courts' in Amrei Müller (ed), *Judicial Dialogue and Human Rights* (Cambridge University Press 2017); Jonas Christoffersen and Mikael Rask Madsen, 'Introduction: The European Court of Human Rights between Law and Politics' in Jonas Christoffersen and Mikael Rask Madsen (eds), *The European Court of Human Rights between Law and Politics* (Oxford University Press 2011); Kanstantsin Dzehtsiarou, *European Consensus and the Legitimacy of the European Court of Human Rights* (Cambridge University Press 2015).

[1023] See, e.g., López Guerra (n 1022); Amrei Müller, 'Conclusion' in Amrei Müller (ed), *Judicial Dialogue and Human Rights* (Cambridge University Press 2017); European Court of Human Rights, 'Dialogue between judges. Human rights protection in the time of the pandemic: new challenges and new perspectives' (*European Court of Human Rights*, 2022) <https://www.echr.coe.int/documents/d/echr/Dialogue_2022_ENG> accessed 26 May 2025; Joint Committee on Human Rights, *The Government's Independent Review of the Human Rights Act* (Third Report of Session 2021–22, HC 89, HL Paper 31), ch 3.

courts and, in doing so, help create the conditions under which the ECtHR may be prepared to reinterpret Article 8 through its own evolutive doctrine.

However, although national courts and legislatures theoretically have the capacity to adopt more inclusive interpretations of 'family',[1024] the current trajectory across much of Europe — as underlined in Chapter 2 — is towards stricter family reunification policies and narrower legal definitions of family. The pathway for change at the national level, therefore, appears increasingly constrained.

More broadly, this restrictive legal landscape limits the potential of judicial dialogue as a viable pathway for reform. Where domestic law is clearly exclusionary — defining family narrowly for the purposes of reunification — national courts are often bound by those legislative frameworks and are unlikely to adopt more inclusive interpretations in the absence of clear guidance from Strasbourg.

This restrictive political and legal trend, therefore, also raises serious doubts as to whether a favourable consensus among Member States is likely to emerge in support of expanded protection for adult-adult relationships — a consensus that, while not

[1024] See, for instance, the responses of Austria, Italy and Sweden to climate-related displacement, which provide broader protection than has so far been recognised in the ECtHR jurisprudence. The interpretation of Article 15(b) of the Qualification Directive (n 726) by Austria and Italy allows for subsidiary protection even where no human actor is responsible, including in cases involving severe living conditions linked to poverty, lack of medical care, or environmental degradation such as drought or floods. In particular, in a 2024 decision, the Milan Tribunal granted subsidiary protection to an applicant from Bangladesh, recognising that repeated flooding and erosion — combined with socioeconomic vulnerability and inadequate state protection — could amount to "inhuman or degrading treatment" under Article 15(b). Sweden, for its part, has introduced a "non-harmonised" national protection category for persons displaced by environmental disasters. See: Margit Ammer, Monika Mayrhofer and Matthew Scott, 'Disaster-related displacement into Europe: Judicial practice in Austria and Sweden' (April 2022) <https://gmr.lbg.ac.at/wp-content/uploads/sites/12/2022/05/ClimMobil_Report.pdf> accessed 14 June 2025; Jane McAdam and Chiara Scissa, 'How Domestic Courts Are Using International Refugee Law and Human Rights Law in the Context of Climate Change and Disasters' (*EJIL:Talk!*, 22 November 2024) <https://www.ejiltalk.org/how-domestic-courts-are-using-international-refugee-law-and-human-rights-law-in-the-context-of-climate-change-and-disasters/> accessed 14 June 2025; Marica Di Pierri and Maria Marano (eds), *Migrazioni ambientali e crisi climatica. Speciale: Le rotte del clima* (4th edn, Associazione A Sud 2025). Both McAdam and Scissa, and Di Pierri and Marano, discuss the aforementioned 2024 decision of the Milan Tribunal (Tribunale di Milano, decreto del 13 marzo 2024, R.G. n 8753/2020).

required, could nonetheless lend support to a shift in the ECtHR's jurisprudence through its evolutive doctrine. Indeed, rather than nudging Strasbourg towards greater inclusivity, prevailing national practice may instead reinforce a more conservative interpretation of Article 8.

Accordingly, while national-level developments and judicial dialogue remain theoretically significant, their practical capacity to drive change towards a broader definition of family appears highly limited in the current legal and political climate.

c) Prospects for reform through EU Law

Given the limited potential for change through national legal systems, it is necessary to consider whether other supranational frameworks — most notably EU law — offer alternative pathways for advancing a more inclusive understanding of family.

As discussed in depth in Chapter 3 and briefly at the start of this chapter, EU law — especially through the FRD and the CD — adopts a limited and formalistic conception of family. While the CD offers somewhat broader protection than the FRD, neither instrument adequately safeguards adult-adult relationships, particularly those grounded in functional or affective ties.

The key question at this stage is how changes to the existing EU legal framework — particularly the CD — might be achieved in order to expand the recognition and protection of adult-adult relationships, and what legal and political obstacles such reform would face.[1025]

[1025] The Asylum and Migration Management Regulation, part of the 2024 New Pact on Migration and Asylum and set to take effect in 2026, introduces an important, albeit limited, expansion by recognising family ties formed during the migration journey (Recital 52), rather than only those that pre-date departure from the country of origin. However, it does not formally broaden the legal definition of "family member" (see Article 2(8)), and thus does not advance protection for adult-adult relationships. See

In theory, such changes could be pursued through two main routes.[1026] One possible path would involve amending the texts of those directives to reflect a more functional understanding of family. However, in practice, this would require political consensus at the EU level, something that appears highly unlikely in the current climate, which, as previously noted, is increasingly resistant to expansive interpretations of family in the migration context. As explored in Chapter 3.1(b)(I)-(II), the first two proposals for the FRD were considerably broader, particularly in relation to adult relatives. Yet the final text was significantly narrowed during the legislative process, reflecting political reluctance to extend stronger protection to such relationships, rather than a principled view that they fall outside the definition of family. This suggests that EU law in this area favours limitation over inclusion, and does not reflect an evolving or expansive understanding of family.

A second possible path to reform would involve using litigation to expand protection under the existing directives, whether by encouraging broader interpretations of key terms within the directives' provisions or by challenging restrictive applications through claims based on fundamental rights — such as respect for family life or non-discrimination — and the principle of proportionality. In practice, such litigation might involve efforts to persuade the CJEU to interpret the term "family member" more inclusively, or to rely on Article 7 of the CFREU to support claims for broader recognition and protection of adult family ties. Additional legal arguments in this context

Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 [2024] OJ L, 22.5.2024.

[1026] Among the more limited or secondary routes, soft law may be mentioned. Instruments such as Commission communications, guidelines, or recommendations may promote a more inclusive definition of family, yet remain non-binding and cannot override the restrictive definitions in the FRD or the CD. While they may shape how courts interpret or how administrative bodies apply EU rules — by encouraging broader recognition of adult relatives as family members eligible for reunification — Member States remain free to disregard such instruments, particularly in the prevailing political climate resistant to expansive definitions of family. As a result, soft law is unlikely to drive significant change in practice.

could also be made on the basis of proportionality or discrimination. A refusal of entry might be challenged as disproportionate where it imposes an excessive burden on the individuals concerned in relation to the aims pursued by the state, such as migration control. Similarly, a claim of discrimination may arise where family relationships that involve comparable emotional or dependency-based bonds — such as long-term partners or dependent adult children — are treated less favourably than formally recognised relationships like those with spouses or minor children, without adequate justification. These arguments are particularly relevant in cases where the refusal appears arbitrary or results in severe hardship.

However, even though the potential for reform exists, this path offers only limited scope in practice for expanding protection to adult relatives. On the one hand, the restrictive wording of the directives — such as the closed list of qualifying family members in Article 4(1) of the FRD — does not easily lend itself to broader interpretations. On the other hand, the wide discretion granted to Member States in provisions like Article 4(2) of the FRD (namely, “may [...] authorise”) and Article 3(2) of the CD (where, for instance, states determine what “facilitate” means) further limits the effectiveness of litigation; even if the Court were sympathetic, national authorities would still retain significant leeway to restrict access by interpreting and applying those provisions narrowly.

Accordingly, despite its theoretical appeal, the EU law route does not presently offer a viable path towards expanding protection for adult-adult relationships.

In sum, while several routes for broadening the legal definition of 'family' under Article 8 in the migration context to encompass adult-adult relationships can be identified, each currently faces significant constraints.

At the national level, reform efforts encounter both structural and political barriers: narrow domestic definitions of family, combined with a prevailing climate of resistance to inclusive change, limit both judicial and legislative progress.

At the EU level, the prospects for change are similarly constrained: neither amendments to existing directives nor litigation under their current provisions is likely to yield meaningful reform.[1027]

Within the ECHR system, the adoption of a new protocol to the ECHR, while theoretically possible, appears politically remote in the current climate.

Ultimately, the most viable route lies in the ECtHR's doctrine of evolutive interpretation. While a shift towards recognising adult-adult relationships within the definition of family for the purposes of Article 8 in the migration context could occur through this path, such change is unlikely to be immediate, mainly due to procedural barriers that currently prevent claims involving such relationships from reaching the merits stage, where evolutive interpretation could be meaningfully applied.

5.3 Rethinking the definition of family in migration law

The fact that evolutive interpretation is currently blocked by procedural barriers only heightens the urgency of reform. In the absence of case law development, the persistent exclusion of adult-adult kinship ties from protection under Article 8 in the migration context risks becoming further entrenched. This reinforces the need for a

[1027] On soft law instruments in this context, see n 1026.

clear and culturally sensitive understanding of the notion of family in this context, ready for adoption when the ECtHR has the opportunity to revisit its approach.

As this work has demonstrated, the question of how the ECtHR should interpret ‘family’ is not only urgent but deeply sensitive. This sensitivity arises not only from the profound personal and legal consequences for individuals seeking to maintain family unity across borders, but also from the broader issues of cultural recognition, legal inclusion, and the normative role of courts in defining the meaning of ‘family’. These considerations are further compounded by the principle of state sovereignty, as states retain broad discretion in determining who qualifies as ‘family’ for the purposes of entry and residence. The Court’s continued reliance on restrictive, nuclear-centred definitions of family fails to reflect the diversity of family life in contemporary Europe and systematically excludes precisely those adult-adult relationships on which migrants most frequently rely.

In light of this, the ECtHR must move beyond a formalistic focus on legal or biological status in migration cases and adopt an approach that reflects the lived realities of modern family life. The law’s understanding of family must evolve to reflect that relationships between adult relatives are integral to family life. This requires a reorientation of the Court’s approach. At present, adult-adult kinship claims are routinely dismissed at the admissibility stage or reframed under “private life”, thereby avoiding substantive engagement with “family life”. Greater weight should be given to the sociological concept — explored in Chapter 1.1(b)(II) — of “family-as-doing” which shifts the focus from fixed legal categories to the lived practices of care, support, and relational interdependence. It recognises that family is constructed and sustained through ongoing interactions and mutual responsibilities, rather than being defined solely by marriage or blood. In migration contexts, the role of adult relatives is

particularly significant: they often provide essential caregiving, emotional and/or financial support, and maintain transnational ties that are central to an individual's identity and well-being. Yet, paradoxically, these deeply meaningful family ties receive little or no protection under Article 8, precisely at the moment when individuals most depend on them to navigate the challenges of migration.

This "family-as-doing" perspective also offers a valuable lens through which to critique the ECtHR's reliance on the concept of "dependency" in migration cases. As discussed in Chapter 2, the Court applies a particularly restrictive test: not only must adult relatives demonstrate "further elements of dependency involving more than the normal emotional ties"[1028] to qualify for protection under Article 8, but the threshold for satisfying this requirement is both exceptionally high and poorly defined. This evidentiary burden stands in stark contrast to the presumed dependency of minor children. It also leaves applicants uncertain as to which adult familial bonds might qualify for protection.

Seen through the lens of "family-as-doing", however, dependency is not an exceptional or rare condition but a normal feature of adult family life. This is because adult relatives often engage in sustained forms of functional interdependence — such as caregiving, emotional support, financial assistance, or transnational solidarity — that reflect genuine familial commitments. These everyday practices of support should be recognised as constitutive of family life.

At the very least, adopting the "family-as-doing" perspective — which emphasises real-life caregiving, emotional support, and mutual assistance — strengthens the case for recognising adult-adult relationships within the existing legal framework of what

[1028] *Javeed v Netherlands* (n 189), 5.

constitutes family life. More broadly, it invites a rethinking of dependency itself: not as a rare, exceptional and difficult condition to prove — as currently treated by the ECtHR — but as a relational practice rooted in social and cultural realities.

When relationships between members of the extended family are at issue in the non-migration context, the ECtHR appears to recognise “family life” where close personal ties are present. Although the case law on adult kinship ties is very limited, the reasoning developed in Chapter 2 suggests that the same approach applies to such ties. In this context, the Court thus adopts a relatively flexible understanding of family, one grounded in the quality of the relationship rather than solely in formal status.
In migration contexts, by contrast, the Court adopts a much narrower conception, largely confined to the nuclear unit. To qualify under “family life”, adult relationships must satisfy an additional dependency test. As shown, the threshold for this requirement is both vague and unduly high, creating barriers to recognising ties that are, from a sociological perspective, key components of family.

With all of this in mind, this work does not advocate for the adoption of a pure “family-as-being” model — one based solely on formal legal status or biological ties — as a sufficient framework for legal protection in migration cases. While such a model does include many adult relationships (e.g., siblings or adult children and their parents), it fails to capture the complexity of contemporary family life. In practice, even these formally recognised ties receive inconsistent protection under the ECtHR’s current practice, which applies an even narrower version of a status-based model and subjects adult-adult kinship ties to an additional dependency requirement.

What is needed instead is a combined model that incorporates both “family-as-being” and “family-as-doing”. Such a model would enable the Court to recognise adult-adult relationships that are both legally or biologically grounded and functionally significant. It would reflect how families operate in practice, particularly across borders, and help ensure that adult-adult relationships grounded in formal status are not excluded merely because they extend beyond the narrow boundaries of the nuclear family.

In addition to the broader social and cultural evidence explored earlier in this work, which highlights the centrality of adult-adult kinship ties, it is also necessary to account for the contingent nature of family bonds. Whereas historical evolution reflects broad, gradual shifts in how societies understand family, family roles and relationships are often contingent, that is, shaped and reorganised in response to immediate life circumstances, such as migration, illness, caregiving, economic hardship, or separation.[1029] In these situations, even legally or biologically defined ties — such as those between adult siblings, or between adult children and their parents — may take on new significance as key sources of caregiving, emotional or financial support. These relationships are not static but adapt according to need. Recognising this contingency further strengthens the case for a combined model of “family-as-being” and “family-as-doing”. Legal or biological status may form the foundation of many adult-adult relationships, but it is the lived, relational practices — caregiving, mutual dependence, sustained emotional bonds — that render those ties meaningful in everyday life.[1030] A combined model ensures that both dimensions are taken into account, allowing the Court to respond more fairly and flexibly to the realities of transnational family life. This is especially crucial where immigration decisions determine whether families can

[1029] See, e.g., Morgan (n 178).
[1030] See, e.g., ibid.

remain together, as narrow definitions risk excluding meaningful relationships and causing permanent separation.

Importantly, adopting such a combined model would not entail abandoning existing legal categories (such as marriage or biological ties), nor would it mean accepting every claimed relationship under “family life”. Rather, it would mean expanding the criteria for recognition to include both formal status (namely legal or biological ties) and functional, relational indicators — such as caregiving, emotional closeness, sustained contact, and mutual support — that together more accurately reflect how families are constituted and experienced across diverse cultural and social contexts. Crucially, it is the lived practices of care, support, and interdependence that transform legal or biological ties into meaningful family relationships.[1031]

Nor is the proposed model intended to disregard immigration status. As argued in Section 2.2(e), legal status may properly affect the proportionality assessment under Article 8(2), but it should not determine whether adult-adult ties constitute family life under Article 8(1).

Alongside this, and although gender is not the central focus of this thesis, any culturally sensitive reinterpretation of “family life” should also remain attentive to the gendered distribution of care within many kinship networks. As noted earlier, transnational care responsibilities often fall disproportionately on women, and restrictive family reunification policies may therefore impose particular burdens on women in migrant and transnational families, especially where they are responsible for sustaining

[1031] See, e.g., ibid.

intergenerational ties, emotional support, and care across borders.[1032] Recent research also shows that Western kinship structures are increasingly female-oriented, with maternal kin described as “emotionally closer”, “more frequently contacted”, more highly valued, and more involved in providing support and care.[1033] These dynamics reinforce the broader argument advanced here: that the Court should treat sustained caregiving, emotional support, and the relational work of maintaining family ties as positive indicators of “family life” under Article 8, rather than requiring exceptional dependency. Such an approach would better capture how family life is maintained in practice, including through gendered practices of transnational care.

Ultimately, this work does not aim to offer a fixed or exhaustive definition of ‘family’ for the purposes of Article 8. As emphasised throughout, the meaning of family is contingent — shaped by culture, context, and historical change — and any interpretation that seeks to do justice to this concept must remain open to its evolving forms.

In conclusion, the ECtHR should revise its interpretation of “family life” in migration cases by adopting a combined model that incorporates both the legal recognition of “family-as-being” and the flexibility of “family-as-doing”. Such a combined model would bring much-needed coherence to the ECtHR’s family life jurisprudence by bridging the gap between migration and non-migration contexts. It would align the interpretation of

[1032] See Section 2.2(f), where this thesis discusses the gendered effects of restrictive family reunification rules, with reference to Askola (n 393) and Kofman (n 1). See also Sections 4.1(a) and 4.2(a), which discuss the gendered effects of family separation and transnational care burdens. See also Anika Liversage and Abir Mohamad Ismail, ‘“Migrant Carer-Wives” – Between Transnational Marriages, Care Work for Older Husbands and Gendered Precarity’ (2022) 12(2) Nordic Journal of Migration Research 156.
[1033] Leopold and others (n 106).

Article 8 with the lived realities of contemporary families and help prevent the exclusion of meaningful ties based on arbitrary or inconsistently applied thresholds. Crucially, it would also respond to the risk of indirect discrimination embedded in the Court's current approach — discrimination that may disproportionately affect migrants as such, on account of their national origin, migration status, or association with non-Western family structures — and would do so by incorporating a substantive equality perspective that takes account of the structural disadvantages migrants may face in how their family relationships are evaluated. By adopting this more coherent and inclusive approach, the Court would be better positioned to fulfil its role as a "guardian" of rights[1034] in a way that is both faithful to the lived experiences of migrants and responsive to the cultural and familial diversity that characterises contemporary European societies.

[1034] Council of Europe Parliamentary Assembly, Committee on Legal Affairs and Human Rights, 'Guaranteeing the authority and effectiveness of the European Convention on Human Rights' (Report, Doc 12811, 3 January 2012). See also Helen Keller and Alec Stone Sweet, 'The Reception of the ECHR in National Legal Orders' in Helen Keller and Alec Stone Sweet (eds), *A Europe of Rights: The Impact of the ECHR on National Legal Systems* (Oxford University Press 2008).

Conclusion

This thesis has demonstrated that the ECtHR's current interpretation of 'family' for the purposes of Article 8 ECHR in the migration context suffers from a range of serious flaws, including internal inconsistencies within its own jurisprudence and a lack of normative justification. It rests on a narrow, nuclear, supposed Western-centric conception of the family that systematically excludes adult-adult kinship ties — such as those between parents and adult children, adult siblings, and grandparents and their adult grandchildren — from the scope of protected family relationships. As shown through both academic literature and expert interviews, these adult relatives are consistently recognised as legitimate components of the family and as vital to its functioning across diverse social and cultural contexts. In migration cases, where family networks are dispersed across borders, such ties are especially critical in helping individuals navigate the legal, economic, and social challenges of transnational life.

While in non-migration contexts the Court has recognised family life based on close personal ties, offering protection to a broad range of relationships, in migration cases it largely confines the notion of family to the nuclear unit. Adult-adult kinship ties are either excluded altogether or subjected to an unduly stringent dependency test. This bifurcated approach not only reveals inconsistencies in the Court's interpretation of family — stemming from a double standard in its treatment of adult-adult relationships in migration versus non-migration contexts — but also fails to capture the diversity of contemporary familial arrangements across Europe and beyond, as well as the ways in which adult kinship ties are experienced today, thereby creating a disjunction between law and lived reality. Moreover, it carries a serious risk of indirect discrimination in breach of Article 14 ECHR — both against migrants as such and

against those whose family structures do not conform to the nuclear model. This Court's restrictive interpretation of family thus undermines the coherence and legitimacy of its broader jurisprudence, compromises the effectiveness of rights protection, and erects unjustified barriers for migrants seeking to maintain family unity.

Any justification for treating transnational families differently from families residing in the same country — on the grounds that physical separation compromises familial bonds — does not withstand scrutiny. As this thesis has shown, physical distance does not dissolve familial ties or responsibilities, and therefore, despite geographical separation, transnational families continue to perform core familial functions comparable to those of families living within a single national context.

Through an in-depth interdisciplinary analysis, this thesis has advanced a compelling normative argument for reform: the ECtHR must move beyond its narrow, nuclear conception of family in the migration context and adopt a more inclusive, culturally responsive, and functionally grounded interpretation of family under Article 8. This approach, which recognises adult-adult relationships as legitimate components of the family, would promote both consistency and substantive equality. In particular, it would advance substantive equality by addressing the risk of indirect discrimination resulting from the exclusion of such relationships in migration cases and the Court's failure to adequately acknowledge the structural vulnerability of migrants. This failure reveals a lack of equivalent sensitivity to migrants' disadvantage, even when dynamics comparable to those the ECtHR has acknowledged in other contexts — such as in cases involving Roma applicants — are at play, including cultural identity, socioeconomic exclusion, or vulnerability. Embracing a more inclusive understanding

of family would also better align the Court's jurisprudence with the lived realities the law purports to protect.

To this end, this thesis has argued for a reconceptualisation of family through a combined model of "family-as-being" and "family-as-doing". This model retains the role of legal and biological status ("family-as-being"), while also recognising the functional and emotional dimensions of caregiving, mutual support, and relational interdependence ("family-as-doing"). It acknowledges that legal and biological ties are not static but rather constituted and sustained through everyday practices. This combined model represents a necessary shift away from the Court's restrictive, status-based conception — one that recognises only certain formally defined relationships, typically limited to the nuclear family — towards a more dynamic and sociologically informed understanding of how families operate in practice, especially in transnational contexts. Such a shift is particularly urgent in migration cases, where decisions about entry or removal often lead to permanent family separations and disproportionately affect individuals from non-dominant cultural traditions. It offers a culturally responsive framework that more accurately reflects how transnational families function and aligns with the lived realities of migrants.

This thesis has also identified and explored possible legal and institutional pathways through which a broader, culturally sensitive, definition of family might be realised in practice. While prospects for reform at the national and EU levels appear politically constrained, the ECtHR's doctrine of evolutive interpretation — which allows the Convention to be interpreted in light of present-day conditions — offers a jurisprudentially grounded and normatively rich mechanism for change. As shown in this work, the Court has previously demonstrated its capacity to interpret Article 8

dynamically in response to evolving social conditions, as evidenced by its recognition of same-sex partnerships and its acknowledgement of the cultural identity and vulnerability of marginalised groups such as the Roma. These developments reflect the Court's willingness to move beyond rigid legal categories when required by contemporary social realities. There is, therefore, no principled reason why a similarly inclusive and responsive approach could not be extended to adult-adult kinship ties in the migration context, particularly where these relationships perform core familial functions and sustain transnational family life.

However, the promise of evolutive interpretation to bring about such changes remains unrealised so long as procedural barriers — especially at the admissibility stage — continue to prevent standalone adult kinship claims in migration cases from being examined on their merits under Article 8. Although adult-adult ties could sometimes be raised within claims admissible on other grounds, standalone claims relying on such ties as the basis for family-life protection are still routinely dismissed at the threshold. The potential of evolutive interpretation to drive meaningful legal development therefore remains largely aspirational.

Ultimately, the challenge addressed in this thesis is not merely a matter of legal categorisation but concerns whether the law consistently and inclusively recognises the full diversity of family relationships as they are lived in practice. This challenge reflects a deeper tension between the complex and varied ways in which families are experienced and the law's tendency, in the migration context, to recognise only a narrow subset of those relationships as deserving of protection. In such a context, this tension is thrown into sharp relief when claims to family life come into conflict with states' assertions of sovereign authority — notably, the power to control borders and

regulate immigration — even when this results in the separation of families and the potential erosion of fundamental rights. Yet it is precisely in these instances that legal institutions must rise to their protective role. If the ECtHR is to remain faithful to its foundational duty as a guardian of rights, it must interpret the Convention as a living instrument to reflect the evolving realities of the family and family life, and confront the persistent exclusion of adult-adult kinship ties from protection in the migration context. A failure to do so risks rendering the Convention increasingly irrelevant to the lived realities of migrant families and entrenching the Court's role in their systemic exclusion. Moreover, the Court's practice of applying different approaches to the meaning of family in migration and non-migration cases, without any principled justification, undermines the coherence of its jurisprudence and its authority as the ultimate interpreter of the Convention.

By offering a vision for reform that is normatively grounded, rooted in substantive equality, informed by a functional understanding of family, and shaped by cultural sensitivity and legal coherence, this thesis contributes to ongoing debates about how the ECtHR interprets and protects family in the context of migration. It calls for a future jurisprudence that is not only more inclusive and internally coherent, but also guided by a substantive equality lens — one capable of identifying how seemingly neutral legal criteria, such as narrowly defining family or requiring exceptional dependency, can lead to the exclusion of adult kinship ties, thereby disproportionately affecting migrants and reinforcing structural disadvantage. Such a jurisprudence must also be more attuned to the lived experiences of those who rely on the law to recognise what they already know to be true: that family is not a fixed legal definition, but a lived and relational

practice — one that, for many, and arguably most, includes adult kinship ties that are genuinely experienced and recognised as family.

While this thesis offers a doctrinal, normative, and sociological analysis of how the ECtHR interprets ‘family’ for the purposes of Article 8 ECHR — particularly in the context of migration — certain boundaries of scope and method should be acknowledged. The analysis draws on expert interviews with family sociologists and demographers, academic literature incorporating migrant perspectives, and a close reading of case law, including dissenting opinions. However, it does not include original interviews with affected migrants or legal practitioners, such as judges or immigration lawyers. This reflects the thesis’s focus on legal reasoning and normative argument, supported by sociological insight, rather than empirical fieldwork involving directly affected individuals or legal actors. Future research could build on this foundation by incorporating first-hand perspectives through qualitative methods, offering additional insight into how restrictive legal definitions of family are experienced and applied in practice.

Further valuable avenues for future research include, first, a cross-jurisdictional analysis of how adult-adult family relationships are treated within the family reunification frameworks of domestic immigration regimes; and second, an examination of how ECtHR jurisprudence is received, interpreted, and implemented at the national level. Although these are distinct lines of inquiry, both could shed light on the extent to which restrictive definitions of family are reproduced across legal systems, and how ECtHR case law shapes — or is shaped by — domestic practice. While there is reason to believe that many domestic systems adopt similarly restrictive approaches — reflecting states’ shared interest in limiting family-based migration — and often align

with the Court's interpretation, such research remains valuable. It could uncover rare examples of broader protection that might serve as normative or policy models, document the extent and uniformity of restrictive practices, and shed light on how ECtHR case law is applied, interpreted, or challenged within national legal systems. Even confirming that divergence is minimal would support the conclusion that meaningful reform must be initiated at the supranational level. Conversely, identifying more inclusive domestic practices could reveal alternative models of legal recognition that might inform or inspire reform of the ECtHR's own jurisprudence.

Bibliography

Table of Cases

A.A. v UK App no 8000/08 (ECtHR, 20 September 2011)

A.H. Khan v UK App no 6222/10 (ECtHR, 20 December 2011)

A.S. v Switzerland App no 39350/13 (ECtHR, 30 June 2015)

A.W. Khan v UK App no 47486/06 (ECtHR, 12 January 2010)

Abdulaziz, Cabales and Balkandali v UK App nos 9214/80, 9473/81 and 9474/81 (ECtHR, 28 May 1985)

Ahmut v Netherlands App no 21702/93 (ECtHR, 28 November 1996)

Al-Nashif v Bulgaria App no 50963/99 (ECtHR, 20 June 2002)

Anam v UK App no 21783/08 (ECtHR, Decision, 7 June 2011)

Balaguer Santacana v Spain Comm No 417/1990 (Human Rights Committee, 27 July 1994) UN Doc CCPR/C/51/D/417/1990

Beldjoudi and Teychene v France App no 12083/86 (Commission Report, 6 September 1990)

Beldjoudi v France App no 12083/86 (ECtHR, 26 March 1992)

Berrehab v Netherlands App no 10730/84 (ECtHR, 21 June 1988)

Bouchelkia v France App no 23078/93 (ECtHR, 29 January 1997)

Boughanemi v France App no 22070/93 (ECtHR, 24 April 1996)

Boujlifa v France App no 25404/94 (ECtHR, 21 October 1997)

Boultif v Switzerland App no 54273/00 (ECtHR, 2 August 2001)

Bousarra v France App no 25672/07 (ECtHR, 23 September 2010)

Boyle v UK App no 16580/90 (Commission Report, 9 February 1993)

Bronda v Italy App no 22430/93 (ECtHR, 9 June 1998)

C. v Belgium App no 21794/93 (ECtHR, 7 August 1996)

Case C-86/12 *Adzo Domenyo Alokpa, Jarel Moudoulou, Eja Moudoulou v Ministre du Travail, de l'Emploi et de l'Immigration* [2013] ECLI:EU:C:2013:645

Case C-316/85 *Centre public d'aide sociale de Courcelles v Marie-Christine Lebon* [1987] ECLI:EU:C:1987:302

Case C-578/08 *Rhimou Chakroun v Minister van Buitenlandse Zaken* [2010] ECR I-1839

Case C-560/20 *CR, GF, TY v Landeshauptmann von Wien* [2024] ECLI:EU:C:2024:96

Case C-256/11 *Murat Dereci and Others v Bundesministerium für Inneres* [2011] (Grand Chamber) ECLI:EU:C:2011:734

Case C-488/21 *GV v Chief Appeals Officer and Others* [2023] ECLI:EU:C:2023:1013

Case C-1/05 *Jia v Migrationsverket* [2007] ECLI:EU:C:2007:1

Case C-127/08 *Blaise Baheten Metock and Others v Minister for Justice, Equality and Law Reform* [2008] (Grand Chamber) ECR I-6241

Case C-540/03 *Parliament v Council* [2006] (Grand Chamber) ECLI:EU:C:2006:429

Case C-83/11 *Secretary of State for the Home Department v Rahman and Others*
Opinion of AG Bot [2012] ECLI:EU:C:2012:174
Judgment [2012] ECLI:EU:C:2012:519

Case C-423/12 *Reyes v Migrationsverket*
Opinion of AG Mengozzi [2013] ECLI:EU:C:2013:719
Judgment [2014] ECLI:EU:C:2014:16

Case C-34/09 *Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm)* [2011] (Grand Chamber) ECLI:EU:C:2011:124

Case C-129/18 *SM v Entry Clearance Officer, UK Visa Section* [2019] ECLI:EU:C:2019:248

Case C-22/21 *SRS, AA v Minister for Justice and Equality* [2022] ECLI:EU:C:2022:683

Case C-519/18 *TB v Bevándorlási és Menekültügyi Hivatal* [2019] ECLI:EU:C:2019:1070

Case C-706/18 *X v Belgische Staat* [2019] ECLI:EU:C:2019:993

Case C-607/21 *XXX v État belge* [2025] ECLI:EU:C:2025:264

Case C-200/02 *Kunqian Catherine Zhu, Man Lavette Chen v Secretary of State for the Home Department* [2004] ECR I-9925

Case concerning Rights of Nationals of the United States of America in Morocco (France v United States of America) Judgment [1952] ICJ Rep 176

Cases C-356/11 and C-357/11 *O and S v Maahanmuuttovirasto* and *Maahanmuuttovirasto v L* [2012] ECLI:EU:C:2012:776

Chapman v UK App no 27238/95 (ECtHR, Grand Chamber, 18 January 2001)

Christine Goodwin v UK App no 28957/95 (ECtHR, 11 July 2002)

Connors v UK App no 66746/01 (ECtHR, 27 May 2004)

Costello-Roberts v UK App no 13134/87 (ECtHR, 25 March 1993)

D.H. and Others v Czech Republic App no 57325/00 (ECtHR, Grand Chamber, 13 November 2007)

Dauphin v Canada CCPR/C/96/D/1792/2008 (UNHRC, 28 July 2009)

Demir and Baykara v Turkey App no 34503/97 (ECtHR, Grand Chamber, 12 November 2008)

Djeroud v France App no 13446/87 (Commission Report, 15 March 1990)

E.B. v France App no 43546/02 (ECtHR, Grand Chamber, 22 January 2008)

El Boujaïdi v France App no 25613/94 (ECtHR, 26 September 1997)

Emonet and Others v Switzerland App no 39051/03 (ECtHR, 13 December 2007)

Ezzouhdi v France App no 47160/99 (ECtHR, 13 February 2001)

F.N. v UK App no 3202/09 (ECtHR, Decision, 17 September 2013)

Family X. v UK App no 9492/81 (Commission Decision, 14 July 1982)

Gül v Switzerland App no 23218/94 (ECtHR, 19 February 1996)

Hirst v UK App no 74025/01 (ECtHR, Grand Chamber, 6 October 2005)

Hopu and Bessert v France Comm No 549/1993 (Human Rights Committee, 30 October 1995) UN Doc CCPR/C/51/D/549/1993

I.M. v Switzerland App no 23887/16 (ECtHR, 9 April 2019)

Javeed v Netherlands App no 47390/99 (ECtHR, Decision, 3 July 2001)

Jeunesse v Netherlands App no 12738/10 (ECtHR, Grand Chamber, 3 October 2014)

Johansen v Norway App no 17383/90 (ECtHR, 7 August 1996)

K. and T. v Finland App no 25702/94 (ECtHR, Grand Chamber, 12 July 2001)

Kaftailova v Latvia App no 59643/00 (ECtHR, 22 June 2006)

Keegan v Ireland App no 16969/90 (ECtHR, 26 May 1994)

Kinsella and Mulvaney v UK App no 19200/91 (Commission Decision, 1 September 1993)

Konstantinov v Netherlands App no 16351/03 (ECtHR, 26 April 2007)

Kroon and Others v Netherlands App no 18535/91 (ECtHR, 27 October 1994)

Kumari v Netherlands App no 44051/20 (ECtHR, Decision, 19 November 2024)

Kwakye-Nti and Dufie v Netherlands App no 31519/96 (ECtHR, Decision, 7 November 2000)

L. v Netherlands App no 45582/99 (ECtHR, 1 June 2004)

Lakatoš v Czech Republic App no 42052/98 (ECtHR, Decision, 23 October 2001)

Lamguindaz v UK App no 16152/90 (Commission Report, 13 October 1992)

Iyisan v UK App no 7673/08 (ECtHR, Decision, 9 February 2010)

Marckx v Belgium App no 6833/74 (ECtHR, 13 June 1979)

Martinez Alvarado v Netherlands App no 4470/21 (ECtHR, 10 December 2024)

Maslov v Austria App no 1638/03 (ECtHR, Grand Chamber, 23 June 2008)

McCombe v UK App no 19785/92 (Commission Decision, 1 September 1993)

McCotter v UK App no 18632/91 (Commission Decision, 9 December 1992)

Mehemi v France (No 2) App no 53470/99 (ECtHR, 10 April 2003)

Moustaquim v Belgium App no 12313/86 (ECtHR, 18 February 1991)

Mustafa and Armağan Akin v Turkey App no 4694/03 (ECtHR, 6 April 2010)

Nasri v France App no 19465/92 (ECtHR, 13 July 1995)

Ngambi and Nébol v France Comm No 1179/2003 (Human Rights Committee, 16 July 2004) UN Doc CCPR/C/81/D/1179/2003

Niemietz v Germany App no 13710/88 (ECtHR, 16 December 1992)

Oliari and Others v Italy App nos 18766/11 and 36030/11 (ECtHR, 21 July 2015)

Olsson v Sweden (No 1) App no 10465/83 (ECtHR, 24 March 1988)

Omojudi v UK App no 1820/08 (ECtHR, 24 November 2009)

Onur v UK App no 27319/07 (ECtHR, 17 February 2009)

P.K., M.K. and B.K. v UK App no 19085/91 (Commission Decision, 9 December 1992)

Pla and Puncernau v Andorra App no 69498/01 (ECtHR, 13 July 2004)

Pormes v Netherlands App no 25402/14 (ECtHR, 28 July 2020)

Rantsev v Cyprus and Russia App no 25965/04 (ECtHR, 7 January 2010)

Rodrigues da Silva and Hoogkamer v Netherlands App no 50435/99 (ECtHR, 31 January 2006)

S. and S. v UK App no 10375/83 (Commission Decision, 10 December 1984)

Sarközi and Mahran v Austria App no 27945/10 (ECtHR, 2 April 2015)

Savran v Denmark App no 57467/15 (ECtHR, Grand Chamber, 7 December 2021)

Schalk and Kopf v Austria App no 30141/04 (ECtHR, 24 June 2010)

Scozzari and Giunta v Italy App nos 39221/98 and 41963/98 (ECtHR, 13 July 2000)

Şen v Netherlands App no 31465/96 (ECtHR, 21 December 2001)

Senchishak v Finland App no 5049/12 (ECtHR, 18 November 2014)

Sheffield and Horsham v UK App nos 22985/93 and 23390/94 (ECtHR, Grand Chamber, 30 July 1998)

Shevanova v Latvia App no 58822/00 (ECtHR, 15 June 2006)

Sisojeva and Others v Latvia App no 60654/00 (ECtHR, 16 June 2005)

Slivenko v Latvia App no 48321/99 (ECtHR, Grand Chamber, 9 October 2003)

Tribunale di Milano, decreto del 13 marzo 2024, R.G. n 8753/2020

Tuquabo-Tekle and Others v Netherlands App no 60665/00 (ECtHR, 1 December 2005)

Tyrer v UK App no 5856/72 (ECtHR, 25 April 1978)

Üner v Netherlands App no 46410/99 (ECtHR, Grand Chamber, 18 October 2006)

Wright v Secretary of State for Health [2006] EWHC 2886 (Admin)

X, Y and Z v UK App no 21830/93 (ECtHR, Grand Chamber, 22 April 1997)

Yeshtla v Netherlands App no 37115/11 (ECtHR, Decision, 15 January 2019)

Z.H. and R.H. v Switzerland App no 60119/12 (ECtHR, 8 December 2015)

Table of Legislation

Charter of Fundamental Rights of the European Union [2012] OJ C 326/391

Consolidated Version of the Treaty establishing the European Community [1997] OJ C340/03

Consolidated Version of the Treaty on European Union [2016] OJ C 202/13

Consolidated Version of the Treaty on the Functioning of the European Union [2016] OJ C202/49

Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification [2003] OJ L 251/12

Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment [2009] OJ L155/17, now repealed by Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC [2021] OJ L 382/1

Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing [2016] OJ L 132/21

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 amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L 158/77

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [2011] OJ L 337/9

European Convention for the Protection of Human Rights and Fundamental Freedoms [1950] ETS 5

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR)

Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto [1963] ETS 46

Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 [2024] OJ L, 22.5.2024

Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR)

Books

Acosta D, *The National versus the Foreigner in South America: 200 Years of Migration and Citizenship Law* (Cambridge University Press 2018)

Arnadóttir OM, *Equality and Non-Discrimination under the European Convention on Human Rights* (Brill Nijhof 2002)

Bates E, *The Evolution of the European Convention on Human Rights. From its Inception to the Creation of a Permanent Court of Human Rights* (Oxford University Press 2010)

Berneri C, *Family Reunification in the EU. The Movement and Residence Rights of Third Country National Family Members of EU Citizens* (Hart Publishing 2017)

Blake N and Husain R, *Immigration, Asylum and Human Rights* (Oxford University Press 2003)

Boeles P, den Heijer M, Lodder G and Wouters K, *European Migration Law* (2nd edn, Intersentia 2014)

Chalmers D, Davies G and Monti G, *European Union Law: Cases and Materials* (2nd edn, Cambridge University Press 2010)

Cicirelli VG, *Sibling Relationships across the Life Span* (Plenum Press 1995)

Costello C, *The Human Rights of Migrants and Refugees in European Law* (Oxford University Press 2016)

De Soto H, Gordon P, Gedeshi I and Sinoimeri Z, *Poverty in Albania: A Qualitative Assessment* (World Bank 2002)

Dembour M-B, *When Humans Become Migrants. Study of the European Court of Human Rights with an Inter-American Counterpoint* (Oxford University Press 2015)

Di Pierri M and Marano M (eds), *Migrazioni ambientali e crisi climatica. Speciale: Le rotte del clima* (4th edn, Associazione A Sud 2025)

Draghici C, *The Legitimacy of Family Rights in Strasbourg Case Law: 'Living Instrument' or Extinguished Sovereignty?* (Hart Publishing 2017)

Duffy H, *Strategic Human Rights Litigation: Understanding and Maximising Impact* (Hart Publishing 2018)

Duranti M, *The Conservative Human Rights Revolution. European Identity, Transnational Politics, and the Origins of the European Convention* (Oxford University Press 2017)

Dzehtsiarou K, *European Consensus and the Legitimacy of the European Court of Human Rights* (Cambridge University Press 2015)

Fourlanos G, *Sovereignty and the Ingress of Aliens: With Special Focus on Family Unity and Refugee Law* (Almqvist & Wiksell International 1986)

Fredman S, *Human Rights Transformed: Positive Rights and Positive Duties* (Oxford University Press 2008)

Guild E, Peers S and Tomkin J, *The EU Citizenship Directive: A commentary* (2nd edn, Oxford University Press 2019)

Hacker D, *Legalized Families in the Era of Bordered Globalization* (Cambridge University Press 2017)

Harris D, O'Boyle M, Bates E and Buckley C, *Harris, O'Boyle, and Warbrick: Law of the European Convention on Human Rights* (4th edn, Oxford University Press 2018)

Jaumotte F, Koloskova K and Saxena SC, *Impact of Migration on Income Levels in Advanced Economies* (Spillover Notes No. 8/2016, International Monetary Fund 2016)

Klaassen MAK, *The right to family unification. Between migration control and human rights* (Leiden University 2015)

Laslett P and Wall R (eds), *Household and family in past time. Comparative studies in the size and structure of the domestic group over the last three centuries in England, France, Serbia, Japan and colonial North America, with further materials from Western Europe* (Cambridge University Press 1972)

Letsas G, *A Theory of Interpretation of the European Convention on Human Rights* (Oxford University Press 2007)

McGlynn C, *Families and the European Union. Law, Politics and Pluralism* (Cambridge University Press 2006)

Morgan DHJ, *Rethinking Family Practices* (Palgrave Macmillan 2011)

Mowbray A, *Cases, Materials, and Commentary on the European Convention on Human Rights* (3rd edn, Oxford University Press 2012)

Murdock GP, *Social structure* (The Free Press 1949)

OECD, *International Migration Outlook 2024* (OECD Publishing 2024)

— — and European Commission, *Indicators of Immigrant Integration 2023: Settling In* (OECD Publishing 2023)

Pech L, *The Concept of Chilling Effect: Its Untapped Potential to Better Protect Democracy, the Rule of Law, and Fundamental Rights in the EU* (Open Society Foundations 2021)

Peers S, *EU Justice and Home Affairs Law* (5th edn, Oxford University Press 2023) vol I, *EU Immigration and Asylum Law*

Plender R, *International Migration Law* (rev 2nd edn, M. Nijhoff 1988)

Raz J, *The Morality of Freedom* (Oxford University Press 1988)

Scales S, Potthast A and Oravecz L (eds), *The Ethics of the Family* (Cambridge Scholars Publishing 2010)

Schotel B, *On the Right of Exclusion. Law, Ethics and Immigration Policy* (Routledge 2012)

Segalen M, *Historical Anthropology of the Family* (Cambridge University Press 1986)

Sousa L (ed), *Families in Later life: Emerging Themes and Challenges* (Nova Science Publishers 2009)

Stacey J, *In the Name of the Family: Rethinking Family Values in the Postmodern Age* (Beacon Press 1996)

Strik T, de Hart B and Nissen E, *Family Reunification: A Barrier or Facilitator of Integration? A Comparative Study* (European Commission, Wolf Legal Publishers 2013)

Van Dijk P and Van Hoof GJH, *Theory and Practice of the European Convention on Human Rights* (3rd edn, Kluwer Law International 1998)

Verbist V, *Reverse Discrimination in the European Union. A Recurring Balancing Act* (Intersentia 2017)

Wells AF, *Social Institutions* (Heinemann Educational Books 1970)

Contributions to Edited Books

Antman FM, 'The impact of migration on family left behind' in Amelie F. Constant and Klaus F. Zimmermann (eds), *International Handbook on the Economics of Migration* (Edward Elgar 2013)

Bonjour S and Cleton L, 'Co-constructions of family and belonging in the politics of family migration' in Emma Carmel, Katharina Lenner and Regine Paul (eds), *Handbook on the Governance and Politics of Migration* (Edward Elgar Publishing 2021)

Bornemann J, Arévalo C and Klarmann T, 'Family Reunification Directive 2003/86/EC' in Daniel Thym and Kay Hailbronner (eds), *EU Immigration and Asylum Law. Article-by-Article Commentary* (3rd edn, Beck/Hart/Nomos 2022)

Bryceson DF and Vuorela U, 'Transnational Families in the Twenty-first Century' in Deborah Fahy Bryceson and Ulla Vuorela (eds), *The Transnational Family: New European Frontiers and Global Networks* (Berg 2002)

Christoffersen J and Rask Madsen M, 'Introduction: The European Court of Human Rights between Law and Politics' in Jonas Christoffersen and Mikael Rask Madsen (eds), *The European Court of Human Rights between Law and Politics* (Oxford University Press 2011)

DeLaet DL, 'Introduction: The Invisibility of Women in Scholarship on International Migration' in Gregory A. Kelson and Debra L. DeLaet (eds), *Gender and Immigration* (Palgrave Macmillan 1999)

Dembour M-B, 'The Migrant Case Law of the European Court of Human Rights' in Başak Çali, Ledi Bianku, and Iulia Motoc (eds), *Migration and the European Convention on Human Rights* (Oxford University Press 2021)

Fonseca ML and Ormond M, 'Defining "Family" and Bringing It Together: The Ins and Outs of Family Reunification in Portugal' in Ralph Grillo (ed), *The family in Question. Immigrant and Ethnic Minorities in Multicultural Europe* (Amsterdam University Press 2008)

Fresnoza-Flot A, 'Social Relatedness and Forenaming in "Mixed" Families: Valuing Children of Filipino-Belgian Couples' in Doris Bühler-Niederberger, Xiaorong Gu, Jessica Schwittek and Elena Kim (eds), *The Emerald Handbook of Childhood and Youth in Asian Societies* (Emerald Publishing Limited 2023)

Hakimi M, 'Human Rights Obligations to the Poor' in Krista Nadakavukaren Schefer (ed), *Poverty and the International Economic Legal System: Duties to the World's Poor* (Cambridge University Press 2013)

Hareven TK, 'The History of the Family as an Interdisciplinary Field' in Theodore K. Rabb and Robert I. Rotberg (eds), *The Family in History: Interdisciplinary Essays* (Harper & Row 1971)

Honn Qualls S, ‘Family caregiving’ in Kenneth F. Ferraro and Deborah Carr (eds), *Handbook of Aging and the Social Sciences* (9th edn, Academic Press 2021)

Jastram K and Newland K, ‘Family unity and refugee protection’ in Erika Feller, Volker Türk and Frances Nicholson (eds), *Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection* (Cambridge University Press 2009)

Keller H and Stone Sweet A, ‘The Reception of the ECHR in National Legal Orders’ in Helen Keller and Alec Stone Sweet (eds), *A Europe of Rights: The Impact of the ECHR on National Legal Systems* (Oxford University Press 2008)

Kohli M and Albertini M, ‘The family as a source of support for adult children’s own family projects: European varieties’ in Chiara Saraceno (ed), *Families, Ageing and Social Policy* (Edward Elgar 2008)

Kruma K, ‘Family reunification. A tool to shape the concept of EU citizenship’ in Maribel González Pascual and Aida Torres Pérez (eds), *The Right to Family Life in the European Union* (Routledge 2017)

Kuhn RS, ‘A longitudinal analysis of health and mortality in a migrant-sending region of Bangladesh’ in Santosh Jatrana, Mika Toyota and Brenda S.A. Yeoh (eds), *Migration and Health in Asia* (Routledge 2005)

Lambert H, ‘Family unity in migration law: The evolution of a more unified approach in Europe’ in Vincent Chetail and Céline Bauloz (eds), *Research Handbook on International Law and Migration* (Edward Elgar 2014)

Leichter HJ and Mitchell WE, ‘Jewish Extended Familism’ in Robert F. Winch and Louis Wolf Goodman (eds), *Selected Studies in Marriage and the Family* (Holt, Rinehart and Winston 1968)

Letsas G, ‘The ECHR as a living instrument: its meaning and legitimacy’ in Andreas Føllesdal, Birgit Peters and Geir Ulfstein (eds), *Constituting Europe: The European Court of Human Rights in a National, European and Global Context* (Cambridge University Press 2013)

López Guerra L, ‘Dialogues between the Strasbourg Court and National Courts’ in Amrei Müller (ed), *Judicial Dialogue and Human Rights* (Cambridge University Press 2017)

Milios G, ‘The Right to Family and Private Life in Migration and Asylum Cases (Article 8)’ in David Moya and Georgios Milios (eds), *Aliens before the European Court of Human Rights. Ensuring Minimum Standards of Human Rights Protection* (Brill Nijhoff 2021)

Müller A, ‘Conclusion’ in Amrei Müller (ed), *Judicial Dialogue and Human Rights* (Cambridge University Press 2017)

Oliver-Smith A and Hansen A, 'Involuntary Migration and Resettlement: Causes and Contexts' in Art Hansen and Anthony Oliver-Smith (eds), *Involuntary Migration and Resettlement. The Problems and Responses of Dislocated People* (Routledge 1982)

Oosterom-Staples H, 'The Family Reunification Directive: A Tool Preserving Member State Interest or Conducive to Family Unity?' in Anneliese Baldaccini, Elspeth Guild and Helen Toner (eds), *Whose Freedom, Security and Justice? EU Immigration and Asylum Law and Policy* (Bloomsbury 2007)

Parsons T, 'The social structure of the family' in Ruth Nanda Anshen (ed), *The family: Its functions and destiny* (Harper & Brothers 1949)

Peers S, 'Family Reunion and Community Law' in Neil Walker (ed), *Europe's Area of Freedom, Security, and Justice* (Oxford University Press 2004)

Pitt-Rivers J, 'The Kith and the Kin' in Jack Goody (ed), *The Character of Kinship* (Cambridge University Press 1973)

Schaffrin D, 'Which Standard for Family Reunification of Third-Country Nationals in the European Union?' in Jean-Yves Carlier and Philippe de Bruycker (eds), *Immigration and Asylum Law of the EU: current debates* (Bruylant 2005)

Smith S, 'Family Theory and Multicultural Family Studies' in Bron B. Ingoldsby and Suzanna Smith (eds), *Families in Multicultural Perspective* (Guilford Press 1995)

Thym D, 'Residence as De Facto Citizenship? Protection of Long-term Residence under Article 8 ECHR' in Ruth Rubio-Marín (ed), *Human Rights and Immigration* (Oxford University Press 2014)

Urbano de Sousa C, 'Le regroupement familial au regard des standards internationaux' in François Julien-Laferriere, Henri Labayle and Örjan Edström (eds), *The European Immigration and Asylum Policy: Critical assessment five years after the Amsterdam Treaty* (Bruylant 2005)

Vedsted-Hansen J, 'Migration and the right to family and private life' in V. Chetail (ed), *Mondialisation, migration et droits de l'homme: le droit international en question. Globalization, migration and human rights: international law under review* (vol II, Bruylant 2007)

Encyclopedias

Mazzucato V, 'Transnational families, research and scholarship', *The Encyclopedia of Global Human Migration* (2013) vol V

Perry A, 'The Right to a Family Life', *Max Planck Encyclopedia of Comparative Constitutional Law* (2019)

Journal Articles

Abas MA, Punpuing S, Jirapramukpitak T, Guest P, Tangchonlatip K, Leese M and Prince M, 'Rural–urban migration and depression in ageing family members left behind' (2009) 195(1) The British Journal of Psychiatry 54

— — Tangchonlatip K, Punpuing S, Jirapramukpitak T, Darawuttimaprakorn N, Prince M and Flach C, 'Migration of Children and Impact on Depression in Older Parents in Rural Thailand, Southeast Asia' (2013) 70(2) Jama Psychiatry 226

Adhikari R, Jampaklay A and Chamratrithirong A, 'Impact of children's migration on health and health care-seeking behavior of elderly left behind' (2011) 11 BMC Public Health 143 <https://doi.org/10.1186/1471-2458-11-143> accessed 8 November 2022

Aggarwal P and Das Gupta T, 'Grandmothering at work: conversations with Sikh Punjabi grandmothers in Toronto' (2013) 5(1) South Asian Diaspora 77

Ahlén A, 'The Effects of Admission Policies on Rates of Family Migration in European States, 2008–2019' (2024) 14(3) Nordic Journal of Migration Research 1

Anderfuhren-Wayne CS, 'Family Unity in Immigration and Refugee Matters: United States and European Approaches' (1996) 8(3) International Journal of Refugee Law 347

Antman FM, 'Adult Child Migration and the Health of Elderly Parents Left Behind in Mexico' (2010) 100(2) The American Economic Review 205

Arenas E, Yahirun J, Teruel G, Rubalcava L and Gaitán-Rossi P, 'Gender, family separation, and negative emotional well-being among recent Mexican migrants' (2021) 83 Journal of Marriage and Family 1401

Arnett JJ, 'Emerging Adulthood. A Theory of Development From the Late Teens Through the Twenties' (2000) 55(5) American Psychologist 469

Arpino B, Bordone V and Balbo N, 'Grandparenting, education and subjective well-being of older Europeans' (2018) 15 European Journal of Ageing 251

Askola H, '(No) Migrating for Family Care in Later Life: *Senchishak v Finland*, Older Parents and Family Reunification' (2016) 18 European Journal of Migration and Law 351

Bainham A, 'Family Rights in the Next Millennium' (2000) 53(1) Current Legal Problems 471

Bana E, 'The Right of Family Reunification in Albania' (2022) 11(1) Perspectives of Law and Public Administration 39

Banda F and Eekelaar J, 'International Conceptions of the Family' (2017) 66 International & Comparative Law Quarterly 833

Banerjee D and Rai M, ‘Social isolation in Covid-19: The impact of loneliness’ (2020) 66(6) International Journal of Social Psychiatry 525

Bedford VH and Avioli PS, ‘Variations on Sibling Intimacy in Old Age’ (2001) 25(2) Generations: Journal of the American Society on Aging 34

Benarieh Ruffer G, ‘Pushed Beyond Recognition? The *Liberality* of Family Reunification Policies in the EU’ (2011) 37(6) Journal of Ethnic and Migration Studies 935

Bengtson VL, ‘The Burgess Award Lecture. Beyond the Nuclear Family: The Increasing Importance of Multigenerational Bonds’ (2001) 63(1) Journal of Marriage and Family 1

Bhattarai N, Manandhar N, Shrestha S, Twanabasu R, Shah S, Amatya I, Jyoti S and Joshi SK, ‘Status of Migration and Its Perceived Effects in Khopasi, Kavrepalanchowk District: A Descriptive Cross-Sectional Study’ (2020) 10(2) International Journal of Occupational Safety and Health 124

Block L, ‘Regulating Membership: Explaining Restriction and Stratification of Family Migration in Europe’ (2015) 36(11) Journal of Family Issues 1433

Böhme MH, Persian R and Stöhr T, ‘Alone but better off? Adult child migration and health of elderly parents in Moldova’ (2015) 39 Journal of Health Economics 211

Bonjour S and Kraler A, ‘Introduction: Family Migration as an Integration Issue? Policy Perspectives and Academic Insights’ (2015) 36(11) Journal of Family Issues 1407

— — and Diepenmaat S, ‘Doing Family Before the State. Does Recognition of *De Facto* Families Lead to More Inclusive Migration Law Practices?’ (2024) Social Politics: International Studies in Gender, State and Society <https://doi.org/10.1093/sp/jxae015>

Bragg B and Wong LL, ‘“Cancelled Dreams”: Family Reunification and Shifting Canadian Immigration Policy’ (2016) 14(1) Journal of Immigrant & Refugee Studies 46

Brunori C, ‘Parenting from Abroad: Transnational Separation from a Child and Mental Health Among Immigrants in France’ (2025) International Migration Review <https://doi.org/10.1177/01979183251329038> accessed 6 June 2026

Bryceson DF, ‘Transnational families negotiating migration and care life cycles across nation-state borders’ (2019) 45(16) Journal of Ethnic and Migration Studies 3042

Buber I and Engelhardt H, ‘Children’s impact on the mental health of their older mothers and fathers: findings from the *Survey of Health, Ageing and Retirement in Europe*’ (2008) 5 European Journal of Ageing 31

Carens JH, ‘Who Should Get in? The Ethics of Immigration Admissions’ (2003) 17(1) Ethics & International Affairs 95

Carlier J-Y, ‘Vers l’interdiction d’expulsion des étrangers intégrés?, note sous Cour européenne des droits de l’homme, 26 mars 1992 (Beldjoudi)’ (1993) 15 Revue trimestrielle des droits de l’homme 449

Chan KB and Lam L, ‘Resettlement of Vietnamese-Chinese Refugees in Montreal, Canada: Some Socio-psychological Problems and Dilemmas’ (1983) 15(1) Canadian Ethnic Studies 1

Charsley K and Wray H, ‘Kept apart: Routine family separation in the UK family immigration system as times of crises’ (2023) 11(3) Migration Studies 380

Chi PSK and McClain J, ‘Drinking, Farm, and Camp Life: A Study of Drinking Behavior in Migrant Camps in New York State’ (1992) 8(1) The Journal of Rural Health 41

Cholewinski R, ‘Strasbourg’s “Hidden Agenda”?: The Protection of Second-Generation Migrants from Expulsion under Article 8 of the European Convention on Human Rights’ (1994) 12(3) Netherlands Quarterly of Human Rights 287

— — ‘Family Reunification and Conditions Placed on Family Members: Dismantling a Fundamental Human Right’ (2002) 4 European Journal of Migration and Law 271

Connidis IA and Campbell LD, ‘Closeness, Confiding, and Contact Among Siblings in Middle and Late Adulthood’ (1995) 16(6) Journal of Family Issues 722

Cornelius LR, van der Klink JJL, Groothoff JW and Brouwer S, ‘Prognostic Factors of Long Term Disability Due to Mental Disorders: A Systematic Review’ (2011) 21(2) Journal of Occupational Rehabilitation 259

Costello C, ‘*Metock*: Free Movement and “Normal Family Life” in the Union’ (2009) 46 Common Market Law Review 587

Cuijpers P, Vogelzangs N, Twisk J, Kleiboer A, Li J and Penninx BW, ‘Is excess mortality higher in depressed men than in depressed women? A meta-analytic comparison’ (2014) 161 Journal of Affective Disorder 47

De Jong GF, Root BD, Gardner RW, Fawcett JT and Abad RG, ‘Migration Intentions and Behavior: Decision Making in a Rural Philippine Province’ (1985) 8(1) Population and Environment 41

Dembour M-B, ‘Human Rights Law and National Sovereignty in Collusion: The Plight of Quasi-Nationals at Strasbourg’ (2003) 21(1) Netherlands Quarterly of Human Rights 63

Demleitner NV, ‘How Much Do Western Democracies Value Family and Marriage?: Immigration Law’s Conflicted Answers’ (2003) 32(1) Hofstra Law Review 273

Desmond A, ‘The Private Life of Family Matters: Curtailing Human Rights Protection for Migrants under Article 8 of the ECHR?’ (2018) 29(1) The European Journal of International Law 261

Deva S, ‘UN’s Human Rights Norms for Transnational Corporations and Other Business Enterprises: An Imperfect Step in the Right Direction?’ (2004) 10(2) ILSA Journal of International and Comparative Law 493

Dotson F, ‘Patterns of Voluntary Association Among Urban Working-Class Families’ (1951) 16(5) American Sociological Review 687

Draghici C, ‘Adult Children and Elderly Parents in Strasbourg Proceedings: A Misconstrued Approach to “Family Life”’ (2018) 32 International Journal of Law, Policy and the Family 42

Drew LM and Silverstein M, ‘Grandparents’ Psychological Well-Being After Loss Of Contact With Their Grandchildren’ (2007) 21(3) Journal of Family Psychology 372

Dykstra PA and de Jong Gierveld J, ‘Gender and Marital-History Differences in Emotional and Social Loneliness among Dutch Older Adults’ (2004) 23(2) Canadian Journal on Aging 141

Edwards A, ‘Human Rights, Refugees, and The Right “To Enjoy” Asylum’ (2005) 17(2) International Journal of Refugee Law 293

Evandrou M, Falkingham J, Qin M and Vlachantoni A, ‘Children’s migration and chronic illness among older parents “left behind” in China’ (2017) 3 SSM - Population Health 803

Falkingham J, Qin M, Vlachantoni A and Evandrou M, ‘Children’s migration and lifestyle-related chronic disease among older parents “left behind” in India’ (2017) 3 SSM - Population Health 352

Ferreira AJ, ‘Family Myth and Homeostasis’ (1963) 9 Archives of General Psychiatry 457

Finch J, ‘Displaying Families’ (2007) 41(1) Sociology 65

Frank R and Hummer RA, ‘The Other Side of the Paradox: The Risk of Low Birth Weight among Infants of Migrant and Nonmigrant Households within Mexico’ (2002) 36(3) International Migration Review 746

Gao M, Li Y, Zhang S, Gu L, Zhang J, Li Z, Zhang W and Tian D, ‘Does an Empty Nest Affect Elders’ Health? Empirical Evidence from China’ (2017) 14(5) International Journal of Environmental Research and Public Health 463 <https://doi.org/10.3390/ijerph14050463> accessed 1 November 2022

Georgas J, ‘Family: Variations and Changes Across Cultures’ (2003) 6 Online Readings in Psychology and Culture <https://scholarworks.gvsu.edu/cgi/viewcontent.cgi?article=1061&context=orpc> accessed 2 October 2019

— — Mylonas K, Bafiti T, Poortinga YH, Christakopoulou S, Kagitcibasi C, Kwak K, Ataca B, Berry J, Orung S, Sunar D, Charalambous N, Goodwin R, Wang W-Z,

Angleitner A, Stepanikova I, Pick S, Givaudan M, Zhuravliova-Gionis I, Konantambigi R, Gelfand MJ, Marinova V, McBride-Chang C and Kodiç Y, 'Functional relationships in the nuclear and extended family: A 16-culture study' (2001) 36(5) International Journal of Psychology 289

Gerards J, 'Margin of Appreciation and Incrementalism in the Case Law of the European Court of Human Rights' (2018) 18(3) Human Rights Law Review 495

Ghimire S, Singh DR, Nath D, Jeffers EM and Kaphle M, 'Adult Children's Migration and Well-being of Left Behind Nepalese Elderly Parents' (2018) 8(3-4) Journal of Epidemiology and Global Health 154

Gilbert G, 'The Burgeoning Minority Rights Jurisprudence of the European Court of Human Rights' (2002) 24(3) Human Rights Quarterly 736

Gilligan M, Stocker CM, and Conger KJ, 'Sibling Relationships in Adulthood: Research Findings and New Frontiers' (2020) Journal of Family Theory & Review 1

Greer S, 'Urbanism Reconsidered: A Comparative Study of Local Areas in a Metropolis' (1956) 21(1) American Sociological Review 19

Groenendijk K, 'Family Reunification as a Right under Community Law' (2006) 8(2) European Journal of Migration and Law 215

Grzywacz JG, Quandt SA, Early J, Tapia J, Graham CN and Arcury TA, 'Leaving Family for Work: Ambivalence and Mental Health Among Mexican Migrant Farmworker Men' (2006) 8(1) Journal of Immigrant and Minority Health 85

— — Quandt SA, Chen H, Isom S, Kiang L, Vallejos Q and Arcury TA, 'Depressive Symptoms among Latino Farmworkers across the Agricultural Season: Structural and Situational Influences' (2010) 16(3) Cultural Diversity & Ethnic Minority Psychology 335

Guo M, Aranda MP and Silverstein M, 'The impact of out-migration on the inter-generational support and psychological wellbeing of older adults in rural China' (2009) 29 Ageing & Society 1085

Gürmen MS, Anderson SR and Brown E, 'Relationship with extended family following divorce: a closer look at contemporary times' (2021) 27(1) Journal of Family Studies 48

Haan M, 'The Place of Place: Location and Immigrant Economic Well-Being in Canada' (2008) 27(6) Population Research and Policy Review 751

Hammel EA and Laslett P, 'Comparing Household Structure over Time and between Cultures' (1974) 16 Comparative Studies in Society and History 73

Hawthorne ML, 'Family Unity in Immigration Law: Broadening the Scope of Family' (2007) 11(3) Lewis & Clark Law Review 809

He C and Ye J, ‘Lonely Sunsets: Impacts of Rural-urban Migration on the Left-behind Elderly in Rural China’ (2014) 20(4) Population, Space and Place 352

Honohan I, ‘Reconsidering the Claim to Family Reunification in Migration’ (2009) 57 Political Studies 768

Johnson CL, ‘Perspectives on American Kinship in the Later 1990s’ (2000) 62(3) Journal of Marriage and Family 623

Karagiannaki E and Burchardt T, ‘Living Arrangements, Intra-Household Inequality and Children’s Deprivation: Evidence from EU-SILC’ (2024) 17 Child Indicators Research 2319

King R and Vullnetari J, ‘Orphan pensioners and migrating grandparents: the impact of mass migration on older people in rural Albania’ (2006) 26 Ageing & Society 783

Kofman E, ‘Family-Related Migration: A Critical Review of European Studies’ (2004) 30(2) Journal of Ethnic and Migration Studies 243

Kuhn R, Everett B and Silvey R, ‘The Effects of Children’s Migration on Elderly Kin’s Health: A Counterfactual Approach’ (2011) 48 Demography 183

Lahav G, ‘International Versus National Constraints in Family-Reunification Migration Policy’ (1997) 3(3) Global Governance 349

Langer J and Love M, ‘The ties of later life: aging siblings’ (2019) 45(9) Educational Gerontology 573

Leopold T, Raab M, Becker CC, Buyukkececi Z and Çineli B, ‘Mapping modern kinship networks: First results from the KINMATRIX survey’ (2025) 87(2) Journal of Marriage and Family 478

Lerner D and Henke RM, ‘What Does Research Tell Us About Depression, Job Performance, and Work Productivity?’ (2008) 50(4) Journal of Occupational and Environmental Medicine 401

Letiecq BL, Grzywacz JG, Gray KM and Eudave YM, ‘Depression Among Mexican Men on the Migration Frontier: The Role of Family Separation and Other Structural and Situational Stressors’ (2014) 16 Journal of Immigrant and Minority Health 1193

Lewis J and Giullari S, ‘The adult worker model family, gender equality and care: the search for new policy principles and the possibilities and problems of a capabilities approach’ (2005) 34(1) Economy and Society 76

Linder A, Gerdtham U-G, Trygg N, Fritzell S and Saha S, ‘Inequalities in the economic consequences of depression and anxiety in Europe: a systematic scoping review’ (2020) 30(4) European Journal of Public Health 767

Litwak E, ‘Geographic Mobility and Extended Family Cohesion’ (1960) 25(3) American Sociological Review 385

Liversage A and Ismail AM, '"Migrant Carer-Wives" – Between Transnational Marriages, Care Work for Older Husbands and Gendered Precarity' (2022) 12(2) Nordic Journal of Migration Research 156

Lu Y, Hu P and Treiman DJ, 'Migration and depressive symptoms in migrant-sending areas: findings from the survey of internal migration and health in China' (2012) 57 International Journal of Public Health 691

Mahoney P, 'The Relationship between the Strasbourg Court and the National Courts' (2014) 130 Law Quarterly Review 568

Mazzucato V and Schans D, 'Transnational Families and the Well-Being of Children: Conceptual and Methodological Challenges' (2011) 73(4) Journal of Marriage and Family 704

Merry L, Hanley J, Ruiz-Casares M, Archambault I and Mogere D, 'Migrant families with children in Montreal, Canada and transnational family support: a protocol for a focused ethnography' (2019) 9 BMJ Open e029074 <https://doi.org/10.1136/bmjopen-2019-029074> accessed 20 February 2025

Merz E-M, Consedine NS, Schulze H-J and Schuengel C, 'Wellbeing of adult children and ageing parents: associations with intergenerational support and relationship quality' (2009) 29 Ageing & Society 783

Milios G, 'The Immigrants' and Refugees' Right to "Family Life": How Relevant are the Principles Applied by the European Court of Human Rights?' (2018) 25(3) International Journal on Minority and Group Rights 401

— — 'A Re-examination of the Family Reunification Directive in the post-Lisbon Fundamental Rights Scene' (2018) 12(1) Vienna Journal on International Constitutional Law 85

— — 'Defining "Family Members" of EU Citizens and the Circumstances under Which They Can Rely on EU Law' (2020) 39(1) Yearbook of European Law 293

Milkie MA, Bierman A and Schieman S, 'How Adult Children Influence Older Parents' Mental Health: Integrating Stress-process and Life-course Perspectives' (2008) 71(1) Social Psychology Quarterly 86

Miltiades HB, 'The social and psychological effect of an adult child's emigration on non-immigrant Asian Indian elderly parents' (2002) 17 Journal of Cross-Cultural Gerontology 33

Moravcsik A, 'The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe' (2000) 54(2) International Organization 217

Moret J, Andrikopoulos A and Dahinden J, 'Contesting categories: cross-border marriages from the perspectives of the state, spouses and researchers' (2021) 47(2) Journal of Ethnic and Migration Studies 325

Muhammad T, Sulaiman MK and Srivastava S, ‘Migration of adult male children and associated depression among community-dwelling older parents: A cross-sectional gender analysis from Longitudinal Ageing Study in India, 2017–2018’ (2022) 37(2) International Journal of Geriatric Psychiatry <https://doi.org/10.1002/gps.5675>

Mustasaari S, ‘The “nuclear family paradigm” as a marker of rights and belonging in transnational families’ (2015) 21(4) Social Identities 359

Nafilyan V, Islam N, Ayoubkhani D, Gilles C, Katikireddi SV, Mathur R, Summerfield A, Tingay K, Asaria M, John A, Goldblatt P, Banerjee A, Glickman M and Khunti K, ‘Ethnicity, household composition and COVID-19 mortality: a national linked data study’ (2021) 114(4) Journal of the Royal Society of Medicine 182

Naseh M, Zeng Y, Ahn E, Cohen F and Rfat M, ‘Mental Health Implications of Family Separation Associated with Migration Policies in the United States: A Systematic Review’ (2024) 352 Social Science & Medicine 116995

O’Cinneide C, ‘The Uncertain Foundations of Contemporary Anti-Discrimination Law’ (2011) 11(1-2) International Journal of Discrimination and the Law 7

Pan Z and Dong W, ‘Can money substitute adult children’s absence? Measuring remittances’ compensation effect on the health of rural migrants’ left-behind elderly parents’ (2020) 79 Journal of Rural Studies 216

Papakostas GI, Petersen T, Mahal Y, Mischoulon D, Nierenberg AA and Fava M, ‘Quality of life assessments in major depressive disorder: a review of the literature’ (2004) 26 General Hospital Psychiatry 13

Parsons T, ‘The Kinship System of the Contemporary United States’ (1943) 45(1) American Anthropologist 22

Peroni L, ‘Challenging Culturally Dominant Conceptions in Human Rights Law: The Cases of Property and Family’ (2010) 4(2) Human Rights & International Legal Discourse 241

Piat M, Sabetti J, Fleury M-J, Boyer R and Lesage A, ‘“Who Believes Most in Me and in My Recovery”: The Importance of Families for Persons With Serious Mental Illness Living in Structured Community Housing’ (2011) 10(1) Journal of Social Work in Disability & Rehabilitation 49

Riley MW, ‘The Family in an Aging Society: A Matrix of Latent Relationships’ (1983) 4(3) Journal of Family Issues 439

Ronen Y, ‘The ties that bind: family and private life as bars to the deportation of immigrants’ (2012) 8(2) International Journal of Law in Context 283

Ryan L, Klekowski von Koppenfels A and Mulholland J, ‘“The distance between us”: a comparative examination of the technical, spatial and temporal dimensions of the transnational social relationships of highly skilled migrants’ (2015) 15(2) Global Networks 198

Sampaio D and Carvalho RF, 'Transnational families, care and wellbeing: The role of legal status and sibling relationships across borders' (2022) 3 Wellbeing, Space and Society 100097

Schapiro NA, Kools SM, Weiss SJ and Brindis CD, 'Separation and Reunification: The Experiences of Adolescents Living in Transnational Families' (2013) 43 Current Problems in Pediatric and Adolescent Health Care 48

Schmalzbauer L, 'Searching for Wages and Mothering from Afar: The Case of Honduran Transnational Families' (2004) 66(5) Journal of Marriage and Family 1317

Settersten RA Jr and Ray B, 'What's Going on with Young People Today? The Long and Twisting Path to Adulthood' (2010) 20(1) The Future of Children 19

Sherlock A, 'Deportation of aliens and Article 8 ECHR' (1998) 23 European Law Review (Human Rights Survey) 62

Silver A, 'Families Across Borders: The Emotional Impacts of Migration on Origin Families' (2014) 52(3) International Migration 194

Silverstein M and Bengtson VL, 'Do Close Parent-Child Relations Reduce the Mortality Risk of Older Parents?' (1991) 32(4) Journal of Health and Social Behavior 382

Simha S, 'The Impact of Family Separation on Immigrant and Refugee Families' (2019) 80(2) North Carolina Medical Journal 95

Siriwardhana C, Wickramage K, Siribaddana S, Vidanapathirana P, Jayasekara B, Weerawarna S, Pannala G, Adikari A, Jayaweera K, Pieris S and Sumathipala A, 'Common mental disorders among adult members of "left-behind" international migrant worker families in Sri Lanka' (2015) 15 BMC Public Health 299 <https://doi.org/10.1186/s12889-015-1632-6> accessed 20 September 2022

Skrbiš Z, 'Transnational Families: Theorising Migration, Emotions and Belonging' (2008) 29(3) Journal of Intercultural Studies 23

Song Q, 'Facing "Double Jeopardy"? Depressive Symptoms in Left-Behind Elderly in Rural China' (2017) 29(7) Journal of Aging and Health 1182

Starr S and Brilmayer L, 'Family Separation as a Violation of International Law' (2003) 21 Berkeley Journal of International Law 213

Steinorth C, '*Üner v The Netherlands*: Expulsion of Long-Term Immigrants and the Right to Respect for Private and Family Life' (2008) 8(1) Human Rights Law Review 185

Stevens D, 'Asylum-seeking families in current legal discourse: a UK perspective' (2010) 32(1) Journal of Social Welfare & Family Law 5

Strasser E, Kraler A, Bonjour S and Bilger V, ‘Doing family. Responses to the constructions of “the migrant family” across Europe’ (2009) 14(2) The History of the Family 165

Sussman MB, ‘The Isolated Nuclear Family: Fact or Fiction’ (1959) 6 Social Problems 333

Swartz TT, ‘Intergenerational Family Relations in Adulthood: Patterns, Variations, and Implications in the Contemporary United States’ (2009) 35 Annual Review of Sociology 191

Thapa DK, Visentin D, Kornhaber R and Cleary M, ‘Migration of adult children and mental health of older parents “left behind”: An integrative review’ (2018) 13(10) Plos One e0205665 <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0205665> accessed 20 September 2022

— — Visentin D, Kornhaber R and Cleary M, ‘Internal and International Migration and the Mental Health of “Left-Behind” Older Parents’ (2024) 58(1) International Migration Review 37

Thomas PA, Liu H and Umberson D, ‘Family Relationships and Well-Being’ (2017) 1(3) Innovation in Aging 1

Thym D, ‘Respect for Private and Family Life under Article 8 ECHR in Immigration Cases: A Human Right to Regularize Illegal Stay?’ (2008) 57 International and Comparative Law Quarterly 87

Torres JM and Casey JA, ‘The centrality of social ties to climate migration and mental health’ (2017) 17 BMC Public Health 600 <https://doi.org/10.1186/s12889-017-4508-0> accessed 7 November 2022

Treuthart MP, ‘Adopting a More Realistic Definition of “Family”’ (1990) 26(1) Gonzaga Law Review 91

Uzoka AF, ‘The Myth of the Nuclear Family: Historical Background and Clinical Implications’ (1979) 34(11) American Psychologist 1095

Van Dijk P, ‘Protection of “Integrated” Aliens against Expulsion under the European Convention on Human Rights’ (1999) 1(3) European Journal of Migration and Law 293

Vanore M, Siegel M, Gassmann F and Waidler J, ‘Adult Child Migration and Elderly Multidimensional Well-Being: Comparative Analysis Between Moldova and Georgia’ (2018) 40(7) Research on Aging 599

Voorpostel M and Blieszner R, ‘Intergenerational Solidarity and Support between Adult Siblings’ (2008) 70(1) Journal of Marriage and Family 157

Waidler J, Vanore M, Gassmann F and Siegel M, ‘Does it matter where the children are? The wellbeing of elderly people “left behind” by migrant children in Moldova’ (2017) 37(3) Ageing & Society 607

Ward LS, ‘Farmworkers at Risk: The Costs of Family Separation’ (2010) 12 Journal of Immigrant and Minority Health 672

Wiesbrock A, ‘The Right to Family Reunification of Third-Country Nationals under EU Law - Is Directive 2003/86/EC in Compliance with the ECHR?’ (2011) 5(2) Human Rights & International Legal Discourse 138

Wolcher LE, ‘The Paradox of Remedies: The Case of International Human Rights Law’ (2000) 38(3) Columbia Journal of Transnational Law 515

Zhao C, Wang F, Li L, Zhou X and Hesketh T, ‘Long-term impacts of parental migration on Chinese children’s psychosocial well-being: mitigating and exacerbating factors’ (2017) 52 Social Psychiatry and Psychiatric Epidemiology 669

— — Wang F, Zhou X, Jiang M and Hesketh T, ‘Impact of parental migration on psychosocial well-being of children left behind: a qualitative study in rural China’ (2018) 17 International Journal for Equity in Health 80

Zhou YR, ‘Toward transnational care interdependence: Rethinking the relationships between care, immigration and social policy’ (2013) 13(3) Global Social Policy 280

Zimmer Z and Knodel J, ‘Older-age parents in rural Cambodia and migration of adult children. A case study of two communes in Battambang province’ (2013) (9)2 Asian Population Studies 156

Zunzunegui MV, Béland F and Otero A, ‘Support from children, living arrangements, self-rated health and depressive symptoms of older people in Spain’ (2001) 30(5) International Journal of Epidemiology 1090

Working Papers

Gassmann F, Siegel M, Vanore M and Waidler J, ‘The Impact of Migration on Elderly Left Behind in Moldova’ (2013) UNU-MERIT Working Paper 82/2012 <https://migration.unu.edu/publications/working-papers/the-impact-of-migration-on-elderly-left-behind-in-moldova.html> accessed 8 August 2022

Staver A, ‘Family Reunification: A Right for Forced Migrants?’ (2008) Refugee Studies Centre Working Paper Series 51 <https://www.rsc.ox.ac.uk/files/files-1/wp51-family-reunification-2008.pdf> accessed 28 May 2020

Other Secondary Sources

— — ‘Is migration good for the economy?’ (Migration Policy Debates, Organisation for Economic Co-operation and Development May 2014)

<https://www.oecd.org/content/dam/oecd/en/publications/reports/2014/05/is-migration-good-for-the-economy_82387ff9/ee27eb0d-en.pdf> accessed 5 October 2022

Ammer M, Mayrhofer M and Scott M, 'Disaster-related displacement into Europe: Judicial practice in Austria and Sweden' (April 2022) <https://gmr.lbg.ac.at/wp-content/uploads/sites/12/2022/05/ClimMobil_Report.pdf> accessed 14 June 2025

Australian Government - Department of Home Affairs, 'The Administration of the Immigration and Citizenship Programs' (10th edn, October 2022) <https://immi.homeaffairs.gov.au/programs-subsite/files/administration-immigration-program-10th-edition.pdf> accessed 23 October 2024

Boustan L, Fjællegaard Jensen M, Abramitzky R and others, 'Intergenerational Mobility of Immigrants in 15 Destination Countries' (Discussion Paper No. 17711, IZA - Institute of Labor Economics February 2025) <https://docs.iza.org/dp17711.pdf> accessed 20 October 2025

Connell J, Mulvey G, Brady J and Christie G, '"One Day We Will Be Reunited": Experiences of Refugee Family Reunion in the UK' (Scottish Refugee Council 2010) <https://www.scottishrefugeecouncil.org.uk/wp-content/uploads/2019/10/%E2%80%9COne-day-we-will-be-reunited%E2%80%9D-Experiences-of-Refugee-Family-Reunion-in-the-UK.pdf> accessed 18 September 2022

Cornelissen S and Pack L, 'Immigrants' Access to Homeownership in the United States: A Review of Barriers, Discrimination, and Opportunities' (Joint Center for Housing Studies of Harvard University July 2023) <https://www.jchs.harvard.edu/research-areas/working-papers/immigrants-access-homeownership-united-states-review-barriers> accessed 18 November 2024

European Court of Human Rights, 'Guide on Article 8 of the European Convention on Human Rights. Right to respect for private and family life, home and correspondence' (Council of Europe/European Court of Human Rights 2025) <https://ks.echr.coe.int/documents/d/echr-ks/guide_art_8_eng> accessed 15 March 2025

Gillen M, Mills T and Jump J, 'Family Relationships in an Aging Society' (University of Florida 2012) <https://edis.ifas.ufl.edu/pdffiles/FY/FY62500.pdf> accessed 18 March 2022

Home Office, 'Ukraine Family Scheme' (Version 6.0, 19 February 2024) <https://assets.publishing.service.gov.uk/media/65ccc3c21d9395001294665e/Ukraine+Family+Scheme+Guidance.pdf> accessed 24 April 2025

Hooper K and Salant B, 'It's Relative: A Crosscountry Comparison of Family-Migration Policies and Flows' (Migration Policy Institute 2018) <https://www.migrationpolicy.org/research/crosscountry-comparison-family-migration> accessed 2 May 2020

Huddleston T, ‘Time for Europe to get migrant integration right’ (Issue paper, Council of Europe Commissioner for Human Rights May 2016) <https://www.refworld.org/docid/5756ecc54.html> accessed 6 November 2022

— — and Tjaden JD, ‘Immigrant Citizens Survey: How immigrants experience integration in 15 European cities’ (King Baudouin Foundation and Migration Policy Group May 2012) <https://www.svr-migration.de/wp-content/uploads/2014/11/ICS_ENG_Full.pdf> accessed 5 September 2022

International Labour Organization, ‘International Labour Conference, 59th Session 1974: *Migrant Workers*, Report VII (1)’ (Geneva 1973) <https://webapps.ilo.org/public/libdoc/ilo/1973/73B09_350.pdf> accessed 10 January 2023

Joint Committee on Human Rights, *The Government’s Independent Review of the Human Rights Act* (Third Report of Session 2021–22, HC 89, HL Paper 31)

Justice and Home Affairs Committee, *All families matter: An inquiry into family migration* (HL 2022-23, 144)

Marsden R, ‘Voices of Strength and Pain. Impacts of Separation, Loss and Trauma on Health and Wellbeing of Reuniting Refugee Families’ (British Red Cross 2016) <https://assets.redcross.org.uk/82b1e254-5524-0172-0612-9ce813c7824c/c1ac16b7-727f-4788-b997-187aa491ebee/British-Red-Cross-Voices-of-Strength-and-Pain.pdf> accessed 18 August 2022

— — and Harris C, ‘“We started life again”: Integration experiences of refugee families reuniting in Glasgow’ (British Red Cross 2015) <https://assets.redcross.org.uk/82b1e254-5524-0172-0612-9ce813c7824c/b38618cc-8ddd-46ed-9a1d-d228c97a6507/British-Red-Cross-We-Started-Life-Again.pdf> accessed 18 November 2022

McDonald-Wilmsen B and Gifford SM, ‘Refugee resettlement, family separation and Australia’s humanitarian programme’ (Research Paper No. 178, UNHCR Policy Development and Evaluation Service 2009) <https://www.unhcr.org/research/working/4b167ae59/refugee-resettlement-family-separation-australias-humanitarian-programme.html> accessed 15 September 2022

Nicholson F, ‘The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied’ (United Nations High Commissioner for Refugees 2018) <http://www.unhcr.org/en-us/5a8c40ba1.pdf> accessed 8 April 2020

Office for National Statistics, ‘Living longer: Fitting it all in – working, caring and health in later life. An overview of two barriers to working at older ages – health and caring’ (2018) <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/ageing/articles/livinglongerhowourpopulationischangingandwhyitmatters/fittingitallinworkingcaringandhealthinlaterlife> accessed 16 April 2020

— — ‘Living longer: how our population is changing and why it matters. Overview of population ageing in the UK and some of the implications for the economy, public services, society and the individual’ (2018) <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/ageing/articles/livinglongerhowourpopulationischangingandwhyitmatters/2018-08-13> accessed 16 April 2020

— — ‘Living longer: caring in later working life. Examining the interplay between caring and working in later life in the UK’ (2019) <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/ageing/articles/livinglongerhowourpopulationischangingandwhyitmatters/2019-03-15> accessed 16 April 2020

Papademetriou DG, Somerville W and Sumption M, ‘The Social Mobility of Immigrants and Their Children’ (Migration Policy Institute June 2009) <https://www.migrationpolicy.org/sites/default/files/publications/soialmobility2010.pdf > accessed 10 October 2024

Parliamentary Assembly of the Council of Europe, ‘Family reunification of refugees and migrants in the Council of Europe member States’ (Resolution 2243 (2018), 11 October 2018) <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25185&lang=en> accessed 5 February 2022

Pascouau Y and Labayle H, ‘Conditions for family reunification under strain. A comparative study in nine EU member states’ (European Policy Centre 2011) <http://www.europeanmigrationlaw.eu/documents/news/Conditions-for-family-reunification-2011.pdf> accessed 2 May 2020

Pew Research Center, ‘The Decline of Marriage And Rise of New Families’ (Pew Research Center 2010) <https://www.pewresearch.org/wp-content/uploads/sites/20/2010/11/pew-social-trends-2010-families.pdf> accessed 4 February 2020

Roagna I, ‘Protecting the right to respect for private and family life under the European Convention on Human Rights’ (Council of Europe human rights handbooks, Council of Europe 2012)

Social Mobility Commission, *Moving out to move on: understanding the link between migration, disadvantage and social mobility* (31 July 2020)

Spitzer DL, ‘Family Migration Policies and Social Integration’ (United Nations Expert Group Family Policies for Inclusive Societies, May 2018) <https://www.un.org/development/desa/family/wp-content/uploads/sites/23/2018/05/Family-Oriented-Migration-Policies-and-Social-Integration.pdf> accessed 6 April 2020

Trask BS, ‘Globalization and Families: Meeting the Family Policy Challenge’ (2011) <http://www.un.org/esa/socdev/family/docs/egm11/Traskpaper.pdf> accessed 4 November 2019

UN Human Rights Committee, 'CCPR General Comment No 16: Article 17 (Right to Privacy). The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation' (8 April 1988) <https://www.refworld.org/docid/453883f922.html> accessed 4 March 2022

— — '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) <https://www.refworld.org/docid/45139bd74.html> accessed 5 May 2020

UN Human Rights Council, 'Report of the Working Group on the issue of discrimination against women in law and in practice' (2 April 2015) A/HRC/29/40 <https://www.refworld.org/docid/5577ed8a4.html> accessed 4 May 2020

UN Office of the High Commissioner for Human Rights, 'Leveraging Regular Migration Pathways for Human Rights' (2025) <https://www.ohchr.org/sites/default/files/documents/issues/migration/pathways/ohchr-leveraging-regular-migration-pathways.pdf> accessed 6 June 2026

UNHCR, 'Statement on family reunification for beneficiaries of international protection. Issued in the context of the preliminary ruling reference to the Court of Justice of the European Union in the case of *CR, GF, TY v. Landeshauptmann von Wien* (C-560/20)' (22 June 2021) <https://www.refworld.org/jurisprudence/amicus/unhcr/2021/en/123879> accessed 13 March 2024

United Nations, 'Report of the Second World Assembly on Ageing' (Madrid, 8-12 April 2002) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/397/51/PDF/N0239751.pdf?OpenElement> accessed 10 September 2022

Women and Equalities Committee, *Unequal impact? Coronavirus and BAME people* (HC 2019-2021, 384)

European Commission and Council of the European Union Documents

Commission, 'Proposal for a Council Directive on the right to family reunification' COM(1999) 638 final, OJ 2000 C 116 E/66

— — 'Amended proposal for a Council Directive on the right to family reunification' COM(2000) 624 final, OJ 2001 C 62 E/99

— — 'Amended proposal for a Council Directive on the right to family reunification' COM(2002) 225 final, OJ 2002 C 203 E/136

— — 'Amended proposal for a Council Directive on the right to family reunification' (Explanatory Memorandum), COM(2002) 225 final

— — ‘Report from the Commission to the European Parliament and the Council on the application of Directive 2003/86/EC on the right to family reunification’ COM(2008) 610 final

— — ‘Report from the Commission to the European Parliament and the Council on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States’ COM(2008) 840 final

— — ‘Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States’ COM(2009) 313 final

— — ‘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

— — ‘Report from the Commission to the European Parliament and the Council on the implementation of Directive 2003/86/EC on the right to family reunification’ COM(2019) 162 final

Council of the European Union, ‘Amended proposal for a Council Directive on the right to family reunification - Outcome of proceedings of the Working Party on Migration and Expulsion’ Doc 6450/01 (6 March 2001)

Council of Europe Documents

Committee of Ministers, ‘Chişinău Declaration’ (CM(2026)99-final, 135th Session of the Committee of Ministers, Chişinău, 15 May 2026)

Council of Europe Parliamentary Assembly, Committee on Legal Affairs and Human Rights, ‘Guaranteeing the authority and effectiveness of the European Convention on Human Rights’ (Report, Doc 12811, 3 January 2012)

Conference Papers

Van Krieken P, ‘Family and International Law: The Principle of Family Unity and Family Reunification’ (Family Reunification for Refugees in Europe conference, Helsingør, 15–17 May 1993)

Website and Blogs

— — ‘Ageing and health’ (*World Health Organization*, 5 February 2018) <https://www.who.int/news-room/fact-sheets/detail/ageing-and-health> accessed 10 April 2020

— — ‘Family reunification’ (*EUR-Lex*, 5 June 2018) <https://eur-lex.europa.eu/EN/legal-content/summary/family-reunification.html> accessed 27 September 2023

— — ‘Family Reunion’ (*Migrant Integration Policy Index*, 2025) <http://www.mipex.eu/family-reunion> accessed 5 November 2025

— — ‘Sponsor your relatives’ (*Canada.ca*) <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/family-sponsorship/other-relatives/who-you-can-sponsor.html> accessed 23 October 2024

— — ‘Tampere European Council 15 and 16 October 1999. Presidency Conclusions’ (*European Parliament*) <https://www.europarl.europa.eu/summits/tam_en.htm#a> accessed 18 January 2024

Australian Government - Department of Home Affairs, ‘Subclass 838: Aged Dependent Relative visa’ (*Homeaffairs.gov.au*) <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/aged-dependent-relative-838> accessed 23 October 2024

— — ‘Subclass 115: Remaining Relative visa’ (*Homeaffairs.gov.au*) <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/remaining-relative-115> accessed 23 October 2024

Australian National Audit Office, ‘Management of Migration to Australia - Family Migration Program’ (*Anao*, 27 March 2023) <https://www.anao.gov.au/work/performance-audit/management-migration-to-australia-family-migration-program> accessed 23 October 2024

Berneri C, ‘When is the family member of an EU citizen “dependent” on that citizen?’ (*EU Law Analysis*, 19 January 2014) <http://eulawanalysis.blogspot.com/2014/01/when-is-family-member-of-eu-citizen.html> accessed 12 September 2023

de Hart B, ‘Book Launch - Article 8 ECHR, Family Reunification and the UK’s Supreme Court: Family Matters?’ (*YouTube*, 24 May 2023) <https://www.youtube.com/watch?v=yZbxcz_P05k> accessed 6 January 2024

European Court of Human Rights, ‘Dialogue between judges. Human rights protection in the time of the pandemic: new challenges and new perspectives’ (*European Court of Human Rights*, 2022) <https://www.echr.coe.int/documents/d/echr/Dialogue_2022_ENG> accessed 26 May 2025

— — ‘Dialogue with national courts’ (*European Court of Human Rights*) <https://www.echr.coe.int/dialogue-with-national-courts> accessed 26 April 2025

Home Office, ‘Immigration Rules: Appendix Adult Dependent Relative’ (*GOV.UK*) <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-adult-dependent-relative> accessed 8 June 2026

Jastram K, ‘Family Unity: The New Geography of Family Life’ (*Migration Policy Institute*, 1 May 2003) <https://www.migrationpolicy.org/article/family-unity-new-geography-family-life> accessed 15 March 2022

Jaumotte F, Koloskova K and Saxena S, ‘Migrants Bring Economic Benefits for Advanced Economies’ (*International Monetary Fund*, 24 October 2016) <https://www.imf.org/en/Blogs/Articles/2016/10/24/migrants-bring-economic-benefits-for-advanced-economies> accessed 5 October 2022

McAdam J and Scissa C, ‘How Domestic Courts Are Using International Refugee Law and Human Rights Law in the Context of Climate Change and Disasters’ (*EJIL:Talk!*, 22 November 2024) <https://www.ejiltalk.org/how-domestic-courts-are-using-international-refugee-law-and-human-rights-law-in-the-context-of-climate-change-and-disasters/> accessed 14 June 2025

Ministry of Foreign Affairs of Brazil, ‘Types of Visa’ (*gov.br*) <https://www.gov.br/mre/pt-br/consulado-los-angeles/english/visas/types-of-visa> accessed 5 November 2024

Muižnieks N, ‘Ending restrictions on family reunification: good for refugees, good for host societies’ (*Council of Europe*, 26 October 2017) <https://www.coe.int/en/web/commissioner/-/ending-restrictions-on-family-reunification-good-for-refugees-good-for-host-societies> accessed 18 November 2020

Peers S, ‘Family Reunion for Third-Country Nationals: Comments on the Commission’s new guidance’ (*EU Law Analysis*, 4 April 2014) <http://eulawanalysis.blogspot.com/2014/04/family-reunion-for-third-country.html> accessed 12 September 2023

— — ‘Family reunion, the rights of the child and effective remedies: latest CJEU judgment’ (*EU Law Analysis*, 28 July 2020) <http://eulawanalysis.blogspot.com/2020/07/family-reunionthe-rights-of-child-and.html> accessed 26 July 2023

Newspaper Articles

Brooks D, ‘The Nuclear Family Was a Mistake’ *The Atlantic* (Washington DC, March 2020) <https://www.theatlantic.com/magazine/archive/2020/03/the-nuclear-family-was-a-mistake/605536/> accessed 2 April 2022