

THE RIGHT TO FAMILY REUNIFICATION¹

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The article examines the mechanisms for implementing the right to family reunification at the international and national level, concludes that the right to family reunification should be more clearly recorded in certain international acts, justifies the need to amend the legislation of the Republic of Belarus and unify the legislation of the CIS countries in order to implement the right to family reunification by persons who have received additional or temporary protection.

Keywords: family reunification; family member; migrant; foreign citizen; migration policy.

ПРАВО НА ВОССОЕДИНЕНИЕ СЕМЬИ

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Исследуются механизмы реализации права на воссоединение семьи на международном и национальном уровне, делается вывод о необходимости более четкой фиксации права на воссоединение семьи в отдельных международных актах, обоснована необходимость внесения изменений в законодательство Республики Беларусь и унификации законодательства стран СНГ в целях реализации права на воссоединение семьи лицами, получившими дополнительную или временную защиту.

Ключевые слова: воссоединение семьи; член семьи; мигрант; иностранный гражданин; миграционная политика.

The realization by migrants of the right to family reunification, first of all, provides them with psychological, physical and economic protection. At the same time, promoting the implementation of this right contributes to solving a number of social and economic issues at the state level, in particular reducing the

economic costs of material support for migrants, reduction in the number of illegal migrants, entering the country as a family member eliminates the need for refugee status.

Issues of legal regulation of the status of migrants and foreign citizens in legal science have been stu-

¹Preparation of the article is organized by Raoul Wallenberg Institute of Human Rights and Humanitarian Law in the context of academic cooperation with the Belarusian State University and other Belarusian universities. This academic cooperation has been supported by the Government of Sweden represented by the Swedish International Development Cooperation Agency (Sida). Opinion of the authors expressed in this article may not coincide with the viewpoint of the Institute or Sida.

Образец цитирования:

Эсмантович ИИ, Копыткова НВ. Право на воссоединение семьи. Журнал Белорусского государственного университета. Международные отношения. 2020;1:34–39 (на англ.).

For citation:

Esmantovich II, Kopytkova NV. The right to family reunification. Journal of the Belarusian State University. International Relations. 2020;1:34–39.

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died by such scholars as N. V. Valyushko [1], V. G. Tikhinya [2], S. V. Zenchenko [3], A. V. Selivanov [4], S. V. Simonova [5], etc. In comparison, the purpose of this article is to analyze international acts and national

legislation on the protection of the family and make suggestions on improving the legal regulation of the provision of guarantees in the exercise by migrants of the right to family reunification.

The right to family reunification in international human rights instruments

More than 70 years ago, the 1948 Universal declaration of human rights (the Universal declaration) proclaimed the right to “found a family” and the right to protect the family “on the part of society and the state” (Art. 16). Art. 25 enshrines the right of everyone to “social services, which are necessary to maintain the health and well-being of himself and his family”². The Universal declaration became the basis and impetus for states in the adoption of mutual international obligations to protect and ensure the right to a family, which subsequently found consolidation in a number of international treaties, both universal and regional. Thus, the International covenant on civil and political rights³ of 1966 proclaims: “The family is the natural and fundamental unit of society and has the right to protection from society and the state” (Art. 23). In the Covenant on economic, social and cultural rights of the state⁴, recognizing “the right of everyone to an adequate standard of living for him and his family”, they undertake to take “appropriate measures to ensure the exercise of this right” (Art. 11).

The need for protection and family assistance from the state was also reinforced by the UN Convention on the rights of the child (1989), within the preamble of which states recognize that “a child needs to grow up in a family environment in an atmosphere of happiness, love and understanding for the full and harmonious development of his personality”⁵. This convention states: “States shall ensure that the child is not separated from their parents against their will” (Art. 9), and statements by the child or his parents “to enter or leave the state for family reunification should be considered positive by the participating states in a humane and operational manner” (Art. 10). Thus, the convention does not contain mandatory instructions for the adoption of specific measures by the state aimed at family reunification, but obliges them to positively consider such issues within their internal competence.

The right to family reunification and unity is of particular importance in connection with migration processes. In the summer of 1951, a conference was held under the auspices of the UN, which resulted in the adoption of the Refugee convention. The Final act of the conference recommends that governments of states take the necessary measures to ensure “the unity of the refugee family, especially in cases where the head of the family has fulfilled the necessary conditions for entry into a particular country”⁶.

On 25 September 1981, the Executive Committee of the Office of the United Nations High Commissioner for Refugees adopted Conclusion No. 24 (XXXII) on the reunification of disparate refugee families. To this end, countries of asylum and countries of origin should make “efforts to ensure that the reunification of disparate refugee families occurs as soon as possible”⁷.

It should be noted that the principle of family unity was not fixed in the Convention on the status of refugees, its content does not contain provisions on ensuring the right of states to protect refugee families. In development of this convention, under the auspices of the UN in 1990, the Convention on the protection of migrant workers and members of their families, Art. 44 which obliges states to take appropriate measures to ensure the unity of the families of migrant workers, and to facilitate the reunification of migrant workers with their spouses and minor children⁸.

The European convention for the protection of human rights and fundamental freedoms of 1950 (including additional protocols) does not proclaim a right to family reunification. Art. 8 of this convention only protects the right to respect for personal and family life, for correspondence and the conditions for interference with this right only on the basis of law and in exceptional cases⁹. The member states of the European Union took the same path, securing in the Charter of fundamental rights of 2000 the right to respect for

²The Universal declaration on human rights : adopted in New-York on 10 Dec. 1948 [Electronic resource] // ConsultantPlus: Belarus / “YurSpektr”. Minsk, 2020.

³International covenant on civil and political rights of 16 Dec. 1966 // Collection of laws, decrees of the Presidium of the Supreme Council of the Belarusian SSR, decrees and orders of the Council of Ministers of the Belarusian SSR. No. 28.4/1703.

⁴International covenant on economic, social and cultural rights of 16 Dec. 1966 // Collection of laws, decrees of the Presidium of the Supreme Council of the Belarusian SSR, decrees and orders of the Council of Ministers of the Belarusian SSR. No. 28.4/1703.

⁵The UN Convention on the rights of the child [Electronic resource] // ConsultantPlus: Belarus / “YurSpektr”. Minsk, 2020.

⁶Final act of the United Nations conference of plenipotentiaries on the status of refugees and stateless persons [Electronic resource]. URL: <https://www.unhcr.org/protection/travaux/40a8a7394/final-act-united-nations-conference-plenipotentiaries-status-refugees-stateless.html> (date of access: 02.03.2020).

⁷UNYCR Conclusion No. 24 (XXXII) on the reunification of disparate refugee families [Electronic resource]. URL: <https://www.refworld.org.ru/type,EXCONC,,,5242d0c04,0.html> (date of access: 02.03.2020).

⁸Convention on the protection of migrant workers and members of their families [Electronic resource]. URL: https://www.un.org/ru/documents/decl_conv/conventions/migrant.shtml (date of access: 02.03.2020).

⁹The European convention for the protection of human rights and fundamental freedoms [Electronic resource]. URL: https://www.echr.coe.int/Documents/Convention_RUS.pdf (date of access: 02.03.2020).

private and family life (Art. 7) and the right of the child to “permanent personal relationships and regular direct contact with both of their parents” (Art. 24)¹⁰. However, the European social charter of 1961 (revised in 1996) in Art. 19 provides for the obligation of states “to facilitate, to the extent possible, family reunification of a migrant worker who has received permission to settle in their territory”¹¹.

Of course, the state has the right to control the entry of foreigners into its territory, however, in our opinion, the absence of a clear fixation of the right to family reunification in these agreements can create difficulties for foreigners in obtaining protection in the European Court of Human Rights. This, in turn, can become an obstacle to obtaining the right to enter the territory of a certain state in order to reunite with the family. The clearly expressed wording of a specific law enables its uniform understanding and application, and does not allow a variety of interpretations.

By proclaiming the right to protect family life and not providing guarantees to preserve the integrity of the family, the state cannot fully ensure the protection of family values and respect for the family. The guarantees are designed to create conditions under which the rights enshrined in regulatory legal acts become a reality. Without appropriate guarantees, rights are a declaration and are formal in nature. Legal guarantees are embodied in special regulatory acts.

Significant experience in regulating migration processes has been accumulated by the Commonwealth of Independent States. One of the first recommendations adopted by the Inter-Parliamentary Assembly of the CIS on 29 December 1992, was the legislative act “On the agreed principles for the regulation of citizenship”, Art. 8 of which the rule enshrined:

“The resolution of issues of citizenship by the competent authorities should facilitate family reunification”.

On 9 December 2000, the Interparliamentary Assembly of CIS Member States in the Decree “On the legal regulation of migration processes in the territory of the Commonwealth of Independent States” imposed on states the obligation to facilitate family reunification of migrant workers.

The model law on migration adopted at the plenary meeting of the Interparliamentary Assembly of the CIS Member States in November 2015 contains Art. 14 “Migration with the aim of family reunification”, which provides for the rights of spouses who are citizens of different states, as well as their children who are citizens of one state or different states, based on personal choice to live as a single family in the territory of any of the states of which at least one citizen from family members. In case of appropriate treatment by a citizen of the state, the state should facilitate the reunification of its divided family on its territory in accordance with its legislation and international agreements to which the state is a party¹².

The disadvantage of this rule is the restriction of the possibility for family members to reunite with a relative who legally resides in the territory of a state, and is not a citizen. Thus, the norms of the model code on family reunification are not applicable to persons wishing to reunite with a person who has the right to permanent residence in the territory of one of the CIS countries, or with someone who uses temporary forms of protection.

The national legislation of the CIS states independently determines the order of entry and family reunification.

Legislation of the Republic of Belarus on the right to family reunification

Significant experience in regulating migration processes, including family reunification, has been accumulated in the Republic of Belarus. The first State migration program for 2006–2010 included the following provision: “According to the principle of family unity proclaimed in the Republic of Belarus, family members of a foreigner granted refugee status, additional protection or asylum who arrived in the Republic of Belarus for family reunification within one year after notifications of a foreigner of a decision made at his request for protection, as well as of children born in the

Republic of Belarus in the families of foreigners, one of whom is granted refugee status, before full protection or asylum, refugee status, additional protection or asylum are also granted”¹³.

The Law of the Republic of Belarus of 23 June 2008 No. 354-3 “On granting refugee status, additional protection, asylum, and temporary protection to foreign citizens and stateless persons in the Republic of Belarus” (hereinafter – Law No. 354-3) clarified the concept of family reunification as “arrival in the Republic of Belarus for the purpose of joint residence of family members of

¹⁰The European Union Charter of fundamental rights [Electronic resource]. URL https://ru.qwe.wiki/wiki/Charter_of_Fundamental_Rights_of_the_European_Union (date of access: 02.03.2020).

¹¹The European social charter [Electronic resource]. URL: <https://www.coe.int/ru/web/moscow/evropejskaa-social-naa-hartia> (date of access: 02.03.2020).

¹²About the migration : the model law : supplement 1 to the Decree of Interparliamentary Assembly of the CIS member states of 27 Nov. 2015 No. 43-5 [Electronic resource] // ConsultantPlus: Belarus / “YurSpektr”. Minsk, 2020.

¹³The State migration program adopted for 2006–2010 : adopted by the Decision of the Council of Ministers of the Republic of Belarus of 8 Dec. 2005 No. 1403 [Electronic resource] // Inform. legal system Business-Info / Natl. center of legal information of the Repub. of Belarus. Minsk, 2020.

a foreigner who has been granted refugee status, additional protection or asylum in the Republic of Belarus”¹⁴.

A foreign citizen or a stateless person who has the right to family reunification can obtain the right to permanent residence in the Republic of Belarus. The Law of the Republic of Belarus “On the legal status of foreign citizens and stateless persons”¹⁵ stipulates that foreigners are issued a permanent residence permit within the immigration quota established by the Council of Ministers of the Republic of Belarus. At the same time, foreigners with the right to family reunification move to the Republic of Belarus for permanent residence in order to live together outside the established immigration quota. Art. 55 of the said law defines the circle of persons entitled to family reunification: spouse, minor children, including adopted minor children, unmarried children, including adopted children older than 18 years old, disabled parents and adoptive parents. Assuming all the aforementioned persons have an invitation from a spouse, parents, adoptive parents, children, including adopted children, who are citizens of the Republic of Belarus or foreigners permanently residing in the Republic of Belarus. In some cases, the right to family reunification may be granted to other relatives of foreigners permanently residing in the Republic of Belarus, provided that the inviting person has sufficient housing conditions and a legitimate source of income providing him and his family members a living wage established in the Republic of Belarus¹⁶. Thus, the Republic of Belarus provides an opportunity to exercise the right to family reunification not only with a citizen of the Republic of Belarus, but also with foreign citizens permanently residing in Belarus.

It should be noted that the amendments to the Law of the Republic of Belarus of 4 January 2010 No. 105-3 (hereinafter – Law No. 105-3) “On the legal status of foreign citizens and stateless persons in the Republic of Belarus” in December 2019 did not solve the problem of reuniting with the family of persons who received additional or temporary protection and who are not permanently resident in the Republic of Belarus.

In accordance with Art. 22 of the Law No. 354-3 additional protection is granted to a foreigner for a period of up to one year, the period of its provision can

be extended, but not more than by one year each time. According to Art. 23 of the same law, a foreigner who is granted additional protection receives the right only to temporary residence in the Republic of Belarus for the period of the provision of additional protection. Thus, a foreign citizen who has received additional protection cannot exercise the right to family reunification by virtue of the current norm of the Law No. 105-3, which provides the possibility of family reunification only with a foreigner permanently residing in the Republic of Belarus. We believe that it is necessary to eliminate these contradictions in the legislation of the Republic of Belarus and not to connect the possibility of exercising the right to family reunification of a migrant with permanent residence in the host state.

In addition, the presence of distribution quotas in the registration of applications for refugee status, additional protection or asylum, which are established annually by a Decree of the Ministry of the Internal Affairs of the Republic of Belarus, does not contribute to the realization of the right to family reunification. We believe that when exercising the right to family reunification, the maximum standards for the admission of migrants by citizenship and migration units should not be taken into account.

The Republic of Belarus regulates in sufficient detail the procedure for organizing the activities of state bodies to consider applications for refugee status, additional protection or asylum, as well as applications for assistance in family reunification. This work involves units and the Department of Citizenship and Migration, the Ministry of Foreign Affairs of the Republic of Belarus, diplomatic missions and consular offices of the Republic of Belarus. The legislation provides for reasonable enough time for consideration of documents and adoption of conclusions and final decisions¹⁷.

Particular attention, in the Republic of Belarus, is paid to protecting the rights of children, including family residence. The Law of the Republic of Belarus on the Rights of the Child¹⁸, adopted in development of the Convention on the rights of the child in 1993, obliged the state to take measures in case of emergency to protect the life, health and property of children, including measures to reunite them with their families and evacuate from the country (places) of their stay.

¹⁴On granting foreign citizens and stateless persons refugee status, additional protection, asylum and temporary protection in the Republic of Belarus : Law of the Repub. of Belarus of 23 June 2008 No. 354-3 [Electronic resource] // ConsultantPlus: Belarus / “YurSpektr”. Minsk, 2020.

¹⁵On the legal status of foreign citizens and stateless persons : Law of the Repub. of Belarus of 4 Jan. 2010 No. 105-3 // Natl. register of legal acts of the Repub. of Belarus. No. 15.2/1657.

¹⁶On the legal status of foreign citizens and stateless persons in the Republic of Belarus : Law of the Republic of Belarus of 4 Jan. 2010 No. 105-3 [Electronic resource] // Inform. Legal system of Business-Info / Natl. center of legal information of the Repub. of Belarus. Minsk, 2020.

¹⁷Instructions on the organization of work when considering applications for refugee status, additional protection or asylum in the Republic of Belarus, applications for extending the period for providing additional protection in the Republic of Belarus, applications for assistance in family reunification, making decisions about loss, cancellation of refugee status or additional protection in the Republic of Belarus and the preparation of proposals on the need for decisions on the loss or deprivation of asylum in the Republic of Belarus : adopted by the Decision of the Ministry of Internal Affairs of the Repub. of Belarus of 22 June 2017 No. 173 [Electronic resource] // Inform. legal system Business-Info / Natl. center of legal information of the Repub. of Belarus. Minsk, 2020.

¹⁸On the rights of the child : Law of the Repub. of Belarus of 19 Nov. 1993 No. 2570-XII // Zvjazda. 11 Dec. 1993.

Ensuring the right to family reunification under the legislation of individual post-Soviet states

Many post-Soviet states have accumulated sufficient experience in ensuring the human right to family reunification. For example, in the Russian Federation, the state program has been approved to facilitate the voluntary resettlement of compatriots living abroad in the Russian Federation together with family members. The program is unlimited in nature and is aimed, on the one hand, to solve the tasks of the state in developing the territories proposed for resettlement, and on the other hand, to ensure the interests of immigrants and the host community.

In addition, a number of public organizations studying interethnic relations are currently operating in the Russian Federation: both state research and expert organizations (for example, the research department of the Russian Academy of Sciences), and non-governmental analytical centers (for example, the Center for Migration Studies). Unfortunately, there are no such public associations in the Republic of Belarus. One of the activities of the Belarusian Red Cross Society is the collection and registration of data on persons missing as a result of situations, in order to search for these people, help in restoring relations between family members, separated as a result of armed conflicts and emergencies, in the search specified persons and family reunification.

The Law of Ukraine “On the legal status of foreigners and stateless persons”¹⁹ defines the concept of family reunification and indicates the need for documentary evidence of the availability of financial security for the maintenance of family members in Ukraine.

The issues of granting and extending the right to temporary residence for family reunification are sufficiently detailed in the legislation of the Republic of Moldova. Foreigners who have been granted the right to temporary residence, with the exception of persons to whom this right has been granted for study purposes, may apply to the competent authority for foreigners for the reunification of family members.

The Law of the Republic of Kazakhstan on migration²⁰ also establishes the procedure and rules for family reunification, containing a detailed list of persons that have this right, and setting restrictions. Immigration for the purpose of family reunification is not allowed in relation to family members who are on the territory of the Republic of Kazakhstan if the migration is for the purpose of receiving an education, seasonal foreign workers, humanitarian immigrants. It is noteworthy that the Law “On the legal status of foreigners of the Republic of Kazakhstan” does not provide, as a prerequisite, confirmation by an inviting person of solvency for family members to live in Kazakhstan (Art. 4)²¹.

Conclusion

Thus, we can conclude that the existing international legal mechanisms and national law can successfully solve the problems of family protection.

In our opinion, the resolution of the following tasks, both at the international and national levels, will contribute to a more effective development of the state strategy in the field of migration policy:

1) in the CIS model law «On migration», it is advisable to include a rule on the right to reunite family members with a citizen of one of the CIS countries, or the right to permanent residence in the territory of one of the CIS countries, or with someone who uses temporary forms of protection;

2) we consider it reasonable to amend the law of the Republic of Belarus on the legal status of foreign citizens and stateless persons in order to eliminate differences between persons permanently residing in the Republic of Belarus and persons with additional and temporary protection in the sphere of exercising the right to family reunification and bring it into line with the law on refugees;

3) it is necessary to pursue a policy of supporting children's rights in the process of family reunification, to involve public associations more widely in activities to ensure the rights to family reunification.

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Received by editorial board 26.03.2020.