

THE BEST INTEREST OF THE CHILD IN FAMILY REUNIFICATION IN THE DUBLIN REGULATION III

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The right to family unity, the importance of which for the growth and well-being of the child is internationally recognized, is a fundamental criterion in the application of the Dublin regulation by member states, as well as an element for determining the best interest of the child (BIC), as indicated by article 6 co. 3 DRIII.

In fact, in the Dublin system the BIC and the respect of family life are fundamental criteria for the determination of the competent member state, establishing specific rules for the allocation of competence according to the legal conditions of the applicant. The specific discipline is indicated in artt. 8-9-10 RDIII. If the minor asylum seeker says that he/she wants to reunite with a parent who legally resides in another European state, and if the family link is established and there is an agreement, and of course the family reunion is in the BIC and, in any case, it does not violate the prohibition of inhuman and degrading treatment according to the provisions of art 3.2 DRIII, the competence to examine the applications is attracted by the member state in which the parent resides. If, instead, the minor has received recognition of international protection in a member state and wishes to proceed with family reunification, with parents or a family member who is seeking asylum, it's the State in which the minor is resending which must examine the applications.

If the family bond between the minor and the parents has been interrupted due to the migration process, the preservation of family unity must be taken into consideration during the best interest assessment. The best interests of the child (BIC), according to art 3.1 CRC, shall be a primary consideration In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. BIC is a broad concept, dynamic and flexible, and must be evaluated case by case.

Before proceeding with family reunification according to DRII, the best interest's assessment (BIA) is carried out. The BIA is a multidisciplinary assessment carried out by a team of experts such as child psychologists, social workers, legal assistants with the purpose of balancing all the relevant elements to get to a first consideration on the BIC at family reunion. It is important that the BIA is done in the presence of the child, in a child-friendly atmosphere, considering his/her age and maturity. To assess the BIC of unaccompanied foreign minors involved in migratory processes, models/formulas are used by professionals. If at the end of the BIA there are doubts about the opportunity to proceed with family reunification, it is necessary to proceed with the best interest determination (BID). BID is a process that provides greater guarantees also at the procedural level. Such greater guarantees are especially necessary in cases where the possibility of separating the minor from the parents is being considered.

Some elements to take into consideration in the assessment are age, maturity, particular vulnerabilities, social and cultural background, type of relationship between family members. If the possibility arises in the evaluation that reunification is not in the BIC (e.g. cases of serious abuse or neglect in the family context), the determination must be made after hearing several experts with a judicial involvement. Basically, if the family has been traced, there is a reciprocal will to reunite, family relationships are verified, reunification should be in the BIC, except in exceptional cases. The family reunification mechanism in DRIII, which in theory is aimed at allowing the right to family unity in the hypotheses indicated therein, in fact often renders this right ineffective. First of all, in some situations it is not easy for minors seeking asylum to make an asylum claim and start the asylum process. The application of the family reunion clauses in the DRIII is only triggered when a Member State makes a take charge request to another Member State. Without a take charge request, an individual applicant does not have the right to initiate proceedings under DRIII. Even when the application of family reunification is presented, there are very strict procedural limits that have to be respected, (e.g art. 21 RDIII). If these limits are not respected the request can be rejected. Another impediment to the possibility of family reunification may derive from different interpretations of the BIC's by member states. An example in this sense is represented by the interpretative line that does not consider that the BIC exists in cases where Eurodac shows that the family arrived together in

Greece, so as to suggest that the family separation was organized on purpose in order to take advantage of the opportunity given by the mechanisms for determining the competence ruled in DRIII (artt. 8-9-10-3.2-17).