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Adult Children and Elderly Parents in Strasbourg Proceedings: A Misconstrued Approach to ‘Family Life’

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ABSTRACT

This article criticizes the exclusion of the relationship between parents and adult children from the purview of Article 8 ECHR in Strasbourg judgments, save for exceptional cases of dependency, narrowly defined (in practice reduced to disability). The author notes that this restrictive approach has been developed in the politically sensitive area of immigration policy and might stem from judicial pragmatism. She supports a more inclusive interpretation of ‘family life’, on two grounds. Firstly, it would align the Court’s stance on adult relatives with its well-established purposive reading of the notion of ‘family life’. In fact, family arrangements between adult relatives usually continue to exhibit the ‘signposts’ of family life identified in landmark decisions: genetic filiation, emotional bonds and effective ties; moreover, in cases without a cross-border element, the Court has recognised the applicability of Article 8 to close bonds with near relatives, such as grandparents. Secondly, bringing adult relatives within the scope of Article 8 would avoid the gap between the legal interpretation of ‘family life’ and the sociological understanding of the family as a group defined by a shared identity, caring, economic cooperation (including financial support, domestic labour, childcare and elderly care), sometimes co-residence. Whilst the Court may accommodate legitimate State interests when assessing the merits of a complaint, the failure to acknowledge the relationship between parents and adult children as ‘family life’ at the admissibility stage does not reflect social reality and prevents any judicial scrutiny over measures interfering with the normal development of such relationships.

I. INTRODUCTION

More than any other provision in the European Convention on Human Rights (hereinafter ‘ECHR’ or ‘Convention’), the concise reference to a ‘right to respect for family life’ in Article 8 has given rise to a multiplicity of practical applications in Strasbourg litigation, ranging from human fertilisation and embryology legislation to rules governing married couples’ choice of family name, and from parental leave entitlements to family reunification claims in immigration proceedings (Draghici, 2017: 30-36 and *passim*). Moreover, due to the purposive interpretation of the notion of ‘family life’ by the ECHR monitoring bodies, the relationships caught by Article 8 have gone so far as to encompass aspiring parents and children formally adopted abroad but with whom they had never lived,¹ a transsexual and a child biologically unrelated to him born through assisted reproduction to a partner with whom he had no legal ties² as well as public foster carers and unrelated looked-after children.³ Despite this elasticity of Article 8, one category of familial ties that has remained outside its scope is the relationship between adult children and their (often ageing) parents. For the European Court of Human Rights (hereinafter ‘ECtHR’ or ‘the Court’), family life

appears to suffer a hiatus after the children reach majority until such time as elderly parents become their children's 'dependents' in the narrowest of terms.⁴

This article maintains that the overemphasis on the nuclear family made up of parents and minor dependent children (or social groups emulating that model)⁵ is a regrettable anomaly in the Strasbourg jurisprudence, and is at odds with the Court's own criteria for defining 'family life', as well as with the reality of everyday family arrangements. The next section examines Strasbourg cases concerning adult children and their parents and criticises the unrealistically high threshold of dependency required in order to engage Article 8, largely confined to disability. The author notes that the judicial approach described has been developed in the politically sensitive area of immigration proceedings (with the notable exception of second-generation migrants awaiting deportation, treated more sympathetically by the Court)⁶ and hypothesizes that the narrow meaning of 'family life' in that context might be a result of judicial pragmatism.⁷ This stream of case-law is contrasted with the landmark cases on the scope of Article 8, including 'signposts' such as biological affiliation corroborated by effective social ties and the recognition of close bonds with near relatives (grandparents and collateral ascendants).⁸ The article further argues that there is a notable gap between the social understanding of 'family life' in European countries and the legal understanding of 'family life' under Article 8 ECHR according to the meaning attributed to it in Strasbourg. To that end, it relies on the notion of 'family' in the sociological literature as a group defined not by strict dependency but rather by a shared identity, as well as caring and economic cooperation, including financial support, domestic labour and sometimes co-residence.⁹ Against this background, the conclusions suggest that a more appropriate reading of the right to 'respect for family life' under Article 8 is that State obligations may vary depending on the nature of the family bonds at stake; however, an interpretation failing to acknowledge the relationship between parents and their adult children as 'family life' altogether is excessively restrictive and does not reflect social reality. Far from being a merely doctrinal issue, the acceptance of parents and adult children as falling within the ambit of Article 8 would entail judicial scrutiny over measures interfering with the normal development of their relationship, placing the burden on State authorities to justify *prima facie* violations.

II. THE EXCLUSION OF PARENTS AND THEIR ADULT CHILDREN FROM THE PROTECTION OF ARTICLE 8

1. Family life predicated on dependency

The exclusion of the relationship between parents and their adult children from the protection of Article 8 can be traced back to the 1984 decision of the now defunct European Commission on Human Rights (hereinafter ‘ECmHR’ or ‘the Commission’) in *S and S v United Kingdom*.¹⁰ The case regarded the British authorities’ refusal to allow an Indian woman to re-join her adult son in the UK after an extended visit to India, although she had previously shared a residence with her son for several years in the UK and she had produced medical evidence of mental health issues, in particular depression and anxiety, exacerbated by the separation from her son. The Commission declared the complaint ill-founded on the following ground:

‘Generally, 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. Relationships between [adult relatives] would not necessarily acquire the protection of Article 8 of the Convention without evidence of further elements of dependency, involving more than the normal, emotional ties.’¹¹

The immediate consequence of restricting the notion of ‘family life’ to the nuclear family and establishing a high threshold for dependency between adult relatives is that claims brought by parents and their adult children are destined to fail at the admissibility stage, without allowing for a proper inquiry into the nature, rationale and proportionality of the alleged interference.

The Court took the same view in a substantial number of cases spread over two decades. It thus reiterated the Commission’s stance verbatim in cases such as *Kwakyie-Nti and Dufie v The Netherlands*, *Ezzouhdi v France*, *Konstantinov v The Netherlands*, and *A.H. Khan v UK*.¹² The Grand Chamber in *Slivenko v Latvia* later provided a restatement of the *S and S* principle, emphasizing the distinction between the ‘core family’ and other family members, as well as the notion of dependency:

‘the existence of “family life” could not be relied on by the applicants in relation to [their] elderly parents, adults who did not belong to the core family and who have not been shown to have been dependent members of the applicants’ family...’¹³

This wording was replicated in subsequent cases, for instance *Sisojeva and others v Latvia* and *Shevanova v Latvia*.¹⁴ The Court appeared to show some hesitation in *Omojudi v UK*; since the respondent government had conceded that the applicant’s deportation interfered with his family life with his wife and two youngest children, the Court found it ‘unnecessary to decide whether the

close bond which the applicant undoubtedly had with his eldest son and his granddaughter was itself sufficient to give rise to family life between them'.¹⁵ Moreover, the Court seemed to suggest that family life did exist with the adult child and the grandchild when it proceeded to apply its usual 'insurmountable obstacles' test to ascertain if family life could be recreated elsewhere.¹⁶ However, this appears to be a mere *ad abundantiam* argument, as the Court had already determined that there were insurmountable obstacles to the relocation abroad of the applicant's minor children born in the UK. It does not follow that the *exclusive reliance* on the relationship with an adult child as 'family life' (even less so if there are no grandchildren involved) will succeed. In fact, the subsequent decision in *Senchishak v Finland* (concerning the alleged dependency of an elderly and disabled mother on her adult daughter settled abroad) reaffirmed the Grand Chamber's dictum in *Slivenko v Latvia*.¹⁷

2. A high threshold for 'dependency'

More problematically, the Court appears quite restrictive in what it is prepared to construe as dependency. In *Sarközi and Mahran v Austria*, it held that 'the existence of family life could not be relied on concerning adults who have not substantiated a *particular dependency* between them...'.¹⁸ The threshold was emphatically presented as narrow, without further guidance as to what qualifies as a particular dependency. In some cases, the Court concludes that there was no dependency but glosses over the issue without providing a detailed assessment. For instance, in *Samsonnikov v Estonia*,¹⁹ the Court merely stated that no family life existed between the applicant and his father and brother without engaging with the applicant's submission; it had been alleged that the relationship between the applicant and his ageing father was based on financial support and mutual aid,²⁰ and the government's rebuttal was limited to the observation that they lived separately.²¹ Considering that in other cases the Court had made it clear that co-residence is not dispositive of the issue of whether family life exists,²² this would have arguably required further analysis. Disappointingly, in *Ezzouhdi v France*, co-residence was explicitly rejected as evidence of dependency capable of attracting the protection of Article 8 (whether alone or together with other factors) in cases involving adult relatives.²³ It is submitted that co-residence, understood as living together as a single household (rather than merely under the same roof) and partaking in day-to-day activities (sharing meals, dividing domestic chores, pooling resources),²⁴ should be treated as a strong indicator of family life.

The case of *Senchishak v Finland*²⁵ is probably the most conspicuous illustration of the Court's restrictive assessment of dependency. The Court in this case declared inadmissible the

Article 8 complaint of an elderly and disabled mother removed from Finland, where she had lived for several years in the care of her daughter, who was a naturalised Finnish citizen. The Court failed to adequately explain why age, disability, effective bonds and co-residence are insufficient to attract the protection of Article 8, especially in a case where there were no other family members in the country of origin able to provide the requisite care. Admittedly, the Court was entitled to take into account the fact that the period of co-residence followed the overstaying of a tourist visa; otherwise, States would be faced with a *fait accompli* whenever family members whose immigration status is irregular manage to stay in the country long enough (living under the same roof) to later invoke ‘family life’. This would also create the wrong incentive in the immigration system. However, a disabled elderly parent’s need for family care should be treated as sufficient on its own to substantiate dependency, even if no weight is given to prior co-residence. At the same time, co-residence (albeit in irregular circumstances) should be seen as giving credence to the adult child’s readiness and ability to care for the parent in the event that the latter is granted leave to remain. Most worryingly, for the Court, the dependency on the adult child was negated by the availability of care institutions for elderly persons:

‘Even assuming that the applicant is dependent on outside help in order to cope with her daily life, this does not mean that she is necessarily dependent on her daughter who lives in Finland, or that care in Finland is the only option. As mentioned earlier, there are both private and public care institutions in Russia, and it is also possible to hire external help.’²⁶

Whilst in principle one may sympathize with any underlying concerns over opening the floodgates for similar claims, the Court appears here to be unduly dismissive of normal family dynamics involving the care of elderly parents by their children. Even making allowance for States’ wide margin of appreciation in matters pertaining to immigration policy, it could be argued that, in principle, citizens and long-term residents should not have to choose between depriving a foreign elderly parent of care or abandoning their homes and livelihood (and possibly uprooting their own children and a partner unfamiliar with the parent’s native country); any such situations should require justification and judicial scrutiny. However, a debate on the proper balancing between individual rights and any interests of the community cannot take place in Strasbourg proceedings since the excessively narrow definition of dependency between adult relatives currently removes such situations from the purview of Article 8.

The cases concerning adult relatives where Article 8 was found to be engaged were highly exceptional. *Anam v UK*²⁷ is a rare example of successful reliance on family life between adult relatives; the Court accepted that the applicant, who suffered from paranoid schizophrenia, had a ‘higher degree of reliance on his mother and adult siblings than other adults as a result of his diagnosed mental health problems’, even though his deportation to Bangladesh following his

repeated convictions for violent offences was ultimately found to constitute a proportionate interference. Similarly, the recognition in *F.N. v UK* of a familial relationship between adult relatives was predicated on the fact that ‘the applicant lived with and was more than usually dependent on her aunt as a result of her vulnerable mental state’.²⁸ The applicant in this case was a young Ugandan woman who had arrived in the UK on a fraudulent passport and subsequently applied for asylum unsuccessfully. She had resided with her aunt, her only surviving relation, for over eight years, while her immigration status remained uncertain, relying on her aunt for financial as well as emotional support, as she suffered from anxiety and depression. In *Emonet v Switzerland*,²⁹ a non-immigration case, the Court also found ‘family life’ engaged on account of the adult child’s disability. The latter case regarded a 30-year-old paraplegic woman who depended on the care and support of her mother and her mother’s former cohabitant, whom she regarded as a father. All parties had agreed that the man ought to adopt her in order to consolidate their relationship in the eyes of the law; however, the unintended effect of the adoption order, challenged in domestic and Strasbourg proceedings, was that it extinguished the mother’s parental status. In deciding that Article 8 applied to the relationship between the parties, the Court noted that additional factors of dependence other than normal ties of affection existed, due to the constant care required by the adult child.

The commonalities between the cases of *Emonet*, *F.N.* and *Anam* would suggest that in practice nothing short of disability (mental or physical, typically of the descendant) can persuade the Court that dependency between adult relatives has been substantiated. This stance amounts to saying that the Convention law only assimilates *vulnerable* adult children to family members, by unuttered analogy with minors. Equating ‘family life’ with disability-induced vulnerability is on any view a very narrow understanding of the substance of familial association.

3. Adult relatives as ‘private life’- a doubtful concession

In a number of cases regarding challenges to deportation orders, adult long-term residents (usually migrants arrived in the host country at a very young age) have been able to invoke their family life with relatives other than partners or minor children, in particular with parents and adult siblings. In *Nasri v France*, the alien subject to a deportation order for criminal conduct was hearing impaired and unable to speak, illiterate and with no command of any sign language, and had always lived with his parents;³⁰ in accepting the applicability of Article 8, the Court made no reference to its earlier restrictive approach in *S and S* to adult relatives, but emphasized 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’.³¹ In *Boughanemi v France*,³² the Court found that the applicant had ‘private and family life’ in France (without distinguishing between the two limbs of Article 8) insofar as he had a child, as well as parents and siblings; most of the discussion on the applicability of Article 8 revolved around the belated recognition of paternity in respect of an illegitimate child born to a non-cohabiting partner, whereas the analysis of the relationship with the parents and siblings was extremely cursory: ‘Mr Boughanemi’s parents and his ten brothers and sisters are legally resident in France and *there is no evidence that he has no ties with them*’.³³ Interestingly, the Court appears to start from the presumption that the second-generation migrant enjoys family life with adult relatives lawfully residing in the country and that the burden falls on the State to demonstrate that there are no actual ties. The focus on social integration is even clearer in *Boujlifa v France*; noting that the applicant had lived in France since the age of five, had received his schooling there, ‘and his parents and his eight brothers and sisters – with whom *he seems to have remained in touch* – live there’, the Court was ‘in no doubt that the measure complained of amounts to interference with the applicant’s right to respect for his private and family life’.³⁴ There are numerous other examples in which second-generation migrants successfully invoke the relationship with adult relatives in the context of deportation proceedings despite the questionable effectiveness of ties. The Court was thus satisfied that Article 8 applied where parents and siblings were lawful residents of the deporting State and the applicant ‘had never broken off relations with them’,³⁵ had ‘remained in contact’ with them,³⁶ or even less; in *Ezzouhdi v France* ‘family life’ was engaged merely because the deportee’s mother and siblings ‘resided there’.³⁷

It would seem that the foreign offender’s social integration in the host country has as an automatic corollary the privilege of invoking family life with adult relatives who reside there legally with no qualitative threshold whatsoever. In other deportation decisions (*Bouchelkia v France*, *Maslov v Austria*), the Court has also accepted that, in the case of young adults who have not yet founded a family of their own and continue to live with their parents, that relationship constitutes ‘family life’.³⁸ Indeed for second-generation migrants, private life and family life appear indistinguishable at times. In *Üner v The Netherlands*, another case regarding a challenge to an expulsion order, the Court was prepared to recognize that the ‘totality of social ties between settled migrants and the community in which they are living constitute part of the concept of “family life”’.³⁹

The scholarship has explained the more protective approach to Article 8 in such cases as driven by a concern to safeguard the individual’s private life in the host country, which is a broader concept. According to Cholewinski, ‘some of the considerations which the Strasbourg organs

viewed as outweighing the legitimate aim of the deporting authorities had little relevance to family life'; in fact, the judicial agenda was 'based on the premise that second-generation migrants ... should effectively be treated as de facto citizens, with the result that expulsion from their country of residence can hardly ever be justified' (Cholewinski, 1994: 298). Thym has similarly argued that the protection afforded in deportation cases involving second-generation migrants is actually less connected to the family life of the applicants and more to their private life, even if the Court does not renounce the reference to family links (Thym, 2014: 114).⁴⁰

In several recent pronouncements (*Slivenko v Latvia*, *Shevanova v Latvia*, *Sarközi and Mahran v Austria*), the Court refined its stance on this matter and explicitly shifted the attention to private life, accepting that relationships between adult relatives 'may be protected under the notion of "private life" for the purposes of Article 8, depending on the degree of social integration of the persons concerned'.⁴¹ In all those cases, the applicants were long-term residents who already had extensive 'private life' ties in the host country, sometimes forged after decades of residence, and therefore this concession added nothing to the analysis of the case. In fact, if the applicant's social integration is already demonstrated and hence the 'private life' limb of Article 8 applies, the recognition of relationships with adult relatives as further evidence of private life is largely superfluous (as well as playing a marginal role in the assessment of proportionality). Otherwise said, adult relatives become 'private life' only if 'private life' is already amply demonstrated through other means, such as length of residence and education in the host country.

Moreover, there is a bizarre inequity in the Court's preferential approach to relationships between adult relatives in cases regarding the proposed deportation of second-generation migrants. Whereas integrated aliens may successfully invoke such relationships to challenge a deportation order following criminal convictions, often for violent offences (*Boughanemi*, *Nasri*), a less favourable treatment is applied to law-abiding naturalized citizens who wish to be joined by a foreign parent requiring care (*Senchishak*)⁴² or children left behind in the country of origin (*Kwakyenti and Dufie*).⁴³ In the latter cases, the Court pays no attention to the social ties that naturalized citizens would lose in their adoptive home country if required to relocate in order to maintain substantial contact with children having reached majority or to look after their elderly parents. From a private life perspective, such citizens or long-term residents stand to lose just as much as second-generation migrants if compelled to move to be able to pursue family interests. Moreover, this double standard suggests that an individual loses 'family life' ties with the original family simply by virtue of crossing a border.

Arguably, the normalcy of a citizen's (or settled resident's) family life comprises the ability to maintain reasonable contact with their children after they reach majority and to provide care for

their ageing parents. Moreover, the focus in Strasbourg proceedings should not be exclusively on the rights of the alien seeking leave to enter or remain, but also on those of the resident or citizen with whom they have, or wish to resume, family life. Carens has aptly emphasized the moral obligation a State has towards citizens or lawful residents to consider *their* right to family life with relatives seeking entry, even though the latter are not yet within the State's jurisdiction and therefore not entitled to protection themselves:

‘The state’s obligation to admit family members living elsewhere is derived not so much from the claims of those seeking to enter as the claims of *those they seek to join*: citizens or residents or others who have been admitted for an extended period’ (Carens, 2013: 186, emphasis added).

The generalized acknowledgement of family relationships between adult children and their parents as falling within the scope of Article 8 would correct the imbalance in the Court's approach to cases regarding family reunion as opposed to removal of settled immigrants.

4. An immigration-specific notion of ‘family life’?

It is apparent from the overview of the case-law undertaken so far that the issue of whether or not parents and their adult children qualify as ‘family life’ under Article 8 has arisen predominantly in immigration cases. It is therefore impossible not to surmise that the context in which the question was put before the Convention bodies influenced the outcome. The Court's acute awareness of the immigration context was manifest in *Abdulaziz, Cabales and Balkandali v UK*:

‘the Court cannot ignore that the present case *is concerned not only with family life but also with immigration* and that, as a matter of well-established international law and subject to its treaty obligations, a State has the right to control the entry of non-nationals into its territory’.⁴⁴

Occasionally, the Court itself seemed to recognize that it attributes a specific meaning to the notion of ‘family life’ (almost exclusively applicable to the core family) in the context of immigration-related cases. In *Slivenko v Latvia* it expressly circumscribed its understanding of ‘family life’ to the substantive area at hand:

‘In the Convention case-law relating to expulsion and extradition measures, the main emphasis has consistently been placed on the “family life” aspect, which has been interpreted as encompassing the effective “family life” established in the territory of a Contracting State by aliens lawfully resident there, it being understood that “family life” *in this sense* is normally limited to the core family’.⁴⁵

Furthermore, the different standard for measuring dependency on family members in immigration cases, even where children are still underage, is clearly encapsulated in the Court's own account of its jurisprudence in *Tuquabo-Tekle v The Netherlands*:

'The Court has indeed previously rejected cases involving failed applications for family reunion and complaints under Article 8 where the children concerned had in the meantime reached *an age where they were presumably not as much in need of care as young children* and increasingly able to fend for themselves'.⁴⁶

It is also worth noting that in cases involving minor children left behind, although the Court usually does find Article 8 engaged, it concludes that the parent's new State of residence has no obligation to allow those concerned to enjoy a more substantial degree of family life on its territory than the one the parent voluntarily chose when relocating abroad.⁴⁷

*Emonet v France*⁴⁸ provides an example of the application of the dependency principle in a non-immigration context, namely with reference to the legal effects of adoption proceedings. In this case the Court did find additional factors present besides emotional ties, in particular the adult child's disability, but it is not far-fetched to assume that the Court preserved its earlier position in *S and S/ Slivenko* insofar as a change in jurisprudence was not needed in the case at hand in order to find Article 8 applicable.

This narrow meaning of family life for the purposes of immigration claims, with the exception of second-generation migrants awaiting deportation, may be a concession to State sovereignty. Arguably, however, any such concession should be made not at the admissibility stage, by rejecting the applicability of Article 8, but, where warranted, at the proportionality stage of the analysis of the merits. It may thus be perfectly reasonable for a State to deport, or refuse entry to, an alien who poses a threat to the community or would be a burden on the social security system, notwithstanding the presence of their parents or adult children on its territory. The Court may find that an elderly relative is likely to rely on the host State's health care system or that the adult child will have to give up work to act as a full-time carer, with implications for the economy of the host State, and hence limitations or the request of proof of financial capacity to meet the needs of the parent may be legitimate. However, the Court should be able to scrutinize decisions such as the refusal of a tourist visa for a family visit by the elderly parent who is not a dependant, or of the admission of an elderly parent who, without being financially dependent or disabled, is in advanced age and has no other family members to care for them in the country of origin (especially where the child with whom they seek reunification is a citizen or permanent resident of the requested country). The Court's decision whether to accommodate the public policy considerations in Article 8(2) should intervene at the second stage of the analysis, rather than through the refusal to entertain the case, deeming it outside the scope of the Convention.

III. THE CASE FOR A MORE INCLUSIVE UNDERSTANDING OF ‘FAMILY LIFE’ UNDER THE ECHR

1. Achieving greater consistency within Article 8 case-law

The aforementioned cases concerning adult child - (elderly) parent relationships reveal a particularly restrictive interpretation of ‘family life’ as limited to the nuclear family, uncharacteristic of ECHR jurisprudence under Article 8. In fact, the Strasbourg authorities have based their interpretation on a functional definition of families, which revolves around the effectiveness of emotional and economic bonds. As the Grand Chamber highlighted in *K and T v Finland*, ‘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*’.⁴⁹

On that basis, Article 8 has been found applicable not only to traditional family units grounded on marital bonds and legitimate affiliation, but also to parents and their natural children (*Marckx v Belgium*, *Keegan v Ireland*),⁵⁰ including adulterous children (*Johnston et al v Ireland*, *Kroon v The Netherlands*, *Merger and Cros v France*, *X and Y v Switzerland*),⁵¹ as well as biological children of a spouse (*Söderbäck v Sweden*)⁵² or of a same-sex domestic partner (*X v Austria*).⁵³ The protection of Article 8 was further extended to the relationship between a man and his former adoptive child (*Kurochkin v Ukraine*)⁵⁴ and to the relationship between a biological father and his adulterous children in relation to whom the mother’s husband was the legal father, insofar as the former was the actual caregiver (*Chavdarov v Bulgaria*).⁵⁵ Similarly, family life was found to exist between (minor) siblings (*Olsson v Sweden (No 1)*),⁵⁶ *Mustafa and Armağan Akin v Turkey*).⁵⁷ Significantly, the case law has recognized that ‘family life’ exists beyond the core family, in particular between children and grandparents (*Marckx v Belgium*, *Pla and Puncernau v Andorra*)⁵⁸ as well as nephews and uncles (*Boyle v UK*).⁵⁹ As explained in *Marckx*:

‘In the Court’s opinion, “family life”, within the meaning of Article 8, includes at least the ties between near relatives, for instance those between grandparents and grandchildren, since *such relatives may play a considerable part in family life*’.⁶⁰

Admittedly, in cases such as *Marckx* and *Boyle*, where relationships within the extended family were included in the ambit of Article 8, minor children were involved. However, there was no reference to the welfare of minors or to economic dependency in those judgments; rather, there was a more general concern to give recognition to social relationships within an individual’s close family circle built on caring and support. In *Boyle v UK*, the Commission based its acknowledgment

of family life on the existence of ‘frequent contact’, ‘considerable time’ spent together and a ‘significant bond’.⁶¹ Moreover, Article 8 was also found applicable in *Pla and Puncernau*, a case concerning the interpretation of a testamentary disposition resulting in the exclusion of an *adult* adoptive grand-child from his grandmother’s estate.⁶²

All these cases confirm that the notion of ‘family life’ in Article 8 is wider than the notion of ‘family’ and that near relatives should be presumptively included if there are effective ties. Importantly, ‘family life’ is not defined in terms of unilateral dependency; consequently, the relationship between parents and their adult children should not be seen as less ‘familial’ if built on interdependence. Indeed *Kroon v The Netherlands* demonstrates that emotional bonds may be sufficient to establish family life even in the absence of either cohabitation or substantial financial support; according to the Court, ‘[t]here thus exist[ed] between [the child and his natural father] a bond amounting to family life, *whatever the contribution of the latter to his son’s care and upbringing*’.⁶³ Close personal ties, recognized as a crucial feature of family life in cases regarding cohabitation, natural parenthood and near relatives, should not be marginalized in the analysis of cases involving adult children. Where such ties are present, Article 8 ought to extend at least to the relationship a person has with his or her parents, step-parents, siblings, grandparents and collateral ascendants, during and after that person’s minority (essentially, those relations recognized as exceptionally close by the consanguinity and affinity bars established by the law of nullity in virtually all European jurisdictions).

In particular, it is submitted that the presence of the ‘signposts’ of family life identified in the case-law cited above (frequent contact, financial cooperation, emotional bonds) in a situation involving parents and their adult children ought to attract the protection of Article 8. The Court would still have the opportunity to exclude relationships where there is a mere biological connection not corroborated by effective ties, in the same way that it has done in cases regarding minors. In fact, even when minor children are the subject of an application, the mere biological link is not sufficient to establish family life in the absence of other factors, such as cohabitation, strong bonds or financial support. Thus, Article 8 does not apply to parents who have never been involved in their children’s life and committed to their upbringing (*Yousef v The Netherlands*),⁶⁴ sperm donors who have never developed a personal relationship with the children born through assisted insemination to lesbian mothers (*JRM v The Netherlands*),⁶⁵ or former lovers seeking a declaration of paternity in respect of children born to married women, although the latter are marginally protected under the ‘privacy’ limb (*Schneider v Germany*, *Ahrens v Germany*).⁶⁶ The Court would therefore preserve the ability to perform a qualitative assessment of the relationship between adult relatives in order to determine if it amounts to ‘family life’. By contrast, an *a priori* blanket

exclusion, save for the most exceptional situations of dependency, means that the Court cannot conduct a case-by-case analysis, either as to whether the relationship amounts to family life or to decide if the interference was a proportionate one.

A further argument in favour of a more expansive interpretation of ‘family life’ is provided by the stream of case-law regarding DNA testing for adult applicants desirous of establishing paternity. Albeit focused on private life, it suggests that family association is centred around a shared identity and transcends a person’s minority. In *Jäggi v Switzerland*, the Court thus found that the interest in discovering one’s parentage did not disappear with age.⁶⁷ The *Menéndez García v Spain* decision further indicates that the need to establish grand-paternity is also covered by Article 8, although a lesser degree of protection is available under the Convention, insofar as States retain a wider margin of appreciation.⁶⁸ According to the Court, the interest in knowing one’s identity varies depending on the degree of kinship in the ascending line, with parents being of the highest importance, whereas the weight of such interest in relation to grandparents diminishes. Affiliation between an individual and their ascendants corresponds therefore to a life-long interest affecting the most personal sphere of anyone’s identity, and this continued relationship in adulthood should also be reflected in the understanding of ‘family life’.

Finally, the Court has recognized that, where a child is born of a marital or *de facto* union, from the moment of the child’s birth and by the very fact of it, there exists between child and parents a bond amounting to ‘family life’;⁶⁹ subsequent events may break that relationship, ‘but only exceptional circumstances can warrant the conclusion that the tie between a parent and his or her child is severed’.⁷⁰ It should not be a foregone conclusion that a child’s coming of age brings “family life” to an end.

2. Bridging the gap between legal and sociological perspectives on the family

The Strasbourg Court’s narrow construction of the notion of ‘family life’ insofar as it concerns adult children and their parents stands in striking contrast with the sociological understanding of the family and actual practice in European countries. Intimate connections variously based on kinship, legal ties, commitment and emotional attachment have traditionally made it difficult for sociologists to produce a definition of ‘family’ capable of encompassing all the aspects that an individual would define as their ‘family life’. The scholarship has, nevertheless, been able to provide a theoretical framework by shifting the focus from defining the family as a social category to identifying family practices. Silva and Smart noted in this respect:

‘In th[e] context of fluid and changing definitions of families, a basic core remains which refers to the *sharing of resources, caring, responsibilities and obligations*. What a family is appears intrinsically related to *what it does*.’ (Silva and Smart, 2004: 7, emphasis added).

Similarly, Diduck proposed adopting practice-based criteria for the recognition of familial relationships:

‘For me, “family” is one way to describe forms or expressions of intimate or private living based upon care and interdependence. ... What makes a relationship familial to me then is not necessarily a biological, legal, or conjugal connection, rather it is *what people do in it*, it is a relationship characterized by *some degree of intimacy, interdependence, and care*.’ (Diduck, 2011: 289, emphasis added).

A Czech qualitative study conducted on school teachers indicated that, in order to explain the concept of family, most respondents would refer to descriptors which can be organised into seven categories: social roles (‘partnership’/ ‘raising children’/ ‘generation’/ ‘lineage’), emotions (‘well-being’/ ‘security’/ ‘trust’/ ‘emotional needs’), responsibilities (‘organisation’/ ‘contribution’/ ‘work’), being together (‘cooperation’/ ‘sharing’/ ‘belonging together’/ ‘coexistence’), economics (‘housekeeping’/ ‘management’/ ‘material security’), leisure (‘spending free time together’) and care (‘protection’/ ‘support’/ ‘relying on one another’) (Havigerová et al, 2013: 2511-2512). None of these terms – which overlap with the core of family practices described in the two definitions reproduced above – apply to the nuclear family exclusively. The relationships between children, parents and grandparents are equally characterised by care, sharing and contribution.

Although it is primarily during their minority that children are dependent upon their parents, the latter continue to be a significant part of their adult children’s network of emotional and economic support. For instance, Herring pointed out that in the UK grandparents are the most important source of pre-school care after parents, and that according to a recent survey 44 per cent of children were receiving regular care from grandparents (Herring, 2015: 721). A study conducted by Douglas and Ferguson showed that mothers who work outside the home rely mainly on grandparents for the provision of childcare, a phenomenon all the more conspicuous given the significant growth in mothers’ employment rates over the past few decades (Douglas and Ferguson, 2003: 42). For post-divorce family structures, grandparents are a crucial source of financial, emotional and childcare support, sometimes during the transition inherent in reorganising family life, but often also as a long-term solution; this is accompanied by both grandparents’ sense of obligation to assist and their children’s expectation to be offered assistance (Ferguson et al, 2004: 103-108, 118). Moreover, sociological research on family background and educational success carried out in the US has revealed that grandparents play a distinctive role in the rearing of grandchildren; Jæger has thus argued that the effect of family background on educational success is not solely explained by the influence of the immediate family (the parents’ generation), but is to a

considerable extent ascribed to the extended family (grandparents in particular) and to the interactions between these two environments (Jæger, 2012: 918-9).

As well as continuing to be a resource for their adult children in terms of providing childcare and financial assistance, parents are also reliant on their adult children when they reach an advanced age. In his partly dissenting opinion in the *Slivenko* case, Judge Kovler pointed out that the extended family is profoundly anchored in the culture of East and Southern European societies, so much so that a number of jurisdictions (such as the Russian Federation, Ukraine, Moldova) incorporate the obligation of adult children to support parents who are unfit to work in their fundamental laws.⁷¹ This suggests that ‘in those countries the tradition of helping one’s elderly parents is firmly established as a moral imperative written into the Constitution’.⁷² Further examples of enforceable maintenance obligations in respect of ascendants can be found in the Belgian and Bulgarian legal traditions, confirming society’s expectation of solidarity within the vertical family (Van Houtte and Breda, 2005; Todorova, 2005). Although in other jurisdictions there is no *legal* obligation to financially support an elderly parent in the same way that there is a legal obligation to support minor children, there is a sense of moral obligation and natural inclination to do so. As Herring noted, in Britain (and arguably many Western countries presenting cultural affinities) it is generally accepted that children owe a moral obligation to their elderly parents, even though the rationale might be obscure and a precise equivalent in a legal obligation may be absent (Herring, 2015: 725).

The relationship between adult children and their parents is consequently best described in terms of mutuality, with valuable contributions and with vulnerabilities on both sides. Indeed, empirical studies suggest that the modern extended family, based on intergenerational care, whether or not within the same household, is a widespread social model (Bornat et al, 2004: 115-128). To reflect that reality, interdependence (broadly defined) rather than unilateral and strict dependency ought to be the criterion governing the understanding of ‘family life’ in Strasbourg case-law.

Additionally, evidence of a special regime applying to adult children and their parents even when they operate as separate households can be found in certain aspects of domestic law. Thus, the presumption of advancement between parent and child at common law (which means *inter alia* that no resulting trust arises where a parent contributes to the purchase price of a home for their adult child) is predicated on the idea that parents and children continue to have a relationship governed by family law rather than general property rules (including equitable doctrines). Another example is furnished by the area of family provision for adult children; English law contemplates inheritance by adult children on intestacy (s. 46 Administration of Estates Act 1925), as well as challenges to wills or to the operation of intestacy rules by the deceased’s adult children (s. 1 Inheritance (Provision for Family and Dependents) Act 1975).⁷³ Moreover, it is quite telling that statutory law

recognises parents as ‘dependants’ for certain purposes regardless of *de facto* financial dependency. For instance, under s. 1 Fatal Accidents Act 1976, in England and Wales a ‘dependant’ legitimated to bring an action for damages in case of wrongful act causing death includes ‘any parent or other ascendant of the deceased’, without further requirements.

Significantly, immigration rules tend to allow, subject to various criteria depending on the jurisdiction considered, a more favourable treatment for a resident’s family members (including parents) who apply for an entry visa. For example, under the Immigration Rules part 8, a person settled in the UK may be joined by parents or grandparents aged 65 or over who have no other close relatives in their own country to whom they could turn for financial support, as long as the resident is able to provide adequate accommodation and maintain them without recourse to public funds.⁷⁴ The British approach is not an isolated example. In fact, Carens has pointed out that many democratic States around the world, albeit not all, permit citizens and residents to bring in a non-national parent, especially where parents are elderly or dependent or without other children in their home country (Carens, 2013: 189). It would therefore not be inconceivable for the Strasbourg Court to construe an argument around States’ practice as regards the eligibility of adult relatives for indefinite leave to remain. Without establishing a positive right to join or be joined by a parent in the host country, this evidence would allow the Court to recognise such relationships as family life according to the same test used in cases involving couples and minor children: biological ties, legal ties, emotional attachment, economic support.

Furthermore, from a sociological perspective, what distinguishes families from other forms of association pertaining to an individual’s private life is an enduring emotional connection. To treat it as entirely irrelevant for the purposes of ascertaining the existence of family life between adult relatives under the Convention does not appear defensible. The over-emphasis on dependency at the expense of emotional ties was forcefully criticised by Judge Spielmann in his partly dissenting opinion in *Shevanova v Latvia*:

‘Giving precedence to the criterion of dependency to the detriment of that of normal affective ties strikes me as a very artificial approach to determining the existence of “family life”. It seems inconceivable to me that so little importance can be attached to the affective ties between a mother and her son that they can fall outside the scope of “family life”’.⁷⁵

In light of all the above considerations, the Court’s dismissive attitude towards emotional ties and intergenerational care as being conducive to ‘family life’ is inconsistent with social reality (and aspects of domestic laws reflecting and accommodating that reality). The dissenters in *Senchishak v Finland* put forward a powerful critique of this standpoint, oblivious to the cycle of life and actual human experience:

‘The notion of “core family” and the level of preserved emotional ties between parents and separated adult children vary across the cultures and traditions of Europe as well as among individuals living in various countries. ... A time comes when elderly parents do need the loving care of their adult children and actually receive it as a matter of moral duty and preserved feelings of affection. To deny this is to hold that once an individual comes of age, the emotional ties with his or her parents are to be considered once and for all *de facto* and *de jure* severed and that for this reason neither a moral nor a legal duty to provide care may be said to exist between them. In our understanding this is incorrect in both legal and moral terms’.⁷⁶

IV. CONCLUSIONS

Not surprisingly perhaps, the cases in which the Strasbourg institutions have established and consolidated their restrictive approach to relationships between adult children and their parents are by and large concentrated in a sovereignty stronghold: immigration proceedings. This would suggest that the Court might have adopted this stance primarily as a matter of judicial pragmatism. In fact, the Court tends to embrace a politicised assessment of the Convention law in immigration cases in general, including a proportionality test skewed in favour of the State, as a means to ensure that it does not alienate the contracting parties.⁷⁷

Regrettably, this also affects the very understanding of what constitutes family life for the purposes of Article 8. As Kilkelly noted, in purely domestic cases the Court has included wider categories of family members within the scope of this provision, whereas ‘a strict line is taken on the existence of family life in immigration cases, particularly those involving family reunification, where the burden is on the applicant to establish that such a relationship exists’ (Kilkelly, 1999: 217). Even accepting the dependency nexus as necessary in order to create family life between adult relatives, the current assessment of dependency is too narrow to reflect normal family dynamics. Significantly, the exceptional cases where the Court was prepared to find that nexus satisfied (*Anam v UK*, *Emonet v Switzerland*, *F.N. v UK*) concerned a dependent adult child (or orphaned niece) afflicted by a serious disability. Dependent *parents* seem to have an uphill task persuading the Court that there is family life between them and their adult children even in the presence of a disability. It is particularly disconcerting to read the Court’s contention in *Senchishak v Finland* that an elderly disabled mother is not dependent on her adult child to the extent that private and public care institutions are available. On that analysis, even minor children cannot be said to be their parents’ dependants, in fact that responsibility can also be delegated to private or public foster care arrangements. Nor does the applicability of ‘private life’ to parent/ adult child relationships mitigate this problematic assessment of the scope of ‘family life’; in fact, it has been shown above that it

only features in cases concerning the deportation of long-term residents, whose extensive links in the host country engage private life regardless of the recognition of a relationship with adult relatives, which remains inconsequential. There is also a logically inconsistent double standard in the application of the strict dependency test to first-entry cases but not to expulsion cases. For socially integrated deportees, family life with adult relatives is either recognised as such, with no qualitative threshold, or absorbed by private life, whereas law-abiding citizens, with extensive ‘private life’ ties in the host country, cannot invoke family life with adult relatives seeking family reunification. Whilst State sovereignty and the desire to maintain States’ cooperation with the Court may be legitimate concerns in Strasbourg deliberation, they should not distort the very definition of family life. That definition should not vary depending on how politically sensitive the issue at hand is perceived to be.

The reluctance of Council of Europe States to accept binding obligations *vis-à-vis* migrants’ right to family reunion with spouses and children has not prevented the Court from taking a more rights-protective approach as regards the core family. The development of jurisprudence safeguarding family interests that conflict with immigration policies⁷⁸ has occurred notwithstanding the fact that, as Cholewinski observed, international instruments invoking the principle of family reunion ‘do not go so far as to recognize it as a right’ (Cholewinski, 2002: 275). The European Convention on the Legal Status of Migrant Workers establishes very limited obligations⁷⁹ and has achieved a particularly low level of ratification (11 parties since its opening for signature in 1977). Furthermore, the 1996 European Social Charter, ratified by a small Council of Europe majority (33 parties), only requires States to ‘facilitate as far as possible’⁸⁰ the reunion of the family of a lawfully established worker. This ostensible lack of commitment to family reunification in international treaty practice has not prevented the Court from finding that Article 8 requires States to avoid disproportionate interferences with family life, even though the enforcement of immigration rules for the economic well-being of the community has been accepted as a legitimate ground for interference.⁸¹ Once it has ascertained that immigration laws are not immune from human rights challenges, the Court should take a consistent approach in respect of adult children and their parents rather than treating them as strangers for the purposes of Article 8.

A reconsideration of this area of law is further warranted by the fact that ‘population aging is a key feature of twenty-first-century demographic trends’ (Murphy, 2017: 257). In the context of this ageing European population, studies have shown that ‘informal networks [of family support] fulfil an important role in providing care to elderly persons’, particularly in Southern Europe (Lyberaki et al, 2013: 8). In countries, such as the UK, where the phenomenon of population ageing is accompanied by a stagnation or reduction in the level of public spending on elderly care,⁸²

familial care becomes essential in meeting those needs, and hence relationships between adult members of the original family deserve recognition in law and policy.

A better view on Article 8 would be to concede that more extensive interferences may be permitted with the enjoyment of family life by parents and their adult children when compared to the nuclear family. Conversely, denying the very applicability of Article 8 to such relationships, save for the most exceptional circumstances, is an unwarranted restriction, which places any and all interferences outside judicial oversight. The rigid definition of family life between adult relatives as based on strict dependency (typically for the purposes of family reunification) is at odds with the well-established signposts of ‘family life’ in Strasbourg cases without a cross-border element, most notably the emphasis on effective bonds. It is also inconsistent with social practice in European countries, as reflected in the sociological literature exploring the meaning of ‘family’. In fact, an understanding of Article 8 as exclusively protecting the nuclear family fails to take into account the adult children’s responsibility to care for their ageing parents (embedded in the culture and sometimes in the law), as well as the irreplaceable resource parents continue to represent in adulthood in terms of financial, emotional and childcare support.

NOTES

¹ *Pini and Bertani & Manera and Atripaldi v Romania*, App Nos 78028/01; 78030/01, ECtHR judgment of 22 June 2004.

² *X, Y and Z v UK*, App No 21830/93, ECtHR judgment of 22 April 1997.

³ *Moretti and Benedetti v Italy*, App No 16318/07, ECtHR judgment of 27 April 2010.

⁴ See sections II 1 and II 2.

⁵ Social groups resembling the nuclear family, despite the lack of biological, legal or *de facto* ties, have been assimilated to families by analogy, as seen in the above-mentioned *Pini and Bertani* (merely legal ties) and *X, Y and Z* and *Moretti and Benedetti* (merely *de facto* ties).

⁶ See section II 3.

⁷ See section II 4.

⁸ See section III 1.

⁹ See section III 2.

¹⁰ *S and S v UK*, App No 10375/83, ECmHR decision of 10 December 1984.

¹¹ *Ibid* at 198.

¹² *Kwakye-Nti and Dufie v The Netherlands*, App No 31519/96, ECtHR decision of 7 November 2000; *Ezzouhdi v France*, App No 47160/99, ECtHR judgment of 13 February 2001, para 34; *Konstantinov v The Netherlands*, App No 16351/03, ECtHR judgment of 26 April 2007, para 52; *A.H. Khan v UK*, App No 6222/10, ECtHR judgment of 20 December 2011, para 32. See also the analogous wording in *A.S. v Switzerland*, App No 39350/13, ECtHR judgment of 30 June 2015, para 49: ‘... 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’.

¹³ *Slivenko v Latvia*, App No 48321/99, ECtHR judgment of 9 October 2003 [Grand Chamber (GC)], para 97.

¹⁴ *Sisojeva and others v Latvia*, App No 60654/00, ECtHR judgment of 16 June 2005, para 103; *Shevanova v Latvia*, App No 58822/00, ECtHR judgment of 15 June 2006, para 67.

¹⁵ *Omojudi v UK*, App No 1820/08, ECtHR judgment of 24 November 2009, para 36.

¹⁶ See *ibid*, para 46: ‘It would be virtually impossible for the oldest child to relocate to Nigeria as he has a young daughter who was born in the United Kingdom.’

¹⁷ *Senchishak v Finland*, App No 5049/12, ECtHR judgment of 18 November 2014, para 55.

¹⁸ *Sarközi and Mahran v Austria*, App No 27945/10, ECtHR judgment of 2 April 2015, para 61 (emphasis added).

- ¹⁹ *Samsonnikov v Estonia*, App No 52178/10, ECtHR judgment of 3 July 2012, para 81.
- ²⁰ *Ibid*, para 72.
- ²¹ *Ibid*, para 79.
- ²² *Kroon and others v The Netherlands*, App No 18535/91, ECtHR judgment of 27 October 1994; *Berrehab v The Netherlands*, App No 10730/84, ECtHR judgment of 21 June 1988; *Abdulaziz, Cabales and Balkandali v UK*, App Nos 9214/80; 9473/81; 9474/81, ECtHR judgment of 28 May 1985.
- ²³ *Ezzouhdi v France* (n 12) para 34.
- ²⁴ The proposed qualitative definition of ‘co-residence’ draws inspiration from the signposts for ‘cohabitation’ in domestic case-law (e.g. *Kimber v Kimber* [2000] 1 FLR 33) as well as from the courts’ interpretation of the notion of ‘living together’ under s. 2 (6) Matrimonial Causes Act 1973 (see *Hollens* (1971) SJ 327, *Mouncer* [1972] 1 All ER 289, *Fuller* [1973] 1 WLR 730). It further takes into account the exclusion from the notion of ‘associated persons’ under s. 62 Family Law Act 1996 of home-sharers who live together merely by virtue of one being the other’s lodger.
- ²⁵ *Senchishak v Finland* (n 17).
- ²⁶ *Ibid*, para 57.
- ²⁷ *Anam v UK*, App No 21783/08, ECtHR decision of 7 June 2011.
- ²⁸ See *F.N. v UK*, App No 3202/09, ECtHR decision of 17 September 2013, para 36.
- ²⁹ *Emonet v Switzerland*, App No 39051/03, ECtHR judgment of 13 December 2007.
- ³⁰ See *Nasri v France*, App No 19465/92, ECtHR judgment of 13 July 1995, para 38.
- ³¹ *Ibid*, para 43. It should be noted that, without mentioning the *S and S* principle and the ‘dependency’ test, the analysis in *Nasri* is also centred on an adult child’s severe disability, as in *Emonet*, *F.N.* and *Anam*.
- ³² *Boughanemi v France*, App No 22070/93, ECtHR judgment of 24 April 1996.
- ³³ *Ibid*, para 35 (emphasis added).
- ³⁴ *Boujlifa v France*, App No 25404/94, ECtHR judgment of 21 October 1997, para 36 (emphasis added).
- ³⁵ *Moustaquim v Belgium*, App No 12313/86, ECtHR judgment of 18 February 1991, para 36.
- ³⁶ *El Boujaïdi v France*, App No 25613/94, ECtHR judgment of 26 September 1997, para 33.
- ³⁷ *Ezzouhdi v France* (n 12) para 26.
- ³⁸ See *Bouchelkia v France*, App No 23078/93, ECtHR judgment of 29 January 1997, para 41; *Maslov v Austria*, App No 1638/03, ECtHR judgment of 23 June 2008 [GC], para 62.
- ³⁹ *Üner v The Netherlands*, App No 46410/99, ECtHR judgment of 18 October 2006 [GC], para 59.
- ⁴⁰ See further [Thym \(2014: 116\)](#): ‘The nuclear family is protected by Article 8 ECHR *ratione materiae* independent of the length of its existence – while private life becomes pertinent after a lapse of time period and gains importance the longer a person has lived in a country and the more he or she has established societal, identificatory, and economic links’.
- ⁴¹ *Sarközi and Mahran v Austria* (n 18) para 61 (emphasis added). See analogously *Slivenko v Latvia* (n 13) para 97, *Shevanova v Latvia* (n 14) para 67.
- ⁴² *Senchishak v Finland* (n 17).
- ⁴³ *Kwakye-nti v The Netherlands* (n 12). The Strasbourg Court endorsed the domestic authorities’ refusal to allow the three children of a naturalised Dutch couple (one of whom was still a minor at the time of the request) to join their parents in the Netherlands. It invoked the *S and S* principle and reasoned that the children did not appear to be dependent on their parents financially or for their care.
- ⁴⁴ *Abdulaziz, Cabales and Balkandali v UK* (n 22) para 67 (emphasis added).
- ⁴⁵ *Slivenko* (n 13) para 94 (emphasis added). See also *Sarközi and Mahran v Austria* (n 18) para 61 for a reiteration.
- ⁴⁶ *Tuquabo-Tekle v The Netherlands*, App No 60665/00, ECtHR judgment of 1 December 2005, para 49 (emphasis added).
- ⁴⁷ See *Ahmut v The Netherlands*, App No 21702/93, ECtHR judgment of 28 November 1996, paras 69-70.
- ⁴⁸ See *Emonet v France* (n 29) para 35: ‘The Court also reiterates the principle that 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”’.
- ⁴⁹ *K and T v Finland*, App No 25702/94, ECtHR judgment of 12 July 2001 [GC], para 150 (emphasis added). See also *Emonet* (n 29), para 33; *Todorova v Italy*, App No 33932/06, ECtHR judgment of 13 January 2009, para 51. On the purposive interpretation of the notion of ‘family’ in ECHR and international case-law, see [Banda and Eekelaar \(2017\)](#).
- ⁵⁰ *Marckx v Belgium*, App No 6833/74, ECtHR judgment of 13 June 1979; *Keegan v Ireland*, App No 16969/90, ECtHR judgment of 26 May 1994.
- ⁵¹ *Johnston and others v Ireland*, App No 9697/82, ECtHR judgment of 18 December 1986; *Merger and Cros v France*, App No 68864/01, ECtHR judgment of 22 December 2004; *X and Y v Switzerland*, App Nos 7289/75 and 7349/76, ECtHR decision of 14 July 1977.
- ⁵² *Söderbäck v Sweden*, App No 24484/94, ECtHR judgment of 28 October 1998 (see in particular para 33).
- ⁵³ *X v Austria*, App No 19010/07, ECtHR judgment of 19 February 2013 [GC].
- ⁵⁴ *Kurochkin v Ukraine*, App No 42276/08, ECtHR judgment of 20 May 2010. See also *Ageyevy v Russia*, App No 7075/10, ECtHR judgment of 18 April 2013.

- ⁵⁵ *Chavdarov v Bulgaria*, App No 3465/03, ECtHR judgment of 21 December 2010.
- ⁵⁶ *Olsson v Sweden (No 1)*, App No 10465/83, ECtHR judgment of 24 March 1988.
- ⁵⁷ *Mustafa and Armağan Akin v Turkey*, App No 4694/03, ECtHR judgment of 6 April 2010.
- ⁵⁸ *Pla and Puncernau v Andorra*, App No 69498/01, ECtHR judgment of 13 July 2004.
- ⁵⁹ *Boyle v UK*, App No 16580/90, ECmHR report of 9 February 1993.
- ⁶⁰ *Marckx v Belgium* (n 50) para 45 (emphasis added).
- ⁶¹ See *Boyle v UK* (n 59) paras 43-45.
- ⁶² *Pla and Puncernau v Andorra* (n 58) para 55. The Court accepted that the facts engaged ‘private and family life’ without any further analysis.
- ⁶³ *Kroon v The Netherlands* (n 22) para 30.
- ⁶⁴ *Yousef v The Netherlands*, App No 33711/96, ECtHR judgment of 5 November 2002.
- ⁶⁵ *JRM v The Netherlands*, App No 16944/90, ECmHR decision of 8 February 1993.
- ⁶⁶ *Schneider v Germany*, App No 17080/07, ECtHR judgment of 15 September 2011; *Ahrens v Germany*, App No 45071/09, ECtHR judgment of 22 March 2012.
- ⁶⁷ *Jaggi v Switzerland*, App No 58757/00, ECtHR judgment of 13 July 2006. The case concerned the refusal to authorise a DNA test on a deceased person requested by an elderly putative grandchild wishing to ascertain his parentage.
- ⁶⁸ *Menéndez García v Spain*, App No 21046/07, ECtHR decision of 5 May 2009.
- ⁶⁹ *Berrehab v The Netherlands* (n 22), para 21; *Keegan v Ireland* (n 50) para 44; *Gül v Switzerland*, App No 23218/94, ECtHR judgment of 19 February 1996, para 32.
- ⁷⁰ *Gül v Switzerland* (n 69) *ibid*. In the *Gül* case, the minimal contact between father and child for several years as a result of the father’s relocation abroad did not meet that exceptional threshold.
- ⁷¹ *Slivenko v Latvia* (n 13), partly dissenting opinion of Judge Kovler.
- ⁷² *Ibid*.
- ⁷³ Significantly, until the entry into force of the amendments to the Administration of Estates Act 1925 introduced by the Inheritance and Trustees’ Powers Act 2014, parents were in turn entitled to half the balance of the estate of a deceased child who was married or in a civil partnership at the time of death, after the statutory legacy of the spouse or civil partner was deducted, provided that the deceased had left no children or grandchildren. Although the new legislation reinforces the financial protection of spouses, and parents are the first category to inherit only where there is no surviving spouse or child, the inclusion of parents for a very long time amongst the first categories entitled to inherit upon intestacy is indicative of the law’s understanding of priority within the family and moral obligations of support beyond death.
- ⁷⁴ Immigration Rules part 8, s. 317. See [Stalford and Woodhouse \(2016: 278-280\)](#) for an analysis of the dependency conditionality test applied to older relatives.
- ⁷⁵ *Shevanova v Latvia* (n 14), partly concurring opinion of Judge Spielmann, para 8.
- ⁷⁶ *Senchishak v Finland* (n 17), Dissenting Opinion of Judges Bianku and Kalaydjieva, last para.
- ⁷⁷ See [Draghici \(2017: 407\)](#): ‘the Strasbourg authorities are readily prepared to find that a family does not face any obstacles to relocating back to the country of origin of one or both spouses as long as there are no legal impediments (*Gül v Switzerland*), that a citizen may be refused authorisation to be joined in their country of nationality by a non-national child (*Ahmut v The Netherlands*) and that a fair balance is achieved by the constructive deportation of an underage citizen whose foreign parent, albeit not a threat to the community, has no entitlement to remain (*Sorabjee v UK*)’.
- ⁷⁸ See [Draghici \(2017: 336-393\)](#) for an analysis of the relevant case-law.
- ⁷⁹ According to Article 12, spouses and minor dependent children may join lawfully established migrant workers only if the latter have adequate housing available for the family according to local standards; an optional proviso further allows States to require sufficient resources to meet the family’s needs. A waiting period not exceeding 12 months is permitted and temporary derogations in respect of parts of the territory are also allowed, with no specified time limit.
- ⁸⁰ Article 19 (6).
- ⁸¹ See *Abdulaziz, Cabales and Balkandali v UK* (n 22) para 78; *Berrehab v The Netherlands* (n 22) para 26; *EA and AA v The Netherlands*, App No 14501/89, ECmHR decision of 6 January 1992.
- ⁸² See N. Trigg, ‘Conservative manifesto: Why many will pay more for care’, *BBC News* 18 May 2017, available at <http://www.bbc.co.uk/news/health-39957879>.

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