**Family Rights in the Light of Brexit Seminar – 24 August 2017 – Summary**

Family reunification is not a human right. The Convention on the Rights of the Child does not oblige states to provide family reunification.

The European Court of Human Rights developed key principles on the matter in the 1980s and 1990s, where it stated that there is no obligation on the state to respect a couple’s choice of place in which to establish their family life.

In more recent cases, the European Court of Human Rights has granted reunification where the best interest of the child to be cared for by its parents was at stake. An example can be that there are so strong ties between the children and parents or to the country that they need to stay. In any case, the circumstances in each particular case must be considered.

From 1992, the constitutional framework of the European Union was modified. A notion of European citizenship was created, and EU jurisdiction now needed to be implemented in national law. It was decided that core family members have the right to reside with each other. This means that EU states have an obligation to facilitate the entry and residence of core family members of EU citizens, namely partners in a durable relationship and any dependant relatives or members of his/her household.

The Court of Justice of the EU has expanded the content of the abovementioned rights. It has recognised the rights of European children and their primary carers to stay in the country even if the EU citizen providing their right to remain has to leave the country.

In 1992, the Court of Justice of the EU also said that the rights of returnees, i.e. people who work and live and the EU and then go back to their own country, must be protected.

With the Immigration EEA Regulations 2016, factors like the degree of integration of persons were also taken into concern when assessing family reunification matters. These regulations were criticised by the House of Lords, as some criteria put forward to a large extent are subjective.

When it comes to the UK’s approach to family reunification, research made at the University of Edinburgh has shown that the Home Office delays the processing of application and makes it hard for third country nationals to leave their countries. For instance, the Home Office can ask for unnecessary documentations for the applications. There is a general reluctance towards the implementation of the EU’s freedom of movement rights.

In the UK, spouses must have a minimum income of £18,600 per annum or have £16,000 in savings plus 2.5 times the amount of the shortfall in order for their non-EU/EEA partners to receive a right to remain. 40% of the UK population do not meet this threshold. There are, however, a few exceptions – like the best interest of the child. UK legislation has nevertheless been criticised because it is too subjective and cannot be applied consistently.

On 20 July 2017, new rules were implemented in the UK. Now the consideration of the best interest and wellbeing of the child is the primary focus of all applications. Other credible sources of income can also be considered, such as sponsors or third parties. Compassionate circumstances are quite rare to be met.

Concluding remarks:

* There is no right to family reunification through EU’s court system but the EU has created family reunification rights. The Court of Justice of the EU has protected and further extended these rights through the entire set of its primary and secondary legislation, with a system of self-reference and reference to the fundamental rights stated in its charter and in the European Court of Human Rights.
* There is need for careful re-evaluation and simplification of the Immigration Rules.
* The minimum income threshold for family reunification in the UK severely impacts on lone parents or people with low income. It also does not take into account differences in wage levels across the UK.
* The EU protects human rights, and Brexit brings uncertainty on whether those laws can be fulfilled.
* With regard to Brexit, all options need to be carefully considered. It is important to consider that if part of the EU citizens’ rights are maintained, it goes hand in hand with the Court of Justice of the EU’s jurisdiction. Is a claim for further devolution in Scotland possible?