



*Research and Documentation
Directorate*

RESEARCH NOTE

Recognition of *kafala* in the Member States, in particular in connection with the right of entry and residence in Member States

[...]

Subject: Review of recognition of an Islamic form of guardianship known as '*kafala*', and of the effects of *kafala* ordered in a non-member country and of the award of a right of entry and residence in a Member State to a child placed under *kafala* for the purpose of joining his guardian who is resident there

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[...]

OVERVIEW

INTRODUCTION

1. This research note concerns the issue of recognition in the Member States of an Islamic form of guardianship known as ‘*kafala*’, particularly in connection with the right of entry and residence in Member States.
2. In general terms, *kafala*¹ (ar. ~~كفالة~~ ^{كفالة}) is an arrangement for the provision of care for a minor child ‘*makful*’² (ar. مكفول), by an adult ‘*kafil*’³ (ar. كفيل), which does not alter the child’s relationship with his biological parents.⁴
3. *Kafala* is recognised under international conventions, in particular the United Nations Convention on the Rights of the Child, adopted in New York on 20 November 1989, and the Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children, concluded at The Hague on 19 October 1996, both ratified by all the EU Member States, as being an arrangement that is different from adoption. In that regard, it is considered that the Convention on protection of children and cooperation in respect of intercountry adoption, concluded at The Hague on 29 May 1993 and also ratified by all the EU Member States, does not apply to *kafala*, since Article 2(2) of that convention states that it ‘covers only adoptions which create a permanent parent-child relationship’.

¹ Other French spellings are also used: *kafâla*, *kefala*, *kafalah*.

² Other French spellings are also used: *makfûl*, *makfoul*.

³ Another French spelling is also used: *kafil*.

⁴ Le Boursicot, M.-C., *La Kafâla ou recueil légal des mineurs en droit musulman: une adoption sans filiation*, *Droit et cultures* [on line], 59 | 2010-1, placed on line on 6 July 2010, consulted on 25 October 2018, No 2. Available at: <http://journals.openedition.org/droitcultures/2138>.

4. Since *kafala* establishes a legal relationship between an adult and a child similar to that created by adoption but is also part of a system which rejects the concept of legal filiation, it is not easy to relate it to categories that are known in the domestic laws of Member States. Problems in this connection arise in various fields, in particular those of family law and social legislation, and in respect of the right of entry and residence in Member States.
5. This overview describes, first, the *kafala* arrangement according to the laws of Islamic countries (Part I), secondly, the issue of the recognition and effects of *kafala* according to the law and practice of the eight representative Member States⁵ generally (Part II), and, thirdly, the impact of *kafala* on the right of entry and residence of a *makful* in those eight Member States (Part III).

I. THE KAFALA ARRANGEMENT

6. *Kafala*, generally translated into French as ‘recueil légal’ (provision of care),⁶ is an arrangement originating in Islamic law.⁷ Its significance in the Islamic world is intrinsically linked to the prohibition of adoption under *Sharia*.

⁵ Germany, Belgium, Spain, France, Italy, Netherlands, United Kingdom and Sweden.

⁶ Papi, S., *L'influence juridique islamique au Maghreb (Algérie – Libye – Maroc – Mauritanie – Tunisie)*, L'Harmattan, Paris, 2009, p. 145.

⁷ For the purposes of this research note, the term ‘Islamic law’ is used as the equivalent of the Arab term *fiqh*. That word is translated as the science of ascertaining the meaning of *Sharia* (see Papi, S., *op. cit.* p. 38). In that regard, *Sharia* is defined as a set of precepts revealed by God to humans in order to regulate their conduct. Understanding of it is entrusted to a *faqih*, whose jurisprudence is called *fiqh*. The primary source (*usul*) of *fiqh* is the Koran (*Qur'an*) (See Gambaro, A., Sacco, R., Vogel, L., *Le Droit de l'Occident et d'ailleurs*. LGDJ – lextenso éditions, Paris, 2011, p. 351).

7. In that regard, before the advent of Islam, adoption (*tabani*, ar. تبني) was a common practice among most of the tribes of the Arabian Peninsula, although it was fully effective only if the adoptive parent did not have any children.⁸ It was nonetheless prohibited by the Prophet Muhammad.⁹ That prohibition is based in part on the prohibition of incest but also relates to the view of the parent-child relationship in Islamic law. Since the relationship between a parent and child is dependent solely on the will of God, it cannot be the result of human will alone and is derived from the fact of being the offspring of a married couple.¹⁰
8. Because of the prohibition by *Sharia*, adoption is still prohibited under the legal systems of a large number of Islamic countries.¹¹
9. As for *kafala* itself, its basis is to be found in the Koran, in the many calls to support orphans.¹² As a general rule, under Islamic law, *kafala* may be provided by an adult Islamic couple, or an Islamic woman, who are morally and socially capable of caring for the child. The obligations of the *kafil* are to provide, without payment, upkeep, education and protection for a child in the same way as a father would for his son. *Kafala* does not, however, create a parent-child relationship

⁸ Papi, S., *op. cit.*, p. 143.

⁹ The prohibition stems from the Koran (Surah XXXIII, verses 4, 5 and 37) and is connected to a story in the life of the Prophet Muhammad. The Prophet fell in love with the wife of his adopted son Zayd. In such a circumstance, he could not marry her even if her husband divorced her. A declaration that the adoption was impossible removed that obstacle. Zayd divorced his wife and Muhammad married her on God's instruction. Aldeeb, S., and Bonomi, A., (Ed.), *Le droit musulman de la famille et des successions à l'épreuve des ordres juridiques occidentaux. Étude de droit comparé sur les aspects de droit international privé liés à l'immigration des musulmans en Allemagne, en Angleterre, en France, en Spain, en Italie et en Suisse*, Zurich, 1999, p. 252.

¹⁰ Le Boursicot, M.-C., *op. cit.*, No 4.

¹¹ By way of exception, adoption is, nonetheless, not prohibited in some Islamic countries, in particular Turkey and Tunisia (see in that regard, for example, the document available on the following website: <https://www.diplomatie.gouv.fr/fr/adopter-a-l-etranger/les-conditions-de-l-adoption-internationale/les-fiches-pays-de-l-adoption-internationale/>).

¹² Aldeeb, S., and Bonomi, A., (Ed.), *op. cit.*, p. 253.

between the *kafil* and the *makful*, does not give any right of inheritance and ceases to exist when the child reaches the age of majority.¹³

10. Despite its origins in Islamic law, *kafala* is an institution which is far from uniform, since it is governed by national rules in different Islamic countries. Thus, several of them, Algeria and Morocco in particular, have adopted national legislation in this matter.
11. In that context, it is appropriate to note that Algerian and Moroccan law provide for two forms of *kafala*, namely, judicial *kafala*, concerning in principle children who are orphans or have been abandoned, and notarial *kafala*, applicable in situations where parents entrust their children to other people.¹⁴ The second form may be approved by a court.
12. Whichever form it takes, under a provision of Algerian law *kafala* confers legal guardianship on the beneficiary and entitles that person to receive the same family and education benefits as for a legitimate child.¹⁵

II. RECOGNITION OF *KAFALA* AND ITS EFFECTS IN MEMBER STATES GENERALLY

A. OVERVIEW

13. At a geographical level, research carried out in almost all the Member States¹⁶ shows that the issue of the recognition and effects of *kafala* ordered in a non-

¹³ Papi, S., *op. cit.*, p. 146.

¹⁴ *Ibid.* p. 146 to 150.

¹⁵ For a more detailed presentation of Algerian law, see the separate contribution forming part of this research note.

¹⁶ With the sole exceptions of Austria and Malta.

member country is present particularly in Member States where the Islamic population, originating from the Maghreb countries Morocco and Algeria in particular, is significant in size.¹⁷ Thus, the issue in question exists especially in **France**, but also in **Belgium, Spain, Italy** and the **Netherlands**. Whereas examples of Moroccan *kafala* seem to exist in all those Member States, examples of Algerian *kafala* appear in **France** and in **Italy** in particular.

14. In substantive terms, questions relating to the effects of *kafala* concern in particular the issues of recognition of the personal status of foreigners, the adoptability of *makfuls* by their *kafils*, the right of entry and residence of a *makful* in a Member State for the purpose of joining his *kafil* who is already lawfully resident there, and entitlement to social benefits.

B. RECOGNITION OF *KAFALA* IN THE MEMBER STATES

15. First of all, it should be noted that the word ‘recognition’ has at least two different meanings. According to the first, it means that a legal system must accept as established a situation enshrined in a foreign legal system (recognition of situations). According to the second, the word ‘recognition’ means the automatic production of certain effects in another legal system (recognition of rules).¹⁸ Given the absence of automatic applicability so far as the effects of *kafalas* are concerned, recognition of *kafala* can be considered only in terms of recognition of a situation created in another State, which then opens the way for questions concerning its effects for each of the Member States (see Part C, below).

¹⁷ Examples have nonetheless been found of Pakistani and Egyptian *kafalas*.

¹⁸ Mayer, P., *La reconnaissance: notions et méthodes*, in: Lagarde, P. (dir.), *Reconnaissance des situations en droit international privé. Actes du colloque international de la Haye du 18 janvier 2013*, Éditions Pedone, Paris, 2013, p. 27 and 28.

16. Recognition of *kafala* as a situation created within a legal system does not appear to give rise to difficulties in Member States. As regards a *kafala* drawn up in a non-member country that is party to the Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children, concluded at The Hague on 19 October 1996, Member States are required to recognise it as a measure for the protection of children. In the case of other non-member countries (particularly Algeria), *kafalas* drawn up there will in principle be recognised in Member States under national rules of private international law enshrining the principle of recognition of the personal status of foreigners.
17. In that context, a distinction is nonetheless drawn in practice between a notarial *kafala*¹⁹ and a judicial *kafala*. One of the conditions for recognition of a *kafala* in the **Netherlands** and in **Spain** is that it must have been declared by an authority that is competent in such matters. The same applies also in **Italy**, where it is considered that recognition should be given only to a judicial *kafala* and a notarial *kafala* approved by a court, the latter being conditional on the court having ensured that the agreement entered into between the parents and the *kafil* is in the best interests of the child.
18. The latter condition also has a part to play in **France** where, as a general rule, a *kafala* order issued or approved by a judicial authority is recognised automatically, without any particular formalities, where its international regularity is not disputed. In practice, however, an exequatur is advisable, particularly since it facilitates relations with the administration. In that regard, according to a ministerial circular, an exequatur may be refused if the court approving a notarial *kafala* has merely certified the formal regularity of the document without undertaking any verification as to its substance.

¹⁹ The word 'notarial' also covers here the term '*kafala adoulaire*' used in Morocco.

19. Under **Belgian** law, however, a notarial *kafala* may be recognised without formalities under certain conditions. If it is enforceable in the country in which it is drawn up it may be declared enforceable in **Belgium** by the family court.

C. EFFECTS OF *KAFALA* IN THE MEMBER STATES

20. More complicated and delicate is the question of the effects that a *kafala* ordered in a non-member country has within the legal system of a Member State. The difficulties associated with it may potentially be resolved either by the legislature (Part 1), or by judicial and administrative practice (Part 2).

1. NATIONAL LAW

21. The bilateral conventions concluded by certain Member States with Algeria²⁰ and Morocco²¹ do not contain provisions stating that *kafalas* drawn up in Algeria and Morocco will have specific effects in the Member States. The same applies so far as national legislation is concerned.²² Thus, in the current state of the law, even though there are a few national provisions which expressly mention *kafala*, they do not contain any details as to its effects.
22. However, whilst they do not mention the word *kafala*, certain legal systems contain specific provisions that may be applied to *kafala*. In that regard, the **Spanish** law on intercountry adoption contains an article concerning the legal effects in Spain of decisions on the protection of minors that do not give rise to

²⁰ Convention with France.

²¹ Conventions with Spain and France.

²² The adoption of regulations on the subject was nonetheless proposed in Italy in the context of the ratification of the 1996 Convention.

parent-child relationships approved by foreign authorities. That article lays down in particular the rule that such arrangements must be treated as being equivalent to specific national measures, namely fostering or guardianship.

23. A special solution has been adopted in the **United Kingdom**. In 2002, a new family law institution was introduced, known as '*special guardianship*', probably in anticipation of issues associated with the presence of individuals connected under a *kafala* arrangement. Special guardianship must nonetheless be ordered by a competent court of the **United Kingdom**. Legal practice, however, has not so far accepted the idea of automatically treating *kafala* as being equivalent to special guardianship.

2. NATIONAL PRACTICES

24. In the absence of exhaustive, or indeed of any, intervention by national legislatures, it falls to national administrations and courts to rule on the effects of a *kafala* drawn up in a non-member country. Even the **Spanish** legislation referred to above makes no provision for *kafala* to be automatically substituted for, or treated as being equivalent to, one of the national arrangements.
25. In that context, it should be mentioned that in **France** some guidance concerning the situation of *makfuls* is contained in ministerial circulars, in particular a circular adopted by the Minister for Justice.
26. In essence, the main question to be resolved is whether *kafala* should be treated as being equivalent to an arrangement provided for by national law and whether it is possible to substitute it for the latter.

27. In that regard, **all the Member States** which have addressed this challenge agree that *kafala* cannot be treated as being equivalent to adoption, whether full adoption or even simple adoption.²³ Adoption consists of the creation of a parent-child relationship between the child and the adoptive parent, whereas that effect is expressly excluded under *kafala*, or rather by the legal system which it comes under.
28. As regards decisions which treat *kafalas* as being equivalent to national arrangements, there are significant differences between the various solutions adopted, as is evident from the diversity of the arrangements existing under the different legal systems. In that regard, *kafala* is treated most often as being equivalent to guardianship (**Germany, France**, for children with no known family relationship or orphans, **Netherlands, United Kingdom**), informal guardianship²⁴ (**Belgium**) or delegation of parental responsibility²⁵ (**France**, for children with an established family relationship and parents living). Other decisions have been noted which treat *kafala* as being equivalent to fostering (**Belgium, Netherlands**), although that solution is considered in the Member States concerned to be less appropriate than guardianship or informal guardianship.
29. In that regard, it should be noted that, even within a particular legal system, the arrangement which *kafala* is treated as being equivalent to may depend not only on the personal situation of the *makful* but also on the legal context in which

²³ In some Member States (**Belgium, Spain, France**) that approach was clear also within social legislation, in decisions rejecting applications for social benefits in respect of the adoption or birth of the child.

²⁴ Informal guardianship, based on a contract, commits the adult to care and provide for a dependent minor child and enable him to earn a living (Article 475bis of the Belgian Civil Code). It does not interrupt the relationship with the child's family of origin.

²⁵ Under the arrangement in question, the father and mother, together or separately, may, where circumstances so dictate, apply to a court in order to delegate, in full or in part, the exercise of their parental responsibility. Delegation may be made in favour of a family member or a third party. Where the child is manifestly neglected or if the parents are unable, in full or in part, to exercise their parental responsibility, the person who has taken in the child in may also apply to the court.

equivalence is being decided. Thus, its results may be different, for example, in the area of social legislation ²⁶ from in the area of parental responsibility.

30. Whether or not there is any equivalence, that process does not in **any Member State** result in *kafala* being transformed into one of the national arrangements. On the contrary, it cannot, in principle, be excluded that a national arrangement will be ordered in respect of a *makful*, including his adoption. ²⁷

III. IMPACT OF *KAFALA* ON THE RIGHT OF ENTRY AND RESIDENCE OF A *MAKFUL* IN THE MEMBER STATES

31. The existence of a *kafala* drawn up in a non-member country raises problems regarding the right of entry and residence in Member States, in particular as regards the right of a foreign *makful* to join a *kafil* who is resident in a Member State.

32. In that regard, it is appropriate to distinguish between situations in which the *kafil* is a citizen of the Union (Part A) and situations in which he or she is a national of a non-member country lawfully residing in the territory of a Member State (Part B).

A. *KAFIL* WHO IS A CITIZEN OF THE UNION

33. The issue of the right of a foreign *makful* to join a *kafil* who is a Union citizen falls within the scope of Directive 2004/38/EC on the right of citizens of the

²⁶ For examples of the special effects of *kafala* in the social legislation of certain Member States, see the contributions relating to **German, Belgian, Spanish** and **French** law.

²⁷ In that regard, it should be noted that, although the rules of international private law in force in the Member States appear, in principle, to refer to the personal law of the child in order to determine his adoptability, it is also considered that it may be in the child's best interests to disapply a provision of that law prohibiting adoption. Only **France** continues to oppose this; adoption of a *makful* becomes possible in that Member State, however, after a change in the personal status of the child following his acquisition of French nationality.

Union and their family members to move and reside freely within the territory of the Member States.²⁸

34. Directive 2004/38/EC provides an automatic right of entry and residence in a Member State for family members of a Union citizen falling within the definition of ‘family member’ contained in Article 2(2) of the directive. According to Article 2(2)(c) of the directive, the term ‘family members’ includes inter alia ‘the direct descendants’ of a Union citizen who are under the age of 21 or are dependants, and the ‘direct descendants’ of his or her spouse or partner.
35. In that regard, **all Member States** appear to reject the idea that a *makful* might be covered by the term ‘direct descendant’ within the meaning of the provision cited above.
36. The situation seems at first sight to be more nuanced only in the **United Kingdom**. Under an interpretation of rules providing for the right of entry and residence of an adopted child in that country, the concept of ‘adoption’ also includes ‘de facto adoption’. That concept is nonetheless interpreted strictly and narrowly by the national courts, which accordingly appear reluctant to have recourse to it in their decisions.
37. The rejection of the idea of classifying a *makful* as a ‘direct descendant’ does not also mean that *kafala* has no impact on the right of entry and residence of a *makful*. Directive 2004/38/EC provides that Member States have considerable power to decide on the category of persons having the right of entry and residence in their territories.

²⁸ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance) (OJ L 158, p. 77).

38. In that regard, it should be noted that among the Member States which do not oppose the adoption of children whose personal law prohibits it, some (**Belgium, Netherlands**) afford a right of entry and residence to a *makful* on the strength of his future adoption. In that situation, *kafala* appears to have rather more impact as evidence of a relationship that already exists between the future adopted child and adoptive parent than a prior condition for the adoption of a child from a country that prohibits adoption.
39. Other circumstances taken into account by national authorities in the context of granting a *makful* a right of entry and residence in a Member State include: the best interests of the child (**France, Italy**), serious health grounds (**Italy**), the need to provide schooling or medical treatment (**Spain**), humanitarian reasons (**Belgium**), disproportionate interference with the right to respect for private and family life (**France**).
40. In that context, in **France** it follows from case-law that in principle it is in the child's best interests to live with the person who, by virtue of a court decision that has legal effects in France, has parental responsibility for him. Thus, where an application is made for a long-stay entry visa to France in order for a child to join a French national to whom parental responsibility has been delegated, as is the case under *kafala*, a visa cannot as a general rule be refused on the grounds that it would on the contrary be in the child's best interests to remain with parents or other family members in his country of origin.
41. Notwithstanding the powers granted to Member States in this matter, Article 3(2) of Directive 2004/38/EC imposes on them an obligation to facilitate, under certain conditions, entry and residence for 'other family members' of the Union citizen not falling under the definition in Article 2(2).

42. Specific cases found during the research where the scope of the concept of ‘other family members’ lies at the heart of the decision are few. Nonetheless, it seems that the approaches of Member States differ as regards the scope of that concept. Thus, in **Belgium**, it has been held that the absence of a family relationship between the *makful* and his or her *kafil* is sufficient to refuse classification of a *makful* as an ‘other family member’ within the meaning of the provision cited. On the other hand, in **Germany** and in **Italy**, it has been ruled that a *makful* falls within the concept of ‘other family member’ contained in the legislation transposing the article of the directive cited.

B. *KAFIL* WHO IS A NATIONAL OF A NON-MEMBER COUNTRY LAWFULLY
RESIDENT IN THE TERRITORY OF A MEMBER STATE

43. The issue of the right of a foreign *makful* to join a *kafil* who is a national of a non-member country lawfully residing in the territory of a Member State falls in particular within the scope of Directive 2003/86/EC on the right to family reunification.²⁹
44. As regards the specific cases that fall within the scope of Directive 2003/86/EC *ratione personae*, recital 9 of that directive states that family reunification should apply in any case to members of the nuclear family, that is to say the spouse and minor children. In that context, Article 4 of the directive provides that it applies in essence to the minor children, including adopted children, of the sponsor and his or her spouse.
45. In that regard, in **Belgium**, the idea of inferring a right of entry and residence from *kafala* is rejected outright on the grounds that that arrangement may be treated as being equivalent to guardianship, which does not confer any right of residence.

²⁹ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, p. 12).

46. In **France** also, it is considered that a *makful* does not meet the definition of a child who can enjoy the right to family reunification. There is a significant exception to that principle, however, which stems from the agreement between France and Algeria. Since the concept, as used in that agreement, of ‘family members’ who can enjoy the right to family reunification, encompasses also children who are legally in the care of the applicant for reunification, ‘under a decision of the Algerian judicial authority in the child’s best interests’, it may be argued that a *makful* entrusted to an Algerian national is covered by the concept of ‘child’ for the purposes of family reunification.
47. In that context, it should nonetheless be pointed out that in **France**, according to reasoning similar to that adopted in the matter of visas set out above, it was held that it was necessary to consider whether a decision refusing to grant the right to family reunification, applied for in the case of a child who did not fall into one of the categories provided for by the national legislation, would not fail to cater to the child’s best interests and would not be unduly prejudicial to the right of those concerned to respect for their private and family life. Consequently, it would appear from the case-law of the Conseil d’État that a *makful* may as a general rule benefit under the family reunification procedure in order to join the *kafil*.
48. Similarly, in **Italy**, it is considered that *kafala* constitutes grounds for family reunification, since it is possible to find broadly within that arrangement aspects of adoption, fostering and guardianship. It is felt that if a child is refused reunification he will suffer harm because *kafala* is the only protection measure available according to his personal law.
49. In **Spain** also, the Supreme Court has ruled, in the case of an orphan *makful* who no longer had any known relationship with his biological parents, that because a foreign *kafala* may be treated as being equivalent to guardianship and the *kafil* is the minor’s legal representative, a family reunification residence visa should be granted.

50. It cannot be excluded that, in some situations, the right to reunification would be granted to a *makful* in **Sweden** also. It has been held there, although in respect of a case of foreign guardianship and not *kafala*, that children placed in a foster home or under guardianship are not covered by the term ‘child’ used in the relevant national law applicable to family reunification. Moreover, such a possibility has also been rejected in that State in respect of a child who is to be looked after only until he reaches the age of majority. However, it would appear that, according to provisions of national law allowing, under certain conditions, the granting of a residence permit even in the case of person who is not a member of a nuclear family, **Swedish** courts may take into account the individual situation of the person concerned and aspects such as a relationship of particular dependency or particularly serious grounds.

CONCLUSION

51. *Kafala* is recognised in the Member States of the Union as being a measure relating to a foreigner’s personal status. However, that so-called ‘simple’ recognition does not mean that that measure has particular effects in the Member States. So far as the latter are concerned, it appears to be commonly accepted in the Member States that *kafala* cannot be treated as being equivalent to adoption since it does not create a parent-child relationship between two persons. In the absence of national legislation requiring *kafala* to be treated as being equivalent to a single measure of national law, it is for the administration and the national courts to take a position on this. Although practices in that regard differ, it appears that the solution most frequently adopted is to treat *kafala* as being equivalent to guardianship or to delegation of parental responsibility.
52. As regards the right of entry and residence in the Member States, to deny the possibility of treating *kafala* as being equivalent to adoption would seem to mean rejection of the idea of treating a *makful* as a direct descendant of the *kafil* or of his child. The situation is less clear as regards the possibility of classifying the

makful as an ‘other family member’ within the meaning of Article 3(2)(a) of Directive 2004/38/EC. Decisions are found which both accept and reject that classification.

53. Whatever the scope of the concepts of ‘direct descendant’, ‘other family member’ or ‘child’, used in EU law, *kafala* is liable to have an impact on the right of entry and residence under the national legislation and practices of the Member States. Thus, it appears possible that applications for entry or residence in respect of a *makful* may be granted by Member States on grounds, inter alia, of the child’s best interests and the protection of private and family life. In some Member States those grounds justify generally the right of a *makful* to join a *kafil* who is lawfully residing in a Member State, whether or not the latter is a Union citizen. In others, it would appear that they may justify it in the light of the particular situation of the child concerned.

[...]