4.14.2.4. Family reunification

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Amendments were adopted to the family reunification rules in Denmark. As a rule, the sponsor living in Denmark or the sponsor's spouse or cohabitant should not be convicted of 'negative social control' (for example, sending a child abroad to conditions that seriously endanger the child's health or development) for a period of 10 years to be able to proceed with family reunification with a child. Similar changes were introduced as a criterion for acquiring a permanent residence permit *(see Section 4.14.2.3)*.1093

The Finnish Aliens Act was amended, and as of 1 February 2023 minors who have received international protection became exempted from the requirement of having sufficient financial resources. Family members can now be granted a residence permit, even when the minor sponsor does not fulfil this requirement,1094 as recommended by UNHCR and civil society organisations in 20211095 and the Finnish Human Rights Centre in June 2022.1096 However, contrary to the recommendations, the requirement remained unchanged for adult beneficiaries of subsidiary protection.1097

Due to an increase in the number of family reunification applications, the Finnish Immigration Service announced a backlog in their processing in October 2022. The backlog concerned only a limited number of applications, and 60% of the requests submitted in 2022 received a decision within 3 months.1098

The Finnish Supreme Administrative Court analysed a family reunification request in light of the CJEU judgment in *B.M.M. and others* from 2020. The court underlined that, in principle, a final and binding decision should not be overturned as a matter of legal certainty. However, in the particular case, the incorrect application of the law could not be corrected by a new application. Thus, the court annulled the final decision and ordered the authorities to process the case again, listing the sponsor's son as a minor.

The Icelandic government approved a proposal to allow family reunification for young Afghan refugees who received protection shortly after turning 18 years. In principle, only persons under the age of 18 can apply for family reunification with their parents and siblings under 18 years old.1099

In Germany, in 2021 and 2022, several federal states (Berlin, Bremen, Hessen, Schleswig-Holstein and Thuringia) decided to put regional family reunification programmes, which were approved by the federal government, in place for family members of Afghan refugees. For Syrian refugees, some regional programmes for family reunification are still in place. These programmes are reserved for first- and second-

degree relatives of persons living in Germany with refugee status or another legal residential status. In contrast to the 'normal' family reunification procedure, the family members living in Germany must act as sponsors by declaring that they will cover the cost of living of their relatives (either from their own resources or with the help of external sponsors).1100

Italy launched a new digital platform to facilitate the family reunification procedure. It allows, for example, a request to be submitted online.1101

In Austria, civil society organisations expressed concern about the time limit to apply for family reunification, given that applications must be submitted personally to an Austrian embassy and waiting times were often lengthy.1102

UNHCR in Spain was concerned by the long processing times for family reunification. The organisation observed that the procedure could take more than 18 months, as it involves a complex procedure with several authorities, and guidelines seemed to be lacking on their cooperation. The organisation also noted that beneficiaries usually received very little information on the status of their request.

The Belgian government announced its intention to create a separate right of residence through family reunification of parents of children who are recognised beneficiaries of international protection, but who themselves do not qualify for international protection.1103

The Dutch IND announced several measures in April 2022 to shorten the waiting time for family reunification and close the backlog. Other measures aimed to speed up the process once family members were in the Netherlands, for example, by creating a separate location and strand for the registration of their application *(see Section 4.1)*.1104 However, a new judgment from the Council of State advised the IND to always weigh the different interests before taking a decision in a family reunification case. For example, it was no longer sufficient to conclude a lack of emotional ties without weighing further elements. The additional steps would likely extend processing times rather than reducing them.

Likewise, the Council of State delivered a judgment on the right to be heard in family reunification cases. Dutch law allows to waive the obligation to hear an applicant in family reunification cases when the person's objection against a planned decision is considered to be manifestly unfounded. In the specific case, the council concluded that the applicants submitted additional evidence and substantiated special individual circumstances that should have led to a hearing.

A study published in June 2022 found that Dutch family reunification legislation was perceived to be more lenient than in other EU+ countries. This led to many unaccompanied children applying for asylum in the country with the objective to be reunited with their families afterwards.1105

In August 2022, the new policies to accelerate procedures in the Netherlands were halted due to a lack of places in reception. The temporary measures aimed to restrict family reunification until 31 December 2023. A visa was only issued to a family member when the assigned municipality notified that suitable accommodation had been found for the recognised beneficiary and the family members planning to join. The procedure was foreseen to take a maximum of 15 months: 9 months to check the family reunification application and 6 months to issue the visa. If no accommodation was found within the 15-month period, the family members would be issued a visa immediately. The government has proposed an amendment to relevant legislation to increase the formal decision time limit for family reunification cases from 6 to 9 months, the maximum allowed by the Family Reunification Directive.1106

Following the entry into force of the temporary measures, several courts have granted interim protection against decisions to refuse a family reunification visa due to a lack of reception places. The Council of State pronounced a ruling on this matter related to three cases in February 2023. 1107 In all three cases, the council ruled that the measure was against national and EU laws.1108 Following the rulings, the measure was immediately abolished.

The ECtHR considered the suspension of family reunification introduced by the Temporary Law in Sweden, in contrast to its judgment in *M.A.* v *Denmark*, where it assessed the 3-year waiting period for family reunification. The court concluded that Swedish legislation was not in breach of the ECHR, Article 8, as the suspension had been applicable in this particular case for less than 2 years, the difference in treatment between refugees and beneficiaries of subsidiary protection was objectively justified, and the effect of the differential treatment was not disproportionate. The court also underlined that "the best interests of a child, of whatever age, could not constitute a 'trump card' that required the admission of all children who would be better off living in a Contracting State".

During the course of the year, the CJEU addressed several questions on determining minority for the purposes of family reunification. The court underlined that the main objective of the Family Reunification Directive was to favour reuniting families and the directive must be applied toward the best interests of a child *(see Section 2.6)*. Hence, it was contrary to EU law, that German authorities took into account the date of the decision on the entry and residence visa as determining the minority or majority of the applicant or the sponsor. In another ruling delivered on the same day, the CJEU concluded that the date of the sponsor's application for international protection needs to be taken into account to determine the minority of the sponsor's child.

The court gave guidance on assessing the existence of a real family relationship in these particular cases. The German civil society organisation, PRO ASYL, welcomed the ruling to strengthen family reunification rights across the EU.1109 The SMA in Sweden updated its legal guidance following the decision.1110 Still, the Belgian Council of State referred again questions for a preliminary ruling and asked which moment should be decisive when determining the minority of the person to be reunited with the sponsor: the moment when the sponsor submitted the application for international protection or when the protection is granted.

In addition, the CJEU ruled on the family reunification of unaccompanied minors and concluded that the child does not have to be unmarried to benefit from the right to family reunification with the parents.

In light of recent CJEU case law, the Administrative Court in Luxembourg found in one case that a refugee child could not be considered to be unaccompanied for the purpose of family reunification after her adult brother was appointed as her guardian. However, the authorities should have taken other circumstances into account when deciding on her request to reunite with her parents, such as the child's young age and her psychological distress since her separation from the parents. The Human Rights Committee recommended the Luxembourgish government to cease imposing strict deadlines for family reunification under more favourable conditions for beneficiaries of international protection.1111

The Finnish Supreme Administrative Court considered the validity of proxy marriages for family reunification procedures. In one case, the court noted that the request cannot be refused only because the marriage certificate was not legalised or because it was not entered in the Finnish population registry. The court underlined that the authorities need to assess the reason for the proxy marriage, which was legal in the spouse's country of origin. In addition, the authorities should assess the duration and stability of family life and the intention to start family life as a married couple.

In another case, the court observed that the reasons invoked to marry by video link did not seem convincing. However, the facts indicated the couple's intention to establish a family life, and thus, the marriage was considered as valid.

In Cyprus, IPAC issued a positive decision (*YT* v *RoC* via CRMD, ??? 500/2019, decision date 10 November 2022) in a case of a recognised refugee who had applied for family reunification with the spouse and 4 underage children. As the applicant had applied 3 months after the status was granted, the application was subject to material conditions. The application had been rejected by the Civil Registry and Migration Department (CRMD) on the basis of financial criteria. Although the applicant was employed, it was deemed that the income was insufficient to support the family. IPAC annulled the decision on the basis of insufficient

research of the material facts by the CRMD and provided clear guidance on the examination of family reunification applications of refugees, emphasising the need for the CRMD to take into consideration the special circumstances of refugees and the best interests of the child.1112

The Tribunal of Brussels submitted an urgent request to the CJEU for a preliminary ruling on the legality of family members of a beneficiary of international protection having to submit their request for family reunification at a Belgian diplomatic or consular office. In parallel, the Flemish Refugee Action made recommendations on facilitating the family reunification procedure for beneficiaries of international protection. It demanded that the government change the legislation and allow family members to apply digitally, without the need to travel to the nearest consular post or embassy.1113

Assessing the requirement for documentary evidence in family reunification procedures, the Belgian CALL overruled the decision of the Immigration Office to reject a request by an Afghan beneficiary of subsidiary protection because he was unable to present a marriage certificate or the results of a DNA test proving family ties. The applicant's wife was requested to provide a criminal record, as a precondition for the DNA test. CALL concluded that it was unfair to make the DNA test preconditional on submitting a criminal record, taking into account the overall situation in Afghanistan. Based on the Family Reunification Directive, Article 11(2), the office should have taken into account other pieces of evidence and circumstances to assess the existence of a family relationship.

In contrast, the Finnish Supreme Administrative Court confirmed the rejection of a family reunification request because a valid travel document from the country of origin was not submitted. One of the parents wanted to be reunited with the spouse (sponsor) who had obtained a residence permit on individual humanitarian grounds and with the child who had refugee status in Finland. However, the parent's application for international protection was rejected and the authorities found no reasons for which he could not contact his home country's authorities. The court underlined that residence permits for family reunification can only be issued in exceptional cases when the travel document is lacking and no special circumstances affected the child's best interests to justify an exemption.

In another case, the Finnish Supreme Administrative Court sent back a case for re-examination, as it found that the child's best interests were not sufficiently analysed when the authorities rejected one of the parent's request for family reunification based on the suspicion that his request intended to circumvent general migration regulations.

The Dutch Council of State reiterated that the authorities should assess information in a holistic way and consider whether the benefit of doubt can be given to the applicant following this examination. In family reunification cases involving nationals of Eritrea, the authorities must take into account the limited availability of documents and not hold it against the applicant that the birth certificate is missing.

In the case of a request to reunite an Afghan mother with her child and husband who already received protection in Belgium, CALL annulled the rejection as the administrative documents did not show evidence of the authority's examination of the best interests of the child or the child's serious illness.

In June 2022, the Civil Court of Rome accepted an appeal presented by a Somali beneficiary of international protection against the refusal of a family visa for his wife based on the absence of sufficient documentation certifying the marriage bond. The applicant was not present at the time of the registration of the marriage and his signature had been affixed by a third person. The court highlighted the limits faced by a holder of international protection in producing the required documentation and insisted on the need to highlight further elements for the purpose of verifying the genuineness of the link.1114

In Germany, in December 2022, the Federal Administrative Court ruled that a distinction between refugees and beneficiaries of subsidiary protection for the right to family reunification does not violate the Constitution.1115 Another discussion in 2022 concerned the additional criteria for family reunification when

minor children were the sponsors and wish to reunite with their parents. Parents of unaccompanied minors may only be granted a visa if the family already existed in the country of origin. In a particular case of interest, the child was born in Germany, so it was argued that the 'family' did not exist yet at the time the parents were in the country of origin. However, in June 2022, the Higher Administrative Court decided that the criterion of the 'already-existing family' does not necessarily require identical persons but that the family already exists as a family.1116

In Sweden, the Migration Court of Appeal found that, when determining the age of the sponsor for family reunification, the relevant time should be the time of the application for family reunification. If the person is under 18 years when the application for family reunification is lodged, there should be no condition that the application must be lodged within 3 months from the decision of the residence permit.

In addition to this precedent ruling, the Swedish SMA issued a legal position in 2022 on the relevant time to determine the age of an applicant or a sponsor. According to the legal position, for a child who applies to reunite with a parent in Sweden, the relevant time is the time of application for family reunification or, when the application for family reunification is made within 3 months from when the parent was granted a residence permit and protection status, the relevant time is when the parent applied for asylum. For a parent who applies to reunite with a child in Sweden the relevant time for determining the age of the child is the time of the application for family reunification or, when the child was under 18 years when applying for asylum but has turned 18 years at the time of application for family reunification, that child is still considered as a child if the application for family reunification was lodged within 3 months from the date the child was granted a residence permit.1117

In February 2023, ECRE published a comparative report providing an overview of current state legislation and practices in family reunification for beneficiaries of international protection in 23 European countries based on ECRE's Asylum Information Database (AIDA). The report focuses on both good practices and the trends at the national level which may compromise the effectiveness of the right to family reunification for beneficiaries of international protection.1118

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