Please cite as: EUAA, '4.14.2.4 Family reunification' in *EASO Asylum Report 2021*, January 2022.

4.14.2.4 Family reunification

Some Member States initiated changes to facilitate family reunification for beneficiaries of international protection and provided clarifications on the process through more detailed guidance. Courts remained active in shaping policy and practice on family reunification, similar to previous years.

An amendment to the Luxembourgish Immigration Law was presented to the parliament, which aimed to simplify the family reunification procedure in general and to extend the time limit for facilitated family reunification criteria for beneficiaries of international protection from 3 months to 6 months.[1036] The amendment follows the recommendations of the Consultative Commission on Human Rights.[1037]

The Swiss Federal Council adopted a positive opinion on a report from the Political Institutions Committee of the Council of States on the parliamentary initiative on granting the same family reunification regimes to beneficiaries of international protection and persons with temporary admission.[1038] The Swiss UNHCR and Red Cross launched two videos to underline the importance of facilitating family reunification, both for refugees and persons with temporary admission.[1039]

The Irish Supreme Court ruled on the right to family reunification for refugees who were naturalised. The Minister for Justice accepted family reunification requests in such cases between 2010 and 2017, but following the issuance of legal advice, it reverted to its practice before 2010 and started to reject them. While the High Court and the Court of Appeal confirmed this approach, the Supreme Court found that naturalised refugees keep their right to family reunification and an interpretation to the contrary would be contrary to the legislators' intent. The judgment applied to the legacy Refugee Act 1996, which was repealed and replaced by the International Protection Act 2015, which includes expressly under Section 47(9) that a refugee declaration is formally revoked on naturalisation.

The Supreme Court also assessed the definition of a child under the International Protection Act 2015 and held that this included biological and adopted children, but it did not cover a larger scope of family structures within the International Protection Act's family reunification provisions. The applicant created serious doubt about his paternity to the two children, and in these circumstances, the national authorities could require a DNA test to establish the relationship. The authorities were also entitled to draw conclusions from the fact that the applicant rejected to take this test and, thus, to refuse the application for family reunification.

The time limit for submitting family reunification requests was extended in Greece for beneficiaries of international protection who were granted status between December 2019 and March 2020.

However, the administrative burden for translating and certifying documents remained a requirement which was proven to be challenging for beneficiaries, who typically lost their documents during their escape.[1040]

The 3-month time limit for facilitated criteria for family reunification for refugees was extended in Finland, when applicants could not submit a family reunification request due to the pandemic. In addition, the government programme proposed amendments to the Aliens Act to facilitate the family reunification of unaccompanied minors and eliminate the requirement for sufficient financial resources, even if they submitted their request after the 3-month time limit. A Regional Administrative Court emphasised in its judgment that the 3-month period should not be interpreted in a strict manner. In that specific case, it was clear that the applicants made significant efforts to gather all necessary documentation on time and they were delayed only because there was no Finnish consulate in their country of origin.

The Finnish Supreme Administrative Court interpreted the notion of family relations and the best interests of the child in a case where the parents who fled from Iraq to Turkey decided to send their daughter to Finland and then request family reunification. The court noted that the girl received subsidiary protection because her return alone would put her at risk of serious harm, but the security situation in their home region would allow to return the family. It added that the parents voluntarily ended family relations when they sent their daughter ahead to secure residence permits and the parents had acted against the best interests of the child. Under these conditions, the court assessed that the best interests of the child did not require her to be reunited with her parents. The court reached the same conclusion in another case with similar facts.

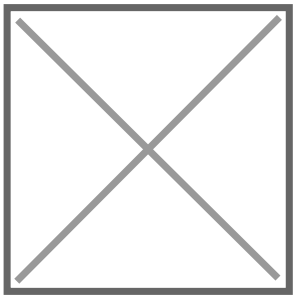
The Immigration Office in Belgium provided detailed guidance on the exceptional circumstances to extend the validity of family reunification decisions and the validity of supporting documents.[1041]

In France, family reunification procedures were suspended due to the pandemic throughout 2020, and this decision was challenged by civil society organisations in front of the Council of State at the end of the year.[1042] The Council delivered its judgment at the beginning of 2021 and raised serious doubts about the legality of the measures. The judge noted that the number of persons who benefit from family reunification is typically not excessive and health risks could be mitigated through testing and quarantine measures instead of a complete travel ban. The judge found as well that the measures were in serious breach of the right to family life and the best interests of the child and that the limitations were not proportionate. Family reunification procedures were temporarily suspended or halted in other countries as well, for example in Cyprus, Hungary and Switzerland, causing further delays in the process.[1043]

In France, the first instance administrative court found that a family reunification request could have been rejected due to considerations for public order in the case of a separated Afghan family. The family fled Iran and applied for asylum in Greece, then the mother travelled further to France with her newborn child, where they were granted international protection. However, the French consulate in Athens refused the family reunification request, underlining that it had already refused their transfer request based on the Dublin III Regulation. The court overturned this decision noting that the consulate failed to consider the urgency of the request.

The Netherlands issued clarifications on the assessment of family reunification for beneficiaries of international protection. For example, the fact that the family members were not named during the asylum procedure is not in itself a ground to reject reunification, but it can be taken into account when assessing the actual family link. For foster children, the identity of the biological parents and the family link of the foster parents to the biological parents always need to be clarified. When the biological parents are still present, the link between a foster child and foster parents can only be recognised for family reunification under very exceptional circumstances.[1044] Both the IND and civil society organisations noted that family reunification procedures were delayed due reduced capacity of embassies and general travel restrictions caused by the pandemic.[1045]
The Swedish Migration Agency provided clarification on the economic requirement for family reunification, explaining in which cases beneficiaries of international protection and children are exempted from these rules.[1046] The agency also updated its legal position on considering a child's age in family reunification procedures, following the CJEU's relevant judgment *(see Section 2)*.[1047] Planned changes to the country's migration legislation *(see Section 4.14.3)* would also systemise the changes introduced by the law on temporary limitations on the possibility of obtaining a residence permit and would limit family reunification to core family members only. However, the draft law extends family reunification to persons who intend to marry or cohabitate if their relationship was already established in the country of origin, enabling family reunification for same-sex couples who were unable to formalise their relationship in their home country.[1048]

Child beneficiaries of international protection in Germany remained entitled only to simplified family reunification with their parents[1049] but not with their siblings. In response, civil society organisations continued to report on the significant difficulties brought by this limitation.[1050]
The Hungarian Helsinki Committee noted difficulties in proving family links between a sponsor and a family member when the asylum authority assessed the submitted documents to be false or falsified. Sponsors cannot initiate a DNA test since 2017, and it is only at the asylum authority's discretion, which typically refuses to request the test based on the assumption that sponsors tried to deliberately misinform the authorities with false information.[1051]



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