3.13.2.3. Family reunification

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Marking the 20th anniversary of the Family Reunification Directive, ECRE published an overview of the right to family reunification for beneficiaries of international protection.872The Red Cross formulated recommendations to enhance the family reunification procedure, based on experiences of the national Red Cross and Red Crescent Societies while delivering support to separated families.873

The draft Belgian Migration Code also foresees changes to the family reunification rules. The planned changes apply to all and are not specific for, but will impact, beneficiaries of international protection. For example, family reunification with a Belgian child is only possible if the parent can demonstrate that he/she is involved in the daily care of the child and the parent can lose the right to residence if they no longer participate in the daily care. When a municipality declares the child's acknowledgement as not genuine, this is registered at the national level. In addition, the cascade ban is extended to spouses of a Belgian or an EU citizen, meaning that the person being reunited with their partner cannot initiate a new family reunification with another partner within 2 years.874

In Sweden, new regulations within the area of family reunification entered into force on 1 December 2023. The age limit for when a residence permit on grounds of personal ties can be denied has been raised from 18 years to 21 years. The possibilities for exemption from the maintenance requirement in family member immigration for persons eligible for subsidiary protection was also limited.875

The Bulgarian SAR issued new instructions on the family reunification procedure for beneficiaries of international protection, noting that both the submission of the family reunification request and the subsequent registration of the family members must be carried out in the same registration and reception centre where the decision to grant international protection was issued to the beneficiary.876The civil society organisation Foundation for Access to Rights published detailed recommendations on legislation, policies and practices to improve the Bulgarian family reunification system. For example, the organisation suggested that the maximum length for the procedure and the roles and responsibilities of each stakeholder should be included in law.877

Czech law now allows adult applicants to be reunited with their parents or a close relative in the ascending line if they applied for international protection as a minor and the family reunification is requested within 3 months of the decision on the asylum application.878

Similarly to 2022, the Finnish Immigration Service announced that there were backlogs in processing a share of family reunification applications in 2023 as well. The majority of applications were still processed on time, 60% within 3 months and 75% within 6 months. The delays were due to a significant increase in the number of family reunification requests in recent years (50% compared to 2021).879Overall, the length of processing family reunification requests decreased from an estimated 9 to 6 months, and the time for the extension of family reunification residence permits stabilised at an estimated 6 months instead of 4-7 months.880

Following the CJEU judgment in 2022, CALL held that the Belgian authorities could not take into account a minor child's civil status (the fact that she was married) when examining the right to be reunited with the parents.

In line with recent CJEU case law, the French Council of State ruled that the age of the child is determined by the date when the request for the family reunification visa is made, irrespective of the date that the authorities register the request. When a first request is rejected and a second application is made, the date of the second request should be taken into account. When the parent is a beneficiary of international protection and the child reached the age of majority between the application for international protection and the application for family reunification, the child should be considered as a minor for the purposes of the family reunification procedure, provided the request was submitted 3 months within the granting of international protection.

The Spanish Administrative Court in Barcelona referred questions for a preliminary ruling on the circumstances and procedure to provide reunited family members with an autonomous residence permit.

In Finland, the Supreme Administrative Court stated that legal certainty requires that a final and binding decision cannot be overturned. However, in a specific case and in light of the CJEU interpretation provided after the national decision, the court found that the erroneous application of the law – the fact that the person was considered to be an adult instead of a minor – could not be corrected by a new application. Thus, the court annulled the final decision and ordered the authorities to process the request again, considering the sponsor's son as a minor.

Finnish courts continued to rule on substantial cases related to family reunification. In one case, the Supreme Administrative Court ruled that the Finnish Immigration Service may reject a family reunification request, assess the possibility of a return and issue a return decision for the purposes of that request, even when the same person's application for international protection was still pending an appeal. In another case the court confirmed that a permit based on family reunification may not be extended when the relationship broke and the spouses divorced. However, in another case, the court underlined that, when the person's situation is particularly difficult after the end of the relationship due to domestic violence, denying a permit would be unreasonable. In that case, the applicant had been in Finland for 4 years with her children.

The ECtHR assessed cases of people who could have qualified for family reunification as refugees but they were granted temporary admission in Switzerland, as their refugee status arose from their own actions after departing their country of origin. Thus, these people were not entitled to family reunification but needed to meet certain criteria, including self-sufficiency and non-reliance on social assistance. The court concluded that, in three of the cases, the Swiss authorities did not strike a fair balance between the applicants' and the state's competing interests, while in the fourth one, it confirmed that the domestic court had not overstepped in its decision when it considered the person's lack of initiative to improve her financial situation.

In another case, the ECtHR found that the Swedish authorities struck a fair balance between the applicant's and the state's interests when they rejected a refugee's request to be reunited with his first wife and children from that marriage. The applicant was under an exemption for 3 months from recognition to fulfil the requirement to have enough funds to maintain the reunited family members, but he submitted his request afterwards. The court also upheld its previous jurisprudence and ruled that the temporary suspension of family reunification requests by beneficiaries of subsidiary protection in Sweden was not a violation of the ECHR, Article 8.

The Dutch Council of State ruled in three cases that a temporary policy measure to restrict family reunification, introduced in 2022,881was against national and EU laws.882

The Brussels first instance tribunal submitted an urgent request for a preliminary ruling at the beginning of 2023, and the CJEU ruled that it was contrary to EU law to require everyone without any exception to submit

an application for family reunification before the competent diplomatic representation (*see Section 2.5*). The court specifically examined the particular situation of refugees and underlined that the requirement without any derogations may render family reunification for them impossible in practice.

The Belgian CALL analysed when exceptions from family reunification rules could be applied to beneficiaries of international protection. The case concerned a refugee who had already been residing in Belgium under a different residence right before receiving international protection. The court confirmed that the exceptions applied in this case, and the person should not be required the proof of medical insurance for the whole family.

In Ireland, the High Court underlined that family reunification is governed by Irish law and the rules of the Family Reunification Directive, as interpreted by the CJEU, are not applicable in the country. Thus, when considering the age of the children of a beneficiary of international protection, the date of the recognition is applicable, not the date of the application for international protection.

The Dutch first instance administrative court noted that the policy on young dependent adults was correctly applied by the authorities, but then they failed to weigh the interests of the state and of the applicant based on the ECHR, Article 8, when examining if the link between the father and his son should still be protected under that provision.

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