

Overcoming restrictions on the right to family reunification for beneficiaries of subsidiary protection

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Overview

- Family Reunification Directive
- Same protection needs
- Article 8 ECHR and the right to family reunification
- Criteria for positive obligation cases
- Procedural hurdles
- Procedural requirements for states under Article 8 ECHR



In the beginning...

“a State is entitled, as a matter of well-established international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there. The Convention does not guarantee the right of a foreign national to enter or to reside in a particular country”

ECtHR, Jeunesse v. Netherlands, para. 100

... and all immigration judgments from the Strasbourg Court



EU Family Reunification Directive

Article 3(2)

2. This Directive shall not apply where the sponsor is:

(c) authorised to reside in a Member State on the basis of a subsidiary form of protection [...]

Examples: Sweden (temporary), Germany (permanent quota system), Netherlands (one-status system under scrutiny)



Same protection needs

European Commission (2014):

“The Commission considers that the humanitarian protection needs of persons benefiting from subsidiary protection do not differ from those of refugees, and encourages MSs to adopt rules that grant similar rights to refugees and beneficiaries of temporary or subsidiary protection.”

'Vergeef me als er iets gebeurt', was het laatste wat Israa Aoun (21) haar man liet weten

Scheepsramp Na de scheepsramp met migranten voor de Griekse kust worden nog zo'n vijfhonderd opvarenden vermist. Naar alle waarschijnlijkheid zijn zij verdronken. Dit zijn de verhalen van twee van hen.

✍️ Carlijn Vis & Martine Kamsma 🕒 18 juni 2023 ⌚ Leestijd 6 minuten



Source: [NRC](#)

Essential right to family reunification

Tanda Muzinga v. France

The Court reiterates that the family unity is an essential right of refugees and that family reunion is an essential element in enabling persons who have fled persecution to resume a normal life [...]



Human right to family reunification?

M.A. v. Denmark

“[...] the extent of a State’s obligations to admit to its territory relatives of persons residing there will vary according to the particular circumstances of the persons involved and the general interest, and is subject to a fair balance that has to be struck between the competing interests involved.”



Criteria for balancing interests

- The extent to which family life would effectively be ruptured
- The extent of the ties in the Contracting State
- Whether there are insurmountable obstacles in the way of the family living in the country of origin of the alien concerned (insurmountable obstacles to enjoying family life in the country of origin progressively assume greater importance)
- Whether there are factors of immigration control

M.T. ea. v. Sweden



Procedural hurdles

- Clear procedural and substantive obligations under the Family Reunification Directive
- Margin of appreciation under Article 8 ECHR
- Possibility to make the right conditional
- Creates complicated and lengthy procedures

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Procedural requirements under Article 8

Tanda Muzinga v. France

In this context, the Court considers that it was essential for the national authorities to take account of the applicant's vulnerability and his particularly difficult personal history, to pay close attention to his arguments of relevance to the outcome of the dispute, to inform him of the reasons preventing family reunification, and, lastly, to take a rapid decision on the visa applications.

Concluding remarks

- Family reunification is used to make countries of destination less attractive
- Positive obligation under Article 8 ECHR is evolving
- But states create procedural hurdles
- Procedural requirements under Article 8 ECHR
- Compare with:
 - Article 9 CRC (positive obligation?)
 - Article 10 CRC (procedural obligation?)



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Leiden Law Blog: Why the proposed Dutch ‘two-status’ asylum system is a bad idea,
<https://www.leidenlawblog.nl/articles/why-the-proposed-dutch-two-status-asylum-system-is-a-bad-idea>



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