Family reunification of refugees and beneficiaries of subsidiary protection

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Two questions on family reunification

• Will the 2016 proposals change the right to family reunification of international protection beneficiaries?

• Relevance of current EU law and the ECHR case law for family reunification of beneficiaries of subsidiary protection (BSP)?
Why is family reunification important?

• Acute danger for family members remaining in country of origin
• Avoid prolonged separation and hardship for protected family member
• Vital importance for integration in country of refuge
Proposal Dublin IV

- Definition ‘family member’ extended with siblings and family relations formed in transit (Article 2(9) and Recital 19)
- Remedy for family criteria in Article 28(4)
- **But**: new inadmissibility procedure disregards protection obligation family unity of asylum seekers => family criteria (current Articles 8-11) will become less relevant
Proposed Qualification Regulation

• Definition ‘family member’ extended to family relations before arrival: Article 2(9)
• Family members already present in MS and not qualifying for international protection entitled to residence permit and same rights as protection beneficiaries: Article 25
• Article 25 without prejudice to Family Reunification Directive 2003/86
Answer to first question

• New inadmissibility procedure in Dublin IV will reduce family reunion on basis family criteria
• More rights for family members already present in the Member State in QR
• The proposals will marginally extend and effectively reduce right to family reunification
II. Current EU law and BSP

• Family Reunification Directive 2003/86 grants right to family reunification to refugees
• Does the Directive really exclude SBP from its scope?
• Article 3(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 *in accordance with international obligations, national legislation or the practice of the Member States or applying for authorisation to reside on that basis and awaiting a decision on his status*
• Not excluded: protection *in accordance with EU law*
Family reunification and BSP

• Text Article 3(2)(c) Directive 2003/86
• Legislative history of that Directive
• Gradual convergence of status of refugees and BSP in EU asylum law (QD)
• If BSP covered by Directive => maximum waiting period 2 years (Article 8)
Different treatment of refugees and BSP compatible with ECHR and EU Charter?

• Justification of different treatment of refugees and BSP with regard to family reunion?

Recent case law ECtHR on Article 8 + Article 14

• *Hode and Abdi v UK* 6 Nov 2012, 22341/09, § 54-55
• *Pajić v Croatia* 23 Feb 2016, 68453/13, § 81-83
• *Taddeucci v Italy* 30 June 2016, 51362/09, § 94-98
• *Biao v Denmark* 24 May 2016, 38590/10, § 122-137

• In EU law: Article 7 and Article 21(1) Charter