

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)
- Is restriction of Chapter V Directive to refugees justified? 2003 ↔ 2017? *Hode&Abdi*

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
 - *Taddeuci v Italy* 30 June 2016, 51362/09, § 94-98
 - *Biao v Denmark* 24 May 2016, 38590/10, § 122-137
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- In EU law: Article 7 and Article 21(1) Charter