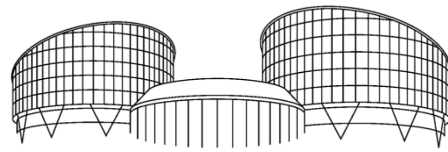

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law

October 2022

M.T. and Others v. Sweden - 22105/18

Judgment 20.10.2022 [Section I]

Article 8

Positive obligations

Article 8-1

Respect for family life

Justified temporary statutory three-year suspension period, for family reunification of persons with subsidiary protection, gradually reduced and allowing individualised assessment: *no violation*

Article 14

Discrimination

No discrimination in circumstances by applying temporary three-year suspension period for family reunification to persons with subsidiary protection status in contrast to those with refugee status: *no violation*

Facts – The applicants, a mother (first applicant) and her two sons (second and third applicant), are Syrian nationals. The second applicant, born in 2000, travelled to Sweden in March 2016 and upon arrival applied for asylum. In November 2016 he was granted subsidiary protection status pursuant to the Aliens Act and given a temporary residence permit under the Act on Temporary Restrictions of the Possibility of Being Granted a Residence Permit in Sweden (the Temporary Act). In October 2017 his residence permit was prolonged by two years.

The Temporary Act had entered into force on 20 July 2016. Among other things, it suspended from 20 July 2016 to 19 July 2019, the right to be granted family reunification with persons who had been granted subsidiary protection in Sweden (and requested asylum after 24 November 2015), unless such a decision would be in breach of international conventions, including Article 8 of the Convention.

In February 2017 the two other applicants requested family reunification in Sweden based on their family ties with the second applicant. Their requests were rejected with reference to the Temporary Act. All appeals were dismissed.

In August 2018 the second applicant turned eighteen years old and therefore under domestic law was no longer considered eligible for family reunification.

Law – Article 8: The Court applied the principles and considerations set out in *M.A. v Denmark* [GC]. The crux of the matter in the present case was whether the Swedish

authorities, when refusing the applicants' application for family reunion, owing to the temporary suspension, had struck a fair balance between the competing interests of the individual and of the community as a whole. The applicants had had an interest in being reunited whereas the Swedish State had had an interest in regulating immigration and controlling public expenditure.

(a) *The legislative and policy framework* – The Court found no reason to question the distinction made by the Swedish legislature in respect of persons granted protection owing to an individualised threat (persons eligible for refugee status under the United Nations Convention relating to the status of refugees), on the one hand, and persons granted protection due to a generalised threat (persons eligible for subsidiary protection), on the other hand. The Court also found that the general justification for the amendments had been based on needs, which served the general interests of the economic well-being of the country. In this connection it noted in particular, that due to developments in Syria, there had been a drastic increase in the number of asylum-seekers in the European union by 2015, including in Sweden. The Temporary Act could be distinguished from the legislation in question in *M.A. v Denmark*, as it had only resulted in a three-year suspension period for those who applied for family reunification on 20 July 2016. Thereafter, the waiting period had been gradually reduced to two years or less for those who had applied on or after 20 July 2017. This was in contrast to the Danish legislation which had required that a person held a residence permit for at least three years, before being eligible for family reunification, unless there had been exceptional reasons. In addition, when the Temporary Act had been prolonged for two years in July 2019, the right to apply for family reunification for persons who had been granted subsidiary protection, and who had applied for a residence permit after 24 November 2015, had been restored.

(b) *The applicants' individual case* – The second applicant had had limited ties with Sweden and had shown no indication of any vulnerability or dependence on the first applicant. Similarly, the first and third applicants had had no ties to Sweden besides from the second applicant (and his twin brothers) being allowed on Swedish territory and had shown no indication of any vulnerability or dependence on the second applicant. When the applicants' application had been refused owing to the general situation in Syria, there had been "insurmountable obstacles" to the applicants enjoying their family life there. They had had the possibility, however, of maintaining contact. The Court was satisfied that the authorities had assessed whether the applicants' individual circumstances, their interests and dependence on each other (or lack thereof) had fallen under the Temporary Act, and whether the refusal to grant the first and third applicants a residence permit would have been contrary to Sweden's commitments under the Convention. Their reasoning had been sufficiently specific to enable it to carry out the supervision entrusted to it.

Moreover, the family reunification concerned a mother and her son, who had been sixteen and a half years old at the time of the application and had managed well on his own in Sweden for almost two years. Therefore, the Court expressed the view the suspension of their family reunification would not "exacerbate the disruption of an essential cohabitation" in distinction with the case of *M.A. v Denmark*. The applicants had not pointed to any particular dependence on each other or difficulties that might have arisen from their living apart from each other. Further, the best interests of a child, of whatever age, could not constitute a "trump card" that required the admission of all children who would be better off living in a Contracting State. Lastly, there was no basis for concluding that only very limited exceptions fell under the exception clause of the Temporary Act.

(c) *Overall conclusion* – The Court saw no reason for questioning the rationale for a waiting period of two years and noted the applicants had been *de facto* covered by the suspension for a period of less than two years. In addition, there had been no indication

that the Temporary Act had not allowed for an individualised assessment of the interests of family unity in the light of the concrete situation of the persons concerned, or that such an assessment had not been carried out in the applicants' case. Given these circumstances and the States' wide margin of appreciation, the domestic authorities, when suspending the applicants' right to apply for family reunification, had struck a fair balance between the competing interests at stake.

Conclusion: no violation (six votes to one).

Article 8 taken in conjunction with Article 14:

The applicants argued that they had been in a comparable situation to that of persons who had been granted refugee status. The Court expressed the view, taking into account the various factual and legal arguments in this connection as well as the views expressed by various international bodies and organisations, that persons with "subsidiary protection status" might in some respects be in a different situation and in other respects in a similar situation to persons with "refugee status", depending on the specific circumstances and the particular rights or situation in issue. The question could not be answered in general in respect of the right to family reunification. If the Court were to find in general that persons with "subsidiary protection" were not in an analogous or relevantly similar situation to that of persons with "refugee status" with respect to family reunification, that would not take sufficient account of the duration of an imposed suspension period. Therefore, for the purpose of the present case – where the core of the issue was not the imposition of a suspension as such, but the length of the suspension period imposed on persons with "subsidiary protection status", as opposed to persons with "refugee status" – the Court proceeded on the basis of the assumption that the second applicant, in respect of the right invoked, had been in an analogous or relevantly similar situation to that of persons granted refugee status. It thus had to examine the proportionality of the duration of the suspension period imposed.

In that respect the Court observed that in 2015 and over the following years Sweden had granted protection to a significant number of asylum-seekers, whether to refugees or persons eligible for subsidiary protection and the record high number of asylum seekers in 2015 had placed a great strain on the Swedish immigration authorities and other central functions in society. Consequently, the Swedish migration legislation had to be temporarily changed in order to reduce the number of asylum-seekers, while improving the capacity of reception and integration arrangements and ensuring the effective implementation of immigration control. The legislation had accordingly been brought into line with the minimum level stipulated by EU law and international conventions.

The applicants had been *de facto* only covered by the suspension on family reunification and could have applied for family reunification under the Temporary Act, had exceptional circumstances emerged. The Court was aware of the concern expressed by the United Nations High Commissioner for Refugees that States might chose to grant subsidiary or temporary protection status instead of refugee status in order to limit family reunification rights. In the present case, however, the domestic authorities had carefully examined whether the second applicant had been entitled to refugee status but found he had not. Furthermore, there was a lack of consensus at national, international and European levels as to whether or not, in respect of the right to family reunification, it was necessary or appropriate to treat persons under subsidiary protection on an equal footing with refugees and similar legislative measures had been introduced by other countries.

Accordingly, the Government had convincingly shown that the differential treatment of the applicants had been reasonably and objectively justified and its effect had not been disproportionate to the legitimate aim pursued.

Conclusion: no violation (six votes to one).

(See also *M.A. v. Denmark* [GC], no. 6697/18, 9 July 2021 Legal Summary)

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