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

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ECHR 329 (2022)
20.10.2022

No violation in temporary suspension of family reunification in Sweden

In today's **Chamber** judgment[1] in the case of M.T. and Others v. Sweden (application no. 22105/18) the European Court of Human Rights held, by six votes to one, that there had been:

no violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights, and

no violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8.

The case concerned the suspension of family reunification in Sweden between July 2016 and July 2019 for those, such as the second applicant, who had been given temporary-protection status.

The Court found in particular that Sweden had correctly balanced the needs of society and the applicants when denying them family reunification temporarily. It furthermore held that the difference in treatment of the applicants *vis-à-vis* refugees had been objectively justified, in particular given the strain on the State from the large number of refugees who had already been taken in, and had not been disproportionate.

A legal summary of this case will be available in the Court's database HUDOC (link)

Principal facts

The applicants, Ms M.T., Mr A.A.K. and Mr M.A.K., are Syrian nationals who were born in 1967, 2000 and 2003 respectively. A.A.K. lives in Stockholm and the other two applicants live in Syria. M.T. is the mother of the other two applicants.

A.A.K. arrived in Sweden in 2016 (from Syria via Germany) and applied for asylum, stating to the authorities, among other things, that his father was in Saudi Arabia, his mother in Syria and he had two brothers in Sweden. Owing to the security situation in Syria he was granted a temporary residence permit, valid for 13 months (until 4 December 2017). That permit was later extended.

In the meantime, on 17 February 2017, at the Embassy of Sweden in Khartoum, the first and third applicants applied for residence permits for Sweden, citing their family ties with A.A.K. They were unsuccessful. The authorities stated, essentially, that under the law – in particular the Law on temporary restrictions on the possibility of being granted a residence permit in Sweden (*Lag om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige*) – family ties to a minor with a temporary residence permit were (until July 2019) no longer grounds for granting a residence permit for family reunification. Two appeals by M.T. and M.A.K. were dismissed.

In August 2018 A.A.K. turned 18 and was no longer eligible for family reunification.

Complaints, procedure and composition of the Court

Relying on Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination), the applicants complained, in particular, of the legal situation resulting from the Law

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

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on temporary restrictions on the possibility of being granted a residence permit in Sweden and that the refusal to grant them reunification had been a result of discrimination.

The application was lodged with the European Court of Human Rights on 9 May 2018.

Judgment was given by a Chamber of seven judges, composed as follows:

Marko **Bošnjak** (Slovenia), *President*,
Krzysztof **Wojtyczek** (Poland),
Alena **Poláčková** (Slovakia),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),
Ioannis **Ktistakis** (Greece),
Davor **Derenčinović** (Croatia),

and also Renata **Degener**, *Section Registrar.*

Decision of the Court

Article 8

The Court reiterated that it had recently found in *M.A. v. Denmark* (no. 6697/18) that a refusal to grant family reunification to a long-term married couple owing to a three-year waiting period applicable to beneficiaries of temporary protection had entailed a violation of Article 8, but that a two-year period would be acceptable. Swedish legislation meant a two-year waiting period had applied from July 2017. It also stated that 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.

The question was whether the authorities had struck a fair balance between the needs of the applicants and those of the community as a whole when not allowing family reunification.

The Court noted, in particular, the high number of asylum seekers taken in by Sweden and the strain that had placed on the functioning of the State and society, given by the Government as the reason for the suspension of family reunification for situations such as the applicants'.

Overall, the Court noted that the applicants had had no ties to the country other than A.A.K.'s having been granted temporary protection there. Their situation had been directly covered by the suspension of family reunification under the relevant Law. Owing to A.A.K.'s status in Sweden, M.T. had not met the requirements for family reunification; owing to M.T.'s application rejection, M.A.K. too had not met the requirements. The applicants had been unable to demonstrate the kind of dependence that would lead the Court to conclude that family ties existed that would warrant reunification. In any case, the Court was satisfied that suspending reunification had not been disruptive on A.A.K., given he had lived and studied in Sweden without issue for two years already.

Overall, the Court was satisfied that the authorities, when suspending the applicants' right to apply for family reunification, had struck a fair balance between their interest in being reunited and that of the community as a whole in protecting the economic well-being of the country by regulating immigration and controlling public expenditure. The State had acted within its discretion ("margin of appreciation"). There had therefore been no violation of Article 8.

Article 14 in conjunction with Article 8

The Court referred to its findings under Article 8 concerning the high number of asylum seekers taken in by Sweden and the strain that had placed on the functioning of the State and society. The

Court stated that there was no international consensus that the right of family reunification open to refugees should also be available to those under subsidiary protection.

The core of the case was not the suspension, as such, but whether the length of the suspension had been disproportionate. The suspension had been applicable to the applicants only for less than two years.

The difference between the treatment of the applicants and others in a similar situation had been objectively justified by the need to ensure the effective implementation of immigration control and to protect the "economic well-being of the country". The effect of the differential treatment had not been disproportionate.

The Court held that there had been no violation of Article 14 read in conjunction with Article 8.

Separate opinions

Judge Ktistakis expressed a dissenting opinion, which is annexed to the judgment.

The judgment is available only in English.

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