

**AD HOC QUERY launched by France regarding the residence permit
for "personal and family links" (21 answers) - April 2024**

BACKGROUND

The Family Immigration Office of the Directorate of Immigration within the General Directorate for Foreign Nationals in France (*Direction générale des étrangers en France, DGEF*) of the French Ministry of the Interior and Overseas Territories would like to know how article 8 of the ECHR is applied and what criteria are applied to the concept of respect for private and family life in other EU Member countries.

KEY FINDINGS

1. Application of Article 8 of the ECHR

Ten EMN Member countries **transposed Article 8 of the ECHR into their national legislation** through one or more specific articles (**CZ, EL, ES, FR, LU, LV, NL, PL, SK and SE**).

In five of these Member countries (**FR, LU, NL, SK and SE**), legal provisions allow a residence permit to be issued on the basis of personal and/or family ties to third-country nationals who cannot be issued with a residence permit as of right, and who do not meet the conditions for family reunification. These legal provisions apply in cases where the refusal of a residence permit would result in a violation of article 8 ECHR. Among them, **Luxembourg, the Netherlands and Sweden** have specified that this provision may apply to family members outside the nuclear family. In **Slovakia**, these provisions may also apply to a person eligible for family reunification but who does not have a valid travel document.

In the case of **Poland**, the right to a residence permit on the grounds of family life, with reference to Article 8 of the ECHR, applies only to a foreigner who lives as a family with a citizen of the Republic of Poland, citizen of other country of the EU or EFTA, citizen of Switzerland or United Kingdom of Great Britain and Northern Ireland, who is the beneficiary of the EU-UK Withdrawal Agreement. In these cases it is required, apart from proving of having family life within the meaning of the ECHR, meeting additional requirements such as having a health insurance and a stable and regular income. Nevertheless, a foreign national may be granted a residence permit on humanitarian grounds if his return would be likely to result in a violation of article 8 of the ECHR.

For **Greece and Cyprus**, a series of legal provisions and practices guarantee the right enshrined in article 8 of the ECHR (e.g. granting of residence permits on the grounds of private and family life, family reunification, special guarantees in the event of return (**EL**); effective remedies in the event of violation of individual rights (**CY**).

In Latvia the Constitutional Court has recognised the right to respect for private life specified in Article 96 of the Constitution of the Republic of Latvia).

Several EMN Member and Observer countries state that they did **not expressly transcribed Article 8 into their national legislation, but they refer to national legal provisions which may implicitly refer to this article** and thus enable it to be implemented (**BE, BG, EE, HR, LT, RS, SI**). Some countries mention the transposition of European provisions into their national legislation. Indeed, the granting of a residence permit to a family member in application of the European directive on family reunification is cited by four countries (**BE, HR, HU and SI**). In **Spain**, the national legislation on family reunification is considered to be an explicit transcription of Article 8 of the ECHR in its domestic legal system. **Croatia's** legislation provides for the possibility of issuing a residence permit in the context of family reunification to a relative outside the immediate family for specific personal reasons or serious humanitarian reasons. Four

Member countries also mentioned constitutional provisions relating to this article (**LT, SI, EE and FI**).

Several countries have mentioned that Article 8 of the ECHR is taken into account directly or indirectly in the interpretation and application of national law in the family field or in the context of decisions and measures affecting personal and/or family interests (**DE, EE, SI**). In **Bulgaria**, personal and family links shall be taken into account, in accordance with its national law and its Constitution (art. 32 and art. 34), when imposing compulsory administrative measures or granting the right to reside affecting personal and/or family interests. In **Lithuania** and **Slovenia** in the event of conflict between national and European legislation on matters relating to private and family life, Article 8 must be taken into account by the national courts.

Serbia mentions that measures to maintain family unity during asylum procedures and the right to family reunification are included in the Serbian Law on Foreigners and the Law on Asylum and Temporary Protection (which is significantly aligned with the EU Directive, whose some parts are transposed into their Law). **Bulgaria** refers to the notion of "personal and family links", which is taken into account while applying the EU and national legislation such as "family reunion" with the purpose to keep family unity.

2. Criteria applied to the concept of respect for private and family life

Several Member countries mentioned various criteria to be taken into consideration when assessing private and family ties, such as :

- the duration and nature of the relationship (**BG, CY, FI, LU, CZ, FR, LV, LT, SE, SI**) ;
- the best interests of the children concerned (**CY, FI, SI**) ;
- whether the foreign national's minor child attends school in the host country (**CZ**) ;
- duration of residence in the host country (**BG, CZ, FI, LV, SI**) ;
- living conditions in the host country (**DE, FR, ES, LT**) ;
- age (**CZ, SE**) ;
- state of health (**CZ, FI, SE**) ;
- economic and/or social integration in the host country (**DE, FI, FR, LV, SI**) ;
- any work and study links and their duration (**FI**) ;
- family and personal ties in the country of origin (**BG, CZ, FI, FR, LV, SI**).

For ten Member countries these criteria were applied by examining the individual circumstances of each situation (**DE, CY, FI, LV, LT, LU, NL, SK, SI and SE**).

Croatia and **Greece** applied the conditions relating to the concept of "right to respect for private and family life" strictly and cumulatively.

CY, CZ, EE, DE, LV, NL and SE also mentioned the fact that a decision interfering with the right to private and family life under Article 8 of the ECHR had to be reasonable and proportionate to the legitimate objective pursued, in a logic of balancing of interests, taking into account the seriousness of the offence committed or the risk posed by the foreign national to the public interest, in relation to his or her private and family ties in the country of residence. In **Latvia**, significant restrictions on the rights or legal interests of a private person are only justified by a significant benefit to society. In the **Czech Republic** a decision interfering with the right to respect for private and family life must be assessed not only according to national law, but also according to the provisions of international law.

In **Belgium**, the conditions for family reunification are laid down in national legislation. In case one does not meet these conditions, a broader, discretionary, clause could allow people to obtain a residence permit. Nonetheless, this provision is not specifically tied to Article 8 of the ECHR, even if cases that fall under this article could benefit from it to obtain a right to stay.

In **Hungary** in the context of issuing residence permits for family reunification, Article 8 of the ECHR had to be taken into account.

Several countries mentioned the importance of evidence of family ties in assessing a case **(ES, LT)**. In Spain, it is the foreign national who must provide proof of their family ties. **Poland** replied that the supporting and evidentiary procedures which are aimed to prove that the family life is factual (for example community interviews, hearing of family members and witnesses) are carried out by the authorities, but the the burden of proving this circumstance does not lie solely with the authority conducting the proceedings. Foreigner, on his own initiative or upon request, is obliged to submit all documents confirming family life within the meaning of the Convention (i.e. all types of documentation confirming this fact). **Serbia** stated that it verifies the circumstances of the conclusion of a marriage and cohabitation in the context of the right of residence for the purposes of family reunification, while **Estonia** does not apply any criteria.

List of responding countries: Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovakia, Slovenia, Spain, Sweden and Serbia.

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