

EDITORIAL

Triggering Irregular Migration in the Name of Combating It: Family Reunification for Beneficiaries of Subsidiary Protection under Attack¹

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Migration continues to dominate political discourse and elections in Europe – and thus also political action (see already Roßkopf, 2024a). Even before the election to the European Parliament on July 9, 2025, the uniform protection of the EU's external borders against irregular migration was the most important political issue for 49% of respondents (Seidl, 2024). For the Austrian parliamentary elections on September 29, 2024, immigration was the most important topic for 22% of the Austrian population and one of the most important topics for 56% (OTS, 2024). At the beginning of January 2025, migration was still considered the most important topic in the election campaign for the German Bundestag, with 37% agreement. After several people with a migrant background carried out deadly attacks in Germany and Austria within just a few weeks, the topic, together with internal security, seemed to gain even further importance. When the new Trump administration in the U.S. then raised doubts about its loyalty to the NATO alliance, the topic of migration (26%) was apparently overshadowed by a general need for peace and security (45%) (ZDFheute, 2025).

In the immediate aftermath of a knife attack in which a rejected asylum seeker, who was required to leave the country, killed a two-year-old boy and a 41-year-old man and injured three others, the conservative faction of the Christian Democratic Union (CDU) and Christian Social Union (CSU), supported by other opposition parties, won a vote in the Bundestag on January 29, 2025, calling on the federal government to turn away asylum seekers at the German borders (cf. on the legal issues Roßkopf, 2024b). Two days later, on January 31, 2025, it narrowly failed (Deutscher Bundestag, n.d.) with a 2024 bill to “end family reunification for those entitled to subsidiary protection until further notice” under the guise of “limiting the illegal influx of third-country nationals” (Deutscher Bundestag, 2024) [translation by the author]. After the election, the two CDU and CSU successfully conducted exploratory negotiations with the Social Democratic Party of Germany (SPD) and decided to suspend family reunification for those entitled to subsidiary protection (CDU et al., 2025). They are currently conducting coalition negotiations based on this.

The new governing coalition in Austria has also included a provision in its coalition agreement to halt family reunification with immediate effect, albeit “temporarily and in

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accordance with Art. 8 ECHR” [translation by the author]. Both proposals are introduced in the context and under the guise of combating irregular migration.

The proposed measures are politically contradictory, however. They are directed against a group of people who are actually seeking to join their family members through the regular immigration channels. These individuals have been recognized as requiring protection and are legally residing in the European Union with the appropriate residence permits. Ending the possibility of regular family reunification will in fact in many cases lead to people resorting to irregular migration routes to enter the EU. This fuels human smuggling on dangerous routes. All too often this will end fatally.

It should be noted that, following a temporary suspension of family reunification for refugees with subsidiary protection from 2016-2018 (Bick, 2018), the law in Germany has only allowed a maximum of 12,000 family reunifications per year since 2018 (Section 36a of the Residence Act), of which more than 60% were minors in 2024 (InfoMigrants, 2025). In Austria, a flat-rate statutory waiting period of three years after the granting of protection status already applies (Art. 35 para. 2 Asylum Act).

However, there are limits under human and fundamental rights. The European Convention on Human Rights (Art. 8 ECHR) protects the family unit, as does the German Basic Law (Art. 6 GG). In Austria, the European Convention on Human Rights has constitutional status. This requires a balancing of interests. Previous temporary suspensions of family reunification with persons entitled to subsidiary protection in Germany and Austria in the context of the influx of Syrian refugees in particular had already been challenged as unlawful due to inadequacies in this regard and in particular with regard to the principle of the best interests of the child (Roßkopf, 2018).

In the meantime, the European Court of Human Rights has summarized its case law in its judgment of 9/7/2021, *M.A. v. Denmark*, No. 6687/18, and specified it with regard to persons entitled to subsidiary protection. The requirements for legislators and administrations can be summarized as follows:

1. Formal requirements:
 - a. Sufficient flexibility, speed and effectiveness
 - b. Permissibility of general waiting periods:
 - i. Up to two years: possible
 - ii. Beyond two years: Interest in family reunification carries more weight
 - iii. Three years or more: hardly justifiable for beneficiaries of subsidiary protection
 - c. Introduction of the possibility of case-by-case examination and consideration of interests
2. Substantive requirements:
 - a. Principle of the best interests of the child shall have priority in all decisions
 - b. Knowledge of the migration plan that entails separation at the time of marriage
 - c. Secured means of subsistence in the host country
 - d. Bonds with the host country
 - e. Possibility of maintaining family unity in the country of origin
 - f. Need for protection of beneficiaries of subsidiary protection, taking into account the values of the ECHR (in particular (Art. 3 ECHR)
 - g. Burden of migration and political sensitivity for the host country

In conclusion, the considerations regarding the suspension of family reunification for beneficiaries of subsidiary protection do not at all contribute to the fight against irregular migration. On the contrary, they will turn the effort to restore family unity from the realm of regularity into that of irregularity. They affect a relatively small recognized group in need for protection that is also particularly vulnerable. A suspension of family reunification for more than two years will generally be difficult to justify. It will hardly be justifiable for a period of three years or more. Any shorter suspension period of less than two years must give those affected the opportunity to assert an overriding interest in reunification on a case-by-case basis.

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