

IRAP

International Refugee
Assistance Project

Europe

On the Reform of France's Asylum and Immigration Law

Position Note

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IRAP Europe applauds the French Constitutional Council's broad censure¹ of almost half of the provisions of the Darmanin law "to control immigration and improve integration", adopted by the French Parliament on December 19, 2023.² Despite the censure, this immigration reform, the thirtieth in the last forty years,³ still entails a series of unprecedented harmful provisions against the rights of foreigners in France, including through the weakening of the asylum system and the stigmatization of foreigners as potential criminals.⁴

This law, which amends the Code de l'entrée et du séjour des étrangers et du droit d'asile (Ceseda), was adopted under a fast-track procedure, without an impact study covering the entire law, and was the subject of political negotiations that flouted institutional processes and allowed for the last-minute integration of dangerous provisions unrelated to the purpose of the law. This is particularly alarming in the current context of a general deterioration in public debate and xenophobic excesses on migration issues, which would have called for an in-depth, balanced analysis of French migration policy.

As an organization specialized in the legal assistance to refugees and other displaced people seeking reunification with their relatives in European countries, including France, since 2019, IRAP Europe is pleased that all the provisions affecting family immigration originally included in the law have been set aside. Although the French Constitutional Council's censure did not include a constitutionality review of these provisions on the merits, IRAP Europe maintains that the provisions constituted a serious and manifestly disproportionate infringement of the fundamental right to respect for private and family life, as guaranteed by article 8 of the European Convention on Human Rights (ECHR), by the Conseil d'Etat's decision of December 8, 1978, and as enshrined by the French Constitutional Council.⁵

With particular regard to the right to family reunification for refugees and beneficiaries of subsidiary protection, IRAP Europe considers that the proposed reform would have arbitrarily and indiscriminately reduced the ability to exercise this right, placing France in an irresponsible and unjustified dynamic of regression in protection standards as a Member State of the European Union and with regard to its international commitments.

As detailed in this note, the specific provisions on family reunification constitute an unjustified and serious attack on the rights of exiled persons benefiting from international protection, who nevertheless have a need for protection to which Member States have a duty to pay particular attention⁶ due to their status and the vulnerability⁷ that stems from it. IRAP Europe wishes to express its strong criticism of the proposed provisions and its recommendations on these issues.

1 Cons. Const., [Décision n° 2023-863 DC of 25 January 2024](#), "Loi pour contrôler l'immigration, améliorer l'intégration".

2 [Draft Law n°220](#), "pour contrôler l'immigration, améliorer l'intégration" adopted by Parliament on 19 December 2023.

3 29 immigration laws have been passed in France since 1980, an average of one every 18 months.

4 [Law n° 2024-42 du 26 janvier 2024](#), published in [JORF n°0022 on 27 January 2024](#).

5 CE, December 8, 1978, no. 10097; Cons. Const., August 13, 1993, no. 93-325 DC.

6 Directive 2003/86/EC, Recital 8; CJEU, [C-1/23 PPU - Afrin](#); ECHR, [Tanda-Muzinga v France, Application 2260/10](#), para 75; See also the principles and standards derived from the rules of international refugee law, human rights law, international humanitarian law, national law, UNHCR statutes and the UN Charter.

7 ECHR, [Hirsi Jamaa and others v. Italy \[GC\], no. 27765/09](#), para 155, 2012.

A Family reunification must protect the family life of refugees, including the youngest and most vulnerable.

Before it was censured by the French Constitutional Council, the Darmanin law provided for:

- (1) the introduction of quotas and targets limiting the number of foreigners admitted to settle permanently in France each year, including those admitted through family immigration,
- (2) the lowering of the age limit from 19 to 18 for children seeking to join their parent benefiting from international protection (with a 3-month period from the grant of international protection, for minors who became 18 after their relative was granted international protection),
- (3) the exclusion of children whose relationship with the parent had not been established before the date of submission of the parent's asylum application,
- (4) the exclusion of the siblings of a minor child benefiting from international protection in France entitled to bring their parents to France, and finally
- (5) the exclusion of minor children "who have formed their own family unit".

Taken together, these provisions demonstrate a **blatant effort to limit the possibilities for family reunification in France**, and in particular those currently offered to minor children and young adults with their parents and siblings who are refugees in France. These provisions are contrary to national and international law, inconsistent with France's human rights obligations, and impractical to implement in practice, for the following reasons:

- First, the introduction of quotas and targets was ruled unconstitutional on the merits. Even though these provisions were not binding, they opened the door to arbitrary and illegal refusals by the authorities.
- The lowering of the age limit for joining a parent in France who is a beneficiary of international protection would have unjustifiably prejudiced the reunification of very young adults. The 3-month provided for minors who have reached the age of majority, although in line with the European minimum standard, would have been infeasible in practice, given the extended time required for OFPRA to issue civil status documents for refugees once they were granted status.
- The exclusion of the siblings of a minor child benefiting from international protection in France from the child's family reunification application would also have confronted parents with a Cornelian dilemma: join their child in France, leaving their other minor children behind, or stay with the rest of the siblings and leave their refugee child alone in France. This is all the more serious when no other alternative to family life is possible, given that a refugee child cannot legally return to his or her country of origin or prior country of asylum to visit his or her family, and that the conditions for obtaining a short-stay visa do not allow parents and siblings to visit France.
- Finally, the proposed law excluded from the right to family reunification minor children who had unwanted children or had been subjected to a forced marriage before they became 18. This situation often concerns girls and young women, who would have been denied any protection under the Darmanin law, in total contravention of France's stated aim of combating forced marriages and violence against girls and women. This provision seriously and disproportionately undermined the fundamental right to lead a private and family life, as well as the best interests of children to reside with their

parents and siblings, as expressly recognized by European Directive 2003/86/EC,⁸ the European Court of Human Rights⁹ and French case law.¹⁰

Although the short- and long-term effects of this reform have unfortunately not been assessed, by restricting the legal pathway for family reunification in these ways, French law would clearly have led to the **long-term separation of a growing number of families whose members have been protected and authorized to stay in France**. As a result, refugee and subsidiary protection beneficiary families would have been subject to the much stricter conditions of ‘regroupement familial’ provided for foreigners who are not beneficiaries of international protection, which is unsuited to their status and which many applicants would not be able to satisfy.

In light of our experience supporting families in these processes, we submit that this reform would have led to a more **precarious situation for refugee families and beneficiaries of subsidiary protection, and to a weakening of their ability and chances of integration in France**, leaving many of their family members with the sole option of taking irregular and dangerous routes to join their loved ones, contrary to the government’s stated intention.

When it comes to protecting refugees and beneficiaries of subsidiary protection, France should set an example and maintain standards above the European minimum. IRAP Europe therefore recommends:

1. At the very least, the **preservation of the state of French law** as regards the categories of persons eligible to apply for family reunification, in line with the spirit of European Directive 2003/86/EC and France’s international obligations.
2. The **adoption of a broader, more modern definition of the family** under French law, enabling family ties to be taken into account on the basis of evidence of close ties rather than predetermined categories, and including, for example, adoptive parents, foster families, siblings and orphaned children of other family members.

B The right to family reunification must be simple, effective and accessible.

Before the French Constitutional Council’s censure, the Darmanin law further provided for:

- (1) the introduction of an 18-month time limit for submitting an application for family reunification following the granting of refugee status or subsidiary protection (except for applicants who are minors),
- (2) the introduction of an obligation to legalize foreign civil status certificates and judgments, and
- (3) the possibility for the administration to refuse reunification on the grounds of a lack of “sufficiently stable and continuous relations”.

IRAP Europe notes that this law missed the opportunity to bring French law in line with the **pragmatism and flexibility required of Member States to facilitate the timely submission of family reunification applications**, recently spelled out in the April 18, 2023 C1/23 PPU Afrin ruling¹¹ and required by the Euro-

⁸ Recital 9, European Directive 2003/86/EC.

⁹ ECHR, *Moustaquim v. Belgium*, no. 12313/86, February 18, 1991, para. 36; ECHR, *Moustafa and Armagan Akin v. Turkey*, no. 4694/03, April 6, 2010, para. 19; ECHR, *El Ghatet v. Switzerland*, no. 56971, November 8, 2016, Concurring opinion of Judge Serghides.

¹⁰ CAA Nantes, 2nd chamber, October 9, 2020, 20NT00411. Separation of a sibling considered by the CAA to be detrimental to the applicant’s best interests and constituting a breach of equality between the siblings.

¹¹ CJEU, [C-1/23 PPU - Afrin](#).

pean Court of Human Rights,¹² the Court of Justice of the European Union,¹³ and French case law,¹⁴ and recommended by the United Nations High Commissioner for Refugees (UNHCR).¹⁵ On the contrary, the censured provisions were designed to unjustifiably and disproportionately limit, burden and complicate the already extremely long and complex procedures that foreign nationals must comply with to prove their identity and family ties in the family reunification process.

IRAP Europe wishes to point out that setting time limits for the exercise of the right to family reunification is **in practice incompatible with the reality of the time currently needed by applicants to apply for a visa**, due to, among other things:

- The absence of French consular and diplomatic posts in many countries, such as Afghanistan, which remains the leading country of origin for asylum seekers in France¹⁶ and whose nationals have the highest protection rate (91.4% in 2021)¹⁷;
- Difficulties in contacting French consular or diplomatic services in the majority of countries of origin, due to unavailability or late responses to requests for appointments; and
- The impossibility or limitation of applicants' ability to travel to competent diplomatic or consular posts due to armed conflict or other reasons.

Coupled with an obligation to legalize all foreign civil documents in order to obtain visas, the imposition of such a time limit would make the submission of applications for family reunification **virtually impossible in many cases**. Based on the cases represented by IRAP Europe, the majority of applicants, if not all, already face numerous obstacles to accessing the application procedure, such as obtaining civil status documents in the required form and approved translations. IRAP Europe therefore considers that these provisions would have inevitably led to an unjustified lengthening and complication of the steps required to submit an application for family reunification, at the sole expense of refugees and other displaced people.

It is now common for several years to elapse between the date of submission of an application for family reunification and the actual arrival of the family in France. These interminable delays, for which France has already been condemned on several occasions,¹⁸ are unjustified and particularly harmful for refugee families unable to return to or visit their country of origin or previous country of asylum.

Lastly, using the lack of "sufficiently stable and continuous relations" as a ground for denying a family its right to family reunification is contradictory, and out of place in a system that aims precisely to re-establish family ties often broken by the forced exile that led to the granting of international protection. Such a provision would be likely to lead to arbitrary and illegal refusals by the French authorities, in direct contradiction of the purpose and principles of family reunification as set out in the Directive 2003/86/EC.

To simplify and facilitate the submission of family reunification applications, IRAP Europe recommends that the French Ministry of the Interior and the Ministry of Foreign Affairs:

12 ECHR, July 10, 2014, [Tanda-Muzinga v. France](#), req. no. 2260/10, para 79.

13 CJEU, March 13, 2019, E. v Staatssretaris van Veiligheid en Justitie, C-635/17, para 81.

14 CAA de NANTES, 5th chamber, 02/03/2021, 20NT00772.

15 UNHCR. [Family protection issues](#). EC/49/SC/CRP.14, June 4, 1999.

16 According to [OFPRA's statistics for 2022](#), Afghanistan remained, for the fifth year running, the leading country of origin for asylum seekers, with over 17,000 first applications submitted.

17 INSEE, French Institute of statistics and economic studies, [Immigrés et descendants d'immigrés](#), Edition 2023.

18 ECHR, July 10, 2014, req. no. 2260/10, [Tanda-Muzinga v/ France](#); req. no. 52701/09, [Mugenzi v/ France](#); req. no. 19113/09, [Seniga Longue v/ France](#).

1. Provide OFPRA with sufficient resources to validate applicants' family composition and civil status as quickly as possible, in order to reduce delays in family separation.
2. Harmonize visa application procedures at French consular posts abroad and make them transparent.
3. Update in real time the information on the France-Visa website concerning the steps to be taken to apply for visas.
4. Simplify and harmonize procedures for making appointments with French consular posts, including when this stage is delegated to private service providers.
5. Set up a single point of contact at the administrative level to help people concerned and those accompanying them make appointments.
6. Strengthen the capacities and resources of consular services that deal with large numbers of applications, so that they can be registered within a reasonable timeframe.
7. Integrate as far as possible the requirements of the CJEU Afrin case law of April 18, 2023, and facilitate, rather than block, the submission of family reunification applications.
8. Propose alternative solutions - including the possibility of partially remote procedures (at least for filing applications) or the issuance of laissez-passer - for people for whom it is impossible or excessively difficult to travel to a consulate in their current country, and for whom traveling to a neighboring country is made impossible or excessively difficult by the local context or individual situation.
9. Set up specific procedures for people with reduced mobility, people identified as LGBTQI+, unaccompanied minors and other groups at increased risk in their country of residence.

The proposed reform by the Darmanin law, ostensibly motivated by the political aim of combating irregular migration, largely **restricted the few legal migration pathways open in France**, notably to the families of foreign nationals, beneficiaries of international protection, spouses of French nationals and international students legally resident in the country. Given that family life is an undeniable benefit to integration,¹⁹ we welcome the censure of all these provisions, all of which contradict both the fundamental rights of families and the stated aim of improving integration.

¹⁹ Council of Europe Commissioner for Human Rights, Issue Paper, [Realizing the right to family reunification of refugees in Europe](#), June 2017; UNHCR, [Note on the integration of refugees in the European Union](#), 2007.