



Ad-Hoc Query on Prevention Family Reunification in cases of violence

Requested by NL EMN NCP on 10 April 2009

Compilation produced on Date, e.g. 15th May 2009

Responses from Austria, Belgium, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Netherlands, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom (17 in Total)

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

1. Background Information

In former governmental meetings, the Minister of Justice and the State Secretary of Justice stated that their ministry will look into possibilities to prevent family reunification of a second or third marriage in case of legally residing immigrants who have been guilty of domestic violence and honour related violence toward the partner in the first marriage. So far, it seems that NL does not have any tools to prevent family reunification in these cases. Answers from this query will serve as input for the Minister of Justice and the State Secretary of Justice to inform the NL House of Representatives on this issue.

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2. Responses

		Wider Dissemination? ¹	<i>Ad-Hoc Query 1:</i> <i>Does your legislation or policy towards immigrants hold any possibility to prevent family reunification on the basis of second or third marriages, with a national of your country or a legally residing immigrant who has been guilty of domestic violence or honour related violence towards the partner in the first marriage, or who has abandoned this first partner (being a national of your country or a legally residing immigrant) in the country of origin, against his/her will?</i>
	Austria	NO	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further
	Belgium	Yes	The Belgian legislation has no possibility to prevent family reunification with a national or legally residing immigrant who has been guilty or condemned for any domestic or other violence, but in the case of repudiation (<i>verstoting</i>) during a previous marriage a visa Family Reunification can be refused because we consider that the previous marriage has not been annulled in a legal way in order that the new marriage can not be recognized.
	Estonia	Yes	Estonia's legislation does not foresee any possibility to prevent family reunification on the basis of second or third marriage, with an Estonian national or a legally residing immigrant who has been guilty of domestic violence or honour related violence towards the partner in the first marriage, or has abandoned this first partner.
	Finland	Yes	<p>There is no legislation on this matter. Regarding to second or third marriages, decision is made on a case by case basis. If a Finnish national or a person legally residing in Finland is guilty of domestic violence or HRV, there is no legal remedy to prevent family reunification, unless imprisonment prevents applicants from spending actual family life together, or the family member residing in Finland is likely to be expelled from the country.</p> <p>If a Finnish national or a legally residing immigrant has been guilty of domestic violence or HRV towards a partner other than the applicant, one is being informed about these facts. The applicant is to make the final decision, if he/she want's to proceed with his/her application.</p> <p>What comes to previous abandonment, The Finnish Immigration service has no competence to prevent the intended family life, unless there are reasonable grounds to suspect that the alien intends to evade the provisions on entry into or residence in the country (Section 36 of the Finnish Aliens Act).</p> <p>If the alien abroad has been guilty of domestic violence or HRV, his/her residence permit upon family reunification may be refused if the alien is considered a danger to public order, security or health (Section 36 of the Finnish Aliens Act).</p>

¹ A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."

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			Domestic violence and HRV are delicate matters to evaluate. Accusations of domestic violence or HRV are difficult to verify, since there is seldom any sufficient evidence to reject family reunification or the denunciation has been false. All the available information from the police, court system and other register holders are of significant importance alongside the statements of the persons concerned.
	Germany	Yes	In the case of a German national or a foreign national with legal residence in Germany being guilty of domestic violence or similar offences with regards to his/her first spouse, the immigration of spouses in the case of a further marriage cannot be excluded on the basis of legal regulations. The immigration of spouses shall not be authorised only if the actual evidence substantiates the assumption that the immigrating spouse (in the second marriage) has been coerced into a marriage. (§ 27, paragraph 1a, no. 2 of the Aufenthaltsgesetz (German Residence Act).
	Greece	Yes	Our current legislation does not provide for the prevention of family reunification on the basis of second or third marriage with Greek citizens or legal immigrants who have been guilty of domestic violence towards their first partner. However, family members of third country nationals, Greek or E.U. citizens who evidently have become victims of domestic violence are eligible for an independent residence permit in Greece. The duration of this residence permit is one year and it is further renewed for one of the rest reasons of our legislation (e.x. dependent employment).
	Hungary	Yes	The Hungarian legislation does not include any of such legal provision..
	Italy	Yes	Italian legislation does not provide any rules to prevent an Italian, EU or third countries , nationals residing in Italy, already divorced or widowed, to submit the request for family reunification with the second or third foreign spouse, even if it has been condemned for crimes committed against the first spouse, or if he had abandoned in the same country of origin against their will.
	Latvia	Yes	No, Latvian legislation does not provide possibility to reject family reunification in such cases. Until now we have not had any cases where this problem would appear.
	Lithuania	Yes	No such provision in LT law.
	Netherlands	Yes	Dutch legislation (immigration law and penal law) has no possibility to prevent family reunification on the basis of second or third marriages, with a Dutch citizen of legally residing immigrant who has been guilty of domestic violence or honour related violence towards the partner in the first marriage, or who has abandoned this first partner (being a Dutch national or legally residing immigrant) in the country of origin, against her will.
	Portugal	Yes	Portuguese immigration law (Act n.º 23/2007, of 4 th of July) doesn't consider measures of these nature in family reunification framework. Although, articles in Act n.º 23/2007 states, as general condition for: - Renewal of temporary resident permit, <i>have not been convicted for crimes with punishment or punishments that individually or cumulatively exceed one year in prison sentence. (Article 78º 2) d);</i> - Grant of a permanent Residence Permit - <i>Not being convicted for crimes in penalty or penalties that, individually or cumulatively, exceed one year in prison sentence. (Article 80º 1)</i>

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	Slovak Republic	Yes	Slovak Republic does not have such provisions in the Slovak law.
	Slovenia	Yes	In Slovenian aliens legislation there is no provision establishing automatic grounds for refusal of family reunification for persons guilty of domestic or similar violence in previous relationships. However, like in all cases of granting residence permits, criminal past of the applicant is checked and where a threat to public policy or security is established, the application for a residence permit can be refused.
	Spain	Yes	<p>Spanish legislation on alien affairs sets forth that a resident alien separated from his/her spouse and subsequently remarried once or several times, may only be reunited with the most recent spouse if said alien certifies, in addition to the requirements established by law, that the separation from previous marriage/s has been effectuated per a judicial process setting forth the situation for the ex-spouse(s) and other family members as to shared housing, financial provisions for the ex-spouse(s) and palimony for the dependent minors. In no case may more than one spouse be reunited, even when the law in the foreign country permits this type of marriage.</p> <p>Additionally, among other requirements to be taken into account with regards to accessing legal residence in Spain, both as to the initial authorisation as well as any subsequent renewals, the alien may not have any criminal record of offences existing in the Spanish legal system (as regards this, the Spanish Penal Code expressly regulates the offence of domestic violence) committed in Spain or in the countries of residence during the previous 5 years.</p> <p>Lastly, it is important to note that the spouse victim of gender-based violence may be granted authorisation for residence independent to that of the reuniting family member once a judicial order for protection has been obtained.</p> <p>Applicable Regulations:</p> <ul style="list-style-type: none"> - Organic Law 4/2000 of 11 January, on the rights and freedoms of foreigners in Spain and their social integration (Articles 17, 19 and 31.4). - Regulations of Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their integration, approved by Royal Decree 2393/2004 of 30 December (Articles 35.2, 39 and 41.2b) . - Accessible at http://extranjeros.mtin.es/
	Sweden	Yes	<p>Chapter 5, section 17, second sentence, of the Swedish Aliens Act states that: <i>“When considering a residence permit under Section 3a, first paragraph, point 1 and second paragraph, particular attention shall be paid to whether it can be assumed that the alien or the alien’s child or children will be subjected to violence or some other serious violation of their liberty or peace, if a residence permit were to be granted.”</i></p> <p><u>Though, Section 3a, first paragraph, does not apply to spouses or cohabiting partners</u>, only to aliens who intend to marry or enter into a cohabitee relationship with a person who is resident in or who has been granted a residence permit to settle in Sweden. (The second paragraph is not applicable in these cases either.)</p>

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			Thus, Swedish legislation lacks a possibility to prevent family reunification on the basis of a second or third marriage with a Swedish national or a legally residing immigrant, who has been guilty of domestic or honour related violence towards the partner in a previous marriage, or who has abandoned a former partner in the country of origin, against his/her will.
	United Kingdom	Yes	No. There is no basis in UK immigration law for preventing family reunification of a 2 nd or 3 rd marriage of a legally residing immigrant who has been convicted of domestic violence towards the partner of the first marriage.
