



EMN Ad-Hoc Query on Polygamous marriage

Requested by Diego BAUSELA GOMEZ on 23rd February 2016

Protection

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom, Norway (25 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.

Background information:

In the recent months, Spain is experiencing an increasing number of cases where the asylum seeker is married with more than one person at the same time (polygamous marriage). In this regard, we would like to know the experience of the Member States with this group.


Summary






- No member of the network legally recognizes polygamous marriages and therefore only the reunification of one spouse is allowed, while other spouses may submit an application for international protection on an individual basis, based on their personal circumstances.
- As an exception to the above rule, only in one Member State, and in exceptional cases, a residence permit may be granted to the second spouse, provided she can prove a prolonged coexistence in the family home.
- The differences between the States which have participated in the AHQ occurs as regards when determining which spouse is entitled to be reunified. In some cases the applicant is allowed to decide who is the spouse to be reunited, while in others the first application submitted is given priority over subsequent applications.




Questions







1. Does your Member State recognise the possibility of family reunification when a member of a polygamous marriage apply for asylum? In that kind of marriage, is it possible to grant the international protection status to the different spouses?







Responses




	Country	Wider Dissemination	Response
	Austria	Yes	1. According to Art. 35 para 5 Asylum Act, family reunification is possible for spouses of beneficiaries of international protection if the marriage has already existed in the country of origin. Accordingly, this provision does not expressly exclude polygamous marriages. However, in 2009 the Austrian Asylum court held that polygamous marriages were incompatible with the Austrian public order and did not recognize a polygamous marriage (13 November 2009, C9 317335-1/2008). Nevertheless, under Art. 2 para 1 subpara 9 Settlement and Residence Act, if in the case of a polygamous marriage a spouse already lives with the sponsor in Austria, the


			other spouses are not entitled to obtain a residence title as a family member. This provision suggests that the Austrian legislation in principle does recognize polygamous marriages. Therefore, the question does not seem to be settled under Austrian law.
	Belgium	Yes	1. In Belgium, polygamy is contrary to the public order and prohibited (regardless of the fact that the country of origin might recognize polygamous marriages). Therefore, only one spouse of a third country national can benefit from the right to family reunification. If two spouses apply for family reunification at the same time, the applicant will have to choose one.
	Bulgaria	Yes	1. Beneficiaries of international protection have the right to family reunification. But according to art. 34 of the Law of Asylum and Refugees, “the Chairman of the State Agency for the Refugees shall reject a permit for family reunification with regard to another spouse” in case of polygamy, when the foreigner has already got a spouse in the Republic of Bulgaria • .
	Croatia	Yes	1. As polygamous marriage is not accepted by Croatian law, according to the Foreigners Act, in case of a polygamous marriage, family reunification under that Act shall be permitted to only one spouse. Only one spouse would be granted a residence permit. The other spouses could be granted international protection only if they are already at the territory of Croatia and applied for asylum and if was assessed that they should be granted international protection in that individual case.
	Cyprus	Yes	1. In Cyprus, Article 25(5) of Refugees Law, which provides for the family reunification of members of the family of an international protection applicant, states the following in the case of a polygamous marriage: “ It is understood that, in the event of a polygamous marriage, any further spouse of the refugee, other than the spouse already living with him in the Republic, shall be excluded from this paragraph;” TM
	Czech Republic	Yes	1. No. It is not possible as the Czech Republic does not recognize polygamous marriages as legal. Further details: According to the Act No. 325/1999 Coll., on Asylum, as amended and its Â§ 13 paragraph 4: (4) In case of a polygamous marriage, if the recognised refugee already has a spouse living together with him/her in the territory of the Czech Republic, asylum cannot not be granted for the purposes of the family reunification to another person who is the recognised refugeeâ€™s spouse pursuant to the legal system of another state. The

			<p>family reunification is also possible according to the Act No. 326/1999 Coll., on Residence of Foreign Nationals in the Czech Republic, as amended. According to this Act, it is possible “ in case of a recognised refugee “ to apply for a long-term residence permit for the purpose of family reunification. However, even in this case it is not possible to grant this visa to more than one partner. According to the Act No. 326/1999 Coll., on Residence of Foreign Nationals in the Czech Republic and its § 42a paragraph 7: (7) In case of a polygamous marriage, the long-term residence permit for the purpose of family reunification cannot be granted to the foreigner whose husband is the holder of the authorization for family reunification and already resides in the territory with another spouse.</p>
	Estonia	Yes	<p>1. Polygamous marriage is not allowed in Estonia. According to Article 4 of the Family Law Act a marriage shall not be contracted between persons of whom at least one is already married. Accordingly Estonia allows family reunification to only one spouse.</p>
	Finland	Yes	<p>1. Polygamous marriage is not allowed in Finland. According to Section 6 of the Finnish Marriage Act, no person shall marry if his or her prior marriage is still in force. Likewise, no person shall marry if his or her registered partnership is in force. Accordingly, only one spouse of a person residing in Finland may be issued a residence permit through family reunification, even if polygamy were allowed in the person’s country of origin. If the person residing in Finland were to divorce the first spouse and a second spouse would lodge an application for family reunification, it needs to be established whether the divorce from the first spouse is actual and recognised in the country of origin. It also needs to be verified that the marriage to the second spouse is authentic and the existence of their prior married life is established.</p>
	France	Yes	<p>1. The law on the reform of asylum dated July 29, 2015, and the related decree n°2015-1166 dated September 21, 2015, define the conditions for family reunification of refugees, beneficiaries of subsidiary protection and stateless persons as well as the related process. The newly created article L.752-1 of the Code for entry and stay of foreigners and asylum right, related to the family reunification, refers to first alinea of article L.411-7 related to family reunification which explicitly states that "when a foreign national resides in France with his/her first spouse, the family reunification process cannot apply for another spouse. Unless this spouse died or lost his/her parental rights, his/her children cannot benefit from the family reunification process". Moreover, the same article also states that the family reunification application can be refused if the foreign national under the protection of OFPRA (French Office for the Protection of Refugees and Stateless</p>

			Persons) does not respect the key principles which govern the family life in compliance with the laws of the Republic. Polygamous marriages do not respect these key principles.
	Germany	Yes	1. According to Â§ 30 para. 4 of the Residence Act no further spouse is granted a residence permit if the foreigner is married with several spouses and he already lives with a spouse in the Federal territory. In exceptional cases the second woman is to be granted a residence permit if she already lives with several consecutive tolerance status in the shared home for a longer time.
	Greece	Yes	1. Polygamous marriage is not accepted by Greek law. Legally the second marriage is not valid in Greece. Since a person only can be married to one spouse only one spouse can get family reunification.
	Hungary	Yes	1. No. A member of a polygamous marriage can apply for reunification with/residence permit for only one female spouse of him. Experience and practice of the asylum authority: In Hungary, it is not a typical case that an applicant lodges an asylum claim in which more spouses are considered. From another point of view of interpretation: during the asylum application process there is no possibility for family reunification, only following the recognition of the asylum seeker as a refugee or beneficiary of subsidiary protection. In Hungary in the system of family reunification, and according to Directive 2003/86/EC, polygamous marriages are not recognized: the right to family reunification entitles solely one female spouse to residence.
	Ireland	No	
	Italy	Yes	1. No. Article 29 (1ter) of Legislative Decree No 286/1998 expressly forbids a TCN legally residing in Italy, and living on Italian territory with a spouse by virtue of a bond of matrimony formally recognised by the Italian State, from of applying for family reunification with another TCN married abroad.
	Latvia	No	

	Lithuania	Yes	1. Asylum seekers, who have not already been granted international protection, do not have a right to family reunification (family members can only come to a foreigner, who has already been granted international protection). There have not been cases when a spouse of polygamous marriage sought for family reunification in Lithuania's experience.
	Luxembourg	Yes	1. Polygamous marriage is prohibited by Luxembourgish law and against public order. A second marriage is not valid in Luxembourg. Family reunification of a spouse is not allowed in case of polygamous marriage when the sponsor is having already a spouse with him/her in Luxembourg (article 70 (3) of the amended Law of 29 August 2008 on free movement of persons and immigration). However, it is not excluded that the other spouse(s) can apply for international protection individually in accordance with article 5 (1) of the Law of 18 December 2015 on international protection and temporary protection, but would then not be considered to be in the same family unit.
	Netherlands	Yes	1. When there is a polygamous situation at the time of application, only one spouse or (registered) partner and the children derived from this marriage/relationship are eligible for residence. If the referent, who resides in the Netherlands, is living permanently together with another man or woman; the legal spouse and any other family members are not eligible for a residence permit.
	Poland	Yes	1. In Poland polygamous marriage is against to the public order and is not recognised by Polish law. Therefore, only one spouse is entitled to family reunification.
	Slovak Republic	Yes	1. There have not been such cases yet and if such cases occur, they will be considered on an individual basis. However, such a marriage would have to be contracted abroad before entering the Slovak Republic because if a person gets married in the Slovak Republic and is already legally married, then they are committing bigamy and the marriage will be considered void.
	Slovenia	Yes	1. According to the Law on international protection in the proces of family reunification in polygamous marriage only one spouse can be considered as a family member. International protection could theoretically be granted to another spouse, but not as a family members, but in a independent procedure.

	Spain	Yes	<p>1. Polygamy is illegal in Spain. Therefore in no case more than one spouse of the asylum-seeker will be reunified, although the foreigner personal law supports this marriage mode.</p>
	Sweden	Yes	<p>1. Polygamous marriage is not accepted by Swedish law. Legally the second marriage is not valid in Sweden. Since a person only can be married to one spouse only one spouse can get family reunification.</p>
	United Kingdom	Yes	<p>1. The UK does not recognise polygamous marriages for the purpose of family reunion or any grant of international protection. More information can be found here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/274430/annexc.pdf ~ It is Government policy to prevent the formation of polygamous households in this country. Section 2 of the Immigration Act 1988 and paragraphs 278 and 279 of HC 395 are intended to achieve this policy. This Annex provides guidance to caseworkers about the circumstances in which a wife of a polygamous marriage will or will not qualify for leave to enter or remain. The following points should be noted in the first instance: primary consideration should be given to whether the marriage is valid in United Kingdom law. If it is not, the application for family reunion should be refused on that account alone - without considering the provisions of the Rules relating to polygamy; the order in which polygamous wives come to the United Kingdom for settlement is the important factor “ not the order in which they marry the husband. If wife number 2 is admitted to the United Kingdom on the basis of the marriage before wife number 1, she may prevent wife number 1 from coming; Applications received before 1 August 1988 are not covered by section 2 of the 1988 Act and may be granted if the marriage is valid and, unless the applicant is a section 1(5) beneficiary, if the public funds requirements of the Rules are met. Government policy relating to polygamy, as reflected in section 11(d) of the Matrimonial Causes Act 1973 and section 2 of the Immigration Act 1988, is extended by virtue of paragraphs 278-280 of HC395 (as amended by Cm 4851), to cover the position of polyandrous husbands. See section 9 of this annex™. Family Reunion guidance can be found: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257465/familyreunion.pdf See Section 4.6 and; https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/314042/DependantsAndFormerDependants_External2014-05-22.pdf See Section 10.5 Claims for international protection guidance on dependants can be found (see Section 3.3): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/314042/DependantsAndFormer</p>

			Dependants_External2014-05-22.pdf
	Norway	Yes	1. In cases where an asylum seeker has more than one spouse, and the marriages were entered into before he settled in Norway, only one of the spouses may be granted a residence permit and international protection. If the asylum seeker is accompanied by more than one of his spouses, the question of international protection is assessed individually for each successive person.