



AD HOC QUERY ON 2019.77 Situation of the asylum procedure of an international protection applicant marrying an EU citizen

Requested by Gladys Roy Chicharro on 5 August 2019

Compilation produced on 26 September 2019

Responses from Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Spain, Sweden plus Norway (20 in Total)

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1. Background information

During the period of examination of their application, some international protection applicants could marry an EU citizen or become parents of a EU citizen. Spain will like to ask the following questions:

2. Questions

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- 1. If an asylum seeker got married to a EU citizen can s/he obtain a residence card as family member of the EU?**
- 2. If an asylum seeker gets married to a EU citizen and applies for a residence card, what will happened with the asylum procedure (i.e. it is considered as an implicit withdrawal, it continues to a final decision, etc.)?**
- 3. What happens if the asylum seeker got a divorce before the deadline for obtaining an autonomous residence permit? Is the residence card revoked? Can the asylum seeker reapply for asylum?**

We would very much appreciate your responses by **5 September 2019**.

3. Responses

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		Wider Dissemination ²	
	EMN NCP Austria	No	

¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

² 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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	<p>EMN NCP Belgium</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. Yes, a person (regardless of his status) can apply for a residence permit in Belgium in the framework of the family reunification procedure if he or she marries an EU citizen. 2. If an asylum applicant obtains a residence permit via the family reunification procedure, this does not imply that his asylum application is automatically withdrawn or rejected. However, the asylum application can result in an implicit withdrawal and thus a rejection of the asylum application, for example if the applicant does not present himself at the interview in the framework the asylum application. 3. The residence permit for the family member can be revoked due to a divorce during the first five years of the residence permit. If the application for international protection was concluded due to an explicit or implicit withdrawal, the person can reapply for asylum.
	<p>EMN NCP Croatia</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. Currently it is not a practice in Croatia. According to Act on International and Temporary Protection, applicant for international protection do not have the right to lodge an application for residence permit pursuant to the provisions of the Foreigners Act during procedure for granting international protection (meaning until final decision is brought). 2. See answer to question 1. However, if an applicant wish to apply for residence permit on the basis of family reunification with EU citizen, an applicant would need to explicitly withdraw its application for international protection. 3. See answer to question 1. Applicants have the right to remain in the Republic of Croatia from the day of expression of intention to apply for international protection until the decision on the application becomes final, which is considered to be legal residence. An asylum seeker can reapply for asylum after the decision on the application for international protection becomes final and if s/he does not have a legal residence on other basis.

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	<p>EMN NCP Cyprus</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. Yes. Both applications (for international protection and as an EU family member) are treated as two different, independent procedures 2. It is up to the applicant to decide whether (s)he wishes to terminate his/her asylum procedure. The asylum procedure may continue independently from the marriage to an EU citizen. 3. A withdrawal of an asylum application is not encouraged in these cases, because we consider that these are two independent processes and if fear of persecution exists in the country of origin, the asylum process should be completed. However, in case the asylum case has been withdrawn, because of the marriage, an application for an autonomous residence permit may be submitted under certain circumstances (e.g. if the couple had a child, and the TCN is the child's guardian). In general, the person concerned, may reapply for asylum (more specifically, (s)he can apply for re-opening after the explicit withdrawal).
	<p>EMN NCP Czech Republic</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. No. The asylum procedure shall be first discontinued or finished. 2. The asylum procedure will continue, but the application for the residence permit will be discontinued because the Foreigners Act is not applicable to asylum seekers. 3. In case a person married EU citizen as an asylum seeker, see above. In this case, no residence card will generally be issued even if the asylum procedure is finished. A person may apply for asylum again but such application may be assessed as repeated in certain circumstances. In case a person married EU citizen and then applies for asylum, the residence card will remain valid throughout asylum procedure irrespective of the result. In case of divorce, the residence card may be revoked even in case a person is an asylum seeker. The asylum procedure will normally continue.

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	<p>EMN NCP Estonia</p>	<p>Yes</p>	<p>1. Yes.</p> <p>2. It is not possible to benefit from the multiple grounds for the residence permit simultaneously. However multiple applications can be processed at the same time. When there is such a situation an applicant is consulted – the options are explained and s/his choice will be asked. As a general rule asylum proceedings shall be continued until a person receives a residence permit on another ground and then a person shall withdraw the application for international protection. With that the procedure will be terminated.</p> <p>3. When the grounds for the residence permit are no longer valid (requirements are not met), then the residence permit on that ground cannot be granted or when already granted, shall be withdrawn.</p> <p>When the asylum seeker married and EU citizen and applied for the residence permit on the ground of the family member of the EU citizen but got e divorce before receiving the permit, then the asylum procedure would continue. When the divorce took place after granting of the residence permit and termination of the asylum procedures, then a new asylum application can be made.</p>
	<p>EMN NCP Finland</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. An application for a residence card or any other permit does not affect the asylum procedure unless the applicant wants to withdraw the application. In any other case the asylum application is assessed and decided normally and the applicant has the right to appeal the decision.</p> <p>3. Yes, the residence card can be revoked in case of a divorce, although several other factors are taken into account in the decision-making. Finnish law does not limit in any way the possibility to reapply for asylum. (S)he can do so regardless of any previous residence permits or even when the residence permit is valid.</p>

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	<p>EMN NCP France</p>	<p>Yes</p>	<p>1. Yes there is no requirement to prove a legal entry to France or a legal stay at the time when the application is filed. However the EU spouse will need to prove his/her right of stay in France (for example, sufficient financial means or professional activity or student).</p> <p>2. end of the Asylum application since a legal status will be obtained.</p> <p>3. s/he will keep his/her right of residence in the following cases: - if his/her spouse dies provided that s/he has established their residence in France as family member for more than one year before the spouse's death - in case of spouse's death or cancellation of the marriage if the marriage has lasted more than 3 years before the start of the process of divorce or cancellation incl. at least one year in France / if they have received the child care as spouse / if specific difficult conditions require such divorce (for example, spouse violence implying end of family life) / if the spouse can benefit from a right of visit to the minor child and that this right is in France and the duration linked to this right of visit.</p>
	<p>EMN NCP Germany</p>	<p>Yes</p>	<p>1. Yes, if and as long as the EU citizen is in Germany within the framework of his or her right to free movement, the spouse who is a national of a third country also enjoys the right to free movement irrespective of his or her asylum application, and thus receives a residence card.</p> <p>2. In this case, the asylum procedure is continued until a decision is taken, unless the person concerned expressly declares the withdrawal of the asylum application, which would result in the discontinuation of the procedure.</p> <p>3. The residence card may be revoked during the first five years of residence if the right of residence is not maintained after a divorce in accordance with Article 13(2) of Directive 2004/38/EC. If the asylum procedure had previously been concluded without protection being granted, an application to conduct a follow-up asylum procedure may only be made if the general conditions for reopening the procedure have been met. In particular, new grounds for the request</p>

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			<p>for protection must have arisen which did not yet apply when the first application was lodged; these must be claimed within three months of becoming known, and must at least make a positive decision appear possible in another asylum procedure.</p>
	<p>EMN NCP Hungary</p>	<p>Yes</p>	<p>1. The family member of an EEA national shall be given the right of residence if the EEA national plans to engage in gainful employment or the EEA national has sufficient resources for him or herself and his or her family members not to become an unreasonable burden on the social assistance system of Hungary during the period of their stay, and have comprehensive sickness insurance cover for healthcare services as prescribed in specific other legislation, or if he or she assures to have sufficient resources for such services as required by statutory provisions. The spouse of an EEA national shall be given the right of residence if the EEA national enrolled at an educational institution governed by the Act on the National Public Education System, or the Act on the National Higher Education System, for the principal purpose of pursuing a course of study, including vocational training and adult education if offering an accredited curriculum, and they have sufficient resources for themselves and their family members not to become an unreasonable burden for Hungary as described above, or if they assure that they have sufficient resources as described above. Furthermore, according to the Hungarian law a third-country national spouse of a Hungarian national is entitled to apply for residence permit for family reunification like other third-country nationals.</p> <p>2. If an asylum applicant gets married to an EU citizen and applies for a residence card, the asylum procedure is going to be suspended until the final decision of the residence card procedure.</p> <p>3. The right of residence of a spouse who is a third-country national shall be retained in the previous status in the event of divorce or annulment of marriage where prior to the divorce or annulment of marriage the marriage has lasted at least two years, and the former spouse has resided at least one year in Hungary during the marriage as a family member of the EEA citizen.</p>

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	EMN NCP Italy	Yes	<p>1. According to the Italian law, the foreign national who marries an Italian citizen and legally resides in Italy for at least two years (three years if resident abroad) can apply for Italian citizenship (Law n.91/1992). These terms are reduced by half in the presence of children born or adopted.</p> <p>Once a foreign national citizen marries an Italian citizen, s/he has the right to apply for a “residence permit for family reasons”. According to article 30 of the Legislative Decree on Immigration N. 286/98 (Testo Unico – T.U.), such a permit is issued:</p> <ul style="list-style-type: none"> a) to the foreign national citizen who has entered Italy with an entrance visa for “family reunification”, “relative visa” or “reunification with a minor”; b) to the foreign national who legally resides for at least one year and has married in Italy an Italian citizen, a citizen of another EU Member State or a legally residing foreign national; c) to the foreign citizen who has a residence permit and wants to be reunited with a family member who is legally residing in Italy. The permit held is converted to a residence permit for family reasons. d) to a foreign national family member of a refugee. e) to a foreign national parent of an Italian minor resident in Italy. <p>2. According to the Italian Civil Code (art. 116), a foreign citizen who intends to marry in Italy must present a certification of the absence of impediments to contracting the marriage (i.e. “nulla osta”). Such a certificate is issued by the competent authorities of the foreign national’s State.</p> <p>If the foreign citizen is a refugee, s/he can substitute the “nulla osta” with a UNHCR certification.</p> <p>If the foreign citizen is an asylum seeker, a beneficiary of subsidiary or international protection, s/he must present a declaration (affidavit), signed before a notary or before the Civil Court.</p> <p>However, the marriage with an Italian citizen does not automatically suspend the asylum procedure before a Territorial Commission. In the case an asylum seeker marries an EU citizen, the status of its application of international protection should remain unchanged for two reasons:</p> <ul style="list-style-type: none"> 1) Indeed, as mentioned in the previous contribution, Italian citizenship is granted only after two years of legal and continuous residence in Italy.

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			<p>2) The citizenship and international protection application involves different requirements, procedures and relevant authorities.</p> <p>3. According to Italian Law (i.e. art. 30, paragraph 5 of Legislative Decree on Immigration N. 286/1998), in case of legal separation, divorce or death of the family member in possession of the requisites for family reunification, the residence permit for family reasons can be converted to a residence permit for subordinate work, for autonomous work or for study purposes.</p>
	EMN NCP Latvia	Yes	<p>1. If asylum seeker gets married to an EU citizen (except Latvian citizen) he/she can apply for residence permit as family member of EU citizen. If asylum seeker gets married to a Latvian citizen he/she can apply for residence permit according to national Immigration law.</p> <p>2. If asylum seeker obtains residence permit as family member of EU citizen or residence permit according to national Immigration law and does not withdraw his/her application, the asylum procedure continues.</p> <p>3. If asylum seeker divorces residence permit (which is obtained on the basis of marriage) has to be revoked. Person always can apply for asylum.</p>
	EMN NCP Lithuania	Yes	<p>1. If an asylum seeker marries a citizen of EU Member State who has a right of residence in the Republic of Lithuania, he or she may apply for a residence card of a family member of a Union citizen.</p> <p>2. The mere fact that an asylum seeker marries a national of an EU Member State and applies for a residence card of a family member of a Union citizen, does not constitute as a ground for the</p>

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			<p>termination of the examination of an asylum application. Decisions on the application for asylum shall be taken with due regard to all relevant circumstances of an individual case.</p> <p>3. If a temporary residence permit in the Republic of Lithuania is issued to an alien on the grounds of family reunification (marriage), then the temporary residence permit will be revoked in the case of divorce.</p> <p>If an alien is holding a temporary residence card of a family member of a EU citizen on the basis of a marriage, then this card is withdrawn in the case of divorce, except in cases where the marriage has lasted at least 3 years, of which one year in the Republic of Lithuania, or in the case when a foreign national is taking care of a child of a national of a Member State of the European Union, or when the divorce is attributable to actions of a citizen of a Member State of the European Union. These circumstances do not constitute grounds for refusing to accept alien's asylum request.</p>
	<p>EMN NCP Luxembourg</p>	<p>Yes</p>	<p>1. In principle, an international protection applicant has the possibility to marry an EU citizen who is legally residing in Luxembourg during the international protection procedure, if s/he can fulfil all the objective conditions to marry. If the international protection applicant marries an EU citizen, s/he will be granted a temporary residence card (with the legend family member of the EU) in accordance with article 12 (1) a) in accordance with article 15 (1) of the amended law of 29 August 2008 on free movement of persons and immigration (Immigration Law).</p> <p>2. In the case where an international protection applicant marries an EU citizen before the decision of first instance has been taken and the third country national explicitly withdraws the file, the file will be closed and no decision will be taken in accordance with article 23 (1) of the law of 18 December 2015 on international protection and temporary protection (Asylum Law). If the third country national does not do an explicit withdrawal of the international protection application there are two possibilities: 1) if the Directorate of Immigration is informed of the change of status, it may assume that the applicant has implicitly withdrawn or abandoned his or her application for international protection, in particular when it is ascertained that the applicant has failed to respond</p>

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			<p>to requests to provide information essential to his or her application or has not appeared for a personal interview in accordance with article 23 (2) a) of the Asylum Law. The Minister in charge of Asylum can take a decision either to discontinue the examination or reject the application, provided that he considers the application to be unfounded on the basis of an adequate examination of its substance. The second possibility is that the Directorate of Immigration will continue the examination of the application and take a decision either to grant the status (refugee or subsidiary protection status) or to reject the application.</p> <p>3. In Luxembourg if a third country national, family member of an EU citizen divorces, s/he will lose her/his right of residence if the divorce occurs before a three year's period of being married (article 17 (3) 1 of the Immigration law). The residence card will be revoked and the person will have to leave the country. However, in case of particularly difficult situations (i.e. domestic violence) the third country national can obtain an autonomous residence permit even if the divorce occurs before the three year's period. In the case that the third country national cannot obtain an autonomous residence permit, s/he can reopen the international protection application if the file has only been closed and not be rejected by the Minister.</p>
	EMN NCP Malta	Yes	<p>1. YES if the spouse is an EU national other than a Maltese national exercising his Treaty Right in Malta</p> <p>2. The Office of the Refugee Commissioner will continue with the examination and a final decision is taken on the basis of all available elements</p> <p>3. As regards circumstances whereby the person divorces the EU national prior to the conditions provided for in Article 13 of Directive 2004/38, the Asylum seeker would lose right of residence on the basis of free movement rights Regarding asylum, there are no conditions that would limit the possibility for such a person to reapply for asylum.</p>

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	<p>EMN NCP Netherlands</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. Yes, if an asylum seeker, marries a EU citizen, the same rights and obligations apply to him as any other third country national. 2. If the asylum seeker whom has married an EU citizen applies for a residency card on this ground, his asylum procedure will be continued as normal. Since the qualification directive has come in to force it is allowed to have both a asylum permit as any other national (or EU) permit. 3. If an asylum seeker (or any third country national) gets a divorce (or a separation) their derived status will also, in principle, be terminated. However on grounds of article 8.15 Vb (aliens decree) their right to stay is not immediately ended. There are subsequent grounds/specifications that the asylum seeker (third country national) needs to meet, such as livelihood as well as duration of the marriage and duration of legal stay in the Netherlands. An asylum seeker can always re-apply for asylum.
	<p>EMN NCP Poland</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. A person who remains in the procedure for granting international protection in Poland cannot apply for a residence card. The asylum procedure must be first completed or discontinued (this can be done at the applicant's request). 2. As it was mentioned above, an asylum seeker who got married to a EU citizen cannot apply for a residence card when she/he remains in the procedure. The only fact of getting married to a EU citizen doesn't have any impact on the final decision on granting international protection. 3. Divorce of the applicant has no impact on the examination of the application for international protection itself. In general, if, within nine months of the date on which the decision to discontinue the proceedings for granting international protection was issued, the applicant declares in writing to the Head of the Office that s/he will further apply for having that protection granted, the decision to discontinue the proceedings shall be terminated by law following the date on which the body received the declaration. The declaration of intention to further apply for international protection shall be filed

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			with the Head of the Office through the Chief of the Border Guard Unit or the commanding officer of the Border Guard post. The declaration of intention to further apply for international protection may not be re-filed.
	EMN NCP Spain	Yes	<p>1. Currently it is not a practice in our Member State, but some organizations are trying to get this possibility. For this reason, we'd like to know how other Member States deal with this kind of situations.</p> <p>2. Currently it is not a practice in our Member State, but some organizations are trying to get this possibility. For this reason, we'd like to know how other Member States deal with this kind of situations.</p> <p>3. Currently it is not a practice in our Member State, but some organizations are trying to get this possibility. For this reason, we'd like to know how other Member States deal with this kind of situations.</p>
	EMN NCP Sweden	Yes	<p>1. Yes, if the requirements for residence is fulfilled including having sufficient means for supporting the family.</p> <p>2. The asylum process will continue unless the person him/herself withdraw the asylum application.</p> <p>3. The asylum case will already be decided which means that the same rules apply as for everyone else getting a divorce. If the requirements for residence card is not fulfilled the permit will be revoked.</p>

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	<p>EMN NCP Norway</p>	<p>Yes</p>	<p>1. Norway is not bound by the EU rules. However, if an asylum seeker is able to produce positive ID to the authorities, it is possible he/she could be approved for marriage. However, marriage to a foreign citizen who doesn't have a permanent residence permit in Norway or who hasn't been granted asylum in Norway must present positive ID. However, marriage in Norway would not guarantee being granted a residence permit to an asylum seeker.</p> <p>2. The asylum application would be reviewed and a final decision reached unless the applicant explicitly withdrew their asylum application.</p> <p>3. Temporary resident permits are issued for a period of 3 -5 years for a foreigner married to a Norwegian resident. If the relationship breaks up before the probation period is over, the foreign ex-spouse can be ordered to leave the country. If an asylum seeker gets married and divorced while waiting for the asylum application to be completed, it would not affect the consideration of need for international protection. However if asylum was not granted and the applicant had divorced, most likely they would have to leave the realm. (Most asylum applications are completed well within a 3 year limit)</p>
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