



European Migration Network

Ad-Hoc Query on family reunification with prisoners who are nationals of a Member State

Requested by LT EMN NCP on 15 October 2009

Compilation produced on 13 November 2009

Responses from [Austria](#), [Belgium](#), [Estonia](#), [Finland](#), [Hungary](#), [Lithuania](#), [Poland](#), [Portugal](#), [Slovak Republic](#), [Spain](#), [Sweden](#), [United Kingdom](#) (12 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

While examining ways which are used by third country nationals in order to obtain residence permits by fraud, Lithuanian migration authorities have noticed a particular form of possible marriages of convenience: Lithuanian citizens, while being imprisoned, get married with third country nationals. Afterwards these third country nationals address Lithuanian migration authorities in order to obtain residence permits as family members of Lithuanian citizens (while these citizens continue to remain imprisoned).





Therefore Lithuanian Migration department would like to receive some information on the practice of other Member States in this area: Are there any legal provisions or administrative practices in your country which allow refusing residence permits to third country nationals, who have concluded marriages with prisoners (citizens of your country) with the sole aim of receiving residence permits on the ground of family reunification/formation?

We would appreciate receiving your answers by the **23rd of October**.




2. Responses

		Wider Dissemination?	1. Would your MS issue a residence permit to third country national if (s)he gets married to the EU citizen or the citizen of your country (who has not enjoyed the right of free movement) who is being imprisoned?
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			<p>2. Can such application be refused? On what grounds (general or specific ground)? Would it be possible to refuse the application on the sole ground that the marriage is concluded with an imprisoned person – therefore a real family life is not possible?</p> <p>3. If the residence permit is being refused/revoked does it affect the legal status of the marriage, if the marriage was concluded in your country?</p>
	Austria	No	
	Belgium	Yes	<p>In Belgium an illegal migrant or someone in a prison or a closed centre can marry in principle. Why in principle? Because the intention to marry always needs to be verified by the public servant of the registry office and the latter can always ask for the advice of the office of the public prosecutor.</p> <p>When the marriage may take place, one marries in prison or the foreigner is released from the closed centre so he can marry in the city.</p> <p>If one refuses to let him marry, this is in the first place because the public servant of the registry office has elements to not let take place the marriage: signs of a marriage of convenience. The public servant of the registry office will therefore serve a reasoned refuse upon the couple.</p> <p>The illegal migrant can request a permanent stay after the marriage at the city on the basis of his marriage to a Belgian or a foreigner settled in Belgium. The imprisoned migrant can only request a stay after he has served his sentence or after his release. Of course then there is a consideration: a ministerial order of refusal or a Royal Decree of removal might be served upon the condemned migrant.</p> <p>Normally those migrants will have to leave the territory. In each of these cases there is a consideration of the personal and family interests on the one hand and the public interest and the public order on the other hand. The ECHR that protects family life does not exclude that this family life can be developed in another country. The right of residence for a (former) condemned person therefore is not obvious.</p> <p>Refusing a stay only because the migrant once was condemned, cannot be defended. (balancing of interests)</p> <p>So far we have only 2 -3 such cases (imprisoned foreigners marrying in prison).</p>
	Estonia	Yes	<p>1. It is possible to give a residence permit to third country national if he/she fulfils requirements given in Aliens Act.</p> <p>2. In practice we don't have such cases but every application should be accessed individually.</p> <p>3. No practice.</p>
	Finland	Yes	<p>There is not a clear policy on this. Finland has had only few cases on this matter.</p> <p>Family members of EU citizens who are not EU citizens or comparable persons must apply for a residence card. Registration and a residence card are proof of a person's right of residence and, thus, they are not residence permits in the strict sense of the word. A</p>


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			<p>certificate of registration proves that an EU citizen's right of residence has been entered in the Register of Aliens.</p> <p>If an EU citizen has not registered before imprisonment (registration is factually impossible), his or her family member is not able to gain residence card or residence permit. On the other hand, if the imprisoned EU citizen has registered in Finland or he or she is a Finnish citizen, family member could obtain residence card or residence permit in order to take care of their mutual children. Spouse's application could be rejected if there is clear evidence that he or she would enter Finland for other purpose than family reunification.</p> <p>In general, application for family reunification is more likely to be rejected if the spouse is imprisoned. If he or she would be released soon after the application being made, the spouse would likely gain residence permit or a residence card. Correspondingly, a long imprisonment would probably lead to rejection.</p> <p>If the imprisoned EU citizen would be removed from Finland soon after his or her release (decision for removal has gained legal force) and his or her registration or residence permit has expired, spouse' application for family reunification would be rejected. The situation is more complicated, if the imprisoned spouse's removal is still under consideration.</p>
	Hungary	Yes	<ol style="list-style-type: none"> 1. Yes. Family members of EEA nationals who satisfy the requirements of residence for a period of longer than three months shall have the right of residence. For family members of EEA nationals as well as for family members of Hungarian citizens residence cards are issued. 2. There is no legal provision which would allow refusing a residence card because of the fact that the third country national will not be able to have a family life together with an imprisoned Hungarian citizen. It would be possible to try to claim that the marriage is that of convenience, but there is no administrative practice or case law in this field. 3. No.
	Lithuania	Yes	<ol style="list-style-type: none"> 1. Yes. Residence permits are issued on general grounds – family members of EU nationals (EU residence permits are issued) or family members of Lithuanian citizens (if they haven't enjoyed the right of free movement – temporary (national) residence permits are issued). 2. There is no legal provision which would allow refusing a residence permit because of the fact that the third country national will not be able to have a family life together with an imprisoned Lithuanian citizen. It would be possible to try to claim that the marriage is that of convenience, but there is no administrative practice or case law in this field. 3. No.
	Poland	Yes	<ol style="list-style-type: none"> 1. Yes. There is no legal obstacle to issue the residence permit to the family members both of Polish citizens and family members of EU nationals who are being imprisoned. The general provisions related to the issuance of residence permits to family members are applied. 2. Such application could be refused on general rules. Any time, if a foreigner applies for the residence permit as a spouse of the Polish citizen (or a foreigner entitled to family reunification), the authority examines whether the marriage was not concluded for the mere purpose of obtaining the residence permit. The fact that the third country national will not be able to have a family life with imprisoned Polish/EU citizen cannot directly indicate that the marriage was the one of convenience. The examining authority should assess the whole evidence in particular case.

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			<p>The authority may refuse to issue the residence permit if the residence of the EU citizen poses threat to the state security and defence or the public security. In such case, the application of his/her spouse would also be refused.</p> <p>3. No.</p>
	Portugal	Yes	<ol style="list-style-type: none"> 1. Yes. An imprisonment penalty is a legal sanction for punishing a crime, and therefore its consequences may not be extended to other areas. This is the legal principle “<i>non bis in idem</i>”. 2. The legal grounds to refuse applications for residence permits are defined in the provisions of the Legal Framework, in accordance to the applicable EU Directives. A sham marriage is celebrated with the sole purpose of obtaining a residence permit or acquiring Portuguese citizenship. Hence, the refusal of granting a residence permit on grounds of a sham marriage relies on obtaining relevant evidence for which an imprisonment penalty imposed for other motives has no direct relevance. 3. No.
	Slovak Republic	Yes	<ol style="list-style-type: none"> 1. In general the residence permit to third country nationals is issued in a same manner as to family members of the EU citizens – first (permanent) residence permit for the period of five years. If they get married with an EU citizen or with a Slovak citizen who is in custody or is imprisoned the application for the residence permit in the Slovak Republic used to be refused. 2. Yes, the application can be refused when the legal condition of the joint family life is not proved by the applicant. The residence permit is granted only when the EU citizen or the Slovak citizen is released from the prison or custody. 3. The legal status of the marriage is not affected by this.
	Spain	Yes	<ol style="list-style-type: none"> 1. Yes. In accordance with Spanish legislation which has transposed Council Directive 2004/38/EC of 29 April 2004, a Family Residence Card for EU citizens is issued to family members of a citizen of a Member State of the European Union or of a State that is a party to the Agreement on the European Economic Area when they accompany the citizen to Spain, or are reunited with that citizen in Spain, for a period exceeding three months. Likewise, a Family Residence Card for EU citizens is also issued to the spouse of a Spanish citizen (as long as no agreement or declaration as to the annulment of the marriage, divorce or legal separation have been ruled by a court). In both cases, the fact that the EU or Spanish national is serving a prison sentence is not grounds for denying a residence permit. 2. No legal provision exists in Spanish legislation related with alien affairs which allows for denying a residence permit exclusively on the grounds that the EU or Spanish national, spouse of the foreigner, is imprisoned. 3. No. The revocation or denial of the residence permit does not affect the legal validity of the marriage celebrated in Spain.
	Sweden	Yes	<ol style="list-style-type: none"> 1. As long as the imprisoned person is a Swedish or a third country national, the general answer is no. However, a permit can be granted if it is proved that the imprisoned person soon will be released. 2. An application can be refused on the sole ground that the marriage is concluded with an imprisoned person which means that a

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			<p>real family life is not possible.</p> <p>3. No.</p>
	United Kingdom	Yes	<p>If the imprisoned person were a British citizen or of another nationality (but not an EEA national).</p> <p>A person who is subject to immigration control (not an EEA national) and who seeks leave to enter/ remain (or indefinite leave) as the spouse of a person who is present and settled in the UK has to satisfy the requirements of the relevant Immigration Rules (paragraph 281, 284 or 287 HC 395, which are to be found at www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part8/spouses_civil_partners/).</p> <p>He or she would have to show, amongst other things, that each of the parties intends to live permanently with the other as his or her spouse, and that the marriage is subsisting. If the sponsor were imprisoned, it is unlikely, although not impossible, that the applicant would meet the requirements of the Immigration Rules as a spouse, and his or her application would be likely to be refused.</p> <p>We have been able to trace two cases of imprisoned spouses. In one case (an entry clearance (i.e. visa) application) the entry clearance officer was not satisfied that each of the parties intended to live permanently with the other as his or her spouse, and the applicant's appeal against that refusal was dismissed. In a second case, the wife of a man who was imprisoned for a minimum of 35 years for murder applied for indefinite leave to remain outside the Rules, and that application was refused. It is possible that, if there were a case in which the sentence being served by the imprisoned sponsor were short, the applicant might be judged to satisfy the requirements of the spouse Rules.</p> <p>On question 3, refusal of leave to enter or remain as a spouse has no effect on the legal status of the marriage itself.</p> <p>If the third country national were the spouse of an EEA national (not a British citizen),</p> <p>If an EEA national has been sentenced and is serving their time in prison they cannot be exercising Treaty rights (ie be employed, self employed, self sufficient or a student). As such, any application by the non-EEA national spouse for a Residence Card will fail because the EEA national is not exercising Treaty Rights</p> <p>If they were already married before the EEA national was imprisoned, then presumably the non-EEA national is not living in accordance with the EEA Regulations (ie married to an EEA national exercising Treaty rights) and the Residence Card can be revoked.</p>
