



**AD HOC QUERY ON 2020.43 The principle of family unity in practice in asylum cases, especially in gender-based violence (GBV) and sexual orientation and gender identity (SOGI) based cases**

**Requested by EMN NCP Finland on 18 June 2020**

**Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden plus Norway (23 in Total)**

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**1. Background information**

In the UNCHR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, it is stated that the unity of the refugee's family should be maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country. If the head of a family meets the criteria of the definition, his dependants are normally granted refugee status according to the principle of family unity (usually his spouse and minor children). On the other hand, if the head of the family is not a refugee, there is nothing to prevent any one of his dependants, if they can invoke reasons on their own account, from applying for recognition as refugees. The principle of family unity operates in favour of dependants, and not against them.

The principle of family unity in refugee cases is recognised in Finland. In practise the principle of family unity is applied widely, and it is not normally considered whether the family member is a dependant or not (for example if the refugee is a minor child, the parents who are not actually dependants, can be granted asylum based on the

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principle of family unity). However, questions arise when one family member has an especially personal reason for applying for asylum, for example related to her/his gender, gender-based violence, gender identity or sexual orientation, and other family members are clearly not affected by the personal threat that this creates for the applicant, especially if the person in question is not the head of the family whose situation more often affects the whole family, but for example a woman or a minor child. Questions have arisen about whether the personal nature of persecution relating to some grounds should be considered when assessing the asylum claim of a family and applying the principle of family unity.

Some examples of these kind of very personal asylum claims could be a man who has a wife and children but claims to be homosexual and does not want his family to know about this, a minor girl who claims to be in danger of forced marriage, a minor girl who is in danger of FGM and it is not clear whether the parents would be willing to oppose the operation in the country of origin, a woman who applies for asylum with her husband and minor children and says that her marriage was forced and she would like to divorce but is scared to do it, and she still does not want to parted from her children and that the children need their father, and her husband does not want a divorce. Sometimes the question arises when two siblings apply together, for example a boy and a girl, and the girl is in danger of FGM, but naturally this threat does not apply to her brother at all, so should her brother still be granted asylum based on the principle of family unity if he does not have any reasons of his own. The situations are even more questionable if one of the siblings is a minor and one an adult.

Sometimes the problem can relate to a situation where it is suspected that other family members might react negatively were they to be informed of the reasons for one family member to be granted asylum, or some family members might be the actors of persecution. Of course, if it is clear that a family member is a threat to another family member the principle of family unity would not be applied, but more often than not, the cases are not so straightforward and the possible threat can be hard to prove. This can lead to situations where according to the principle of family unity refugee status should be granted to people, who cannot be informed of the reasons why they receive refugee status (because informing them is against the will of the applicant, and might put them at risk) or to people who might in the future actually pose a threat to one family member either actively or passively (for example by allowing others to perform FGM to their child). Sometimes the reasons for not following the principle of family unity cannot be written in every family members' decision because they have not given consent to use their information in other family members' decisions and this can cause problems in reasoning the written decision.

These kinds of problems seem to arise more and more often, especially since many refugee women bring up gender-related violence and persecution and quite often refugee families divorce in the process which creates problematic situations especially when the couple has minor children. Because of the growing number of questions, we would like to hear your thoughts about possible similar problems and how you tackle them.

## **2. Questions**

**1. Do you make exceptions in applying the family unity, especially in gender-based violence or sexual orientation or gender identity related cases?**

*Available choices: Yes, No*

**2. If Yes, in what kind of cases would the principle of family unity not be applied?**

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**3. How are exceptions reasoned in the decisions?**

**4. Is the principle applied differently when the one applicant who is recognized as a refugee is an adult versus a minor child of the family (the principal applicant in the family / a dependent applicant)?**

We would very much appreciate your responses by **17 July 2020**.

**3. Responses**

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|   |                 | Wider Dissemination <sup>2</sup> |  |
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|  | EMN NCP Austria | Yes                              | <p>1. Yes</p> <p>In Austria, family members of persons who have been granted asylum or subsidiary protection can be awarded the same level of protection. For this purpose, certain conditions must be fulfilled, e.g. the family member must not have committed a criminal offence and there must not be a pending withdrawal proceeding of the family member's status of asylum or subsidiary protection (Art. 34 Asylum Act). According to the law, these provisions are not applicable in certain cases (Art. 34 para. 6 Asylum Act). In this context, it should be noted that the exclusion provisions of Art. 6 and Art. 8 para. 3a Asylum Act are applied in family proceedings.</p> <p>2020.43_comment_q1.docx</p> |

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|   |                            |            | <p>2. The rule described under 1. is not applicable 1. to family members who are EEA citizens or Swiss citizens 2. to family members of an alien who has been granted the status of asylum seeker or beneficiary of subsidiary protection in the context of a procedure under this section, unless the family member is a minor unmarried child 3. in the case of a residence marriage, residence partnership or residence adoption (Art. 30 Settlement and Residence Act) No exceptions exist for cases of gender-based violence on grounds of sexual orientation or gender identity. In addition, attention should be given to Supreme Administrative Court 15.5.2019, legal statute 2019/01/0012 (a forced marriage cannot constitute a family relationship in the sense of Art. 34 Asylum Act, which can be applied, for example, in cases of sexual violence). Furthermore, take note that Art. 34 para. 2 and 3 Asylum Act also contain exceptions.</p> <p>3. An individual justification is given as to why the rules for deriving protection status in family proceedings are not applicable or why a single family member is excluded. For example, violence by one family member against another family member may be a reason for exclusion. Violence may also mean that no substantive family life in the sense of Article 8 ECHR exists.</p> <p>4. No. The law defines the term family members (Art. 2 para. 1 subpara. 22 Asylum Act) and restricts it to the immediate family. However, the parents of minors who are entitled to asylum or subsidiary protection are indeed considered family members. The distinction mentioned above therefore does not exist.</p> |
|  | <p>EMN NCP<br/>Belgium</p> | <p>Yes</p> | <p>1. Yes</p> <p>2. In April 2019, the national asylum authority (the Office of the Commissioner General for Refugees and Stateless persons - CGRS) adapted its policy on requests for international protection submitted by parents on behalf of their daughter(s) fearing female genital mutilation. The policy change means that parents are no longer granted derivative refugee status on the basis of the principle of family unity, but instead must submit an application for regularisation of stay based on Article 9bis of the Immigration Act. <a href="http://www.ejustice.just.fgov.be/eli/loi/1980/12/15/1980121550/justel">http://www.ejustice.just.fgov.be/eli/loi/1980/12/15/1980121550/justel</a></p>   |

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|   |                             |            | <p>The CGRS can also decide to split an asylum case of a family into different asylum applications when a person claims a fear towards one of the family members (for example: domestic violence, child abuse, forced marriage, LGBTQ...), enabling the authorities to motivate the decision individually and it therefore prevents the other family member and his/her legal representative to have access to the written notes of the personal interview and the written decision (and thus the reasons for the asylum claim).<br/>If the CGRS deem necessary, an accompanied minor can be invited for an individual interview (art 57/1 §1 Immigration Act). Accompanied minors having an individual and very specific claim can also ask to be heard separately or can lodge an individual asylum claim.</p> <p>3. The CGRS reasons that the mere fact of being a family member of a beneficiary of international protection, does not entail any consequence for the application and therefore does not automatically lead to international protection (referring to international and national legislation). The CGRS refers primarily to the individual assessment of an asylum claim and in some cases additionally mentions that the refugee status was granted on individual motives (without commenting on the exact content of those motives).</p> <p>4. The CGRS is currently in the process of establishing a specific framework for the application of the principle of family unity, in part as a result of case-law of the CJEU (October 4, 2018, case C-652/16) and of the Council for Alien Law Litigation (CALL).</p> |
|  | <p>EMN NCP<br/>Bulgaria</p> | <p>Yes</p> | <p>1. Yes</p> <p>2. The principle of family unity will not be applied in cases where the family member is the actor of persecution or poses a serious threat to the applicant.</p> <p>3. The ground for not applying the family unity principle is when it is clear that the family member is the actor of persecution or poses serious threat to the applicant.</p>  |

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|   |                    |     | <p>4. The principle of family unity is not applied differently. Eligible for family reunification with beneficiary of international protection, provided that the family ties existed before the foreigner's entry into the country, are</p> <ul style="list-style-type: none"> <li>a) the spouse or the person, with whom he/she is in a proven stable and long-term relationship and their underage and unmarried children;</li> <li>b) children of legal age who are not married who are not able to provide for themselves due to serious health conditions;</li> <li>c) the parents of each of the spouses who are unable to take care of themselves due to old age or serious health condition and who have to share the household of their children;</li> <li>d) the parents or another adult family member, responsible by law or custom for the underage unmarried person, to whom international protection has been provided.</li> </ul> |
|    | EMN NCP<br>Croatia | Yes | <p>1. No</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. The principle of family unity is normally applied. According to the Law on International and Temporary Protection (Official Gazette No. 70/15 and 127/17.), regarding article 66., paragraph 2., a minor child of an asylee or foreigner under subsidiary protection who has not founded their own family shall follow the legal status of their legal representative, to whom international protection has been granted, on which the Ministry shall render a decision.</p>  |
|  | EMN NCP<br>Cyprus  | Yes | <p>1. No</p> <p>2. N/A</p>   |

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|   |                    |     | <p>3. N/A</p> <p>4. No. The principle of the best interest of the child is taken into consideration</p>  |
|    | EMN NCP<br>Estonia | Yes | <p>1. Yes<br/>Yet our experience is quite limited and each case is considered on a case by case basis. All circumstances are taken into account (including the age of family member who is an applicant, dependency on other family members, the ability to cope separately from the family etc.)</p> <p>2. Our experience is quite limited and each case is considered on a case by case basis. Yet, the principle of family unity is not applied in cases where one family member clearly is the actor of persecution or poses a serious threat.</p> <p>3. Circumstances why exceptions are harnessed regarding a specific case are explained (e.g. taking into account the age of family member who is an applicant, dependency on other family members, the ability to cope separately from the family etc.)<br/>If a family member is the actor of persecution or poses a serious threat, this is the ground for not applying the principle of family unity in a certain case.</p> <p>4. Each case is treated individually. All circumstances are taken into account. Exceptions are more likely in case of minors when considering the best interest of the child.</p> |
|  | EMN NCP<br>Finland | Yes | <p>1. Yes</p> <p>2. It is logical not to apply the principle in cases where one family member clearly is the actor of persecution or poses a serious threat, but in more borderline cases it is challenging and problematic to decide whether or not to apply the principle.</p>   |

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|   |                           |            | <p>3. If it is clear that a family member is the actor of persecution or poses a serious threat, this is the ground for not applying the principle of family unity to that person. In other types of problematic cases some things that need to be considered individually are for example the best interest of the child, who is the actor of persecution, do several family members pose a threat to each other (it is not always clear who is threatening whom). In some cases, it has become apparent that if the principle of family unity is applied, it may enable people to misuse the asylum procedure, it may put some applicant(s) at risk of harm, or lead to an otherwise unreasonable outcome. Sometimes the reasons for not following the principle of family unity cannot be written in every family members' decision because they have not given consent to use their information in other family members' decisions and this can cause problems in reasoning the written decision.</p> <p>4. In Finland the principle of family unity is normally applied between parents and minor children, not regarding who is dependent on whom.</p> |
|  | <p>EMN NCP<br/>France</p> | <p>Yes</p> | <p>1. Yes</p> <p>2. The principle of family unity applies in France when individual fears cannot be established even indirectly. Whereas it only benefits within nuclear family, it applies to three limitative categories of people: for the spouse/partner of the refugee, for his/her minor children, and for a person under his/her guardianship or any kind of parental authority or dependency if it preexists in the country of origin.</p> <p>If any member of the family who could benefit from the principle of family unity has individual well-founded fear of persecution, he/she will be granted the asylum status due to his/her individual circumstances rather than due to the principle of family unity. The applicability of the principle of family unity is analyzed after the individual analysis of fear of persecution.</p> <p>Moreover, in case of domestic violence, the matrimonial link between the spouses is considered broken and the principle of family unity will not apply. OFPRA, the French determining authority, will analyze if</p>  |

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|  |                    |     | <p>the author of the domestic abuse should be excluded in accordance with Article 12(2) (b) of the Qualification Directive. Likewise, a family member responsible for acts relevant to an exclusion clause or who represents a serious threat to public safety or state security will not be granted refugee status in accordance with the principle of family unity.</p> <p>3. OFPRA does not communicate the reasons for granting refugee status, whether on the basis of individual fears of persecution, or on the basis of the principle of family unity. After examining individual fears of persecution, where facts leading to the non-application of the principle of family unity do not breach the principle of confidentiality, they are mentioned at the end of the decision. For instance, when facts of domestic violence have already been reported to the police, or when protective measures have been ordered by judiciary authorities. Otherwise, OFPRA will not mention the domestic abuses and why the applicant does not benefit from the principle of family unity in the decision.</p> <p>4. As explained in Question 2, the principle of family unity applies only in three cases. If the refugee is the minor child, his/her parents will not be granted refugee status. As parents of a refugee, they will nonetheless be able to ask for residence permits at the prefecture.</p> |
|  | EMN NCP<br>Germany | Yes | <p>1. Yes</p> <p>2. In cases where one family member clearly is the actor of persecution or poses a serious threat.</p> <p>3. If a family member is the actor of persecution or poses a serious threat, this is the ground for not applying the principle of family unity to that person.</p> <p>4. No, the principle of family unity is applied within the family (parents and children) regardless of who is dependent on whom.</p>  |

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|  | EMN NCP<br>Hungary | Yes | 1. No<br><br>2. No<br><br>3. The answer to questions from number 1 to number 3 is the following.<br>Hungarian Asylum Directorate separated a family only once a time when the result of the DNA test confirmed the fact that one of the three siblings is not family members of the others. Otherwise, the answer to question number 1 is no.<br><br>4. No   |
|  | EMN NCP<br>Ireland | No  | This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.  |
|  | EMN NCP<br>Italy   | Yes | 1. No<br>ahq_2020.43_q.1.docx<br><br>2. N.A.<br><br>3. N.A.<br><br>4. No. See Q. 1.<br>It is important to clarify that the family reunification does not imply the recognition of refugee status to the family member who has been reunited with the refugee: once entered in Italy, the TCN has to request – within 8 months - the residence permit for family reason (however, it is not forbidden to ask for asylum). |

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|   |                   |     | <p>For completeness, it may be interesting to highlight that – in case of minor child – Italian legislation allows the family reunification of the natural parent to his child who living in Italy with the other parent (art. 29 c. 5 of law 286/1998).</p> <p>Moreover, in case of danger of serious damages for the minor or if there is a serious reasons connected to physical and mental development of the child, the Juvenile Court may issue to parents (resident abroad) an authorization to legally reside within the national territory that allow them to obtain a residence permit for minors' assistance (art. 29 comma 6 law 286/1998).</p>  |
|  | EMN NCP<br>Latvia | Yes | <p>1. Yes<br/>However our experience is quite limited.</p> <p>2. We have had cases where, in the course of the proceedings, were suspicion of a possible threat to family members from another family member but the possible threat was difficult to prove. For example, relationship between spouses are volatile and women generally do not show a lasting desire to talk about it, in particular taking into account cultural background and differences. In order to ensure that asylum seeker has a possibility to provide complete and comprehensive information to support of his/her asylum claim the personal interview always takes place without presence of family members to guarantee confidentiality. In examining the application, the opinion of the minor shall be taken into account and personal interview may be arranged according to the minor's age and maturity.</p> <p>3. According to the Asylum Law the asylum seeker and his/her family members may be included in one decision to grant refugee status, if the applications of such persons are based on the same facts and if thus the special circumstances of the asylum seeker are not disclosed, which may endanger his/her interests, particularly in cases which are related to persecution due to sex, sexual orientation, gender identity or age. Thus, in order not to disclose individual grounds for asylum and to protect the particular asylum seeker the separate decision may be taken. In addition, due to the Administrative Procedure Law there is no need to include detail information about reasons for asylum in a positive decision on refugee status (detailed information on particular asylum grounds is kept in the personal file).</p> |

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|   |                              |            | <p>4. The principle of family unity is normally applied either in relation to parents and minor children or between spouses.</p>  |
|  | <p>EMN NCP<br/>Lithuania</p> | <p>Yes</p> | <p>1. Yes</p> <p>2. By default, according to the national legislation, family members are granted (the same) derivative international protection status as the primary applicant, provided they are all in Lithuania at the time when decision is taken. The only exception foreseen is application of an exclusion clause in respect of a particular individual. There are no recent practice concerning situations where the principle of family unity would be relevant in GBV or SOGI based cases. On purely practical level in the past there were some exceptions made to the application of derivative status in situations where one (or some) of the family members held dual citizenship, e. g. where the husband was a Syrian national, but the wife was both Syrian and Belorussian citizen.</p> <p>3. In exclusion cases there is no need for separate (creative) reasoning concerning refusal to grant a derivative status, since exclusion clauses are per se a sufficient ground for refusing international protection, whether derivative or not. In the aforementioned dual citizenship cases the reasoning mostly refers to the fundamental purpose of international protection as a surrogate to national protection, that is to protect a person when his/her state fails to. In situations like this it's just seems extremely counterintuitive to grant a person international protection without even considering the situation in his/her country of origin.</p> <p>4. The legislation does not discern these situations. In practice, however, the process of granting a derivative status to a minor child would definitely be much less scrupulous as opposed to an adult. E. g., application of the mentioned dual citizenship exception would probably not be even considered in case of a dependent child.</p> |

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|  | <p>EMN NCP<br/>Luxembourg</p> | <p>Yes</p> | <p>1. Yes<br/>1. Yes, according to article 5 (2) of the Luxembourgish amended law of 18 December 2015 on international protection and temporary protection (Asylum Law), an application may be lodged by an applicant on behalf of his / her dependants. In this case, the adult dependants must consent to the application being made on their behalf. Consent is required at the time the application is lodged or, at the latest, at the time of the personal interview with the adult dependant. Prior to the application for consent, each adult dependant shall be informed privately of the relevant procedural consequences of submitting an application on his or her behalf and of his or her right to submit a separate application for protection. Furthermore, article 34 (1) of the same law stipulates that for the purposes of Article 5(2) and where an application is based on the same grounds, a single decision shall be adopted for all dependants, unless such action leads to disclosure of an applicant's particular circumstances which could be detrimental to his or her interests, in particular in cases of persecution based on gender, sexual orientation, gender identity or age. In such cases, a separate decision shall be communicated to the person concerned. It is however important to be noted, that even if an applicant gave his/her consent at the moment of the application being lodged, has the possibility, at a later stage of the procedure, to request a separate decision if s/he does not wish certain data/information to be disclosed to the rest of the family. The same applies to accompanied minors, who during the procedure, are coming of age.</p> <p>2. Luxembourg treats every international protection application on a case by case basis analysing the facts described by the applicant as well as the evidence provided and taking into consideration the general situation of the country of origin. As in Finland, the family unit principle will not be applied when it is clear that the family member is the actor of persecution or poses a serious threat to the applicant, or in cases where a single decision for all the members of the family may lead to disclosure of one family member's particular circumstances which could be detrimental to his/her interests. In cases that are not straight forward the analysis is done on a case by case basis taking into consideration all the facts of the case.</p> <p>Furthermore, the principle of family unity is not applied in cases where the dependant adult is of a different nationality than the main applicant. In such cases, two different decisions are issued. However, even if the dependent adult is not issued an international protection (due to his different nationality and the lack of motives), s/he has the possibility to get a right of residence as a family member.</p> |
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|   |                                |            | <p>3. See answer to question 2. Every decision taken in the international protection procedure has to be motivated in accordance with article 34 (1) of the Asylum Law. As it was mentioned before the decision will be motivated based on the facts and evidence laid down in the file. The arguments advanced by Finland in its answer can be taken as motive for not applying the family unit principle. The main principles that have to be applied are the need of protection and the degree of vulnerability of the applicants.</p> <p>4. The principle of family unity applies normally between parents and minor children but it can also be applied between spouses, or, if the beneficiary of international protection is an unaccompanied minor, with other family members.</p>   |
|  | <p>EMN NCP<br/>Netherlands</p> | <p>Yes</p> | <p>1. Yes</p> <p>2. In the Dutch asylum policy, unaccompanied minors are consulted when they are 6 years or older. Individuals belonging to a family are consulted by default when they are 15 years or older. Children between the age of 12 and 15 who belong to a family are consulted if they ask for it or if there is reason to do so.</p> <p>All asylum motives that are put forward are assessed. Unrelated asylum motives are not taken into account in the assessment of the asylum application.</p> <p>Every person can therefore qualify for an asylum residence permit on his/her own merits and independently of the assessment of a family member's application for asylum.</p> <p>An asylum residence permit may be granted to:</p> <ul style="list-style-type: none"> <li>- the spouse or the minor child of the foreign national who has been granted an asylum permit;</li> </ul> |

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|  |  |  | <ul style="list-style-type: none"><li>- the foreign national who is a partner or a child who has reached adulthood of the holder of an asylum residence permit;</li><li>- the parents of the holder of an asylum residence permit, if that person is a unaccompanied minor.</li></ul> <p>In addition to this, every asylum application also supports Article 8EVRM. This involves an assessment that examines if family life is worthy of protection. Family ties are tested with a test related tot 8EVRM.</p> <p>The information provided in asylum interviews is treated confidentially. If someone does not want certain information that he or she provides to be known to, for example, his / her partner, this will be taken into account.</p> <p>The following applies specifically with regard to Female Genital Mutilation. The parent of a girl who is at risk of genital mutilation on return to the country of origin, receives an asylum residence permit. The condition is that the parent was already in the Netherlands at the time the girl was granted the residence permit.</p> <p>When the IND employee receives a signal, for example, about possible domestic or honor-related violence, the employee will consult designated employees. Where necessary, further action will be taken. However, this is independent of the substantive assessment of the asylum application. Individuals who are in the Netherlands can (in addition to an asylum application) also apply for a regular residence permit. There are situations in which they qualify for an independent, regular residence permit, for example the danger of being confronted with domestic violence, honor-related violence or abandonment. Asylum-related grounds do not play a role in the assessment of such an application.</p> <p>3. See the answer to question 2.</p> <p>4. See the answer to question 2.</p> |
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|    | EMN NCP<br>Poland   | Yes | <ol style="list-style-type: none"> <li>1. Yes</li> <li>2. The Polish asylum law respects the principle of family unity. In the developed jurisprudence, the refugee status is granted to a person who has submitted a separate application or is covered by the applicant's application if the spouse or parent has been granted refugee status. Therefore, as a rule, the decision to grant the refugee status is also provided for persons on whose behalf the applicant is acting, even if there is no justified fear of persecution in the country of origin for them. By way of derogation, despite the principle of family unity, refugee status <u>is not granted</u> to a person who is individually affected by the exclusion clauses (other than fear of persecution) or is a citizen of the Republic of Poland.<br/>In exceptional cases, e.g. where the applicant is a perpetrator and use violence against another member of the family covered by the application, it is possible that if the conditions for granting international protection are met, the victim receives a positive decision (however, he / she should submit a separate application first), while the family member who uses violence and there were no reasons to give him/her protection, would receive a negative decision.</li> <li>3. The office conducting the procedure for granting international protection issues a single decision relating to the applicant and other persons on behalf of whom the applicant is acting, unless the issuing of one decision would reveal the specific situation of the applicant or the person on whose behalf the applicant is acting, which could threaten their interests, in particular in matters related to harassment based on sex, sexual orientation, gender identity or age. In such a case, the person's special situation, e.g. sexual orientation, is not disclosed to other family members.</li> <li>4. Each case is treated individually. Moreover, in the case of minors, the provisions governing the procedure for international protection involving minors shall apply.</li> </ol> |
|  | EMN NCP<br>Portugal | Yes | <ol style="list-style-type: none"> <li>1. No</li> <li>2. N/A</li> </ol>  |

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|   |                  |     | <p>3. N/A</p> <p>4. No</p>   |
|  | EMN NCP Slovakia | Yes | <p>1. No</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. No.</p> <p>The right of family reunification is described in Art. 10 of the Act that reads as follows:</p> <p>(1) Unless stipulated otherwise by this Act, the Ministry shall grant asylum for the purpose of family reunification to</p> <ol style="list-style-type: none"> <li>1. the spouse of a person granted asylum if their marriage continues, and continued, also at the time when the person granted asylum left his/her country of origin and provided the person granted asylum gives a prior written consent to the reunification;</li> <li>2. unmarried children of the person granted asylum or of a person pursuant to the Subparagraph (a) who are younger than 18 years of age; or</li> <li>3. parents of an unmarried person granted asylum younger than 18 years of age or the person given custody of such person provided the person granted asylum gives a prior written consent to such reunification.</li> </ol> <p>(2) Applicants under Paragraph 1 must be staying on the territory of the Slovak Republic and must not have a permanent residence on the territory of the Slovak Republic granted to them pursuant to a special regulation.</p> <p>(3) The Ministry shall grant asylum to persons mentioned in Paragraph 1 only in case of family reunification with a person granted asylum under Section 8 herein.</p> <p>(4) The Ministry shall also grant asylum to a child born to a female asylum seeker on the</p> |

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|   |                             |            | <p>territory of the Slovak Republic, if the obligation stipulated in Section 4 Paragraph 5 is met. Similar principles apply in case of subsidiary protection as stipulated by Art. 13 b) of the Act and reads as follows:</p> <p>(1) Unless stipulated otherwise in this Act, the Ministry shall grant subsidiary protection for the purpose of family reunification to</p> <ol style="list-style-type: none"> <li>1. the spouse of an alien granted subsidiary protection under Section 13a if their marriage continues, and continued, also at the time when the alien left his/her country of origin and provided the alien gave prior written consent to the reunification;</li> <li>2. unmarried children of an alien granted subsidiary protection under Section 13a, or of a person pursuant to Subparagraph (a) who are younger than 18 years of age; or</li> <li>3. parents of an unmarried alien granted subsidiary protection under Section 13a who is younger than 18 years of age or to the person given custody of such alien provided the alien granted subsidiary protection gives a prior written consent to such reunification.</li> </ol> <p>(2) Applicants under Paragraph 1 must be staying on the territory of the Slovak Republic and must not have a permanent residence on the territory of the Slovak Republic granted to them pursuant to a special regulation.</p> <p>(3) The Ministry shall also grant subsidiary protection to a child born to a female alien granted subsidiary protection on the territory of the Slovak Republic, if the obligation stipulated in Section 4 Paragraph 5 is met.</p> |
|  | <p>EMN NCP<br/>Slovenia</p> | <p>Yes</p> | <p>1. No</p> <p>In Slovenia, it is the practice for each family member to submit his / her application for international protection, regardless of whether he / she has reasons for seeking protection or simply accompanies a family member in need of protection. However, usually the proceedings of the same family are combined into a single proceeding. Despite the merging of the procedure, each application is still considered individually, which means that it is necessary to define the reasons in the application for international protection for each family member. If the conditions for international protection are met by one family member, then in accordance with the International Protection Act, other family members may also acquire the same status (if there are no grounds for exclusion on their part), which are</p>   |

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|   |                          |            | <p>determined by law. "Family members of the applicant" are third-country nationals or stateless persons who are together with the applicant in the Republic of Slovenia and are members of a family that already existed before coming to the Republic of Slovenia. They are:- the applicant's spouse, registered partner or partner with whom the applicant lives in a long-term cohabitation, with only one person in the polygamous relationship being considered a family member, namely the one designated by the applicant,- minor children of the applicant or of the person referred to in the previous indent, if they are unmarried, whether they were born in or out of wedlock or adopted,- child of the applicant, born in the Republic of Slovenia,- the father, mother or other adult responsible for the applicant if the applicant is a minor and unmarried,- another relative of the applicant, if there is a living community between them that is essentially similar to the primary family or has the same function as the family, which means mainly genuine family ties between family members, physical care, protection, protection, emotional support and financial addiction.</p> <p>2. /</p> <p>3. /</p> <p>4. No. We do not use the concept of the head of the family (or the principal applicant in the family) and dependent members. The point of the concept of maintaining family unity is for family members to stay together, so it doesn't matter if the child gets the status because of the parent or the parent because of the child.</p> |
|  | <p>EMN NCP<br/>Spain</p> | <p>Yes</p> | <p>1. Yes</p> <p>2. The principle of family unity does not apply in the event that a woman has previously filed a request for gender-based violence or there is evidence of a complaint on this issue.</p> <p>3.</p>   |

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|  | EMN NCP<br>Sweden | Yes | <p>1. Yes</p> <p>2. The Swedish Migration Agency makes exception from the principle of derivative status for family members when the result would be unreasonable or go against the common legal consciousness. One example of such a situation could be a girl who is found to be a refugee due to risk of female gender mutilation if returned. The parents of the family in that case should not get protection on the same ground as the girl if it during the investigation appears that they do not oppose that the daughter is subject to the procedure. Also a case when a woman from for example Afghanistan get protection due to risks associated with return due to lack of male network. If the husband later applies for asylum and do not have an individual need for protection, he should not get protection on the same grounds as family member. Also in the case of honour and gender related violence, when a family member is the reason for the protection need of the applicant, the principle of derivative status is not applicable. For more information on how the Swedish Migration Agency apply the principle of derivative status please see the judicial position on family unity in asylum cases (SR 57/2016 – in Swedish) <a href="https://lifos.migrationsverket.se/dokument?documentSummaryId=38358">https://lifos.migrationsverket.se/dokument?documentSummaryId=38358</a></p> <p>3. It is referred to the judicial position of the Swedish Migration Agency SR 57/2016 which is decided by the Director of Legal Affairs and binding for the staff of the agency. The issue of exception from the principle of derivative status in the situations mentioned above has not been tried by the highest court of Sweden, Migration Court of Appeal.</p> <p>4. It does not make any difference if it is a parent or a child who has the main individual grounds for asylum in order for the principle of derivative status to be applied. In the case that the parents apply for asylum based on fear for prosecution of their child, the child is normally seen as the main applicant. If the child is in need of protection the parents can get derivative protection status.</p> |

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|  | <p>EMN NCP<br/>Norway</p> | <p>Yes</p> | <p>1. No</p> <p>2. (#1. No. Norway has no established practice for exceptions for derivative refugee status in cases where gender-based persecution is the grounds for asylum. In such cases, Norway would carry out an individual consideration of whether there are other special reasons that argue for granting derivative refugee status. Note that Norway does not mention grounds for international protection for the reference person in decisions for derivative refugee status for family members. The refugee's spouse or cohabitant and children who meet the conditions for entitlement to a residence permit under sections 40 to 42 of the Immigration Act are entitled to a residence permit as a refugee (under section 28, sixth paragraph, of the Act) unless there are other special grounds to the contrary. Should a woman be granted asylum because she lacks a network with adult male family members and later is joined by her husband, most likely her protection would then be revoked and other possible grounds for protection would be considered. Because of this, we would rarely be in the situation where we would have to grant derivative asylum protection to a family member that was actually the cause of the need for protection. )</p> <p>3. N/A</p> <p>4. No. In cases where parents are granted residence on the grounds of strong humanitarian considerations or a particular connection to Norway (Norwegian Immigration Act § 38) because their child is in danger of FGM, then Norway is very clear about why the child is granted protection and the parents are informed that the protection can be withdrawn if the girl is in fact subjected to FGM. Parents are not granted derivative protection in Norway based on their children's protection status.</p> |
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