



First Focussed Study 2012

**MISUSE OF THE RIGHT TO FAMILY REUNIFICATION:
MARRIAGES OF CONVENIENCE AND FALSE
DECLARATIONS OF PARENTHOOD**

French contact point of the European migration network (REM)

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*Study conducted by the National Contact for France of the European
Migration Network (EMN)*

March 2012

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EXECUTIVE SUMMARY

Family reunification, as part of this study, is understood as the procedure enabling:

- **a third-country national legally residing in France to be reunified with the members of his family who are third-country nationals.** This case comes under European regulation and the national legislation that transposed it (**scenario a.**);
- **a mobile EU national coming to reside in France to be accompanied by or reunified with the members of his family, third-country nationals.** This case comes also under European regulation and the national legislation that transposed it (**scenario b.**);
- **a non mobile EU national to be re unified with the members of his family that are third-country nationals.** In this case, family reunification entitles to residence on the basis of European jurisprudence. There is then a European protection on the basis of the treaty of the European Union (**scenario c.**¹);
- **a French national to be reunified with the members of his family that are third-country nationals.** In this case, only national legislation applies (**scenario d.**).

These four types of family reunification (**4 scenarios**) may apply to the spouse and/or children and/or to the parents of the French or European national and of the third-country national legally residing in France. Family reunification that may be adopted in various forms, such as comprised as part of this study, proves, generally speaking, to be one of the main means for foreigners to set up in France. There is a risk that this procedure may be misused and be used in an improper manner by certain persons to divert the rules relating to the entry and residence of third-country nationals in France. Two phenomena seem to have developed over recent years on the French territory to resort to family reunification as a migration channel without due cause: **marriage of convenience**, and **false declarations of parenthood**.

On the one hand, **the bogus marriage** (referred to as "sham marriage" or "marriage of convenience") is a marriage contracted for the sole purpose of getting an advantage (in particular for migratory purposes). Thus, the spouses let the marriage be celebrated only to get a result extraneous to the marriage (obtaining a residence permit or acquisition of nationality). One shall note in France, since 2009, public authorities also refer to **marriages by abuse** (referred to as "*mariage gris*" - marriage contracted between two persons of different nationalities, one having seduced the other one to obtain certain rights). In this case the aim of one of the spouses, not disclosed to the spouse, is to obtain an advantage (obtaining a residence permit of the nationality of the host country). As part of the study, we will use the terms of marriage of convenience and of "*mariage gris*" (as there is no general translation for this term in English) to describe these two different phenomena. On the other hand, **fraudulent parenthood** exists in two different forms: **those of falsified civil status documents (most often, birth certificate) or false recognitions/declarations of parenthood**.

On the one hand, the study aims to highlight the national legislative framework regulating the right to family reunification (**section 1**). On the other hand, it seeks to determine the extent to which France is facing, in practice, misuses of this right studying especially the perceptions of

¹ It is important to underline that the recent European jurisprudence following the Zambrano, McCarthy and Dereci decisions has little impact on French legislation relating to family reunification. Therefore, the French study will not refer to this scenario.

the different stakeholders of the extent of marriages of convenience and false declarations of parenthood and the means implemented to prevent, detect and combat them (**section 2**). One of the objectives of this study is also to assess the real scope of such fraudulent practices in France through relevant statistics (**Section 3**).

In France, the anti-marriage of convenience mechanism introduced in the Civil Code by **Act no. 93-1417 of 30 December 1993**² pertaining to various provisions relating to immigration control, was constantly intensified between the years 2003 and 2011. Indeed, **Act no. 2003-119 of 26 November 2003**³ relating to immigration control, residence of foreigners in France and nationality had improved the legal framework of the fight against bogus marriages. It also instituted a **specific offence** for the fact of contracting marriage for the sole purpose of getting or causing to get a residence permit. These same penalties apply in case of organisation or attempted organisation of a marriage or a recognition of child for the same purposes. Then, both **Act no 2006-911 of 24 July 2006**⁴ relating to immigration and integration and **Act no. 2006-1376 of 14 November 2006**⁵ relating to the checking of the validity of marriages, intensified the means to fight against the diversion of marriage for migratory purposes. Details of application of the policy aimed at preventing and penalising bogus marriages have since been specified and intensified through **circular CIV/09/10 of the Ministry of justice and liberties of 22 June 2010**⁶. In addition, **Act no. 2011-672 of 16 June 2011**⁷ relating to immigration, integration and nationality completed the previous system recently, by instituting an offence for "*mariages gris*" and penalising them by the same penalties.

Today, **marriages of convenience may be detected during various formalities before and after the marriage**, both for marriages celebrated abroad and for those celebrated in France. Indeed, checks take place before and after, i.e. before the celebration of the marriages, before the transcription of marriages celebrated abroad, before the issuance of a visa for France, before the first issuance of a residence permit, and afterwards every year at the time the temporary residence permit is renewed. Sincerity of the marriage and the reality of the community of life are in this way ascertained by the French law. When there are suspicions, a authorities are enabled by law to object to the marriage and subsequently to have it cancelled. In addition to these prevention and detection means, there are also penalty tools that act as a deterrent on persons attempting to resort to a fraudulent marriage.

While false declarations of parenthood are recognised as a means to resort improperly to family reunification, one can notice, through this study, that public authorities do not take up so much this issue as they do that of marriages of convenience. When the sole aim of these false declarations is fraud, they are considered as a criminal offence based on Act no. 2006-911

²Act no. 93-1417 of 30 December 1993 introducing various provisions relating to checking of immigration and amending the Civil Code

<http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000362870>

³ Act no. 2003-1119 of 26 November 2003 relating to checking of immigration, stay of foreigners and to nationality

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000795635&dateTexte=>

⁴Act no. 2006-911 of 24 July 2006 relating to immigration and integration, <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000266495&dateTexte=>

⁵Act no. 2006-1376 of 14 November 2006 relating to checking of the validity of marriages, <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000275701>

⁶Circular CIV/09/10 of the Minister of justice and liberties of 22 June 2010, http://www.gisti.org/IMG/pdf/circ_civ0910_2010-06-22.pdf

⁷Act no. 2011-672 of 16 June 2011 relating to immigration, integration and nationality, <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000024191380&categorieLien=id>

of 24 July 2006. Today, French authorities try to tackle these problems via various tools that enable them to counter document fraud in particular. Moreover, **exercising parental authority** and taking charge of the financial and moral support of the child are prerequisites for obtaining the right for the child or parent to reside in France and therefore helps to prevent and detect fraudulent declarations when a residence permit is issued or renewed. It is one of the limited means available for detecting and fighting against fraudulent declarations.

Generally speaking, by dealing with these issues, French authorities get, on the one hand, the support of the aid organisations for victims of these two phenomena and, on the other hand, attract wrath of migrant support and aid associations. These associations denounce restrictive policies against the right to a normal family life. These issues are being regularly debated in France. To that effect, one shall note that in addition to the above mentioned stakeholders, the French media have been also regularly taking up these problems. Nevertheless, **it is still difficult today to grasp these two issues**. Indeed, while one cannot disprove their existence, it proves more complicated to assess their extent.

These two forms of abuse are phenomena that are difficult to quantify, considering there are no statistics on visas and residence permits that are refused or withdrawn on the ground of a presumption of marriage of convenience or false declaration of parenthood. Nevertheless, some indicators allow an assessment of the extent of these phenomena, but there are still doubts regarding their over- or underevaluation.

SECTION 1: NATIONAL LEGISLATIVE FRAMEWORK REGULATING THE RIGHT TO FAMILY REUNIFICATION

First of all, this section will present the concepts related to marriages of convenience and false declarations of parenthood as defined in French legislation (**sub-section 2.1**). It will also outline the legislation regulating the right to family reunification depending on the nationality of the sponsor (**sub-section 2.2**). The last sub-section aims to determine if, in France, a specific national legislative framework has been developed to prevent misuse of the right to family reunification (**sub-section 2.3**).

Note that each sub-section is further broken down to first address marriages of convenience and then false declarations of parenthood.

1.1. Definitions of concepts in relation to marriages of convenience and false declarations of parenthood in French law

1.1.1 Marriages of convenience

Although there is no true definition of marriage in French legislation, Article L. 144 of the Civil Code specifies that "*a man and a woman cannot contract marriage before they are over the age of eighteen*", which indirectly results in substantive law that marriage can only take place between two opposite sexes and excludes marriage between same-sex persons. **In France, legal authorities agree on the definition of marriage as “a solemn legal act by which a man and a woman establish a union organised by civil law”.**

Only marriage may give rights to a foreigner regarding entry and residence in France. Thus, **family reunification, as defined in scenario a), is possible only for the spouse of the opposite sex** (as well as minor children) of a foreigner residing regularly in France (Article L. 411-1 of the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA)). It is not possible for the same-sex spouse or the cohabitee, whether the latter have signed a civil partnership or not. Directive 2003/86/EC⁸ regulating family reunification is more flexible than French law insofar as it specifies that it is up to Member States to define if the above mentioned persons may also benefit from family reunification. It will be underlined later in this study that family reunification, in the framework of the present study, may be requested in favour of these persons when they testify to lasting private and family bonds other than matrimonial bonds with a EU national.

Polygamy has been prohibited by law in France since 1993, according to Article L. 411-7 (family reunification), L. 314-5 (residence permit) and L. 313-11 (temporary residence permit “private and family life”) of the CESEDA. Thus, a foreigner can live in France with only one spouse (for instance [Rép. min. no 13547 : JO Sénat Q, 2 dec. 2010, p. 3166](#)). Against this background, only one spouse may benefit from family reunification. French law is, in this situation, no more restrictive than Directive 2003/86/EC. Moreover, jurisprudence no. 333723 of the Council of State dated 24 August 2011 recently indicated that polygamy appeared on the list of public order grounds likely to be taken into account to justify the refusal of a visa.

⁸ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0086:fr:HTML>

1.1.2 False declarations of parenthood

In France, the filiation of a child, whether biological or voluntary, allows either this child or his parents to enter and to reside regularly on French territory. Indeed, family reunification (**scenario a.**) may also be requested in favour of children under eighteen years old of the third-country national legally residing in France, his or her spouse, or the couple thus formed. In this respect, the law specifies the notion of child likely to benefit from family reunification by reference to the last paragraph of Article [L. 314-11](#) of the CESEDA. The latter gives the following definition of the child: "*A legitimate or natural child who has a legally established filiation, including an adopted child, by virtue of an adoption decision, subject to the checking by the public prosecutor's office of its legality when it was pronounced abroad*". Circular of 17 January 2006 details as follows the children concerned (Inter ministry circular DPM/DMI2 no 2006/26, 17 January 2006, III, B, 2.2):

- the legitimate children of the couple;
- the natural children whose filiation is established only as regards the applicant or his or her spouse by virtue of an adoption decision, subject to the fact the public prosecutor's office checks it when it was pronounced abroad;
- the minor children born of a previous union of the applicant or his spouse whose other parent has died or whose exercising of parental authority was withdrawn;
- the children of a previous union whose custody was entrusted to the parent applicant or whose usual residence was fixed with him by court decision, subject to the consent of the other parent whose signature must be authenticated in the forms provided for by the legislation of the country of residence or by the relevant French consulate.

The child who may benefit from family reunification as part of scenarios **b)** and **d)** is also the one who meets the above definition.

A parent, a third-country national, of a French national child or European national child, who may benefit from family reunification as part of scenarios **b)** and **d)** is the one whose child meets the definition of Article L. 314-11 of the CESEDA (apart from child of spouse).

1.2 National legislation for regulating right to family reunification

1.2.1 Marriages of convenience

As regard scenario a), According to Article L. 411-1 of the CESEDA, a foreign national who regularly resides in France for at least eighteen months under a permit valid for at least one year provided for by said code or by international conventions, may ask to be granted his right to be reunified under family reunification with **his spouse, if the latter is at least eighteen years old**. A visa issued for a period greater than three months gives the foreign spouse benefiting from reunification, since 1st January 2012, similar rights as the temporary residence permit (art. L.411-1 et seq. and L. 313-11, 1^o of the CESEDA). Subsequently, Article L. 314-9, 1^o of the CESEDA provides that a ten-year residence permit may be issued to the foreign spouse authorised to reside in France under family reunification, under certain conditions.

According to Article 4 of the Franco-Algerian agreement dated 27 December 1968 relating to the movement, employment and residence in France of Algerian nationals and their families, an Algerian national with a residence certificate valid for at least one year only has to be present in France for at least **one year** to be reunified with **his spouse** in France under family

reunification. The spouse who moves to France is given a residence certificate with the same validity as that of the person he is reunified with.

With respect to scenario b), article L.121-3 of the CESEDA specifies that, except if his presence constitutes a threat for public order and depending on the situation of the person he accompanies or reunifies with, a third-country national, **spouse of a European national** has the right to reside anywhere on French territory for more than three months. Moreover, it should be noted that the right to free movement of European nationals such as transposed into French law is more flexible than the right to family reunification, strictly speaking, since, according to Articles L. 121-2-1 and 121-4-1 of the CESEDA, created by the Decree no 2011-1049 of 6 September 2011 transposing Directive 2004/38/CE, any third-country national may have the right to reside in France if he provides evidence of **private and lasting family bonds other than matrimonial bonds** with an EU citizen. Circulars IMIM1000116C of 10 September 2010⁹ relating to the conditions of exercising the right to reside of European and similar nationals as well as their family members, and IOCL1130031C of 21 November 2011¹⁰ relating to the details of enforcement of the above mentioned circular specify that this applies to **partners in a civil partnership, cohabitees and same-sex married couples**.

In the framework of scenario c), apart from cases of fraud, cancellation of marriage or threat to public order, a visa for a stay of more than three months cannot be refused to **a spouse of a French national** (CESEDA, Article L. 211-2-1). A visa issued for a period of more than three months gives the foreigner the right attached to the temporary residence permit (art. L. 313-11, 4° of the CESEDA). Subsequently, Article L. 314-9, 3° of the CESEDA provides that a ten-year residence permit may be issued to the spouse of a French national in certain conditions.

According to Article 6.2 of the Franco-Algerian agreement dated 27 December 1968, **a one-year residence certificate bearing the indication “private and family life” is automatically issued to the Algerian national married with a French national**, providing his/her entry on the French territory is **lawful**, that the spouse has kept French nationality and – when the marriage was celebrated abroad – that it was **transcribed** beforehand on the French civil status registers. According to Article 7 bis a) of said agreement, **the ten-year residence permit is automatically issued** subject to the validity of the Algerian national’s right to residence, if that national has been married for at least **one year** to a French national.

1.2.2 False declarations of parenthood

➤ **As regard scenario a), two situations can arise:**

- The one in which a third-country national declares himself the father of a child that is a third-country national:

⁹Circular IMIM1000116C of 10 September 2010 relating to the conditions of exercising of the right to residence of European nationals and similar as well as of members of their family, <http://www.immigration.gouv.fr/IMG/pdf/IMIM1000116C.pdf>

¹⁰ Circular IOCL1130031C of 21 November 2011 relating to the application conditions of circular no. 2011-1049 of 6 September 2011 in application of Act no. 2011-672 of 16 June 2011 relating to immigration, integration and nationality and relating to residence permit, http://circulaire.legifrance.gouv.fr/pdf/2011/11/cir_34068.pdf

Article L. 411-1 of the CESEDA specifies that the foreign national who has been residing regularly in France for at least eighteen months, under one of the permits valid for at least one year, provided for by said code or by international conventions, may ask to benefit from his right to be reunified, under family reunification, with **his children, those of his spouse or the children under eighteen years old of the couple.**

According to Article 4 of the Franco-Algerian agreement dated 27 December 1968, an Algerian national with a residence certificate valid for at least **one year** only has to be present in France for at least one year to be reunified with **his children** under family reunification. The children who move to France are issued a residence certificate of the same validity as that of the person they reunified with. They may be the **minor children** of the Algerian national or the **children under the age of eighteen he legally supports** under a decision of the Algerian authority in the child's best interest (notably under a judicial "kafala"¹¹).

- The other in which a third-country national declares himself the father of a child who is a third-country national born on French territory:

The fact of being the parent of a child born in France does not confer the right to residence. However, the setting up of a home in France, provided that there is creation of stable, intense bonds and of certain duration favouring integration in French society, allows the foreigner to avail himself of personal and family bonds under Article L. 313-11, 7° of the CESEDA and to be issued a temporary residence permit bearing the indication "private and family life". Similarly, according to Article 6.5 of the Franco-Algerian agreement dated 27 December 1968, a one-year residence certificate bearing the indication "private and family life" is issued automatically to the Algerian national who does not come under the categories which entitle to family reunification, whose personal and family bonds in France are such that the refusal of residence would prejudice his right to the respect of his private and family life out of proportion to the grounds for the refusal.

➤ **Two similar cases can appear in the framework of scenario b):**

- When an EU national declares himself the father of a child who is a third-country national: According to Article L. 121-3 of the CESEDA, unless his presence constitutes a threat to public order and depending on the situation of the person he accompanies or reunifies with, **the child, a third-country national under the age of 21 or dependent of a European national**, has a right to reside throughout French territory for a duration of more than three months.

- When a third-country national declares himself the father of a child who is an EU national: the circular of 10 September 2010 provides a reminder that, while Directive 2004/38/EC¹² does not provide for the recognition of a right to reside in favour of a third-country national who claims his right as parent of a European child, European jurisprudence treats the issue in a completely different way. The Court of Justice of the European Union (CJEU, case C-200/02, **Zhu and Chen**) indeed considered that the **parent of a child who is an EU national or national of a similar country** may get a residence permit on the basis of the European provisions in the case he actually has the custody of the child, subject to fulfilment of the following conditions: the parent must take total financial responsibility for his child and must already have sufficient resources and a social security cover for himself

¹¹ See 3.2. relating to false declarations of parenthood for more information about the kafala.

¹² Directive 2004/38/EC of the European Parliament and of the Council dated 29 April 2004 on the right of the citizens of the Union and their family members to move and reside freely within the territory of the Member States, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:FR:PDF>

and the child so that the latter does not become dependent on the public finances of the host Member State. According to the same circular, French authorities must grant him a right of residence in the form of a "visitor" residence permit or a work permit authorising professional activity, subject to the relevant authorisations, in particular in the case of a salaried job.

➤ **The same applies to scenario d) for which two situations can be distinguished:**

- **The one in which a third-country national declares himself the father of a French child:** A temporary residence permit with the indication "private and family life" is automatically issued **to the parent of a French child**, from the moment he has actually contributed to the maintenance and upbringing of the child since his birth or for at least two years. (CESEDA, art. L. 313-11, 6^o). The obtaining of a residence permit by the parents of French children is provided for by Article L. 314-9, 2^o of the CESEDA.

According to Article 6.4 of the Franco-Algerian agreement dated 27 December 1968, **the residence certificate bearing the indication "private and family life" is issued by right to the Algerian national direct ascendant of a minor French child residing in France**, providing he exercises parental authority as regards this child even partially or he actually provides for the child's needs. When the capacity of direct ascendant of a French child is the result of the recognition of the child after his birth, the one-year residence certificate is delivered to the Algerian national only if he has provided for his needs since his birth or for at least one year.

- **The other in which a French national declares himself the father of a child who is a third-country national:** Article L. 314-11, 2^o of the CESEDA provides that a residence permit is automatically issued to "the **foreign child of a French national** if this child is eighteen to twenty one years old [...] or if he is dependent upon his parents".

According to Article 7 bis b) of the Franco-Algerian agreement dated 27 December 1968, **a ten-year residence certificate is automatically issued** subject to the validity of the right to reside to the **Algerian child of a French national** if this child is under the age of twenty one or if he is dependent upon his parents.

1.3 National legislation for preventing misuse of right to family reunification

1.3.1 Marriages of convenience

Generally speaking, one notes that in France the authorities especially attempt to prevent abuses of residence permits by marriage of convenience in the case of scenario a) when the marriage is celebrated in France between two third-country nationals or d) when a French national marries a third-country national in France or abroad. Therefore:

- **when a marriage between a third-country national and a French national is celebrated abroad (scenario d.):**

The Act dated 14 November 2006 relating to the checking of the validity of the marriage introduced in the Civil Code a restrictive purview relating to the celebration of marriages abroad and to the transcription of marriage certificates in the marriage register (**Articles 63, 171-2 to 171-8 of the Civil Code**). In this respect, the diplomatic or consular agent may notably **hear** the future spouses when the banns are published or when the certificate of non-impediment to marriage is delivered or at the time of the application for the transcription of the marriage of the spouses.

- **when the spouse of a French national, a third-country national wishes to reside in France (scenario d.):**

Since the **Act of 24 July 2006 relating to immigration and integration**, a visa for residence of more than three months may be refused to a spouse of a French national in case of fraud (Article L. 211-2-1 of the CESEDA). To date, this is the only law existing at the time of the application for a visa to justify the refusal of issuance of a visa.

Therefore there is a gap insofar as, at the time of the issuance of the long-term visa to a spouse of a French national, there is no efficient legal tool to detect that the intent of living together is false. This can be overcome as much as possible by the great vigilance of consular services, in liaison with the prefectures, if need be, to detect indications of a marriage of convenience and refuse the visa due to the fraudulent intent. As the time for the granting of the visa is belated from the transcription, one should be able to establish indications/elements of doubts subsequent to those presented at the time of the transcription.

With this same act, the right to the "residence" permit disappears for the spouse of a Frenchman or woman. Of course, the possibility of asking for the issuance remains, but the conditions of issuance have tightened. Indeed, in order to obtain a "residence" permit as the spouse of a French national, one must be married for more than **three years** and prove **uninterrupted life together** since the marriage. But even when these conditions are satisfied, the authorities have no longer to answer favourably to his application. An Algerian national must only be married for **one year** with a French national to **automatically** obtain a ten-year residence certificate (Article 7 bis a) of the Franco-Algerian agreement dated 27 December 1968).

- **When a marriage takes place in France between two third-country nationals or between a third-country national (scenario a.) and a European national (scenario b.)/French national (scenario d.):**

The **Act of 26 November 2003 relating to the control of immigration, residence of foreigners in France and nationality** introduces a certain number of provisions aimed at making more efficient the means of combating against fraudulent marriages or marriages of convenience. Indeed, this act provides for the obligation notably for registrars, before celebrating any marriage, to hear the future spouses together, or separately.

The Act of 14 November 2006 relating to the checking of the validity of the marriage has made the checking procedure for marriages celebrated in France even stricter by subordinating the due publication of banns (or the celebration of marriage in case of exemption of publication of banns) to the compliance with **two cumulative conditions**: the compilation of a file to strengthen the control of **identity** of the marriage candidates and the preliminary **hearing** of the future spouses.

The **Circular of 22 June 2010 relating to the fight against bogus marriages** aims at intensifying the legislative framework that was enforced up to then by specifying and intensifying the details of implementation of the policy aimed at preventing and sanctioning bogus marriages. This circular raises awareness of mayors and recalls their preventive role as registrars, in the fight against marriage frauds since they are the only ones to be able to detect certain indications during the compilation of the file or the hearing of the future spouses.

There is also a tool intended to prevent abuses of residence permits as part of European mobility. Indeed, as underlined above, a third-country national may get the right to reside in

France if he provides evidence of lasting private and family bonds, other than matrimonial bonds, with an EU national. Within this framework, **the supervision of the criteria to assess the lasting nature of the relation** between a European national and a third-country national helps to prevent abuses of procedure. Indeed, in view of the circular of 10 September 2010 relating to the conditions of exercising of the right of residence of European and similar nationals as well as members of their family, the minimum duration of cohabitation demanded (in France and/or in another country) is, save for exceptions, one year for partners united by a marriage concluded between two same-sex persons as well as for partners united by a civil partnership or a foreign partnership and five years for cohabitation. In accordance with Article 3(2) of Directive 2004/38/EC, these duration criteria originate the already existing French regulations. Indeed, circular no. NOR INTD9800108C of 12 May 1998 already instituted a requirement of seniority of 5 years for the recognition of cohabitations between third-country nationals under the protection of private and family life; whereas circular no. NOR: INTD0400134C of 30 October 2004 led, in the case of civil partnership with a French or a European national, to consider satisfied the condition of stability of bonds in France from the moment that the persons concerned justify a one-year living together in France.

1.3.2 False declarations of parenthood

According to the various scenarios of the study, there are cases in which the condition of exercising of parental authority, i.e. a condition of custody, is essential to allow the residence on French territory of a child or a parent, a third-country national. This provision enables the prevention of abuses of residence permit by false declarations of parenthood.

Generally speaking, family reunification, as defined in the study, is open **to minor children** in scenarios **a)** and **b) when a European national declares him- or herself father or mother of a child who is a third-country national**, and **d) when a French national declares him- or herself the father or the mother of a child, who is a third-country national**.

When the age condition cannot be satisfied, the child aged over eighteen or twenty-one years must be **supported** (financially) by the parent to have the right to reside in scenarios b) and d).

Moreover, to authorise the residence of a third-country national parent of a French national or European national in France, the age condition must be combined with that of the exercising of parental authority.

Indeed, on the one hand, in order to restrict the misuse of family reunification, the circular of 10 September 2010 relating to the conditions of exercising of the right to reside of European and similar nationals as well as the members of their family provides a reminder that the right to reside of a third-country national declaring him- or herself the father or mother of a minor child European national is conditioned by the **financial support of the child**. Thus, the parent must pay for all his child's expenses and must already have sufficient resources and a social security cover for himself and the child so that the latter does not become a burden for the public finances of France.

On the other hand, national law conditions the obtaining of a temporary residence permit or a residence permit by the father or the mother of a minor French child **to the exercising of parental authority** on the child even if the filiation is prior to the exercising of parental authority. If this filiation is established by means of voluntary recognition, the latter is valid only if it has been made in conformity with the personal law of the mother on the day of the birth of the child (Article 311-14 of the Civil Code). The conditions concerning the exercising

of parental authority appear in L. 313-11, 6° of the CESEDA, relating to the temporary residence permit, which specifies that the parent must “have actually contributed to the maintenance and upbringing of the child in the conditions provided for by Article 371-2 of the Civil Code since the birth or at least for two years. According to Article 371-2 of the Civil Code, amended by the reform of parental authority of 4 March 2002, "each parent contributes to the maintenance and upbringing of the children in proportion with his/her resources, with those of the other parent as well as with the needs of the child. This obligation does not automatically cease when the child is of age". This condition to obtain the right to residence is **slightly more flexible** for an **Algerian national direct ascendant of a minor French child residing in France**. Indeed, according to Article 6.4 of the Franco-Algerian agreement of 27 December 1968, the one-year residence certificate bearing the indication "private and family life" is automatically issued, on condition that the ascendant exercises **even partially** parental authority on this child or he actually meets his needs. When the capacity of direct ascendant of a French child is the result of a recognition of the child after his birth, a one-year residence certificate is issued to the Algerian national only if he has met his needs since his birth or **for at least one year**.

In all cases (scenarios a, b, d), **the father must present birth certificates** proving that the children he declares were registered at birth, or formally acknowledged subsequently by a supplementary judgement, as his own children. This also helps to prevent abuses of residence permit by false declarations of parenthood. Indeed, while there is a presumption according to which the statements made in the French birth certificate or the foreign one made abroad are true. This does not prevent the relevant authorities from questioning the birth certificate in the case where other certificates or documents held, outside data or elements drawn from the certificate itself establish the certificate is irregular, falsified, or that the facts declared in it do not correspond to reality (Article 47 of the Civil Code). Nevertheless, while State employees have legal tools to counter document fraud (for instance a fraudulently modified birth certificate), **there are no means to fight against declarations of convenience, from the moment that their fraudulent nature is not raised**.

* * *

This first section showed that the conditions to benefit from the right to family reunification differ depending on the nationality of the sponsor. The conditions applied when the sponsor is a European citizen seem the most flexible. Certain provisions in the legislation, such as the one on maximum or minimum age required to be eligible for family reunification or the other one which makes family reunification conditional on the financial care of the applicant, may also help to prevent misuse. Added to this regulation are more specific preventive measures aimed to fight against marriages of convenience. The means to fight against false declarations of parenthood seem more limited. It is now necessary to determine the extent to which France is facing, in practice, these phenomena.

SECTION 2: THE SITUATION IN FRANCE

The second section of this national report firstly aims to determine how the extent of misuse of the right to family reunification is perceived by the different stakeholders (**sub-section 2.1**). It then tends to highlight the measures developed to prevent and detect marriages of convenience and false declarations of paternity (**sub-section 2.2**) and the authorities implementing them (**sub-section 2.3**). It also helps to highlight recurrent indicators of marriage of convenience or false declaration of parenthood identified by the authorities involved and on the basis of which an investigation may be initiated (**sub-section 2.4**). Another objective is to present the sentences imposed against the persons misusing the right to family reunification (**sub-section 2.5**), and then identify, the reasons and motivations encouraging them to use fraudulent practices such as marriages of convenience and false declarations of paternity (**sub-section 2.6**).

Note that each sub-section is further broken down to first address marriages of convenience and then false declarations of parenthood.

2.1 Perceptions of the extent of misuse

An issue becomes a problem in a society when certain actors take it up and politicise it. In France, the problems of marriages of convenience capped by the problem of "*mariage gris*", and the problem of false declarations of parenthood, have for several years become politicised until the political administrative field takes it up. A real debate is ongoing on these issues within French society sparking off a process of production of public decisions. However, the difference in opinions of the actors taking part in the debate highlights the difficulty of assessing the actual extent of this problem.

2.1.1 Marriages of convenience

➤ Political decisions and parliamentary debates

Since the Act of 26 November 2003 relating to the control of immigration, residence of foreigners in France and nationality created an offence of "marriage of convenience", the issue has been put on the agenda several times. The Act of 24 July 2006 relating to immigration and integration intensifies the fight against these abuses of procedure. Then, the Act of 14 November 2006 relating to the checking of the validity of marriage is exclusively devoted to the provision of new tools to fight against fraudulent marriages. More recently, Mr. Eric Besson, former French minister of immigration, reopened the political debate and announced in April 2009 the creation of a working group on the fight against marriages of convenience. Finally, in November 2009 he launched a debate on marriages of convenience and "*mariages gris*" and set up in May 2010 a working group on "*mariages gris*" led by Ms Claude Greff, then MP of Indre-et-Loire. New tools to fight against this phenomenon were placed at mayors' disposal in 2010 (circular of 22 June 2010 which replaces a previous circular dated 2005) whereas the Act of 16 June 2011 relating to immigration, integration and nationality recognises the legal existence of "*mariages gris*" and sanctions them by the same penalties as the marriage of convenience.

The problem of marriages of convenience resurfaces during parliamentary debates and regularly as the subject of parliamentary questions¹³. The issue was debated when the above-

¹³ List of parliamentary questions dealing with "*mariages gris*", <http://mariagegris.fr/?cat=12>

mentioned law and the finance laws were adopted¹⁴. MPs are also inspired by the best practices of other States that have legislated in this field¹⁵. At present, some MPs are even speaking clearly in their support for the victims of "*mariages gris*"¹⁶.

➤ **The position of the associations**

On the one hand, the combat against this phenomenon is waged by certain groups such as the association "**Non aux mariages et paternités de papiers**"¹⁷ whose founding president, Marie-Annick Delaunay, has made a true fight of this. **The Association Nationale des Victimes de l'Insécurité (ANVI)**, founded in 1999, has also gradually specialised in supporting women and men that are victims of "*mariage gris*". The organisation today devotes an entire Website to this issue, used in particular to list various testimonies and a petition of victims of "*mariages gris*"¹⁸.

On the other hand, immigrant support and aid associations (**Cimade, GISTI, RESF, FASTI, ARDHIS, SOS Racisme, MRAP, Ligue des Droits de l'Homme and Secours Catholique as well as France Terre d'Asile**) denounce the continuous tightening of laws and administrative practices aimed, according to them, at setting up a restrictive policy going against the right to a normal family life which engenders a climate of generalised suspicion favourable to the development of illegal practices. These organisations, such as '**Les Amoureux au Ban Public**' (movement created in 2007 and made up of several hundred mixed couples), today conduct campaigns and publish reports to counteract the parallel made between mixed marriages and marriages of convenience or "*mariages gris*"¹⁹. The fight against marriages of convenience and "*mariages gris*" is considered by these organisations as "one of the multiple means of fuelling endlessly the "problem of immigration"". They contest the thesis presenting marriages of convenience and "*mariages gris*" as one of the main irregular networks of immigration and assert, with figures to back it up, that it is not a large-scale phenomenon. Indeed, in an article published in the French daily newspaper *Le Monde*, published on 9 December 2009, their members put into perspective the number of marriages annulled in 2004 with all the bi-national marriages celebrated in France. Thus, they note that in 2004, 745 marriages were annulled, including 395 by reason of a marriage of convenience, whereas 88,123 bi-national marriages were celebrated that same year²⁰.

➤ **How the media deal with this issue**

¹⁴ - P. Delnatte, Report no. 2967 made on behalf of the commission of constitutional laws, legislation and general administration of the republic on the bill (No. 2838), relating to the checking of the validity of marriages, National Assembly, 20 March 2006, <http://www.assemblee-nationale.fr/12/rapports/r2967.asp>

- G. Othily, F.-N. Buffet, Report of inquiry commission no. 300 (2005-2006), *Immigration clandestine : une réalité inacceptable, une réponse ferme, juste et humaine*, Senate, April 2006, <http://www.senat.fr/rap/l05-371-1/l05-371-1.html>

- F.-N. Buffet, Report no.371 (2005-2006) drafted on behalf of the commission of laws relating to the bill relating to immigration and integration, Senate, May 2006, <http://www.senat.fr/rap/r05-300-1/r05-300-1.html>

¹⁵ Senate, Study of comparative legislation no.159, *La lutte contre les mariages de complaisance*, February 2006, <http://www.senat.fr/lc/lc159/lc159.pdf>

¹⁶ List of members of parliament supporting the persons victim of "*mariage gris*" available, <http://mariagegris.fr/?p=149>

¹⁷ Association Website: <http://2jong.free.fr/associationnon/index.php>

¹⁸ Association Website dedicated to "*mariage gris*" <http://mariagegris.fr/>

¹⁹ N. Ferran with the movement "Amoureux au ban public", Observation report, "Peu de meilleur et trop de pire", CIMADE, April 2008

²⁰ E. Fassin, N. Ferran, S. Slama, "*Mariages gris*" et matins bruns, *Encore un recul des libertés individuelles*, *Le Monde*, 9 December 2009

The issue of marriages of convenience and "*mariages gris*" is regularly brought up by the media that contribute, in this sense, towards turning this issue into a public problem. The press report the legislative updates and political debates in this field while echoing testimonies of "victims" of "*mariages gris*". The criticisms of associations for the defence of foreigners regarding the putting on the agenda of this issue are also reported by French newspapers²¹.

2.1.2 False declarations of parenthood

False declarations of parenthood are also recognised by French public authorities as a means of abusing procedures in order to enter and reside in France. Moreover, this is why these false declarations are considered as a criminal offence and the law attempts to counter them via various tools (see 2.3.). At association and media levels, while the association "Non aux mariages et paternités de papiers" distinguishes itself again by denouncing this problem, the French press also reports the phenomenon of "white" or "paper" paternities, often revealed following the breaking up of irregular migration networks²². Nevertheless, it seems that public authorities, associations and the media do not take up this issue as much as the one of fraudulent marriages. This may let us think that the phenomenon is less extensive than that of marriages of convenience. However, it is necessary to highlight two controversies that have recently developed around the issue of false declarations of parenthood.

- For the last few years, MPs relayed by the French press have become concerned about **fictitious recognitions of parenthood which are a fraud widely practised in Mayotte**. This is how the weaknesses of the population register enable the obtention of a first residence permit. The number of recognitions of parenthood in Mayotte went up sixfold between 2001 and 2005, going from 882 to 5,423, whereas between 2001 and 2004 the number of birth certificates rose only from 6,619 to 7,676²³. Also, foreign women come to give birth in Mayotte, thus hoping to get papers. After a report given to the government by a parliamentary mission led by the Senator of the Yvelines, Alain Gournac, the Act of 24 July 2006 relating to immigration and integration now requires the spouse of an irregular migrant to pay for maternity expenses in Mayotte.
- In 2007, in France, a major controversy was raised when the MP Thierry Mariani proposed to use **DNA** tests to prove, via a biological test, in the absence of conclusive birth details, the filiation of foreigners wishing to immigrate legally as part of family reunification. In addition to that of many intellectuals, the Hortefeux bill thus faced strong objections when it passed before the Senate, which profoundly amended the law in particular on DNA tests. The latter, rejected at first at the Senate committee stage, were later adopted, but then they became optional, experimental (only eighteen months), and only for establishing filiation regarding the mother in order not to establish in passing that a father is not the biological father. The DNA test procedure was not in force since a decree setting the terms had not been published. On 13 September 2009, Brice Hortefeux's successor, Éric Besson, declared that, on account

²¹ -*La grande colère des victimes de "mariages gris"*, Le Parisien, 2 Février 2012

- *Un questionnaire contre les mariages de complaisance*, Le Figaro, 21 October 2010

²² - *Clandestins : la nouvelle filière des fausses paternités*, Le Figaro, 18 November 2006

- *Démantèlement de filières : 55 fausses déclarations de paternité*, Le Figaro, 8 September 2010

²³ *Mayotte est confrontée à un afflux migratoire*, S. De Royer, La Croix, 2 February 2006

of the end of the experimental period, of the lack of means, of the constraints of time limits and of the emotion provoked by the law, the decree would not be signed.

2.1.3 Other forms of misuse

Both for the spouse (or partner) and for the child, there is a risk of **false European mobility**. Thus a third-country national, family member of a European national residing in a Member State of the EU whose legislation does not allow the regularisation, temporarily moves to another Member State, with the European national, to be able to benefit from Directive 2004/38/EC regulating the status of third-country nationals, family members of a European national who exercised his right to freedom of movement.

The *kafala* is an institution under Muslim law allowing a parent or guardian to entrust a child during his minority to a Muslim family (*kafil*) who will take care of his upbringing, protection and maintenance. Its effects are those of legal guardianship. It is similar to the transfer of parental authority. This transfer is known in French law in the form of the "delegation of parental authority". The main cases of *kafala* known as regards residence are of Algerian and Moroccan origin. In France, according to the CESEDA, a minor foreign child entrusted, by virtue of a delegation of parental authority or a *kafala*, to a third person other than the father or the mother is not allowed to benefit from family reunification. However, recent jurisprudence converted *kafala* or the delegation of parental authority into a means to obtain or to legalise the residence of a child who is a third-country national in France by asserting that the **child's interest is to live with the person who exercises parental authority**. However, it is only a **simple presumption**. Proof of the contrary may always be provided. Indeed, the authority in charge of the issuance of visas may reverse this presumption by basing itself either on **the prejudice to public order** which could be the result of the access of the child to French territory or on the ground that the **conditions of welcome** of the child in France would be, in particular considering his **resources** and the **conditions of the accommodation** of the holder of parental authority, contrary to his interest.

There is however a **risk of abuse** of such procedures via the misuse of laws governing family reunification in France. Indeed, consular authorities, who say they are often confronted with this problem, admit it is difficult for them to assess the conditions of welcome and whether the best interest of these children is taken into account in these intra or extra family transactions.

Moreover, there is a risk that **simple adoption** which comes widely within an **intra-family** framework and is subject to more flexible rules than plenary adoption, may turn into an **adoption of convenience**. Thus, once adopted, through simple adoption, by a third-country national legally residing in France, a European national or a French national, a third-country national child may more easily obtain the right to reside in France within the framework of the three above-mentioned family reunification procedures (scenarios a), b) and d)).

Simple adoption is subject to more flexible rules than plenary adoption. Therefore, there is a risk that this procedure is used, in an improper manner, by a third-country national who legally stays in France or a European or French citizen to adopt a third-country national child, for the sole purpose of obtaining him the right to reside in France within the framework of family reunification, as understood in this study (scenario a), b) and d)). This is especially to occur given that simple adoption comes widely within an **intra-family** framework. French authorities are then faced with **adoption of convenience**.

2.2 National means of preventing and detecting misuse

2.2.1 Marriages of convenience

The fight against bogus marriages comes within the general measures of checking marriage conditions. Marriages of convenience may be detected during various formalities before and after the marriage, both for marriages celebrated abroad and those celebrated in France.

➤ Checks and measures prior to the marriage ceremony

The role of mayors, assistant mayors and other registrars is to be vigilant and prevent abuses. Indeed, they are the only persons able **to detect certain clues**, during the compilation of the file or during the hearing of the spouses. To this end, a template for the hearing of the future spouses is appended to the circular of 22 June 2010 related to the fight against bogus marriages (questions on the circumstances of their encounter, migratory history, knowledge by the foreign spouse of the French spouse, marriage ceremony, etc.).

The registrar conducts checks on several points while **compiling the marriage file** (check of the domicile or residence, check of the legal capacity to marry), then when the **banns are published** (handing over of certain documents, preliminary hearing of the future spouses).

According to Article 63 of the Civil Code, the marriage ceremony cannot take place without the **joint hearing of the future spouses**, unless this is impossible or if it appears after seeing the documents provided, that the hearing is not required under Articles 146 and 180. The registrar, if he considers it necessary, asks to discuss separately with one or the other future spouse. The joint and/or separate hearings allow, in certain cases, to detect possible evidence of a marriage of convenience or a forced marriage.

➤ The checks and measures during the marriage ceremony: objection to a marriage

Article 171-4 of the Civil Code provides for an **objection procedure specific to the marriage of a Frenchman/woman contracted abroad before a foreign authority** in order to give the diplomatic or consular authority and the public prosecutor's office the means to prevent fraudulent marriages.

Article 175-1 of the Civil Code provides for a **possibility of investigations by the public prosecutor** to lodge an objection “*for cases where he could ask for the nullity of the marriage*”, which includes in theory marriages celebrated abroad. However, its implementation is random, its information being sensitive. The Public Prosecutor may thus ask for the nullity of the marriage by virtue of Articles 180 and 184 of the Civil Code.²⁴

A specific procedure provided for in Article 175-2 of the Civil Code allows **only the registrar** to refer to the Public Prosecutor when there are reliable clues which imply, where applicable in view of the hearing of the future spouses, that the marriage envisaged is likely to

²⁴ Article 180 of the Civil Code refers to defect of consent, whereas Article 184 of the Civil Code refers to the non compliance of nubile age, the lack of consent or presence of one of the spouses to the marriage, bigamy and impediments to marriage.

be a marriage of convenience (Article 180 of the Civil Code). The registrar then advises the spouses.

The public prosecutor must advise the persons concerned and, **within fifteen days from the submission to the court, either allow the marriage to take place, or object to it, or decide that it will be postponed** while awaiting the results of the investigations he has initiated. He informs the registrar and the persons concerned of his reasoned decision. Since the Act of 26 November 2003 the duration of the postponement cannot exceed one month, renewable once by specially reasoned decision. At the end of the postponement, he advises his reasoned decision if he objects to the marriage or allows the marriage to take place.

Either spouse, even minor, may **contest the decision** of postponement or its renewal **before the president of the county court** who decides within 10 days. **This decision may be referred to the court of appeal** which rules within the same time-limits.

Act n° 2006-1376 of 14 November 2006 relating to the checking of the validity of marriages created a specific objection procedure for marriage of a Frenchman/woman taking place before a foreign authority, inspired by the procedure provided for marriages that take place in France.

Nevertheless, there are several points where this law is different:

- Its **scope is wider**. The submission to the relevant public prosecutor – who is the one of the county court of Nantes, competent for all marriages celebrated abroad – does not only intervene in case of reliable clues which imply an absence or a defect of consent to marriage (Articles 146 and 180 of the Civil Code), but every time the marriage file implies a nullity under Articles 180, 184 or 191 of the Civil Code²⁵;
- This **submission is not optional**, but is imposed on the diplomatic or consular authority in case of doubt on the validity of the marriage;
- The procedure is simplified: the public prosecutor has **two months from the court submission to lodge an objection to the marriage by a reasoned instrument**. It is no longer a question of giving the public prosecutor fifteen days to object, while reserving the possibility of postponing the ceremony for one month renewable once, in order to initiate an investigation.

²⁵ Are thus concerned, the cases of nullity for non compliance of nubile age (art. 144), the lack of consent of the spouses (art. 146), absence of the French spouse during the celebration (art. 146-1), the pre-existing non dissolved marriage (art. 147) or impediments relating to parental or alliance marriage bonds (art. 161 to 163), defect of consent of the spouses (art. 180) and for illegal marriage (art. 191).

➤ **The checks and measures after the marriage ceremony**

• **The transcription of a marriage celebrated by a foreign authority**

When the marriage of a Frenchman/woman is celebrated by a foreign authority, the issuance of a **certificate of non-impediment to marriage** is required; yet the issuance of such certificate is subordinated to the hearing by the diplomatic or consular authorities of **the future spouses**.

When the marriage is celebrated by a foreign authority, the marriage of a Frenchman/woman must be preceded by the issuance of a certificate of non-impediment to marriage (Article 171-2 of the Civil Code). If not, **the marriage transcription** is preceded by the hearing of the spouses, together or separately, by the diplomatic or consular authorities to ensure their matrimonial intents. However, if the latter has information establishing that the validity of the marriage is not at issue under Articles 146 and 180, it may, by reasoned decision, allow the transcription without prior hearing of the spouses.

The aim of the hearing is to ensure the reality of intents before issuing a visa for family reasons. When reliable clues imply that the marriage incurs nullity (see Article 171-4 of the Civil Code), consular authorities then advise **the county court of Nantes** thereof (relevant for marriages celebrated abroad) and postpone the transcription. The public prosecutor's office of Nantes may object to the marriage celebration of a Frenchman/woman abroad, make a decision on the transcription of the foreign marriage certificate on the registers of the French registry and institute proceedings for the annulment of the marriage.

The transcription of a marriage celebrated by foreign authorities is required in order to produce an effect in France in cases of obtainment of a residence permit or acquisition of French nationality. The transcription ensures the validity of the marriage by the check made on this occasion, and it contributes to the fight against document fraud. This being so, the absence of transcription of a marriage validly celebrated abroad by a foreign authority does not deprive the latter of producing its civil effects in France as regards the spouses and the children (Article. 171-5 of the Civil Code).

The public prosecutor makes a decision on the transcription within two months from the court submission (the time limit is 6 months in the event the spouses did not comply with the obligation to obtain a marriage certificate). If he has not made a decision within the deadline or if he objects to the transcription, the spouses who received a certificate of non-impediment to marriage may ask for the **withdrawal of the objection at any time (objection procedure)**. The spouses who did not obtain a certificate of non-impediment to marriage first may **refer to the county court** to rule on the marriage transcription. The county court rules within one month.

In case of appeal, the court rules within the same deadline. After the court has made its decision, the public prosecutor's office advises the central registry office of the Ministry of Foreign Affairs in Nantes directly. Refusal to transcribe or cancellation of the transcription has no effect as such on the legal validity of the marriage in the foreign State.

• **The annulment procedure**

A marriage for which the lack of matrimonial intent seems established must be subject to a annulment from the county court.

In case of “*mariage gris*”, the victim may also undertake a marriage **annulment procedure** before the prosecutor of the territorially relevant county court (if the marriage was celebrated

in France), or with the public prosecutor of Nantes (in case of a marriage celebrated abroad and transcribed in the French registers).

- **Role of prefectures**

Prefects above all check the reality of **community of life**, both at the time of the issuance of the permit and at the time it is renewed, and focus their attention on alerts which imply a fraud. When the fact of their living together seems doubtful, the prefectures may ask the police for “community of life investigations”.

In the event of marriage annulment, the administrative authority may withdraw or may not renew the residence permit of the foreign spouse. It is up to the prefect, if it is established that the marriage was contracted in order to obtain a residence permit, to foil this fraud and refuse to grant a residence permit to the person concerned.

2.2.2 False declarations of parenthood

It is quite difficult to detect false declarations of parenthood for the reasons given below:

- According to Article 47 of the Civil Code, *“any birth or marriage certificate of Frenchmen/women and foreigners (...), is deemed authentic, unless other instruments or documents held, outside data or elements extracted from the certificate itself establish, after all useful checks, that this certificate is irregular, falsified or that the facts stated in it do not correspond to reality.”*

- No proof is demanded at the time of the recognition of parenthood in the registry office. The recognition of a child may be done in the birth certificate, by instrument received by the registrar or by any other authentic deed. The recognition of parenthood may be done immediately. The father does not need the mother's consent to establish recognition of parenthood. The recognition of parenthood has a declarative effect, i.e. the effects of this declaration date back to the birth day.

Nevertheless, the formalities with which the fathers must comply may enable anomalies to be detected.

- **At the time of the visa application**

The father must produce as part of family reunification, the birth and marriage certificates that establish the paternal filiation. Concerning adopted children, the father must produce the court decision.

Consular authorities demand, to grant a visa, the birth or marriage certificate held by the town council (for checking) or, in case of adoption, the court's decision. If there is a doubt about the authenticity of a birth certificate issued by a foreign authority, the certificate is checked and the visa may be refused. While the diplomatic or consular agents have legal tools to counter document fraud (birth certificate amended fraudulently for instance), they do not have the means, on the other hand, to detect or to fight against fraudulent declarations of parenthood, except to establish that the father could not be “materially” the father (because he was not in the same country as the mother at the time of the conception for instance).

➤ **At the time of the issuance of residence permits by prefectures**

During the interview which precedes the obtaining of a residence permit or during the renewal of the permit, the father must prove that he contributes to the maintenance and upbringing of the child. This is when it is possible to detect fraud risks.

➤ **The link between fraudulent declarations of parenthood and frauds to family allowances**

False declarations of parenthood may also be detected when frauds to family allowances are discovered.

For example, several newspaper articles reported in September 2010 that one Frenchman of Senegalese origin had made 55 false declarations of parenthood which led to family allowances for the mothers.

The investigators' calculations had established the cost incurred by this fraud at one million euros per year for the social services. Some of the beneficiaries declared that they received approximately 7,500 euros per month in various allowances (housing, minimum income, isolated parent allowance, child care and school lunch benefits, etc.)

2.3 Factors triggering an investigation by the authorities

2.3.1 Marriages of convenience

➤ **A series of clues**

There is no evidence as such but a body of accurate and corroborating clues that make it possible to spot a fraudulent marriage.

Jurisprudence pronounced in terms of bogus marriages and the experience of certain public prosecutor's offices and of some towns make it possible to group together, in a non-exhaustive manner, a certain number of clues or marriage simulation indicators which are listed in the circular of 22 June 2010 relating to the fight against bogus marriages. Among these indications, one can mention a lack of congruence of the spouses' accounts on the circumstances in which they declare they have met, or on personal information (ignorance of each other's family), mistakes on their respective particulars, not understanding each other or absence of a common language, marriage plans successively postponed or cancelled, including sometimes a change in the person to be married, etc.

At all events, only a thorough hearing of each spouse may allow such clues to be collected.

One should note that the illegal status of a marriage applicant as regards entry and residence rules on the French territory cannot constitute alone sufficient reason for alert: this indication must be backed up by other elements of suspicion so that the procedure of Article 175-2 of the Civil Code may be correctly applied.

➤ **The burden of proof**

There are two possibilities:

- The marriage may be challenged with a view to its annulment by the public prosecutor's office. It is then up to the authority that avails itself for the lack of matrimonial intent to establish the existence of a body of evidence, following the

hearing of the spouses. The public prosecutor's office must prove that the consent is vitiated or that it was given not in order to commit oneself in a true union, but only for the purpose of obtaining one or more secondary effects.

- In case of “*mariage gris*”, also referred to as fraud on feelings, it is up to the grievor to ask for the marriage annulment pursuant to Articles 180 and 184 of the Civil Code.

2.3.2 False declarations of parenthood

➤ Indications which prove false declarations of parenthood

It is difficult to provide evidence of a false declaration of parenthood, except when the birth and marriage certificates are recognised as fraudulent or implausible. Nevertheless, Article 339 of the Civil Code makes it possible to carry out a comparative blood test as well as a biological expert appraisal.

According to Article 336 of the Civil Code, “the legally established filiation may be contested by the public prosecutor's office if **indications extracted from the certificates themselves make it unlikely or in case of abuse of the law**”.

Concerning the evidence to provide, it is specified that, according to Article 339 of the Civil Code, “*a comparative test of the bloods of a child, of a man who recognized him and of the husband of the mother may be ordered by urgent summary proceedings from the moment that there is a legitimate reason to keep or establish, before any trial, the evidence of facts on which the dispute settlement may depend. It is added that the “the biological expert appraisal is by right as regards filiation, except if there is a legitimate reason to not proceed to it.”*

➤ The burden of proof

According to the Civil Code (Article 339, 2°, 7), “*the recognition of a biological child is supposed to be the expression of the truth and it is up to the one who contests it to provide the evidence of its false nature*”.

2.4 National authorities responsible for detecting misuse

2.4.1 Marriages of convenience

Several authorities are likely to detect marriages of convenience.

- When the marriage is celebrated abroad, **consular or diplomatic authorities** are in charge of discussing with the future spouses during a hearing before the banns are published, of issuing a certificate of non-impediment to marriage, and of transcribing the marriage certificate. These are formalities during which one can detect bogus marriages.

- When the marriage is celebrated in France, **registrars** are the persons who are in charge of spotting possible fraudulent marriages while setting up the marriage file, during the hearings of the future spouses, then during the publication of the banns.

- In case of doubt over the validity of the marriage, the registrar refers to **the public prosecutor** with a view to the annulment of the marriage. It is up to the public prosecutor to forward accurate investigation directives and useful tools to the police and gendarmerie services. To this effect, in the circular on the fight against bogus marriages of 22 June 2010, a “standard form” of investigation may be forwarded to the investigation services in charge of the criminal investigation in order to direct their work.

- Regarding **prefectures**, they check that the couple really lives together, both at the time the permit is issued and upon its renewal. When their living together seems doubtful, prefectures may ask **the police** for “investigations on community of life”.

- **The Family Allowance Funds** that grant family benefits and housing assistance may sometimes spot frauds or be assisted for this purpose by police investigations.

- Moreover, **the Central Directorate of Border Police** is able to detect spouses of convenience as well as irregular migration networks that organise marriages of convenience. See part 4.

- **The Ministry of Justice and Liberties** has a role in the detection of bogus marriages only after the presumption of such a marriage has been reported to the prosecutor, or when it is a question of marriage annulment (different from divorce which does not have the same consequences). This ministry also provides statistics on applications for marriage nullity and sentences against spouses in case of marriage of convenience, giving insight into the phenomenon. See part 4.

Although the various authorities do not follow a specific general action plan, exchanges may take place, in particular so that public prosecutors' offices advise the registrars of the follow-up of the investigations initiated after their flagging. Exchanges between police services and public prosecutors' offices also take place for the latter to be informed in real time of the investigations being carried out. Contacts are also made between the Ministry of Justice services, consular and diplomatic services, and prefectures, at any time during the procedures.

The criminal policy of the public prosecutor's office is led in consultation with concerned partners among whom are mayors and registrars.

In the circular dated 22 June 2010, it is specified that it *“is up to the public prosecutor to make the mayors aware, during general information meetings, of the materialization criteria of offences allowing legal proceedings. The public prosecutors' office shall also inform the mayors of the follow-up that may have been given to their reporting”*.

2.4.2 False declarations of parenthood

- **Consular authorities** demand, to grant a visa as part of family reunification, the birth certificate held by the town council (for checking) or, in case of adoption, the court decision. If there is a doubt about the authenticity of a birth certificate issued by a foreign authority, the certificate is checked and the visa may be refused. Except for the checking of birth certificates, diplomatic or consular agents do not have any means to detect or to fight against fraudulent declarations of parenthood, unless one establishes that the father could not be “materially” the father, as mentioned above.

- It is difficult for **registrars** to spot fraudulent declarations of parenthood considering that no evidence is required during the recognition of parenthood, apart from cases where the birth certificates are recognised as fraudulent or implausible.

- During the interview carried out by **the prefectures** and before obtaining a residence permit or during the permit renewal, the father must prove that he contributes to the maintenance and upbringing of the child. These preventive measures may help to detect risks of fraud.

- In case of doubt, in particular in cases of fraud to family allowances, **the police services** may conduct investigations to detect false declarations of parenthood.

- **The Central Directorate of Border Police** is able to detect irregular migration networks organising undue children recognition. See part 4.
There is no concerted action between all these actors but ad-hoc information exchanges may take place between these various authorities.

2.5 Penalties imposed against those misusing the right to family reunification

2.5.1 Marriages of convenience

➤ Criminal sanctions imposed in case of bogus marriage

A marriage of convenience can be criminally sanctioned since the Act of 26 November 2003. Thus, Article L. 623-1 of the CESEDA punishes by **five years of imprisonment and a 15,000 euro fine** *“the fact of contracting a marriage for the sole purpose of obtaining, or causing to obtain, a residence permit or a protection against removal, or for the sole purpose of acquiring, or causing to acquire, the French nationality. These same penalties are applicable in case of organisation or attempted organisation of a marriage or recognition of a child for the same purposes.”*

On the basis of this offence, 29 **convictions** in 2005, 42 in 2006, 84 in 2007, 67 in 2008, 47 in 2009, and 42 in 2010 were pronounced against the spouses in case of marriage of convenience. See part 4.

Since the Act of 16 June 2011, the same penalties are also incurred *“when the foreigner who contracted a marriage concealed his intents from his spouse”*. This scenario is the one of a marriage referred to as *“gris”*, i.e. a marriage contracted in good faith by a French national with a foreigner, who would have, on the other hand, for sole aim to obtain a residence permit or the French nationality, which some refer to as *“fraud to feelings”*.

The National Assembly proposed to extend to seven years of imprisonment and a 30,000 euro fine sanctions against *“mariages gris”*. This proposal, rejected by the Senate insofar as the offence would be on the same level as procuring or violences leading to more than eight days of total disability to work, was also abandoned by the National Assembly, that has, on the contrary, specified the terms of the incrimination.

These penalties are aggravated when the offence is committed in an organised gang; they are then extended to **ten years of imprisonment and a 750,000 euro fine**.

Article L. 623-2 of the CESEDA provides for **supplementary penalties** of prohibition of residence, of prohibition of French territory and prohibition to exercise the job or social activity on the occasion of which the offence was committed.

In practice, the materialisation of elements provided for in Article L. 623-1 of the CESEDA sometimes proves difficult: the future spouses organise, for example, a scenario about their past history or about their life together. These difficulties in terms of investigations lead certain public prosecutors' offices to prosecute on the basis of Article L. 622-1 of the CESEDA which provides that *“any person who will have, by direct or indirect assistance, facilitated or attempted to facilitate the entry, the illegal movement and residence, of a foreigner in France will be punished by 5 years of prison and a 30,000 euro fine.”*

➤ Provisions taken to fight against marriages of convenience

- The authorities may refuse to issue the requested residence permit to the spouse of a French national if the marriage was contracted with the sole aim of obtaining a residence permit, disclosing thus the existence of a fraud, and even if the marriage is not dissolved or declared void by the judicial judge.

- Since the Act of 16 June 2011, the measure which consists in excluding the fraudulent marriage years from the duration of residence required for the granting of the long-term resident permit is effective. Article L. 314-8 of the CESEDA states: *“The years of residence, under a temporary residence permit bearing the indication “private and family life” withdrawn by the administrative authority on the basis of a marriage whose sole purpose was to obtain a residence permit or to acquire French nationality, cannot be taken into account to obtain a residence permit.”*

2.5.2 False declarations of parenthood

Article L. 623-1 of the CESEDA which punishes marriages of convenience also punishes, since 2006, by **five years of prison and a 15,000 euro fine** *“the fact of recognising a child for the sole purposes to obtain, a residence permit or the benefit of a protection against removal, or for the sole purpose of acquiring, or causing to acquire, French nationality. These same penalties apply in case of organisation or attempted organisation of a marriage or the recognition of a child for the same purposes”*.

As for marriages of convenience, these penalties are aggravated when the offence is committed in an organised gang; then they are extended to **ten years of prison and a 750,000 euro fine**.

Supplementary penalties of prohibition of residence, prohibition of French territory and of prohibition of exercising a job or social activity also apply.

2.6 Identified reasons and motivations for misusing the right to family reunification

2.6.1 Marriages of convenience

➤ Case of sham marriages (“*mariages blancs*”)

The spouses or future spouses (scenario d: a French national and a third-country national) have agreed beforehand to misuse the purpose of a marriage. Generally speaking, in exchange of **obtaining the right of residence** in France (obtaining a residence permit, French nationality) by the third-country national, the French national receives a **financial compensation**.

➤ The case of "*mariages gris*"

Many accounts by victims that are reported in newspapers tell of French nationals who were fooled by a third-country national whose sole aim was to **obtain the right of residence and related rights** (access to the social security system and to a faster administrative integration).

2.6.2 False declarations of parenthood

Generally speaking, the two parties (scenario d: a French national and a third-country national) take advantage of this fraudulent declaration, one for financial reasons, and the other one to obtain the right to reside and related rights.

This abuse of the law comes in various forms:

- It may concern a woman with the right of residence that is the mother of a child born in France, who proposes to undocumented immigrants to buy the paternity of their child. According to an article in *Le Figaro* newspaper, published on 18 November 2006: "Illegal immigrants: the new network of false paternities"²⁶, the rate would be between 2,000 and 5,000 euros depending on the baby's age. This enables illegal foreign nationals to obtain a residence permit. For example, the prefecture of the Essonne (Ile de France region) considers it deals with five or six cases of false parenthood per month.

- An article in *Le Figaro* newspaper, published on 9 September 2010²⁷, reported that a Frenchman of Senegalese origin had drawn up, in return for payment (150 to 200 euros per fraudulent recognition), dozens of recognitions of paternity to allow the mothers to obtain residence permits and collect social security benefits. The ensuing investigation identified 42 mothers between the ages of 25 to 50, nationals of Senegal, Mauritania, Cameroon and Mali. Out of the 17 who could be found, only one admitted she had bought the recognition of paternity.

- Certain cases are part of the phenomenon of "grey" parenthood, i.e. French nationals abused by a foreign spouse whose sole aim is to have a child and recognise him to obtain a residence permit. These testimonies are reported in the book *L'immigration par escroquerie sentimentale* by Marie-Annick Delaunay, president of the association "Non aux mariages et paternités de papiers".

An article in *Le Parisien* newspaper, dated 2 February 2012, related the account of a Frenchman who had a child with a young Russian woman in illegal position whose sole aim was to give birth on the French territory in order not to be liable for removal²⁸.

* * *

The second section showed that a debate has been recently introduced in France on the issue of misuse of the right to family reunification. Marriages of convenience seem a growing concern among public authorities. The media has also contributed to this debate by referring to cases of misuse as well as by relaying the position of the relevant stakeholders. The means implemented by different authorities to prevent this type of abuse are numerous. However, those authorities do not always have sufficient tools to prevent and combat other fallacious practices such as false declarations of parenthood. Sanctions imposed against persons who misuse the right to family reunification are substantial and can be considered as a deterrent for those who consider committing such fraud. While obtaining the right of residence seems to be the main motivation that drives applicants to use these practices, the financial compensation is

²⁶ [Clandestins : la nouvelle filière des fausses paternités](#), *Le Figaro*, 18 November 2006

²⁷ [Interpellé après 55 fausses déclarations de paternité](#), *Le Figaro*, 9 September 2010

²⁸ [La grande colère des victimes de mariages gris](#), *Le Parisien*, 2 February 2012

the most frequently reported reason that prompts the sponsor to take part in such insidious proceedings. If misuses of the right to family reunification are perceived as growing phenomena, only the analysis of relevant statistical data can be used to estimate their actual scope.

SECTION 3: STATISTICS ON MARRIAGES OF CONVENIENCE AND FALSE DECLARATIONS OF PARENTHOOD

First it should be pointed out that statistical tool is in two ways inappropriate to "measure" social phenomena such as marriages of convenience and false declarations of parenthood. Firstly, such phenomena cannot be achieved (statistically) through surveys with a large sample, or over-representing particular populations. Then, in general, illegal behaviors are rarely reported in surveys.

In 2010, France issued **76,829** permits for family reasons. Among them, the vast majority (**43,728**) were delivered to third-country nationals joining a French citizen. **27,558** permits were issued in the framework of family reunification between two third-country nationals. The share of third-country nationals joining a European citizen is lower in the context of family reunification. Indeed, the number of residence permits issued to third-country nationals joining an EU citizen was only **5,546** in 2010²⁹.

If these statistics can be considered as contextual elements, they cannot help to assess the extent of the phenomena of marriages of convenience and false declarations of parenthood. **Thus, neither marriages of convenience nor fraudulent declarations of parenthood are recorded within the framework of the issuance of visas and residence permits for family reasons.** Indeed, France do not have statistics relating to refused visas and residence permits on the grounds of a presumption of marriage of convenience or a false declaration of parenthood. Figures on residence permits issued and then withdrawn on the ground of the suspicion of a marriage of convenience or a false declaration of parenthood are not recorded either.

➤ **Specific indicator to assess intensity of the issue and characteristics of those involved**

- **Marriages of convenience**

We have several indicators that allow us to detect marriages of convenience. However, the figures from the various sources are not comparable, not to mention persistent doubts about their under or over evaluation.

1) Statistical data from the French Ministry of Justice

a) Marriage annulments dealt with by county courts from 1995 to 2010

Marriage annulments may give a first indication as regards the extent of marriages of convenience.

Between 1995 and 2010, the number of cases of marriage annulments dealt with by county courts increased significantly. The maximum value is reached in 2005 with 1,682 cases. This increase in the number of annulment procedures is accompanied by an almost continuous increase in the number of annulments pronounced. The portion of annulled

²⁹ These are provisional data. There were collected in March 2012.

Scope: Metropolitan France

Source: Department of Statistics, Studies and Documentation of the General Secretariat for Immigration and Integration at the French Ministry of the Interior.

marriages regularly decreased from 2000 to 2007, after relative stability. Thus, the proportion of annulled marriages goes from 81.2 % in 1995 to 69.9 in 2007 before increasing from 2008 to 2010. In the end, 1,080 marriages were annulled by county courts in 2010 and 274 applications rejected, i.e. respective portions of 79.8 % and 20.2 %.

Among the grounds put forward for a marriage annulment application, the absence of consent, bigamy, absence of one of the spouses of the marriage or even the error on the essential qualities of the spouse are most frequently put forward. **All legal bases used to request the marriage annulment may be combined with convenience.** Thus, given that the annulments pronounced have more than doubled in 15 years, one may suppose that the number of marriages of convenience also increased without knowing the specific terms.

One may add that the numbers of **marriages of convenience are certainly underestimated**, given that on the one hand, they may accompany each one of the grounds for marriage annulment applications and that, on the other hand, they may lead, not to annulments, but to divorces, which would give a higher result.

b) Marriage annulment applications citing a marriage of convenience

A study carried out in 2004 by the Ministry of Justice³⁰, based on decisions and court orders on marriage annulment applications in 2004, gives information on the number of marriages of convenience.

- **Marriage annulment applications citing a forced marriage or a marriage of convenience according to the nature of the judgment in 2004:**

Ground for the application for annulment	Total		Marriage annulled		Application rejected	
	Number	%	Number	%	Number	%
All marriages	1,002	100	737	73.6	265	26.4
Marriages of convenience only	568	100	363	63.9	205	36.1
Marriage of convenience and forced marriage	40	100	32	80	8	20
Forced marriage only	20	100	10	50	10	50
Sub-total	628	100	405	64.5	223	35.5
None of these types of marriages	374	100	332	88.8	42	11.2

Scope: 1,002 cases closed in 2004

Source: Survey on marriage annulments 2004 - Ministry of Justice / SDSSED

According to this study, **60.7 % of cases are marriages of convenience**, 4 % of which involved claims of coercion of one spouse by the other to enter into a marriage of convenience (in this case, the forced marriage is added to the marriage of convenience).

Of all petitions claiming a marriage of convenience or forced marriage, annulment was granted in six out of ten cases (64.5 %).

³⁰ Zakia Belmokhtar, *Les annulations de mariage en 2004*, Directorate of general administration of equipment, Sub-division of statistics, studies and documents, Ministry of Justice, March 2006

On an individual case analysis, annulment is more frequently granted when a marriage of convenience is alleged than in forced marriages (63.9 % and 50 % respectively). When these grounds are combined, courts grant an annulment in almost eight out of ten cases: 32 of 40 marriages contested on the grounds of convenience and coercion are annulled.

Of all petitions decided on the merits (1,002), 568 concerned exclusively marriages of convenience. 63.9 % of those resulted in annulment and 36.1% were dismissed.

As stated above, while all the grounds for petitioning for annulment of a marriage may be combined with an allegation of marriage of convenience, Articles 146 and 180 of the Civil Code³¹ are the main bases for these petitions: they are cited in 89.9% and 7.2% respectively of marriage of convenience cases.

Marriages annulled on the grounds of convenience, found in 363 cases, are most frequently been contracted to obtain a French residence permit for one of the spouses. However, other more anecdotal reasons have been uncovered, including obtaining material or financial benefits or personal arrangements.

It is most frequently the husband who is found to have sought, via the marriage of convenience, to obtain a secondary effect from the marriage (199 cases or 54.7 %, 32 cases in which coercion of the other spouse was combined with convenience); organisation of a marriage of convenience by the couple was found in one third of annulled marriages (112 cases or 30.9 %); finally, almost 15 % of marriages annulled on the grounds of convenience incriminated the wife exclusively (52 cases or 14.4 %).

c) Number of convictions of spouses in marriages of convenience

	Number of offences
2010	42
2009	47
2008	67
2007	84
2006	42
2005	29
2004	4

Source: Ministry of Justice and Liberty/ SG/ SDSE/ Analysis of criminal records

These convictions were based on a specific offence under Article L 623-1, CESEDA, of participating in a marriage of convenience.

The number of convictions increased steadily between 2004 and 2006, attaining a peak in 2007 before dropping in 2008 and stabilising in 2009 and 2010. The 2007 peak can be explained by at least two factors:

- As of 2006, the public prosecutor may object to the marriage not only on the grounds of absolute nullity but also for lack of consent, consequent upon the redrafting of Article 180 of

³¹ Article 146, Civil Code, specifies the need for the parties' consent, thereby implying the absence of any marriage if it is celebrated with the express intention of attaining one of its secondary effects. Article 180, Civil Code, states that the substantive conditions include the absence of error concerning the spouse or his or her essential capacity.

the Civil Code. This law particularly targets cases where the conjugal intent is missing. The reduction and stabilisation of the number of convictions from 2008 can be construed as the dissuasive and preventive effect of this measure;

- More generally, the increase in convictions of spouses may also be due to the toughening of the two 2006 laws giving registrars of births, marriages and deaths more tools to detect and combat marriages of convenience.

2) Data from the registry central service of the Ministry of Foreign Affairs

The registry central service of the Ministry of Foreign Affairs is responsible for all registry events occurring abroad or in the territories formerly under French administration, and which concern French nationals (birth, recognition, marriage, divorce, adoption, etc.)

Taking the year 2010, for 46,000 marriages celebrated abroad and transcribed by consular posts, we find that the latter have forwarded to the county court of Nantes, responsible for checking the validity of marriages celebrated abroad, 1,193 cases for suspected marriage of convenience (preliminary or subsequent marriage formalities). For 425 of these cases (35.6 % of entitlements to jurisdiction) the prosecutor's decision followed the one of the consular post and considered he had evidence of the fraudulent nature of the marriage or of the intended marriage. These volumes vary little from one year to another.

It should also be noted that the number of marriages celebrated abroad, that are over 90 % mixed marriages, has decreased by 8 % between 2007 (year of implementation of the 2006 Act on the control of validity of marriages) and 2010. This development certainly tends to show that, by the mere existence of controls it has established, even if they are not 100 % effective, this law has greatly contributed to discourage the crudest attempts at fraudulent marriage.

3) Data from the Central Directorate of Border Police (DCPAF)

The DCPAF data relates to **spouses of convenience from 2006 to 2011**. As part of these figures, only one spouse is counted within the couple and is the one who complies with the right of residence (who is legally staying in France).

It should be noted first that **the number of detected spouses of convenience fluctuates and dropped sharply after 2008, reducing from 130 in 2008 to 70 in 2009 and 75 in 2010 before rising in 2011** (95 spouses of convenience). The 2007 peak of 145 spouses of convenience can be explained by the toughening of the two 2006 laws giving registrars of births, marriages and deaths more tools to detect and combat marriages of convenience. The slight increase in 2011 may also be due to the Law of 16 June 2011 imposing penalties for "*mariages gris*" and enabling them to be reported more easily.

75 % of spouses of convenience are French nationals. 14 % of spouses of convenience are Maghrebian. The remaining 11 % are of several nationalities in very small proportions (see the Excel spreadsheet).

The fact that most spouses of convenience are French is hardly surprising given that only the spouse residing legally on the territory is counted in the statistics.

Geographically-speaking, spouses of convenience are **most numerous in French border areas**: Gard (southeast France), Nord, Haut-Rhin and Bas-Rhin (eastern France) and Ile et Vilaine (western France). These five counties alone account for 50 % of spouses of convenience. There was a general reduction in spouses of convenience from 2006 to 2011.

The figures for irregular migration networks organizing marriages of convenience (individuals or gangs) **are low** since two organisations were uncovered in 2009, 7 in 2010 and 7 in 2011. Most organisations are detected by the area directorates of the DCPAF which describes them as "structured, often hierarchical and compartmentalised transnational groups which assist, for money, one or more irregular migrants to be transported from one country to another or to stay there illegally".

- **False declarations of parenthood**

The DCPAF figures concern **irregular migration networks organizing false recognitions of children** (individuals or gangs): 3 organisations were uncovered in 2009, 5 in 2010 and 9 in 2011, almost all by the DCPAF area directorates. 3 of the 9 organisations uncovered in 2011 were found by the Police Prefecture.

* * *

This section highlighted that few official statistics about suspected or detected marriages of convenience and false declarations of parenthood are available. Therefore, it is difficult to give a clear indication of the extent of these practices. In general, the figures show that few marriages of convenience and false declarations of paternity are detected in France every year.

CONCLUSION

This study shows that the French anti-marriage of convenience system, introduced into the Civil Code in 1993, has been regularly reinforced between 2003 and 2011 by new laws enabling this phenomenon to be prevented, detected and combatted. In dealing with these issues, the French authorities have created genuine debate, fuelled by both associations and the media.

The civil registry is conferred a supervisory and preventive role in detecting evidence of fraudulent marriages before the marriage is celebrated, during the administrative procedure and in hearing the spouses. The same role is given to consular officials who hear both spouses before issuing the certificate of non-impediment to marriage or the transcription if the marriage is celebrated abroad. The combat against marriages of convenience gives civil registry registrars the opportunity to refer the matter to the public prosecutor who can object to a marriage before it is celebrated in France. It also gives consular officials the right to suspend transcription of a marriage celebrated abroad. Thereafter, the Prosecutor of Nantes, once informed, may object to the celebration of a marriage abroad of a French national, rule on transcription of the foreign marriage certificate into French civil registers and proceed to annul such marriage. Prefectures also contribute to prevention and detection by verifying conjugality when residence permits are issued and renewed.

Generally it is important to stress that there is no proof as such; rather, a series of distinct and corroborating evidence pointing to a fraudulent marriage.

While false parenthood declarations are recognised as an illegal method of family reunification, this study highlights the fact that the public authorities understand this issue as little as they understand marriages of convenience. It is difficult to prove fraudulent parenthood unless the civil registry certificates are recognised as fraudulent or implausible or when the condition for exercising parental control to obtain a residence permit in France for the child or parent is not fulfilled. Parenthood fraud may be revealed at the time of issuing of the visa or residence permits or when family allowance fraud is detected.

French law has recognised marriages of convenience, "*mariages gris*" and fraudulent parenthood declarations as criminal offences. Apart from the punishment aspect, this acts as a deterrent for those who consider committing such fraud.

Moreover, the desire to obtain the right to reside in France (and access the social security system and become integrated more rapidly) and the financial benefits appear to be the two main reasons behind people using such methods respectively to settle oneself or another third country national in France.

The statistical data made available by various authorities and presented in this study are not comparable but provide a cumulative effect. Firstly, there are no statistics for visas and residence permits refused or withdrawn on the grounds of a presumed marriage of convenience or false parenthood declaration. Secondly, the study shows that marriage annulments and convictions of spouses in the event of a marriage of convenience may nonetheless give a primary indication of the extent of marriages of convenience.

In general, the figures show that few marriages of convenience and fraudulent parenthood declarations are detected in France each year. There are two different hypotheses which may

explain this. Firstly, it may be a small-scale problem. On the other hand, it could be that it is difficult to detect. For example, marriages of convenience are difficult to quantify as they may fulfil each of the grounds under French law for annulment, and may result not in petitions for annulment but in divorce, thereby increasing the number of the latter.

Finally, the latest law dealing with immigration (Act of 16 June 2011 on immigration, integration and nationality) has recognised the “*mariages gris*” problem by providing sanctions under the criminal law. As far as we know, there has since been no thought given to future action to be taken on the subjects discussed in this study.

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