

## **EMN FOCUSSED STUDY 2012**

### **Misuse of the Right to Family Reunification: marriages of convenience and false declarations of parenthood**

#### **National Contribution from Republic of Bulgaria**

*Disclaimer: The following responses have been provided primarily for the purpose of completing a Synthesis Report for the above-titled EMN Focussed Study. The contributing EMN NCPs have provided information that is, to the best of their knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of an EMN NCPs' Member State.*

#### **Section 1**

#### **Top-line 'Factsheet' (National Contribution) / Executive Summary (Synthesis Report)**

This study was drawn up in accordance with the requirements of Article 9, item 2 of Council Decision (2008/381/EC) of 14 May 2008 establishing a European Migration Network which states that the annual programme of activities shall include the preparation by each National Contact Point of studies, following common specifications, covering specific migration and asylum-related issues necessary for the support of policymaking.

The object of this focused study – a part of the work program 2012 of EMN is the legal basis for family reunification and the possibilities for abuse of it - the marriages of convenience and false declarations of parenthood.

The main objective of this study is to provide an overview of the scope of this problem in Bulgaria, to provide updated information on legislative and practical measures, adopted and applied by the national authority for administrative control over the residence of foreigners in Bulgaria. In preparing the document up-to-date statistical information was used. Bulgarian practice for prevention and combating this phenomenon was traced.

In the national legislation of the Republic of Bulgaria the relevant Community legislation in the area of migration and asylum has been introduced and implemented. It has been reflected in a number of legal acts in the primary, secondary and tertiary national legislation. Implementing the criteria set out in fundamental directives of the European Union is a key element of a common immigration policy aimed at ensuring, at all stages efficient management of migration flows, fair treatment of third-country nationals residing legally in Member - States, and prevents illegal migration.

The development of migration processes will result in transforming Bulgaria from a country emitting emigrants to a country accepting immigrants. Creating a policy framework will build a comprehensive and sustainable legal and institutional basis for ensuring the successful management of legal migration and integration, and prevention and countering illegal migration. The implementation of the overall objective results in:

- Effective prevention and combating illegal migration;
- More effective management of economic migration and integration;

- Making migration and mobility drivers for development in economic and demographic plan.

In 2011, 9945 first residence permits have been issued in the Republic of Bulgaria, 1530 of which under family reasons, representing about 16% of total number of all issued permits.

In 2010, 17 308 first residence permits have been issued in the Republic of Bulgaria, 1796 of which under family reasons, representing about 10% of total number of all issued permits.

The analysis of statistical data for 2010 and 2011 identifies the following trends: decrease in the total number of all issued first residence permits and a significant increase in the number of first residence permits under family reasons in the Republic of Bulgaria. In the light of the growing migration pressure, which greatly affects Bulgaria in recent years, the statistical data find justification in the following two interrelated conditions - precise regulations on the one hand, and increased efficiency in the implementation of administrative control over the residence of foreigners – on the other.

Similarly with the situation in other Member States, the practice of using the legal basis for family reunification as a possibility and a means for legal migration to EU and the EEC countries is also observed in Bulgaria.

After assessment of these circumstances, the Republic of Bulgaria has taken adequate legal measures to effectively prevent all acts of illegal migration. These measures are fulfilled by the national body for specialized administrative control over foreigners - the Migration Directorate within the Ministry of – Interior, in cooperation with other bodies and organizations competent in this area.

## Section 2

### **National legislative framework and definitions**

In the national legislation the following term for marriage is apprehended:

#### **“Marriage”:**

Only civil matrimony, concluded in the form, provided for by The Family Code shall give rise to the consequences, which the laws connect with matrimony. The religious ceremony shall not have legal bound. The matrimony shall be concluded upon mutual, free and explicit consent of a man and a woman, given in person and simultaneously before an official of the civil status. Matrimony may be concluded by a person at the age of 18. Upon exception, in case that important reasons impose this, matrimony may be concluded by a person at the age of 16 with permission given by the regional judge. In case that both persons, entering into matrimony are under age of 18 and have different permanent address, the permission shall be given upon their choice by the regional judge on the address of one of the persons, entering into matrimony.

#### **“Marriages of Convenience”:**

According to the national legislation these are marriages concluded solely to take advantage of the right of obtaining a residence permit which the person will not have right otherwise.

**“False Declarations of Parenthood”:**

Specific hypotheses determine the negative decision of migration authorities at the request of a third country nationals to be granted residence in a country in the case whether the adoption is accomplished to circumvent the migration legislation. Procedures for affiliation and adoption are governed by Family Code.

Under national legislation on migration, the fake adoption and affiliation are those that are made solely to take advantage of the right of residence, which otherwise the person could not benefit.

The terms and conditions to determine the circumstances related to the fake adoption and affiliation are defined in the text of Art. 26 of **Law for the foreigners in the Republic of Bulgaria (LFRB)**. With regard to the EU citizens and their family members all issues connected with abuse of rights are governed by **Law for Entering, Residing and Leaving the Republic of Bulgaria of European Union Citizens and Members of Their Families (LERLRBEUCMTF)**, art. 24, par.1, sec.2, art.31, art. 32. In the national legislation material-procedural rules have been laid for the effective protection of persons, as all acts of the national authorities are subject to appeal.

The burden to prove the fact that the adoption and affiliation is made solely for the purpose of obtaining right of residence falls on the authorities who want to restrict the rights of persons on these grounds.

**"Family reunification" is the entry and residence in a Member State of family members of foreign nationals residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after entry of that person.**

“Family members of a foreigner as per LFRB” shall be:

1. a spouse;
2. children of the foreigner and of his/her spouse, including the adopted children, who are not of age of 18 years and are not in matrimony;
3. children of the foreigner, including the adopted children, who are not of age of 18 years and are not in matrimony, in the cases where he/she is entitled to the parental rights and the children are on alimony provided by him/her;
4. children of his/her spouse, including the adopted children, who are not of age of 18 years and are not in matrimony.

As family members shall also be considered the children of the foreigner or his/her spouse, who are on the age of 18 years or more and who have not concluded matrimony and who have been dependent on alimony provided by the foreigner in the state of origin or in the state of their usual residence and in the cases where significant medical reasons determine personal care for the family

member. In the cases where the foreigner already has a spouse, who lives with him/her on the territory of the Republic of Bulgaria, union of the family with another spouse shall be forbidden (LFRB, art.2).

It should be noted that in respect of third country nationals Bulgarian law only recognizes civil marriage. Bulgarian legislation does not accept polygamous marriages, cohabitation, and unisexual marriages, except for diplomats' cases.

#### *A Bulgarian national reunifying with a third-country national*

As members of the family of a Bulgarian citizen shall be recognized the persons, living together with him/her in same household and are:

1. a spouse;
2. relatives of descending line, including in case they are descendants only of the person under item 1, who haven't turned twenty-one years of age and have not entered into a marriage;
3. relatives of descending line, including in case they are descendants only of the person under item 1, who have turned twenty-one years of age, but do not have income of their own for they are not in a condition to provide their maintenance or serious health reasons enforce the Bulgarian citizen to take personal care of them;
4. relatives of ascending line to whom the Bulgarian citizen or the person under item 1 provides maintenance;
5. other members of his/her household, who have been at his/her support entirely in the state of their origin or in the state of their customary residence and serious health reasons enforce the Bulgarian citizen to take personal care of them.

#### *An EU citizen reunifying with a third-country national*

"A family member of a Union citizen" means:

- a) a person is married or lives together with a European Union citizen,
- b) a descendant of a Union citizen who is not a Bulgarian citizen and had not reached twenty-one year or the dependent, or descendant of a person under letter "a"
- c) an ascendant, who is dependent on the European Union citizen or a person under sec. "a".

For nationals of EU - Bulgarian legislation recognizes and accepts civil marriage and actual concubinage.

**Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification**  
/transposed in LFRB, art. 16, par. 4/

It is envisaged that Member States may reject an application for entry and residence for the purpose of family reunification or, if appropriate, withdraw or refuse to renew the residence permit of a family member, provided that it is false or misleading information or false or forged, or fraudulent or other unlawful means, and the marriage, partnership or adoption was contracted for the sole purpose to enable interested persons to enter or reside in a Member State.

During the procedure of assessment on this issue, Member States may pay particular attention to the fact that marriage, partnership or adoption was contracted after the candidate has obtained his residence permit.

Member States' authorities may conduct special verifications when there are reasonable grounds to suspect that a fraud is committed with the statement of the applicant linked to false marriage, partnership or adoption. Specific checks may also be made regarding the renewal of residence permits of family members.

**The internal regulations cohered with the Directive 2003/86/EC**

National laws and practices in the Republic of Bulgaria are highly harmonized with the European legislation in terms of the principle of family reunification as well as in terms of issues related to marriages of convenience. Specific measures are introduced to facilitate and better manage the family reunification. These measures are: specific secondary legislative acts to refine national legislation in this direction.

Specific hypotheses are determined defining the negative opinion of the responsible bodies at the request of a TCN to be granted right of residence in Bulgaria.

A residence permit or extension of the stay shall be denied to a TCN who has married a Bulgarian citizen or a TCN or who is adopted by a Bulgarian citizen or foreigner who has obtained a residence permit if there is evidence that the marriage is concluded or adoption is made solely to circumvent the norms regulating the regime of aliens in the Republic of Bulgaria and obtaining a residence permit.

The decision to refuse a residence permit shall be made by the services for administrative control of foreigners based on data giving rise to a reasonable conclusion that the marriage was contracted or adoption was made solely to circumvent the norms regulating the regime of aliens in the Republic of Bulgaria and to obtain a residence permit. Such data may be circumstances that the spouses or the adoptee and the adopter does not live together; the lack of contribution to the obligations of marriage; the spouses did not know each other before the marriage; given conflicting information about the personal data of the spouse or adopted child (name, address, nationality, profession), the circumstances of their acquaintance or other important personal information; the spouses or the adoptee and adoptive parent does not speak a language understood by both; the payment of money for marriage outside the usual dowry; the presence of previous marriages or adoptions concluded to circumvent the rules governing the regime of aliens; the fact that the marriage was contracted or adoption took place after the alien has obtained a residence permit.

All those data may be found out through interviews (conducted by officers of the administrative control of foreigners), in the written statements of the concerned or of third persons, by means of official documents or by inspections and investigations made by public authorities. The services for administrative control of foreigners are obliged to hear the parties affected (LFRB, art.26).

In respect with the tendencies that in previous years many cases of marriages of convenience have been observed, and in order to prevent further cases of circumvention the rules of the law, national legislation adopted changes in the respective laws that the right of permanent residence is granted to a foreigner on ground of affiliation or adoption - three years after affiliation or adoption occurred.

### **Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States**

It is envisaged that Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by Directive 2004/38/EC, in cases of abuse of rights or fraud, such as marriages of convenience. All such measures are proportionate and subject to the procedural guarantees.

It must be accentuated that the transposition and implementation of Directive 2004/38/EC into national law is applying in respect only to EU citizens who move or reside in a Member State other than that to which they are nationals, and to their family members who accompany or join them. Therefore, the national legislation distinguishes different hypotheses according the nationality of the applicant. There are two separate acts – Law for the foreigners in the Republic of Bulgaria and Law on entry, stay and departure of EU citizens and their family members. The LFRB regulates the conditions for entry and residence of the members of the family of a Bulgarian citizen, who are third country nationals. The Law on entry, stay and departure of the EU citizens and their family members regulates the hypotheses subject to Directive 2004/38/EC. This national approach is consistent with the Commission guidelines on the implementation of Directive 2004/38/EC, which states that EU citizens residing in a Member State of which they are citizens usually do not enjoy the rights provided by the Community law concerning the free movement of people and their families who are third country nationals; these are covered by the national immigration rules. Again, in line with the recommendations, the Bulgarian citizens returning to Bulgaria, after having stayed in another Member State also benefit from the rules on free movement of people.

### **Marriages of Convenience**

Under national legislation on migration, marriages of convenience are those marriages which are committed by the applicant solely to take advantage of the right of residence.

The terms and conditions to determine the circumstances related to marriages of convenience are drawn in the text of Art. 26 of LFRB. With regard to EU citizens and their family members the issues concerning the abuse of rights are governed by Art. 24, Par.1, Sec.2, Art.31, Art. 32 of The Law on entry, stay and departure of the EU citizens and their family members. The burden to prove the misuse of grounds falls on the authorities who want to restrict the rights of persons to receive a residence permit on the basis of marriage. It is necessary to provide convincing arguments while complying with all substantive and procedural guarantees.

It is necessary to point that in the process of application of Community legislation in this area, the cases of marriages of convenience and the forced ones are distinguished. The forced marriages are subject to annihilation only through a court procedure according to Family Code, if the consent for marriage has been granted as a result of severe and imminent threat to life, health or the honor of the spouse or of his relatives.

According to Art. 26 of the LFRB, shall be denied a residence permit or extension of stay of a foreigner who has married a Bulgarian citizen or a foreigner who has obtained a residence permit if there is evidence that the marriage was contracted solely to circumvent the rules governing regime foreigners in the Republic of Bulgaria and obtaining a residence permit.

### **False Declarations of Parenthood**

Under the national legislation on migration, specific hypotheses are determined in relation with the decision on taking a negative opinion at the request of a TCN to be granted right of residence in the country when there is evidence that the adoption is to circumvent the migration legislation.

Procedures for affiliation (art. 64 – art. 71 of the FC) and adoption (chapter 8 of the FC) are governed by the Family Code (FC).

Given that in previous years there have been many cases of marriages of convenience, as a guarantee that this option will not be used to circumvent the rules of the law is written that the right of permanent residence (indefinitely) is granted to a foreigner in cases of affiliation or adoption - three years after the affiliation or adoption occurred.

*2.3. Is the prevention of misuse of residents' permits for family reunification as defined in the context of this study specifically covered in national legislation? If so, what are the provisions? Please explain what changes in legislation and/or practice are being considered in your Member State to fight against such misuses. Please refer to the specific piece of legislation and relevant Articles.*

*Marriages of Convenience:*

*LFRB and LERLRBEUCMTF*

Family members of long-term residing foreigners could obtain permanent residence permit for a period of one year with possibility of renewal, without exceeding the permitted period of residence of the holder. For the purpose of issuance of residence permits, the family members should have sufficient means of subsistence and health insurance. After 5 years of legal stay in the Republic of Bulgaria, and provided that the husband/wife and the major children of the resident alien have not received a residence permit in the country for reasons other than family reunification, they are entitled to receive a long-term residence, regardless of the holder's permit, if there are reasons.

Upon termination of the marriage the children of the long-term resident and the other parent have the right to a separate residence permit, if they meet the criteria for one, and when children are enrolled in school education system or in a high school until the end of school year or until the end of course.

When an alien has received a residence permit in another Member - State of the Union and established a family there and who has received permission for prolonged residence in Bulgaria, his family members have the right to accompany or join him. To obtain a permit for prolonged residence of the family members they present at the territorial office of administrative control of foreigners: 1.

regular travel document; 2. A document proving sufficient funds for maintenance and insurance; 3. the long-term residence permit or residence permit issued in another Member – Stat; 4. evidences that they have resided in in another Member - State being family members of a long-term resident;. Period of residence of the family members is determined by length of residence of the holder (LFRB, Art.3).

*A mobile EU national reunifying with a TCN*

**LERLRBEUCMTF**

In the application of Community law at national level it is recognized that the mobility of EU citizens shall be promoted and those who have benefited from it shall be protected. It is not considered abuse when an EU citizen and his family members qualify for residence under Community law in the Member State other than that of nationality of the EU citizen, as they enjoy the benefits arising from the right to freedom of movement protected by the Treaty, irrespective of the purpose of their movement in this country. Similarly, Community law protects EU citizens who have exercised their rights of free movement.

*A non –mobile EU citizen reunifying with a third –country on the basis of jurisprudence*

*A non –mobile EU citizen reunifying with a third –country national*

A family member of an EU citizen who is not a TCN enters the territory of the Republic of Bulgaria with a valid passport and visa, if required. The visa is free. Visa is not required when the person who is a family member accompanies or joins the EU citizen and holds a residence card of a family member of an EU citizen issued by the respective Member State. When a European Union citizen or family member who is not a citizen of the European Union, has no documents required for entry, before taking action on prevention, he is given an opportunity to obtain the necessary documents or verify by other means that has right of free movement (art.4 **LERLRBEUCMTF**). Right of entry and residence in the Republic of Bulgaria under this Act have the family members of EU citizens who are either dependents or household members of the EU citizen entitled to free movement, or where serious health grounds strictly require the personal care for the family member provided by the EU citizen (art.5 **LERLRBEUCMTF**).

A family member of an EU citizen who is not a citizen of the EU and is accompanying or joining the EU citizen may reside permanently in Bulgaria, for which he is issued a residence card for family member citizen of EU (art.10 **LERLRBEUCMTF**).

In order to refine the national legislation in respect of abuse of rights in 2012 were adopted by the National Assembly changes to the **LERLRBEUCMTF**, transposing Directive 2004/38/EC. New administrative penalty provisions in respect of EU citizens and their families were introduced (art.31,33,34).

## **Section 3**

### **The situation in Bulgaria**

The accession of the Republic of Bulgaria to the European Union (EU) demanded new and higher requirements in the approach to analyzing the migration situation in respect of:

- collecting and summarizing statistical data for the migration processes in the country;
- observation of the migration processes;
- defining and evaluating potential risks which could cause certain tendencies in the dynamics of the migration situation in the Republic of Bulgaria, both in the national and the collective security in EU. The harmonization of the national legislation according to the European and the complete reform in the area of migration require implementation of numerous measures.

Following the accession of the Republic of Bulgaria to the EU, the country became attractive destination for citizens of third or “risky” countries not only as a transit country but also as a possibility for permanent stay of these citizens.

The main factors determining migration flows remain the poor economic development of the countries of origin, the geographic position of the Republic of Bulgaria and the possibility to find a job at the labour market in the developed EU countries.

The main migration flows and countries of origin generating illegally staying foreigners are as follow:

The characteristics of the geographical position of Bulgaria determine the existence of a variety of legal and illegal migration flows.

According to the national legislation “Migration” Directorate is the main structural unit in MoI responsible for co-ordination of migration management and control of the migratory flows with regard to the foreign nationals residing in the Republic of Bulgaria.

#### **National means of preventing misuse**

The Migration Directorate is working in close collaboration with all the competent authorities-state and municipal, in order to prevent misuse of the right for family reunification: Ministry of Foreign Affairs and Bulgaria’s foreign representations, Ministry of Labor and Social Policy, State Agency for National Security, Ministry of Justice, State Agency for Child Protection, State Agency for Refugees, National Income Agency, other competent bodies of MoI etc.

Experts of the competent authorities participate in a different working groups, seminars, conferences and workshops in the field of migration.

The information exchange is permanent and it is of major importance for preventing further cases of misuse.

### **National means of detecting misuse**

In order to optimize the activity of administrative control there have been prepared and are implemented the provisions of the normative regulations. The action of the competent officials are strictly defined and unified:

1. Refused shall be the issuance of residence permit to a foreigner, who has concluded matrimony with a Bulgarian citizen or a foreigner who has been adopted by a Bulgarian citizen or with a foreigner, who has obtained a residence permit, if data presents, that the matrimony was concluded or adoption was done with the only purpose to circumvent the legislation regulating the foreigners regime in the Republic of Bulgaria and obtaining a residence permit.

2. Assessment to refuse the permit shall be taken by the offices for administrative control of the foreigners on the basis of evidence justifying an objective conclusion that the matrimony has been concluded or the adoption was done solely for the purpose of evading the norms stipulating the regime for foreigners in the Republic of Bulgaria and obtaining a permit for stay. Such evidence can be:

1. the circumstance that the spouses or the adopted person and the adoptive parent do not live together;

2. lack of contribution to the commitments ensuing from the marriage;

3. the circumstance that the spouses have not known each other before the marriage;

4. the presentation of contradicting information for the personal data of the other spouse or the adopted person (name, address, nationality, profession), for the circumstances of their acquaintance or other important personal information;

5. the circumstance that the spouses or the adopted person and the adoptive parent do not speak a language understandable for both of them;

6. the payment of money for the contracting of the marriage beyond the usual dowry;

7. the presence of previous marriages or adoptions contracted for the purpose of evading the norms stipulating the regime for the foreigners;

8. the circumstance that the matrimony was concluded , respectively – adoption was done, after the foreigner has obtained residence permit.

The data can be established by interviews held by employees of the services for administrative control of the foreigners, by statements of the concerned or third persons, by documentary means or by investigation and checkup carried out by the state bodies. The services for administrative control of the foreigners shall obligatorily hear out the concerned persons.

### **National action against those misusing**

The process of verification of the declared reason for obtaining residence, in particular "family reunification" is continuous. When applying for the status, after consideration of the service for administrative control of the foreigners, a procedure takes place to verify the facts on the ground. This

procedure is regulated by national legislation and in particular by the Law for the Foreigners in the Republic of Bulgaria:

The "Migration" Directorate within the Ministry of Interior is responsible for implementing administrative control over the residence of foreigners. The competences of the Office include the obligations of detection and prevention of cases of marriages of convenience and false declarations of parenthood. The implementation of this activity is favored by the fact that employees of the office for administrative control have the powers of police officers, i.e. all state institutions, public organizations and citizens are obliged to cooperate in implementing their legal duties.

### **Reasons and motivations**

#### **The reasons and motivations driving the migration are:**

**Political factors:** political instability and lack of trust in the democratic potential of the countries emitting migrants are factor for migration behavior, especially among the younger population.

**Socioeconomic factors** - motivation that includes striving for a complete personal expression, career and higher remuneration and is essential for the majority of those willing to migrate. Generally, the lower standard of living is one of the major factors stimulating external migration.

**Psychological factors** - changes in the system of values that under the present conditions are very dynamic, have a major impact on immigration. New values define new trends - in these conditions a successful career as a dominant motive for emigration.

## **Section 4**

### **Available statistics, data sources and trends**

Issued temporary residence permits:

<i>Type of migration</i>	2007	2008	2009	2010	2011
<i>Family reasons</i>	4 937	4 769	4 545	4 744	5 146
<i>Employment</i>	925	1 212	1 127	673	397
<i>Studying</i>	6 328	5 751	5 887	5 885	5 146
<i>International agreement</i>	331	290	251	277	259
<b>TOTAL</b>	<b>27 916</b>	<b>25 453</b>	<b>24 080</b>	<b>23 494</b>	<b>24 835</b>

Number of refused issuance of residence permit:

Legal ground for denial	2007	2008	2009	2010	2011
marriage of convenience/ false	2	6	8	3	5

declaration of parenthood					
TOTAL number of refused issuance of residence permit	170	187	303	276	218

Number of revoked right of stay

Legal ground for revoke	2007	2008	2009	2010	2011
marriage of convenience/ false declaration of parenthood	2	1	1	3	7
TOTAL number of revoked right of stay	44	72	119	88	93

<i>First residence permits, by reason in 2011</i>					
	Total	Family reasons	Education reasons	Remunerated activities reasons	Other reasons
First permits	9945	1530	1033	1249	6133

<i>First residence permits, by reason in 2010</i>					
	Total	Family reasons	Education reasons	Remunerated activities reasons	Other reasons
First permits	17 308	1796	5 741	2 128	9 439

The statistics on cases identified or assumptions justified concerning marriages of convenience / false declarations of parenthood, where the right of residence in the country has been refused or denied show that the possibility of abuse of the reason "family reunion" at present is not identified as a serious problem. This is due to effective prevention of this kind of abuse through, first, strict control by the competent migration authorities and, second, adequate legal regulations.

## **Section 5 Summary and conclusions**

As evident from this study and the data reported in it, the current Bulgarian legislation fully meets the current needs of efficient and effective regulatory framework that is able to support the efforts of authorities in countering the various aspects of illegal migration, including cases of abuse of the reason "family reunification".

The legal powers and the active administrative control over the residence of foreigners on the territory of Bulgaria granted to the authorities of "Migration" Directorate form a successful mechanism for prevention and countering this phenomenon.

The negligible number of cases of marriages of convenience and false declarations of parenthood are proving the fact that at present the possibility of abuse of the reason "family reunification" as a way of legalizing the stay of third country nationals in the Republic of Bulgaria, as an EU Member State is not an attractive alternative to the other forms of circumvention of legal requirements for the authorization of residence in the country.