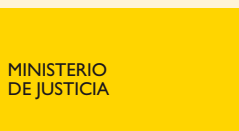


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**MISUSE OF THE  
RIGHT TO FAMILY  
REUNIFICATION:  
MARRIAGES OF  
CONVENIENCE  
AND FALSE  
DECLARATIONS  
OF PARENTHOOD**

**SPAIN**

**May 2012**



The European Migration Network (EMN) is an initiative of the European Commission. The EMN has been established via Council Decision 2008/381/EC and is financially supported by the European Union.

Its objective is to meet the information needs of Community institutions and of Member States' authorities and institutions by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the European Union in these areas. The EMN also serves to provide the general public with such information.

To that end, the EMN has a network of National Contact Points (NCPs).

In Spain, the NCP is composed of experts from four ministries (Ministry of Employment and Social Security, Ministry of the Interior, Ministry of Foreign Affairs and Cooperation and Ministry of Justice) and the General Prosecutor's Office. It is coordinated by the Permanent Observatory for Immigration, a collegial body attached to the Ministry of Employment and Social Security. The NCP also collaborates with independent experts for the elaboration of EMN studies and reports.

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

**Spain**

This Focussed Study analyses the phenomenon of misuse of authorization for family reunification in Spain through marriages of convenience and false declaration of parenthood; studying their legal status, means of prevention, detection and consequences of this phenomenon and the information available in this regard.

This Report has been developed by the Spanish National Contact Point of the European Migration Network.

May 2012



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## Section 1 Introduction

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At a time when the economic cycle and crisis have led to a reduction of the hiring of migrants in the country of origin, combined with a similar drop in work permits, family reunification is perceived as a more accessible route for entering Spain. We have therefore started to detect an increasingly interesting phenomenon consisting of the misuse of permits for family reunification.

Specific legislation has been developed over the last few years for its prevention and detection, especially concerning marriages of convenience, due to the fact that these are more frequent (as compared to false declarations of parenthood), in view of the conflict that arises between the requirement to verify and control on the part of the different government authorities involved and constitutional rights, such as the right to marry and the right to family privacy.

## Section 2 National legislative framework and definitions

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### 2.1. Concepts of 'marriage' and 'family' in the laws and regulations relating to family reunification

With respect to immigration law and for the purposes of regulating the right to family reunification, Article 17 of Organic Law 4/2000, of 11 January, on the rights and freedoms of aliens in Spain and their social integration (hereinafter, Aliens Act) lists the following **family members** as being entitled to **reunification**: the resident's spouse, as well as the person who maintains a relation of affection analogous to that of marriage with the resident; children of the resident and the spouse or partner, including adopted

children, provided they are under eighteen years of age, and persons with disabilities not objectively capable of providing for their own needs due to their state of health; children under the age of eighteen or of legal age who are not capable of attending their own necessities for health reasons when the sponsor is the legal representative; and first degree ascendants of the sponsor and his/her spouse or partner who are over sixty five years of age and are dependent on the former, as long as there are grounds to justify the need to authorise their residence in Spain.

## **2.2. National legislation according to the following scenarios:**

- 1) A third-country national residing lawfully in the EU / Norway reunifying with a third-country national applying to enter / reside there in order to preserve the family unit.
- 2) A mobile EU national reunifying with a third-country national.
- 3) A non-mobile EU citizen reunifying with a third-country national on the basis of jurisprudence (and reference to the EU Treaty).
- 4) A non-mobile EU citizen reunifying with a third-country national.

Spanish regulation of family reunification differs depending on the legislation that is applicable to the foreign citizen concerned, which is either the general immigration law applicable to non-EU and non-European Economic Area third-country nationals or the European Community law, which applies to EU and European Economic Area nationals and their family members.

Therefore, the different scenarios that can arise are as follows:

- Scenario (1), covering third-country nationals legally residing in the EU who apply to reunite their family members in order to preserve family unity, comes under the scope of European Council Directive 2003/86/EC, of 22 September 2003, on the right to family reunification.

In respect to Spanish legislation, this scenario is governed under the aforesaid Aliens Act and Implementation Regulation of said Act, approved under Royal Decree 557/2011, of 20 April (hereinafter, Aliens Regulation), which comprise the basis of general immigration law.

- Scenario (2), i.e. cases in which a national of an EU member state living in Spain applies to reunite a third-country national, is covered under European Council Directive



2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, provided the person being reunited comes under the scope of application of the said directive.

The said Directive was transposed to Spanish law under **Royal Decree 240/2007, of 16 February, on entry, free movement and residence in Spain of citizens of European Union (EU) Member States and other States belonging to the Agreement on the European Economic Area (EEA).**

- The provisions of **Royal Decree 240/2007, of 16 February** also apply to scenario (4), where a Spanish citizen living in Spain requests reunification of a third-country national. This is due to the fact that the provisions of Article 2 there under are deemed to apply to family members who are not nationals of either an EU or an EEA State when accompanying or being reunited with an EU or EEA citizen.

The legal regime for reunification is set out below, both with regard to general immigration law, which would apply to scenario (1), and to European Community law, applicable to scenarios (2) and (4).

In respect to **foreign (third-country nationals) residents in Spain** who wish to reunite family members, as mentioned above, the provisions of **Articles 17 to 19 of the Immigration Act and 52 to 61 of its Regulation** are deemed to apply.

Pursuant to the provisions of Article 17.1 of the Aliens Act, residents are entitled to reunite in Spain with their spouse provided they are NOT separated de facto or by law, and as long as the marriage was not entered into fraudulently. Reunification with more than one spouse is not permitted under any circumstance, even if the law in the alien's country of origin allows this form of marriage.

If the foreign resident has been married for a second or successive time following dissolution of the previous marriages, s/he shall only be entitled to reunite with the new spouse if evidence is provided that the dissolution(s) took place following legal proceedings that determined the status of the previous spouse and of their children in common with regard to the use of the family dwelling, the financial allowance for that spouse and the maintenance for underage children or dependent children of legal age. Dissolution must have been duly entered when it refers to a marriage already registered in the Spanish Civil Registry.

Apart from their spouses, foreign residents in Spain may also reunite:

- a) Their own children and children of their spouse, including adopted children, as long as they are under the age of eighteen or persons with disabilities not objectively capable of providing for their own needs due to their health.
- b) Children under the age of eighteen or persons with disabilities not objectively capable of providing for their own needs due to their health whenever the sponsor is their legal representative and provided the legal resolution from which the legal representation stem is not contrary to the principles of Spanish law.
- c) First degree ascendants of the sponsor and spouse when such family members are dependent on the applicant, provided they are older than sixty-five years of age and that there are grounds to justify the need to authorise residence in Spain.

Similarly, foreign residents are entitled to be reunited in Spain with persons with whom they maintain a relation of affection analogous to that of marriage, provided said relationship is duly accredited and meets all necessary requirements to have effect in Spain. Such persons shall be deemed equivalent to a spouse for all purposes of this particular section (i.e. the latter may reunite the family members described in previous paragraphs). Just as with spouses, foreign residents shall not be reunited with more than one person with whom they maintain a relation of affectivity analogous to that of marriage, even when the law in the alien's country of origin allows this form of marriage. In any case, the situations of marriages and analogous relationships are deemed mutually incompatible.

Pursuant to the provisions of Article 53.b) of Aliens Regulation, relation of affection analogous to that of marriage is deemed to exist whenever:

1. Said relationship is duly recorded in a public register established for that purpose and provided the entry has not been cancelled; or
2. Evidence can be provided of a not registered relationship, constituted prior to the date on which the sponsor started to reside in Spain. For this purpose documents issued by a public authority shall prevail, without prejudice to the possibility of using any means of evidence legally admissible.

In respect to the conditions and requirements for reunification, the procedure is governed under Article 56 of the Aliens Regulation, which establishes sponsorship requirements, where and when an application for family reunification must be submitted, the documents that must be provided and reports that must be requested by the competent legal body.

In respect to family members accompanying or being reunited with **a citizen of the European Union or of any other State belonging to the European Economic Area**, Article 2 of Royal Decree 240/2007, of 16 February, is applicable:

- a) To the spouse, provided there has not been any agreement or declaration of dissolution of the matrimonial bond, or divorce;
- b) To the partner with whom there exists a relationship analogous to that of a spouse, provided:
  - The relationship is duly recorded on a public register established for that purpose in a European Union Member State or a State belonging to the European Economic Area; and
  - Provided the entry has not been cancelled, with sufficient evidence submitted in that respect. In any case, the situations of marriage and of registered partnership are deemed to be mutually incompatible.
- c) To their direct descendants, and to the direct descendants of the spouse or registered partner provided there has not been any agreement or declaration of dissolution of the matrimonial bond, or divorce, and that the partnership register entry has not been cancelled, and being under the age of twenty-one or over twenty-one if they are dependent on the spouse or registered partner or disabled.
- d) To direct ascendants of the citizen or the spouse or registered partner dependent on them, provided there has not been any agreement or declaration of dissolution of the matrimonial bond, or divorce, and that the partnership register entry has not been cancelled.

On the other hand, Article 8.3 of Royal Decree 240/2007 lists the documents that must be submitted to obtain a family member of a European community / EEA citizen Card.

### **2.3. Legislative provisions regarding the prevention of misuse of residents' permits for family reunification**

#### **Marriages of Convenience**

In Spain, there are two main aspects to the prevention of marriages of convenience:

- on the one hand, given that marriages must be entered in the Civil Registry in order to obtain full recognition of effects, these marriages are detected by the officials in charge for the aforesaid Civil Registries (Article 61 of the Spanish Civil Code);

- on the other hand, immigration administrative authorities must also check full compliance with all requirements for the family reunification of foreigners, and Consular Offices abroad, where visas are issued for family reunification, can also check documents issued in the country of origin.

Thus, in the cases subject matter of this study, the prevention carried out by persons in charge of Civil Registries is intended to avoid having false declarations or facts entered in Spanish Civil Registers, as the principle of concordance of the Civil Registry with real facts applies (Article 26 of the Civil Registry Act), with actions being taken against fraud committed at these legal institutions.

In respect to marriages of convenience, prevention is basically covered by **two Instructions issued by the Directorate General for Registries and Notaries** which do not directly regulate immigration but nonetheless define precautions to be followed in registry procedures in order to avoid fraudulent marriages being used for immigration purposes.

- The first of these is the Instruction of 9 January 1995, Directorate General for Registries and Notaries, on dossiers prior to marriage when one of the intended spouses resides abroad.
- The second instruction, which supplements the first one, is the Instruction of 31 January 2006, Directorate General for Registries and Notaries, on marriages of convenience. These are the only two provisions that deal exclusively with marriages of convenience, interpreting other provisions on the authorisation or registration of marriages in general.

With regard to Immigration legislation, note should be made that the legislative reform carried out in late 2009 introduced a new scenario of serious offences, described under Article 53.2.b) of the Aliens Act, in respect to: «*Solemnising matrimony, simulating an analogous affective relationship or purporting oneself as the legal representative of a minor, when such a conduct is carried out for the purpose of material profit or in order to irregularly obtain residence rights, provided such acts do not constitute a criminal offence.*»

### **False Declarations of Parenthood**

In respect to false declarations of parenthood, Spanish law upholds the principle of biological veracity, as confirmed on several different occasions by the Constitutional Court. The instruction of 20 March 2006, General Directorate for Registries and Notaries, on the

prevention of documentary forgery with respect to civil status, is applied in the prevention of such false declarations when they have to be entered in the Spanish Civil Registry, i.e. if any of the parties has the Spanish citizenship. Even though said instruction does not exclusively refer to declarations of parenthood, it is used to control their validity. Lastly, mention should be made of the rules regarding late birth registration dossiers (Articles 311 to 316 of the Civil Registry Regulation), which allow the Officer in charge of the Registry to investigate at his/her initiative the authenticity of declarations made in the dossier, where necessary, of filiation.

## **2.4. Description of the impacts of European Court of Justice case law on family reunification**

The jurisprudence of the European Union Court of Justice is always taken into account in rulings issued by Spanish courts, and internal rules regarding family reunification are duly interpreted and applied in the light of that jurisprudence.

An example of this is the Supreme Court Ruling of 1 June 2010, which annulled certain provisions set forth in Royal Decree 240/2004 on the entry, free movement and residence in Spain of citizens from European Union Member States and from other States belonging to the European Economic Area.

# **S**ection 3 **The situation in Spain**

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## **3.1. Scope of the misuse of residents' permits for family reunification: marriages of convenience**

**T**he legal treatment of the question of marriages of convenience has gained importance in the last few years in Spain. Enquiries and requests for reports addressed to the Directorate General for Registries and Notaries have also increased.

Furthermore, the Public Prosecutor's Office, which gathers information from the competent police authorities to investigate illegal immigration networks, has detected an increase in the number of applications for family reunification and for residence permits as a family member of a European community citizen on the part of foreign citizens presenting register certificates of registered partnerships of a legally resident foreigner, a Spanish citizen or a European Union citizen.

Likewise, an increase has also been detected in the number of canonical marriages between irregular migrants and Spanish nationals, marriages which under Spanish law are granted civil effects when entered in the registry, with some of these church ceremonies involving marriages that are in fact fraudulent.

### **3.2. Means of preventing misuse**

#### **Marriages of Convenience**

According to the Instruction issued by the Directorate General for Registries and Notaries, of 31 January 2006, it can be said that there is a double prevention control at the civil system: on the one hand, for the purpose of avoiding false marriages celebrated and, on the other hand, in order to avoid Civil Registry entries that do not correspond to reality. The Public Prosecutor's Office is involved in the dossiers processed prior to such marriages by the Officer in charge of the Registry.

Furthermore, in the event that the marriage took place in a third country and that at least one of the spouses is Spanish, the marriage may be entered in the Spanish Civil Register pursuant to a foreign certificate or by processing a dossier for that purpose. In both instances, the Officer in charge must check the «legality of the fact pursuant to Spanish law» (Article 256 of the Civil Registry Regulation), including verification of the legal capacity of the spouses to marry, of the existence and validity of matrimonial consent provided before the foreign authority and of the formal requirements marriage pursuant to Spanish or foreign law, as applicable.

It should be noted that the Central Register of Foreign Nationals has a system of alerts which allows discovering more than one residence application per person, thus constituting a means of detecting and avoiding reunification of several spouses (or polygamy).

#### **False Declarations of Parenthood**

In respect to false declarations of parenthood, and in instances where an entry must be made in the Civil Register because a Spanish citizen is involved, it should be noted that such declarations can be made at the same time if the birth is registered within the established deadline, but may also occur «*by declaration of the father or the mother, at any time, to the Officer in charge of the Civil Registry*» (cf. Section 49 Civil Registry Act).

The Instruction of 20 March 2006, issued by the Directorate General of Registries and Notaries, on the prevention of documentary fraud in matters related to civil status,

recommends that «*whenever there are signs that cause doubt in respect to the accuracy of the data shown on the document filed or the authenticity of the signatures, stamp or document itself, then the competent authority for the matter must carry out all necessary checks, particularly with the interested party*» and that «*whenever the elements checked indicate that the document presented is fraudulent, the competent authority must refuse to grant the document any effect whatsoever*», pursuant to Articles 23 of the Civil Registry Act and 85 of the Civil Registry Regulation. If the declaration of parenthood is rejected because it is deemed to be one of convenience, then registration in the Spanish Civil Register must be refused and no documents issued.

In cases of declarations of parenthood in connection with family reunification, pursuant to a report issued in 2005 by the State Legal Services at the request of the Ministry of Foreign Affairs and Cooperation regarding the use of DNA evidence to ascertain parenthood in the course of proceedings corresponding to a dossier at Consular Offices, if the applicant consents, then DNA evidence may be used to ascertain parenthood.

### **3.3. Means of detecting misuse**

#### **3.3.1. Factors that trigger an investigation of individual cases**

##### **Marriages of Convenience**

Both with regard to marriages of convenience and to false declarations of parenthood, the fraud is generally detected on the basis of certain signs. At the registry level, for example, the Officer in charge of the Civil Registry will take even greater precautions to review and check marriages if there are any elements which raise suspicions of a hidden motive (particularly if one of the intended spouses is a national from a non-European Union member country and the marriage includes a Spanish citizen or a legal resident whose intended spouse is from a country with particularly high levels of migration).

Thus, in respect to registration or authorisation by the Officer in charge of the Civil Registry, prior to a civil marriage or religious wedding in an Evangelical church (Law 24/1992 of 10 November), in a Jewish ceremony (Law 25/1992) or in an Islamic ceremony (Law 26/1992) in which consent is to be given before a Spanish authority, a dossier must be processed for the purpose of accrediting legal capacity of the intended spouses to marry and their true intention to marry. The purpose of the dossier is to verify that all necessary legal requirements have been met for the validity of the marriage. Pursuant to Article 246 of the Civil Register Regulations, a hearing must be held in the course of processing the said dossier, in which each of the intended spouses is heard separately and in «private».

The official in charge of the dossier will cross examine the intended spouses in order to ascertain their «true matrimonial intentions» and, as the case may be, detect any possible fraud. The Officer in charge of the Registry may, on the basis of such hearings, refuse to register the entry whenever a series of objective facts are deemed to exist, as evidenced by the statements of the interested parties themselves, or by other evidence submitted from which one may reasonably conclude that according to rules of human criteria the marriage is null and void due to false pretence.

At the administrative level, any requests for temporary residence authorisation in favour of family members (i.e. exercising the right to family reunification) must be lodged with Immigration Offices at Delegations and Sub-Delegations of the Central Government, together with documental proof of marriage. Under Immigration Law, if the official body processing a residence permit on the basis of family reunification has reasonable doubts regarding the existence of fraud in the marriage, then said body must inform the competent authorities so this can be verified, as well as the Civil Registry and corresponding police units.

Furthermore, and in accordance with the provisions of Aliens Regulation, it should be highlighted that in the course of the visa procedures, the diplomatic mission or consular office may request the applicant for personal appearance and if deemed necessary, have a personal interview to check his/her identity, the validity of documents submitted and the veracity of the motives to apply for the visa (Tenth Additional Provision, point 4).

In respect to marriage dossiers, the Public Prosecutor's Office is always involved in the proceedings. Even in instances when fraud is discovered due to a report by one of the intended spouses or by a witness to the marriage union, a statement must be recorded in writing by the corresponding police units and forwarded to the Public Prosecutor's office so that action to declare said marriage void may be duly exercised, where appropriate.

### **False Declarations of Parenthood**

As already mentioned, in cases of attempts to have false declarations of parenthood registered, the fraud is also usually detected on the basis of certain signs. In cases of declarations of parenthood, such signs must be clear and conclusive (insufficient difference in age, no possibility that cohabitation occurred at the time the interested party was conceived, among others). Detection of this practice within the scope of family reunifications usually occurs due to an alert being issued by Immigration Offices, since any official body processing an application for a residential permits on the basis of family reunification that has reasonable doubts during the process of the existence of fraud with



regard to a declaration of parenthood must communicate this to the Civil Registry and to the corresponding police units, as in the case of marriages of convenience.

In some instances, no investigation is possible because documents are from countries of origin and are legitimately issued with biographical content adapted to the false parent and child/children. In other instances the document may not have been issued legitimately and may have been forged, in which case the original will be requested from the authorities in the country of origin so that they can be compared. In this respect, the actions of Spanish Consulates in the countries of origin are important when they have to issue visas and notice any irregularities.

### **3.3.2. Evidence needed to prove that the marriage/declaration is false. Who has the 'burden of proof'?**

#### **Marriages of Convenience**

The main method of evidence is assessment of judicial assumptions whilst processing the marriage dossier prior to authorisation or registration, which therefore only affects marriages involving a Spanish national or scenarios in which consent is granted in Spain. This system of assumption due to evidence is used given the difficulty of obtaining conclusive proof or facts regarding the intentions of the individuals getting married. This system falls under the scope of the law but entails serious difficulties, given that a constitutional right is involved in all these cases.

Each of the intended spouses must be heard separately and in «private». The case officer may and should cross-examine the intended spouses in the course of the proceedings to ascertain their «true matrimonial intention» and, as the case may be, to detect any possible fraud.

There are two types of basic information from which one may infer that matrimonial consent has been simulated: a) lack of knowledge on the part of one or both intended spouses of «basic personal and/or family data» of the other person and b) lack of a prior relationship between the intended spouses. There is no conclusive list of the specific information that should be known about each intended spouse, although some of the basic elements are date and place of birth, address, profession, relevant hobbies, well-known habits and the nationality of the other intended spouse, previous marriages, identity number and basic identity details of the closest family members of each one (children, parents, brothers and sisters of the other spouse), together with the circumstances of how the intended spouses met each other.

Additionally, proof that the intended spouses currently live together or have a child in common is deemed sufficient evidence to confirm the existence of a «personal relationship». On the other hand, however, if false marriages are shown to have existed in the past with regard to either of the intended spouses, this is a strong indication that there is no genuine personal relationship between the intended spouses, but only simulated relations. Equally, a sum of money being handed over in order for the marriage to take place, as long as this is unquestionably proven, will be deemed evidence that no personal relationship exists between the intended spouses, nor any true intention to marry. This is established in the 2006 Instruction issued by the Directorate General for Registries and Notaries, which adhere in this respect to the Council Resolution of 4 December 1997.

Either of the intended spouses or another person with a legitimate interest may submit contrary evidence to oppose a decision of judicial assumption, and such evidence may be geared at proving the non-existence of the indication taken into account by the Spanish authority and/or to prove non-existence of the inferred connection between said indication and a simulated marriage scenario (Articles 386.3 and 385.2 of Civil Procedure Act 1/2000, of 7 January).

Lastly, simulated marriage may occur not only at the time of entering into the marriage but also when the marriage is registered at the Civil Registry. As a general rule, foreign certification that the marriage took place must be provided, or if this is not available, a registry dossier must be opened in the manner set forth above. In such scenarios, cooperation with consular authorities in countries where the marriages are deemed to have taken place has proven to be a valuable instrument for checking the validity of such documents. If any forged documents are detected in the course of these official steps, then evidence of this must be submitted by means of an expert report drafted by specialist officers belonging to the national Law Enforcement Authorities. Furthermore, if there is any evidence that the particular union or marriage is associated with an offence to promote, favour or facilitate illegal trafficking or clandestine immigration, even if there are no false documents, then police intelligence evidence is usually used in most cases (the burden of proof of a particular fact corresponds to the person alleging that fact, in this scenario the police or judicial authorities).

### **False Declarations of Parenthood**

In respect to false declarations of parenthood, DNA evidence is not accepted as conclusive for the registry dossier, without prejudice to such evidence being confirmed by a Judge in corresponding judicial proceedings. In this sense, in view of the fact that it is impossible to disprove the content of birth certificates, the most frequent practice is to hold personal interviews, to review biographical data given in documents and to look for contradictions

or to request copies of original documents from the countries of origin in order to detect any forgeries. Entry in the register of the declaration and subsequent proof of filiation may be refused if there is conclusive evidence showing that the declaration is false.

### **3.3.3. National authorities responsible for detecting such misuses**

Throughout the study it is clear that in the procedures for investigating and detecting marriages of convenience, different public administration bodies are involved in different areas: administrative bodies (Immigration and Consular Offices), civil bodies (Officers in charge of Registries) and for criminal investigations (the Public Prosecutor's Office and the Spanish Law Enforcement Authorities).

In the civil sphere, the Officers in charge of Civil Registries who process the marriage dossier are responsible for control mechanisms.

The Public Prosecutor's Office is involved in processing the marriage dossier and may propose official steps or appropriate evidence, prior to issuing a final report. It may furthermore extend, amend or oppose a particular marriage application and will hear the interested parties in that regard.

Furthermore, under Spanish law the Public Prosecutor's Office and any individuals who become aware of an intention to enter into a fraudulent marriage have the obligation to report any impediment or obstacle they know about. If the officer in charge of the dossier is aware of the legal impediment, then the marriage will be refused.

It is also possible for the Officers in charge of a Civil Registry to inform the police or immigration authorities that they have detected a suspected fraudulent marriage.

Furthermore, if the marriage has already taken place and if residence or family reunification has been applied, such detection usually occurs at Immigration Offices, administrative bodies which inform the National Law Enforcement Authorities whenever they detect the existence of altered documents.

In scenarios when there is a connection between fraudulent marriages and a criminal offence, the National Law Enforcement Authorities are responsible for detection.

There is good coordination between Immigration Offices and Law Enforcement Authorities and between the latter and the Public Prosecutor's Office, which receives information regarding police operations on a daily basis.

In respect to Consular Offices abroad, which issue visas for reunification and are able to detect documents issued at origin, the authorities responsible for detecting misuse are the Chiefs of the Visa Sections and, at the second level, the Consuls.

In conclusion, the system is complex but there is a good flow of cooperation, despite the fact that there is no specific action plan governing the involvement of the different authorities in such scenarios.

### **3.4. Action against those misusing**

#### **Marriages of Convenience**

Whenever a marriage of convenience that has already taken place is detected, this produces the following consequences under Spanish law:

In the Administrative field: in addition, of course, to refusal of the particular residence or visa application, Article 53.2.b) of the Immigration Act establishes that solemnising matrimony, simulating an analogous affective relationship or purporting oneself as the legal representative of a minor, when such a conduct is carried out for the purpose of material profit or in order to irregularly obtain residence rights, provided such acts do not constitute a criminal offence. The penalty provided under the Aliens Act for this type of offence is a fine ranging from 501 to 10,000 Euros (Article 55.1.b).

In respect to the scope of the Civil Registry, both in scenarios when the marriage has been registered or when the fraudulent nature of the marriage is detected at a later date, the register entries must be cancelled (Articles 95.2 of Civil Registry Act and 163 and 164 of Civil Registry Regulation). Action must be taken in coordination with the Public Prosecutor's Office to request that the marriage be considered null and void.

From the perspective of criminal law, entering into marriage on false pretences does not comprise a criminal offence, i.e. whenever the pretence is accepted by both spouses. A false marriage would only be reviewed by criminal courts if the pretence is linked to another act deemed to be an offence, basically any of the following:

- Offence of facilitation of illegal immigration (Article 318 bis Criminal Code): this offence (not the marriage per se) is punishable whenever, as provided, «*Whoever, directly or indirectly, promotes, favours or facilitates illegal trafficking or clandestine immigration of persons from, in transit and with their destination in Spain, or with their destination in another country in the European Union, shall be punished with the penalty from four to eight years imprisonment*».

- Offence of documentary forgery: if the marriage took place in a fraudulent manner using forged documents included in the marriage dossier, then an offence of falsification of official documents may be deemed to have occurred, which is punished with the penalty of six months to three years imprisonment and a fine. The use of genuine documents, dispatches, certificates or identity documents by unauthorised persons is also a criminal offence in Spain (Article 400 bis Spanish Criminal Code).

## **False Declarations of Parenthood**

False Declarations of Parenthood made for the purpose of achieving family reunification have the following consequences:

The administrative effect of detecting this type of fraud is refusal of the particular visa or residence application based on reunification. Furthermore, Article 53.2.b) of the Aliens Act defines purporting oneself as the legal representative of a minor, when such a conduct is carried out for the purpose of material profit or in order to irregularly obtain residence rights, as a serious offence (punishable by a fine ranging from 501 to 10,000 Euros), provided such actions do not constitute a criminal offence.

From the perspective of criminal law, the offence of documentary forgery, which generally accompanies False Declarations of Parenthood, will be prosecuted, given that such false declarations are made on the basis of untruthful birth certificates.

Under civil law, Article 137 of the Spanish Civil Code regulates legal actions to contest filiation and provides that parenthood can be challenged by the son or daughter during the year following the date on which the filiation was registered. If the son or daughter is under age or does not have legal capacity, then the deadline is calculated from the date on which s/he comes of age or obtains full legal capacity. Furthermore, this legal principle states that only the mother with legal custody or the Public Prosecutor's Office may instigate legal action of this nature, in the interests of a child who is under age or does not have legal capacity, within said period of one year from the date the filiation was registered. If there is no matrimonial bond in the family relationship, then the petition may be lodged at any time by the son or daughter or their heirs.

Insofar as the Civil Registry is concerned, if an already registered declaration is found to be fraudulent, any related entries made will be cancelled (Articles 95.2 of Civil Registry Act and 163 and 164 of Civil Register Regulation). In this scenario actions must be carried out jointly with the Public Prosecutor's Office and the latter must request that such entry be deemed null and void.

### **3.5. Do persons accused of abusing/misusing family reunification have a right to appeal?**

Against the decision of the Officer in charge of the Civil Registry refusing authorisation or registration of a marriage celebrated abroad or the inscription of a declaration of parenthood, the interested party may appeal before the Directorate General for Registries and Notaries. However, no further appeal procedure is available except, where appropriate, through ordinary judicial action.

As already stated, a marriage of convenience per se is not deemed to be an offence under criminal law. If judicial action is instigated due to marriage of convenience or false declaration of parenthood combined with an offence such as promoting, favouring or facilitating illegal trafficking or clandestine immigration, (by means of such marriage or declaration) or documentary forgery, any ruling in both instances can be appealed pursuant to the provisions set forth in the Criminal Procedure Act.

### **3.6. Are there any examples of trans-national cooperation?**

#### **Marriages of Convenience**

There are no examples of bilateral or multilateral agreements with other countries in this regard, although in some instances reciprocal arrangements do exist with Member States for requesting information and verification of the circumstances alleged.

#### **False Declarations of Parenthood**

There is no record of specific cooperation with regard to False Declarations of Parenthood, either due to lack of interest on the part of the countries of origin or because they have no centralised and/or reliable registers.

### **3.7. Reasons and motivations**

#### **Marriages of Convenience**

The Instruction of 31 January 2006 issued by the Directorate General of Registries and Notaries describes the following objectives of marriages of convenience with regard to nationality and immigration:

1. Fast track to acquiring Spanish nationality, in that the required period of residence in Spain for the foreign spouse of a Spanish citizen is reduced to one year (Article 22.2 Spanish Civil Code);
2. To obtain a residence permit in Spain, given that the foreign spouse of a Spanish citizen is entitled to reside in Spain as long as the spouses are not «legally separated» and can obtain a renewable residence permit valid for five years (Articles 2.a and 8.4, respectively, of Royal Decree 178/2003, of 14 February, on entry and stay in Spain of European Union member state citizens and citizens of other States belonging to the European Economic Area) (later replaced by Royal Decree 240/2007 cited above); or
3. To achieve family reunification of third-country nationals, given that the foreign spouse of the foreign citizen may be «reunited» as established under the Aliens Act.

As to the sponsor's possible motivation, the reasons may be financial, humanitarian (in order to benefit or avoid harm to a person s/he knows) or perhaps even emotional, in instances when the sponsor really does intend to marry and the false pretence is on the part of the other partner in the intended marriage, given that it will be deemed a marriage of convenience whenever the intention of either spouse is a pretence.

### **False Declarations of Parenthood**

In most cases the motivation for False Declarations of Parenthood is to provide greater legal rights for the acknowledged minor (third-country national), although in some instances the alleged parent may become entitled to a more favourable legal status due to the recognised child, e.g. children who are EU citizens.

## **S**ection 4 Available information

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### **4.1. Are there any available statistics or indicators related to the misuse of family reunification?**

**N**o statistics available.

The intensity of the issue and success of annulated marriages cannot be estimated by Spanish Law Enforcement Authorities (Ministry of the Interior). No statistics are available in view of the fact that this does not comprise a specific criminal offence.

## **4.2. Characteristics of those involved**

### **Marriages of Convenience**

In respect to information available regarding the characteristics of persons involved in this type of misuse, police experience gained from cases in which a marriage of convenience has been used as the means to carry out an offence of facilitation of illegal immigration or which has led to an offence of documentary forgery indicates that low income Spanish are the ones that are most commonly involved.

### **False Declarations of Parenthood**

In respect to False Declarations of Parenthood, whenever these are associated with any criminal offences, usually facilitation of illegal immigration or documentary forgery, the police finds in practice that the sponsor is a national of the same country as the reunified family members.

## **4.3. Information about the location of the misuse**

### **Marriages of Convenience**

In respect to the location of such events: in Spain this fraud is usually detected through authorisation of marriage permits, given that this type of authorisation must be granted by a Spanish authority. Some cases are detected at Spanish consulates abroad, given that Consuls may also authorise and celebrate civil marriages.

Whenever the intention is to register an existing marriage in a Spanish Civil Registry (Article 256 Civil Register Regulation), many of the frauds detected involve marriages entered into in a third country.

Furthermore, false marriages may also be detected when applications are received for family reunification permits, i.e. the sponsor enters into the marriage in one Register and then request authorisation elsewhere. Such cases also occur within Spain, which is where reunification is requested.



## **False Declarations of Parenthood**

Sometimes parents of other EU nationalities have come to Spain to attempt family reunification with their false children after registering themselves as residents. However, this is an exception; usually they are all residents in Spain.

# **S**ection 5 **Summary and conclusions**

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## **Marriages of Convenience**

**M**arriages of convenience entered into for the purpose of obtaining certain advantages and rights in connection with family reunification are becoming increasingly relevant as a route for illegal immigration. However, it is not possible to draw firm conclusions of their impact on the basis of available data, even if the general perception is that such cases have increased over the last few years.

Several public authorities in different sectors are involved in detecting marriages of convenience (civil, administrative and criminal justice). In this sense, we have seen that it is primarily the Officers in charge of Civil Registries who discover such misuses in the course of the proceedings of the marriage process, as well as consular authorities when issuing visas. They are also detected (after the marriage has been recognised) by the Immigration Offices that grant these types of permits, when examining applications. The Public Prosecutor's Office and the Law Enforcement Authorities and agencies also collaborate in instances when irregularities are detected or if fraud is suspected, as well as specialised units in detecting fraudulent behaviour.

The consequences of detecting such irregularities are generally civil or administrative, i.e. the marriage will not be entered in the Civil Register, the corresponding authorisation will not be granted and, whenever there is a real intention to commit fraud, administrative sanctions (of a serious nature) are established, the legal consequence of which is a fine. Marriages of convenience are not, per se, deemed to be a criminal offence unless entered into for the purpose of illegal immigration or involving other offences, such as documentary forgery as a mean to perform said actions.

One additional problem, which has already been mentioned in the course of this study, is the difficulty of obtaining data in connection to the misuses and to the persons involved,

given that neither the Ministry of Justice nor the Ministry of the Interior gather such direct or disaggregated data.

### **False Declarations of Parenthood**

False Declarations of Parenthood are equally complex with regard to the various different legal authorities involved in Spain and also present the additional difficulty of the impossibility to prove the false content of birth certificates, generally issued by authorities in third countries and sometimes requiring investigation in countries of origin in order to detect possible false declarations.

Despite the fact that no disaggregated and conclusive data are available, the general perception is that these are less frequent than marriages of convenience, which may be due to the different legal consequences involved, as well as the fact that it is more difficult for the sponsor to carry out this type of falsification.



