



**Misuse of the right to family reunification:
marriages of convenience and false
declarations of parenthood**

Riga, April 2012

Pursuant to Council Decision No. 2008/381/EC of 14 May 2008, the European Migration Network was established¹, its objective shall be 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 European Migration Network also serves to provide the general public with information on these subjects.

The Network is composed by the European Commission and the contact points designated by the Member States. Each contact point establishes a national migration network.

The contact point of each state prepares research work, whose topics have been set in the respective annual programme of activities. The topics of research work are related to the area of migration of third-country nationals.

The Latvian Contact Point of the European Migration Network is the Office of Citizenship and Migration Affairs.

Contacts:

Čiekurkalna 1.line 1, b-3,
Riga, Latvia, LV-1026

Phone: +371 67219492

Fax: +371 67219431

E-mail: emn@pmlp.gov.lv

Web: www.emn.lv

Authors of the Study:

Linda Krūmiņa, Expert of the Latvian Contact Point of the European Migration Network

Ilze Briede, Head of the Migration Division of the Office of Citizenship and Migration Affairs

Reviewers:

Jānis Citskovskis, Deputy Head of the Office of Citizenship and Migration Affairs

Sandis Barks, Senior Desk Officer of the Policy Planning Division of the Sectoral Policy Department of the Ministry of Interior

¹ Published in: Official Journal, L 131, 21.05.2008.

CONTENTS

CONTENTS	3
SUMMARY	4
I. MARRIAGES OF CONVENIENCE	5
1. LEGISLATIVE FRAMEWORK AND DEFINITIONS	5
Definitions.....	5
Legal basis to family reunification	6
Misuse of the rights to family reunification.....	7
Impacts of European Court of Justice case laws.....	8
2. SITUATION IN LATVIA	9
Topicality of the problem.....	9
Institutional framework.....	9
Preventive measures.....	10
Means of detecting marriage of convenience	11
Body of evidence	14
Liability and sanctions	15
Appeal procedure	15
Reasons and motivation	16
International cooperation	17
Statistics	18
II. FALSE DECLARATION OF PARENTHOOD	22
CONCLUSIONS	23
LIST OF USED SOURCES AND LITERATURE	25

SUMMARY

On average 30% from all issued residence permits in the EU Member States are issued due to family reunification each year. Currently more and more cases when third-country nationals misuse the rights for family reunification applying for residence permit in the EU Member States, thus providing legal basis for residence in the EU, are encountered. Marriages of convenience and false declaration of parenthood is considered to be a new phenomenon of illegal migration.

The aim of the study is to identify the scale and scope of misuse of residence permits for the purpose of family reunification. The study covered two aspects of such misuse – marriages of convenience and false declaration of parenthood. In short and concise way information on legal basis for third-country nationals to receive residence permit in Latvia, on current situation in the state – actions of responsible authorities to detect misuse and to collect evidence, performing of preventive measures, motivation of persons and sequences on involving in such activities, are provided. All data included in this study are approved by respective experts.

Information used in the study are obtained from the Ministry of Foreign Affairs, the Ministry of Interior, the State Police, the State Border Guard, as well as from Society “Shelter “Save House””.

Cases, when third-country nationals on basis of concluded marriages of convenience have received residence permits in Latvia, are rare. To date no case of receiving residence permit due to declaration of false parenthood is encountered. Thus, Latvia is not considered as the target state for misuse of the rights to family reunification.

Involvement of the Latvian citizens in marriages of convenience on optional or forced basis in the other EU Member States or third countries are the main trend in Latvia. Latvia has to be considered a country of origin of bogus brides.

I. MARRIAGES OF CONVENIENCE

1. LEGISLATIVE FRAMEWORK AND DEFINITIONS

Definitions

Family Law in Latvia is regulated by Part One of the Civil Law². The Civil Law provides that in the narrow sense of its definition, a family consists of the spouses and their children while they are still part of a common household³.

In Immigration Law⁴ definition of family reunification has been expanded – parents of pensioning age of Latvian citizens and non-citizens and adult children of Latvian citizens are entitled to receive residence permits.

The Constitution⁵ of the Republic of Latvia defines marriage as a union between a man and a woman, meanwhile the Civil Law provides that marriage between people of the same sex is prohibited. The Civil Law does not regulate relations of actual cohabitation between persons without registering of a marriage.

In order to protect the rights of the Union citizens partnership in Latvia is recognised within the context of the Cabinet of Ministers Regulation of 30 August 2011 No.675⁶ only and none of the legal norms arising from the family rights established by the normative acts of Latvia apply to the partner of the Union citizen.

The Civil Law defines marriage of convenience as the marriage that has been entered into without the intent to create a family and therefore has to be considered void as of the moment of conclusion thereof. The Civil Law provides that a spouse may contest a marriage if the spouse has married under the influence of criminal threats within six months after termination of the influence of such threats. Only court may annul a marriage. The court decision shall have a retrogressive force. A marriage of convenience may be admitted valid, if family relations have developed between the spouses, who have entered into a marriage of convenience.

² Law “Civil Law. Part One. Family Law”. – Available at: <http://www.likumi.lv/doc.php?id=90223> – [accessed on 23.02.2012.]

³ In legal practice the notion of common household has wider meaning than property rights to separate items. Common household refers to joint sharing of daily costs, maintenance of joint housing, in other words - conducting of common management of the household by people, who live together.

⁴ Immigration Law. – The Latvian Herald, No.169, 20.11.2002. – [came into force on 01.05.2003.]

⁵ Law “The Constitution of the Republic of Latvia”. – The Latvian Herald, No.43, 01.07.1993. – [came into force on 07.11.1922.]

⁶ Cabinet of Ministers Regulation of 30 August 2011 No. 675 “Procedures for the Entry and Residence in the Republic of Latvia of Citizens of the Union and their Family Members”. – The Latvian Herald, No.141, 07.09.2011. – [came into force on 08.09.2011.]

Legal basis to family reunification

Legal residence in Latvia requesting residence permit with the purpose of family reunification may be settled to:

1) spouses of third-country nationals, who legally reside in Latvia,

- application, issuance, registration and revocation of residence permit shall be in order established by Immigration Law;

- residence permit shall be issued with the condition that the marriage is monogamous, the spouses live together and have a common household;

- in the context of the EU, non-citizens of Latvia⁷ are considered to be third-country nationals with the rights of the people, who have received permanent residence permits. Residence permits are not issued to this category of residents, their status is confirmed by the Latvian alien's (non-citizen) passport instead;

2) spouses of the Union citizens, including citizens of Latvia, who have exercised their rights of free movement of persons and resided in another country of the EU, country of EEZ or Swiss Confederation, who are not Union citizens

- entry and residence shall be in accordance within the provisions of the Cabinet of Ministers Regulations of 30 August 2011 No.675;

- a residence permit of a family member of the Union citizen is issued;

- a special category of the Union citizens include those Union citizens, who had been non-citizens or citizens of Latvia before acquiring citizenship of any country of the EU, and whose permanent place of residence is in Latvia. Thus, if a non-citizen of Latvia or citizen of Latvia, upon acquiring citizenship of another country and renouncing the status of a non-citizen of Latvia or citizenship of Latvia, continues to reside in Latvia, they are entitled to use the rights of the Union citizen regarding the provisions of family reunification, although it cannot be considered that these people have used the right to free movement in classical understanding of this concept..

⁷ According to the law "On the Status of those Former U.S.S.R. Citizens who do not have the Citizenship of Latvia or that of any Other State" **non-citizens of Latvia** are such citizens of the former USSR who reside in the Republic of Latvia as well as who are in temporary absence and their children who simultaneously comply with the following conditions: 1) on 1 July 1992 they were registered in the territory of Latvia regardless of the status of the living space indicated in the registration of residence, or up to 1 July 1992 their last registered place of residence was in the Republic of Latvia, or it has been determined by a court judgment that they have resided in the territory of Latvia for 10 consecutive years until the referred to date; 2) they are not citizens of Latvia; 3) they are not and have not been citizens of another state.

3) spouses of the citizens of Latvia, who have not used their rights for free movement of the person

- application, issuance, registration and revocation of residence permit shall be in order established by Immigration Law;
- residence permit shall be issued with the condition that the marriage is monogamous, the spouses live together and have a common household.

Misuse of the rights to family reunification

As the legal acts that regulate the migration policy of the EU provide for different requirements of entry and stay of third-country nationals – depending on whether the third-country national is a family member of a Union citizen or not, the respective requirements differ in the normative acts of Latvia as well.

The order for submission and review of the documents for a person, who receives residence permit in Latvia as a family member of a Union citizen, but is not a Union citizen, with consideration of provisions of Directive 2004/38/EC⁸, is implemented according to the simplified procedure (for example, the documents may be submitted not only at the diplomatic or consular missions of the Republic of Latvia abroad, but at the Office of Citizenship and Migration Affairs during the legal stay of the individual in Latvia) in comparison with the cases when a person enters the Republic of Latvia according to the provisions of the Immigration Law. The norms included into Directive 2004/38/EC and minimum document inspection requirements provide wider possibilities for third-country nationals to ensure legal basis for stay in the EU by concluding a marriage of convenience.

Entry and stay of third-country nationals in Latvia with the purpose of family reunification is controlled much stricter, considering national legal norms. Therefore, detection of the cases when the residence permit has been requested due to conclusion of the marriage of convenience in order to ensure legal right of the third-country national to reside in Latvia is much more successful during the regular document inspections.

Provisions contained in normative acts of Latvia provides possibility to refuse issuance or registration of residence permit or revocation of issued residence permit to

⁸ Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC. – Official Journal, L 158, 30.04.2004.

the third-country national (even, if he/she is a spouse of Union citizen), if there are grounds to believe that:

- a third-country national has concluded a marriage of convenience or registered false partnership in order to receive a residence permit in the Republic of Latvia;
- the marriage is not monogamous, the spouses do not live together and do not have a common household or the marriage does not actually exist.

Normative acts of Latvia do not contain such norms that would directly refer to the prevention of misuse of the right to family reunification, nevertheless, they contain separate horizontal provisions, which permit detailed inspection of the applications for residence permits and visas.

Impacts of European Court of Justice case laws

Although during evaluation of the cases, the legal practice of the European Court of Justice is taken into consideration, the competent institutions of Latvia have to date not encountered the cases that would equal to the practice of European Court of Justice regarding issue or non-issue of the residence permits with the purpose of family reunification (cases of Zambrano⁹, McCarthy¹⁰ and Derechi¹¹).

Meanwhile, the Office of Citizenship and Migration Affairs uses the arguments of the European Court of Human Rights while taking decision on non-issue of the residence permit, if suspicion exists that the concluded marriage is a marriage of convenience. For instance, an argument that the state is not obliged to respect the choice of the spouses as to where they wish to establish a family or to accept settling of the third-country national in the selected country, has been taken into consideration several times.¹² Similarly, with reference to the practice of the European Court of Human Rights, the Office of Citizenship and Migration Affairs may in some cases request the persons to prove that serious and overwhelming obstacles to the family reunification exist in the country of permanent residence of the other spouse.¹³

⁹ Case law of the European Court of Justice C-34/09.

¹⁰ Case law of the European Court of Justice C-434/09.

¹¹ Case law of the European Court of Justice C-256/11.

¹² Abdulaziz, Cabales and Balkandali vs. The United Kingdom. Decision of the European Court of Human Rights of 28 May 1985, paragraphs 67, 68.

¹³ See, for instance, Boultit vs. Switzerland. Decision of the European Court of Human Rights of 2 August 2001, Paragraph 48.

2. SITUATION IN LATVIA

Topicality of the problem

Although the number of the residence permits that have been annually refused or revoked in Latvia due to suspicion of registering marriages of convenience is low, recruitment of Latvian citizens through social media with the purpose of involvement in conclusion of marriages of convenience with third-country nationals abroad has become very topical.

On average, every day one female citizen of Latvia is recruited for conclusion of a marriage without the purpose of establishing a family. The State Police confirms that the number of concluded marriages of convenience continues to grow in the whole EU.

In the time period from 2005 to 2010, as many as 834 citizens of Latvia concluded marriages with the citizens of Pakistan, Bangladesh, India, as well as Nigeria, Afghanistan, Egypt, Iraq, Syria and other countries with the purpose of providing a legal right to reside in the EU for third-country nationals.¹⁴

Non-governmental organisations¹⁵ in Latvia inform, that majority of the marriages of convenience are concluded in Ireland (5-6 citizens of Latvia address Latvian embassy in Ireland weekly), and most frequently these marriages have been concluded with the citizens of Nigeria, India, Pakistan and Bangladesh.¹⁶

The Criminal Police draw attention to the fact that the number of citizens, who, after concluding marriages abroad, has been acknowledged as being victims of human trafficking or fraud is increasing. As these people apply to Latvian diplomatic and consular missions abroad in order to receive financial and psychological assistance, the authorities of the Republic of Latvia abroad, in their turn, contact the responsible institutions in Latvia and the phenomenon of marriages of convenience arouses discussions both in the society and the government.

Institutional framework

The Office of Citizenship and Migration Affairs receives documents for applying of residence permit, performs verification of information provided by

¹⁴ Source of information: Ministry of Foreign Affairs.

¹⁵ Society "Shelter "Safe House"" and Resource Centre for Women "Marta".

¹⁶ Source of information: Society "Shelter "Safe House"".

person, makes decision on the issuance of residence permits, on the refusal to issue residence permit or on the revocation of issued residence permit.

Officials of diplomatic and consular missions of Latvia abroad receive documents for applying of residence permit and/or visa, perform verification of information provided by person, perform primary interviews with the persons, as well as in-depth interviews, if the third-country national resides abroad and performance of a simultaneous interview of the spouses is required, make decision on issuance or refusal to issue a visa.

The State Border Guard are entitled to perform examinations at the place of residence of the persons on request of the Office of Citizenship and Migration Affairs.

The administrative court is responsible for appellation proceedings regarding the decisions on refusal to issue or register a residence permit or revocation of the residence permit.

The Civil Register Department of the Ministry of Justice is responsible for provision of information to the responsible institutions in the cases when the marriage concluded in Latvia arouses suspicion regarding its purpose.

The Ministry of Welfare, the Ministry of Foreign Affairs and non-governmental organisations are responsible for development and guaranteeing of the normative acts on social rehabilitation services for the people, who fall victim of marriages of convenience.

The State Police is responsible for determining the body of a crime and application of sanctions in cases of marriages of convenience.

Preventive measures

Circulation of preventive information to the society is essential in order to reduce the number of marriages of convenience and both governmental and non-governmental sector are responsible for that in Latvia.

Marriages of convenience are mainly concluded outside Latvia, the competent institutions of Latvia pay attention to circulation of the preventive information on the consequences of marriages of convenience to citizens of Latvia that live abroad.

The available data bear evidence that female citizens of Latvia most frequently get involved into marriages of convenience abroad, especially in Ireland, where circulation of the preventive information is performed through the Embassy of Latvia in Ireland.

Before conclusion of a marriage in Ireland, Latvian citizens must visit the Embassy of Latvia in Ireland, in order to legalise the birth certificate. The consular officials evaluate each application of a citizen of Latvia for the presence of risk of conclusion of a marriage of convenience, as well as warn the person on the consequences of the aforementioned crime. In cases when suspicions about conclusion of marriages of convenience arise, the consular officials of the Embassy of Latvia in Ireland warn the competent institutions in Ireland and Latvia.

As problems of marriages of convenience in Latvia are closely related to human trafficking and fraud and violence against women, the preventive information is presented by outlining interrelation and consequences of these three crimes.

It must also be underscored that the crime of marriages of convenience has to be evaluated in the context of human trafficking and increased attention has been lately paid to the issue of human trafficking in Latvia.

In order to inform the public on the consequences of marriages of convenience, non-governmental institutions, the Ministry of Foreign Affairs and the Ministry of Interior regularly cooperate with mass media. Non-governmental organisations¹⁷ are active in organising several information campaigns, public polls and trainings.

The responsible institutions also provide availability of information regarding safety measures to be taken when travelling abroad for work, risks of human trafficking and marriages of convenience on different web pages of state government institutions and other internet sites.¹⁸

Means of detecting marriage of convenience

If the marriage between a third-country national and a citizen of Latvia is concluded in Latvia and suspicions arise that the marriage of convenience is concluded, the employees of the registry offices inform the Office of Citizenship and Migration Affairs and the State Border Guard in order to perform all required inspections.

¹⁷ Detailed information on activities of non-governmental organisations see on Societies “Shelter “Safe House”” web page www.patverums-dm.lv.

¹⁸ For example: www.cilvektirdznieciba.lv, www.trafficking.lv, web page of the State Police www.vp.gov.lv, in web pages of the Ministry of Welfare, the Ministry of Foreign Affairs, the Ministry of Interior and www.sargi-sevi.lv, www.dzimba.lv, www.patverums-dm.lv.

The draft law “Amendments to the Civil Law”¹⁹ was reviewed in its first reading in the Parliament on 10 November 2011. The draft law provides that submission of the applications and other documents required for conclusion of the marriage in future will be possible at the registry office only irrespectively of where the marriage will be concluded – at the registry office or in the church.

Currently it is possible to submit documents for conclusion of marriage both at the registry office and in church. The aforementioned amendment is necessary in order to ensure complete circulation of information regarding the marriages that have been concluded. Cases when clergymen fail to inform the respective registry office on conclusion of a marriage within the terms provided for by the law are not infrequent, which causes imperfections in the register of marriages. Cases when support provided by individual clergymen to persons concluding marriages of convenience have also been registered in the practice of the Office of Citizenship and Migration Affairs, i.e. a large proportion of marriages of convenience has been detected among marriages concluded within a certain congregation and by a particular priest.

As the officials of the registry offices successfully cooperate with the Office of Citizenship and Migration Affairs and the State Border Guard by reporting the cases when suspicion on the conclusion of marriages of convenience arise, the aforementioned draft law can be considered to be a successful initiative in combating marriages of convenience.

Meanwhile, if the marriage is concluded outside Latvia and the suspicion of its fictive nature arises at the moment when a third-country national applies to the Office of Citizenship and Migration Affairs or a diplomatic or consular mission of Latvia abroad, in order to submit documents for receipt of a residence permit, and evidence that proves that the concluded marriage is a marriage of convenience has not been collected during additional checks, the residence permit shall be issued, but the inspection of the individuals is continued until the moment when conclusive evidence confirming existence or non-existence of a marriage of convenience is collected.

The Office of Citizenship and Migration Affairs shall inform the State Border Guard on the necessity of performance of such inspections. The inspections of the involved individuals are performed at the places of residence and are repeated in case of doubt. The spouses are interviewed during these checks. The spouses are requested

¹⁹ Draft law “Amendments to the Civil Law”. – Accessible at: <http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/0/58DDCD69C293BEA3C225793D004D5304?OpenDocument> – [accessed on 23.02.2012]

to show personal items of other spouse, neighbours are questioned if required. After performance of the examinations, responsible official of the State Border Guard shall prepare a conclusion, based on which the Office of Citizenship and Migration Affairs evaluates whether or not a sufficient amount of factual evidence has been collected for the decision to revoke the registered residence permit or to refuse registration of a residence permit. If necessary it is possible to extend the period of examination of the case until the required information is summarised.

The State Border Guard admits that, due to the incomplete development of a unified methodology for the performance of examinations at the place of residence, not all possible methods of investigation for detection of marriages of convenience are used, as performance of examinations at the place of residence should be considered to be interference in the private life of a person.

In order to commence examinations with the purpose of establishing the genuine nature of a marriage or presence of a marriage of convenience, the officials of the Office of Citizenship and Migration Affairs pay attention to several factors, for example:

- a third-country national resided in the country illegally before conclusion of the marriage and a decision on his or her expulsion from the state has been taken;
- a third-country national has unsuccessfully tried to receive residence permit for other reason and conclusion of the marriage followed immediately after refusal of such residence permit, in some cases – the marriage is concluded with a person with whom the applicant has a large age difference;
- close relatives of the third-country national live in Latvia and address of these relatives is indicated as the planned place of residence instead of the address of the spouse;
- the spouses do not have a joint household; it has been established that one of the spouses - a national of Latvia - keeps joint household with former family and not a spouse – third-country national;
- applications of the relatives, neighbours and friends of the spouses regarding the fictitious character of the marriage have been received;
- the spouses have not met before the marriage;
- cohabitation of married life is not in place.

The criteria established by the Council Resolution of 4 December 1997 on measures to be adopted on the combating of marriages of convenience²⁰ are also taken into consideration:

- the lack of an appropriate contribution to the responsibilities arising from the marriage;
- the spouses have never met before the marriage;
- the spouses are inconsistent about their respective personal details (name, address, nationality and job), about the circumstances of their first meeting, or about other important personal information concerning them;
- the spouses do not speak a language understood by both;
- a sum of money has been handed over in order for the marriage to be contracted (with the exception of money given in the form of a dowry in the case of nationals of countries where the provision of a dowry is common practice);
- the past history of one or both of the spouses contains evidence of former marriages of convenience or illegal stay in any of the Member States.

National legislation of certain Member States, which does not provide that conclusion of a marriage of convenience with the purpose of acquiring of the rights of residence have to be considered a criminal offence, obstruct efficient combating of the phenomenon of marriages of convenience, thereby limiting the possibilities of combating this problem in cases that involve cross-border arrangements.²¹

It should be noted that cases of marriage of convenience in spite of developed criteria is not easy to prove and justify.

Body of evidence

Generally it is considered that the marriage is genuine and, if an institution refuses to issue a residence permit to a person, it is the duty of the institution to prove that the marriage is a marriage of convenience, meanwhile the individuals may submit other documents and evidence to prove that the marriage has been concluded with the purpose of establishing a family.

Recognition of a marriage as a marriage of convenience in Latvia cannot be considered to be a simple issue to be settled by procedural means, as it can be considered to be an interference with privacy of family life.

²⁰ Published in: Official Journal, No. 382, 16.12.1997.

²¹ Source of information: State Police.

Decisions of the Office of Citizenship and Migration Affairs regarding refusal to grant a residence permit based on suspicions that the marriage concluded is a marriage of convenience are appealed in court in majority of the cases. Meanwhile, regular court practice primarily assumes that marriage is not considered to be a marriage of convenience. In order to admit the marriage to be marriage of convenience, confirmed evidence is required, thus observing the rights of a person for family life and human rights. The court considers that in order to convincingly decide whether marriage of convenience is in place, a possibility of cohabitation must be provided for the newlyweds, by granting the residence permit. Although the Immigration Law provides that the residence permit must be revoked, if the spouses do not live together or they do not have a common household, it is difficult for the competent institutions to prove this fact, and, therefore, to revoke the residence permit issued to a third-country national.

Liability and sanctions

The normative acts of Latvia currently do not provide for sanctions to the people for organising marriages of convenience or participation therein. The punishments are applicable, when along with the crime of a marriage of convenience signs of other criminal offences are identifiable, for example, human trafficking.

The Criminal Law currently provides for a punishment for deliberate provision of possibility to reside illegally in the Republic of Latvia to a person, meanwhile, in order to specify the aforementioned norms, a draft law “Amendments to the Criminal Law”²² has been developed. The aforementioned draft law provides for sanctions in cases when the person has maliciously ensured a possibility to receive a legal right to reside not only in the Republic of Latvia, but also in any other Member State of the EU, EEZ or Swiss Confederation.

Appeal procedure

The Immigration Law provides that the inviter or the third-country national, who, according to the Cabinet of Ministers regulations, does not require the invitation for requesting a residence permit, is entitled to contest the decision on refusal to issue or register a residence permit or revocation of a residence permit with the Head of the

²² Draft law “Amendments to the Criminal Law”. – Available at: <http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/0/F8EAF0BB07FCB67AC225793300488419?OpenDocument> – [accessed on 22.02.2012.]

Office of Citizenship and Migration Affairs within 30 days as of the effective date of such decision.

The decision of the Head of the Office of Citizenship and Migration Affairs on refusal to register or issue a residence permit or revocation of a residence permit may be appealed at the administrative court. This provision also applies to the people, whose application for a residence permit has been refused due to the fact that the marriage they have entered is a marriage of convenience.

As Latvia has a three level court system, the decision of the first instance on refusal to issue the residence permit or revocation of the issued residence permit may be appealed on the first level – district (city) court, on the second level – regional court and on the third level – Administrative Affairs Department of the Supreme Court.

Reasons and motivation

The main motivation of the Latvian citizens when involving into marriages of convenience is material interest, however in some cases marriages of convenience have been concluded with the purpose of helping third-country nationals to receive a residence permit in Latvia due to friendship or kinship reasons. For instance: a married couple, third-country nationals, who have once lived in Latvia, but emigrated later, wished to return to life in Latvia, while the Immigration Law does not provide for re-emigration. These people got divorced and concluded new marriages. The wife married her former school mate (who was, possibly, remunerated for that), while the husband – married mother of his divorced wife, who wished to help her daughter and son-in-law to return to Latvia.

As involvement of Latvian citizens in marriages of convenience is especially topical problem in Ireland, Latvian embassy in Ireland has performed a study “Social status of Latvian citizens – potential participants in marriages of convenience”, which was performed for the time period from September 2010 to 30 November 2011. The study summarised data on social conditions of 253 citizens of Latvia, who applied to the embassy regarding the planned marriage since 2 September 2010, when the Civil Registry Department of Ireland introduced new guidelines for registry offices to send all foreign brides to their respective embassies for confirmation of their birth certificates.

The aforementioned study shows that the citizens, who have applied to the embassies are mainly young, including citizens, who have delivered their first baby while being minor (4) or, who have been deprived of the right to care for children (13), or, who have left their minor children to be cared for by relatives in Latvia. People, who have been released from care by the guardian or a social care institution (12), people from large families, mainly from low income or disadvantageous families has also applied at the embassy. Cases when members of one family – sisters get involved in marriages have been observed. 4 cases when people with pronounced signs of disability have been involved in marriages have been registered.²³

The people, who had become victims of marriages of convenience, have also admitted that they were prompted to do so not only by the poverty, unemployment at their country of residence and a wish to earn easy money, but verbal encouragement of friendly intermediaries.²⁴

General facilitating factors for human trafficking include unemployment, unstable economic and social structure of the society, lack of education possibilities, attraction of better life abroad, violence towards women and children.²⁵

During the campaign organized by the Society “Shelter “Safe House””, a survey regarding awareness of the public about the issue of marriages of convenience was performed. 1,055 people participated in the survey and the summarised information evidenced that people aged 19 to 35 are better informed about the risks of marriages of convenience than other age groups, yet, at the same time it is the age group that is most frequently involved in conclusion of marriages of convenience.²⁶

Surveys of motivation of third-country nationals for conclusion of marriages of convenience have not been performed. In most cases they are connected with the wish to settle down in Latvia, as close relatives live here, while Immigration Law does not provide possibility to arrange its residence in legal way due to such reason.

International cooperation

As involvement of the citizens into marriages of convenience is a topical problem in the all Baltic States, the meetings of the Migration subgroup of the Baltic

²³ Information source: Embassy of Latvia in Ireland.

²⁴ Luse, L. Marriage without the purpose to establish a family – also found in Criminal Law. – Available at: <http://www.lvportals.lv/?menu=doc&id=225134> – [accessed on 22.02.2012.]

²⁵ Information source: Ministry of Interior and Society “Shelter “Safe House””.

²⁶ Detailed information on that survey is available at: <http://www.patverums-dm.lv/index.php?lang=lv&id=92>

Council of Ministers take place on regular basis. The Member States exchange the best practices of solving this issue during the meetings.

Furthermore, the issues of marriages of convenience are discussed at the meetings of the EU Justice and Home Affairs Council.

The issue of Latvian citizens being involved in marriages of convenience is especially topical in Ireland the competent institutions in Latvia pay especial attention to improving cooperation with different associated services of Ireland.

Since 2nd September 2010 a successful cooperation has been established with the Civil Registration Department of Ireland, as a provision was introduced in Ireland requesting foreigners to confirm their documents at the embassy of their country of origin in order to conclude a marriage in Ireland.

The State Police monthly summarises information on the people, who recruit citizens of Latvia with the purpose of getting them involved in conclusion of marriages of convenience in the other Member States of the EU. After summarising of the information, the State Police informs the competent institutions in respective country through EUROPOL, the Consular Department of the Ministry of Foreign Affairs or diplomatic and consular officials of Latvia. Successful cooperation has been established with the United Kingdom and Cyprus, which provide information to the State Police on detained and punished citizens of Latvia.

Participation of the State Police in EUROPOL meetings is equally essential, as during these meetings the representatives of the State Police turn attention to the problems of marriages of convenience, as well as acquire the experience of other countries in this area.²⁷

Statistics

Annually the largest number of first-time residence permits in connection with the marriage concluded in Latvia is issued to the third-country nationals, who are spouses of Latvian citizens or Latvian non-citizens (see Table No.1). Residence permits are considerably less frequently issued to spouses of the third-country nationals, who have received legal right to reside in Latvia.

²⁷ Information source: State Police.

Table No.1

Total number of first-time issued temporary residence permits to third-country nationals due to concluded marriage, 2007-2011

	2007	2008	2009	2010	2011
To spouses of Latvian citizens	370	343	226	234	299
To spouses of Latvian non-citizens	98	102	59	49	48
To spouses of foreigners*	17	13	9	16	20
Total	485	458	294	299	367

Information source: Office of Citizenship and Migration Affairs.

*third-country nationals and Union citizens.

The statistical data also shows, that most frequently first-time residence permits are issued to the spouses, who are citizens of Russia, Ukraine, Belarus, Israel, Turkey, Moldova and Georgia (see Table No.2).

Upon general assessment of the migration processes of Latvia, it must be concluded that third-country nationals from the former USSR countries enter Latvia most frequently. Active migration from Russia, Ukraine and Belarus can be explained by economic, historical and social links of Latvia with the countries of the former USSR, which have been retained since the breakdown of the USSR.

Table No.2

Number of third-country nationals, whom first-time residence permits is issued due to concluded marriage, disaggregated by citizenship, 2007-2011

Citizenship	2007	Citizenship	2008	Citizenship	2009	Citizenship	2010	Citizenship	2011
Russia	192	Russia	181	Russia	111	Russia	124	Russia	171
Ukraine	94	Ukraine	102	Ukraine	80	Ukraine	59	Ukraine	51
Belarus	51	Belarus	53	Belarus	35	Belarus	18	Belarus	34
Israel	19	Turkey	16	Turkey	9	Israel	12	USA	14
Turkey	16	Moldova	16	Moldova	10	Moldova	11	Georgia	13

Information source: Office of Citizenship and Migration Affairs.

General evaluation of the phenomenon of the marriages of convenience in the context of irregular migration allows the conclusion that, considering the fact that Latvia is not a target country of irregular migration, it cannot be considered as such in cases of conclusion of marriages of convenience as well.

The low number of the revoked temporary residence permits (see Table No.3) based on suspicion that marriages of convenience have been concluded can be explained by the fact that majority of third-country nationals, who have concluded

marriages of convenience with the citizens of Latvia or non-citizens of Latvia, have chosen other Member States of the EU as their places of permanent residence and therefore request legal right of residence in other Member States of the EU.

Table No.3
Total number of temporary residence permits revoked due to concluded marriage of convenience, 2009-2011

	2009	2010	2011
Total	6	5	5

Information source: Office of Citizenship and Migration Affairs.

The topicality of the problem is characterised by the number of the inspections performed by the State Border Guard at the places of residence (see Table No.4), which are performed in order to determine whether the marriage is or is not a marriage of convenience.

Although the number of inspections performed by the State Border Guard in order to determine whether a marriage of convenience is in place show that these inspections are performed on a regular basis, the number of violations detected is low. The low numbers of detected violations can be explained by the fact that repeated inspections have been included into the number of inspections. The repeated inspections were performed due to absence of the individuals at home at the moment of first inspection, which often is due to the fact that the places of permanent residence of these individuals are outside Latvia. The cases when it was impossible to receive the sum of the required evidence that would convincingly prove whether a marriage is or is not a marriage of convenience and repeated inspection had to be performed were also included into the number of repeated inspections.

Table No.4
Number of inspections performed by the State Border Guard, 2009-2011

	2009	2010	2011
Number of performed inspections	301	295	305
Violations detected	9	21	37

Information source: State Border Guard.

Marriages of convenience with involvement of third-country nationals are mostly from the countries of the former USSR. The aforementioned trend can be explained by the legal residence of friends and relatives of these third-country nationals in Latvia due to historical factors. Latvian citizens and Latvian non-citizens are ready to assist their relatives, friends and acquaintances from third countries in ensuring the possibility of receiving legal rights to stay in Latvia. In rare cases residence permits was revoked due to conclusion of marriage of convenience to citizens of South Africa, Pakistan, USA and Turkey (see Table No.5)

Table No.5
Number of third-country nationals, whom residence permits
was revoked due to conclusion of marriage of convenience,
disaggregated by citizenship, 2009-2011

Citizenship	2009	2010	2011
Russia	2	2	1
Georgia	3	-	1
Armenia	1	2	-
Ukraine	-	1	-
USA	-	-	1
Pakistan	-	-	1
Turkey	-	-	1
South Africa	-	-	1

Information source: Office of Citizenship and Migration Affairs.

To date, residence permits issued to family members of the EU citizens or family members of such citizens of Latvia, who have used their right for free movement of persons, have not been revoked in Latvia based on the suspicion that a marriage of convenience has been concluded or false declaration of partnership registered.

II. FALSE DECLARATION OF PARENTHOOD

Issue of false declaration of parenthood with purpose of misusing the advantages offered by the family reunification is covered within the framework of the present study. It should be mentioned that to date Latvia has not encountered such cases, as a result of which, procedures and other types of sanctions targeted against such types of breaches of residence and entry norms have not been developed in Latvia, as well as no preventive measures to reduce number of cases of false declaration of parenthood has been performed. To date competent institutions of Latvia have not cooperated with the related services of the EU or third-countries with the purpose of combating cases of false declaration of parenthood.

In spite of aforementioned, normative acts of Latvia clearly provide definition of mother and father. A woman, who has delivered the child and it is confirmed by the doctor's certificate has to be declared as the mother of such child, meanwhile, the spouse of the woman has to be considered as the father of the child, if such child has born during the effective period of the marriage or not later than on day 306 after termination of the marriage (paternity assumption), otherwise filiation of the child from a father shall be substantiated by voluntary admission of parenthood by a man or determined by means of court proceedings.

If the paternity is announced voluntarily, it is not doubted, otherwise paternity or maternity is determined by court proceedings. The normative acts that regulate the issue and revocation of the residence permits do not require the responsible institutions to doubt paternity or maternity, while they are entitled to doubt the genuine nature of the issued documents, as well as provision of correct information. Thus, Immigration Law and Cabinet of Ministers Regulations of 30 August 2011 No.675 provide possibility to revoke issued residence permit or to refuse issuance of residence permit, if the false information has been supplied to receive residence permit.

All institutions which detect cases of marriages of convenience are responsible for examination of submitted documents, if they are related with registration of a false paternity or maternity, as far as it refers to the issue of the residence permit.

CONCLUSIONS

Upon evaluation of the overall situation in the area of marriages of convenience, it has to be concluded that the right to family reunification is one of the basic rights, infringement whereof may be permitted in separate cases only and only if it is possible to fully demonstrate that the persons have maliciously used their rights in order to bypass immigration provisions.

Considering that marriage is an institute that refers to the private life of a person, detection of the fact of a marriage of convenience and performance of inspections is a highly sensitive procedure, which balances on the border of breaching the principle of inviolability of the private life, therefore, sufficient basis must be present in order not only to refuse the rights of residence, but also to initiate the inspection basing the action of the state institutions on the particular preliminary evidence.

Acquiring of the evidence regarding concluded marriages of convenience is also related to a certain degree of interference with the private life of a person and although certain types of evidence are determined, they are not available or obtainable by the institutions that are responsible for migration, for instance, inspection of the bank accounts of the individuals with the purpose of concluding whether monetary resources have been paid for conclusion of a marriage. Inspection of the people at their place of residence, especially in the cases when the fact of a marriage of convenience is not confirmed during further examination, also causes discontent of the individuals with interference into their private life.

Courts, upon examination of the evidence that serves to prove the genuine nature of the family, frequently take decisions that are favourable to individuals. At the same time, the judges are incapable of providing adequate explanations regarding the evidence that the migration institutions must provide in order to consider the fact of the marriage of convenience to be confirmed.

The principal argument determining why a marriage has to be considered a marriage of convenience of the institutions responsible for migration in Latvia – lack of cohabitation and joint household – cannot be considered sufficient to conclusively prove the fictitious nature of the family.

Upon the first entry of the family members of the Union citizens, who are nationals of third-countries into the territories of the EU countries, according to the

norms provided for by Directive 2004/38/EC, entry and stay in the territories of the EU countries is excessively oversimplified. This kind of entry should be enforced on the basis of the national normative acts and should be subject to more detailed inspections.

The argument that in depth inspection would limit the rights of free movement of the EU citizens must be assessed critically, as anyway, it is not clear why the entry conditions for the aforementioned third-country national, in the case when the Union citizen wishes to reunite with their family member and the family member in question enters the territory of the EU for the first time, must be relieved just because of the fact that the sponsor (EU citizen) of such third-country national uses the right of free movement.

Such regulation in itself arises temptation to bypass national provisions by using a fictitious right for free movement, as, thus, almost none of the conditions can be posed to the acceptance of the third-country national. Inspection of the first entry of the family member of the Union citizen should be made independent of the use of the right to free movement by the Union citizen.

Likewise, along with the right to the free movement within the territory of the EU, committing the offence of marriage of convenience in another Member State of the EU is simplified for any citizen of any country of the EU, i.e. the marriage is concluded in one of the Member States, the residence permit is requested in another, while the third Member State is chosen as the country of permanent residence.

The procedure of design of such offences inconveniences investigation thereof and places mutual cooperation of the countries and development of unified criteria regarding criminalisation of the offence in all Member States into the position of one of the main factors for successful resolution of such cases, in order to enable application of the punishment irrespectively of where the offence involving malicious misuse of the family reunification right has been committed.

Cooperation with the competent institutions of Ireland has to be assessed as especially essential for Latvia due to the fact that, in the recent years, Latvian citizens have been recruited in Latvia with the purpose of concluding marriages of convenience particularly in Ireland.

LIST OF USED SOURCES AND LITERATURE

Sources:

1. Cabinet of Ministers Regulation of 30 August 2011 No. 675 “Procedures for the Entry and Residence in the Republic of Latvia of Citizens of the Union and their Family Members”. – The Latvian Herald, No. 141, 07.09.2011. – [came into force on 08.09.2011.]
2. Council Decision No. 2008/381/EC of 14 May 2008 establishing the European Migration Network. – Official Journal, L 131, 21.05.2008.
3. Council Resolution of 4 December 1997 on measures to be adopted on the combating of marriages of convenience. – Official Journal, No.382, 16.12.1997.
4. 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 amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC. – Official Journal, L 158, 30.04.2004.
5. Draft law “Amendments to the Civil Law”. – Accessible at: <http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/0/58DDCD69C293BEA3C225793D004D5304?OpenDocument> – [accessed on 23.02.2012]
6. Draft law “Amendments to the Criminal Law”. – Available at: <http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/0/F8EAF0BB07FCB67AC225793300488419?OpenDocument> – [accessed on 22.02.2012.]
7. Immigration Law. – The Latvian Herald, No.169, 20.11.2002. – [came into force on 01.05.2003.]
8. The law of 28 January 1937 „Civil Law. Part One. Family Law”. – Available at: <http://www.likumi.lv/doc.php?id=90223> – [accessed on 23.02.2012.]
9. The law „The Constitution of the Republic of Latvia”. – The Latvian Herald, No.43, 01.07.1993. – [came into force on 07.11.1922.]
10. The Law „On the Status of those Former U.S.S.R. Citizens who do not have the Citizenship of Latvia or that of any Other State”. – The Latvian Herald, No.63, 25.04.1995. – [came into force on 09.05.1995.]

Literature:

11. Luse, L. Marriage without the purpose to establish a family – also found in Criminal Law. – Available at: <http://www.lvportals.lv/?menu=doc&id=225134> – [accessed on 22.02.2012.]