

SPECIAL EMN STUDY 2012

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

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LIST OF ABBREVIATIONS

BBAP PFP – Bureau of the Border and Aliens Police of the Police Force Presidium

Coll. – Collection of Laws of the SR

EC – European Communities

EU – European Union

FRONTEX – European Agency for the Management of Operational Cooperation at the External Borders of the Member States

ICMPD – International Centre for Migration Policies Development

IOM – International Organization for Migration

MoI SR – Ministry of Interior of the Slovak Republic

SR – Slovak Republic

TABLE OF CONTENTS

1. SUMMARY.....	5
2. NATIONAL LEGISLATION AND DEFINITIONS	5
3. CURRENT SITUATION IN THE SLOVAK RPEUBLIC	14
4. STATISTICS	19
5. CONCLUSION.....	Error! Bookmark not defined.
6. BIBLIOGRAPHY	23

1. SUMMARY

The compilation of this focused study entitled *Misuse of the Right to Family Reunification: Marriages of Convenience and False Declaration of Parenthood* was approved by the Steering Board of the European Migration Network in the framework of its Work Programme 2012. This focused study forms part of a synthesis report with the same focus at the EU level, which summarises the results of the national studies compiled by EU Member States on the basis of common specifications in the form of a questionnaire.

Many EU Member States face fears of the family reunification institute being increasingly abused as a way of obtaining a residence permit in EU countries and, hence, of acquiring various benefits resulting from this status.

Therefore, the main objective of this study is to provide an overview of the scope of this problem in the different EU Member States, inform about the legislative, political and practical measures and available statistical data, and identify best practice examples in the prevention of and fight against this phenomenon.

The misuse of the right to family reunification by contracting marriage of convenience or false declaration of parenthood can be considered as a certain form of irregular migration or illegal way of acquiring a residence permit in the Slovak Republic.

The Slovak Republic is predominantly a transit country, but as a Member State of the EU and of the Schengen Area it is increasingly becoming a country of destination, as well. With respect to migration management and the introduction of measures to combat illegal migration, the entry to the EU and to the Schengen Area represented key moments for Slovakia. In this regard, the Slovak legislation tackles the abuse of the right to family reunification where contracting a marriage of convenience or false declaration of parenthood can result in committing the crime of smuggling¹. The relevant laws also deal with prevention, clarification and consequences of misusing the right to family reunification, as detailed in the chapters below.

Since this problem is not critical yet in the SR, no political or strategic documents have specifically dealt with these issues. Also, no research or studies covering these issues have been conducted so far in Slovakia. Statistical data is available in a limited scope only, since this problem only concerns dozens of cases annually and, for the moment, is solved within the wider context of fighting against illegal migration and the abuse of the rules applying to residence.

The study concerning the SR provides a basic overview of the facts and available information about this area and can serve as a basis for a more in-depth research of this topic in the future. In line with the focus of this study, the sub-chapters, where relevant, are divided into two basic sub-topics: marriages of convenience, and false declaration of parenthood.

2. NATIONAL LEGISLATION AND DEFINITIONS

2.1 Definition of Marriage and Family in National Legislation

Definitions Related to the Institution of Marriage

¹ Art. 356 of Act No. 300/2005 Coll. Penal Code, as Amended.

In the Slovak Republic, marriage is regulated by Act No. 36/2005 Coll. on Family and on Changes and Amendments to Some Acts as Amended (hereinafter referred to as “Family Act”). Its legal definition is laid down in Article 1, par. 1 of this act: “Marriage is a bond between a man and a woman arising on the basis of their voluntary and free decision to contract marriage upon fulfilment of the conditions laid down in this act.” This definition suggests that marriage in the Slovak Republic cannot occur between persons of the same-sex.

The Family Act does not directly define a family. In principle, the definition is based on Article 19, par. 1 of this act which suggests that the term family means a spouse, parents and children (family in a narrower sense).

The case law² provides a wider definition of family. It is based on Art. 116 of Act No. 40/1964 Coll. Civic Code as Amended, which contains a legal definition of the term “close person”. A close person is a relative in direct line, a sibling or a spouse; other persons in the family or other similar relationship are considered to be persons close to each other in case an injury suffered by one of them is justifiably felt by the other person as his/her own injury.

Art. 18, par. 2 of Act No. 154/1994 Coll. on Registers contains a special definition of the term family. For the purposes of this act, a person’s family includes a spouse, parents, children, grandchildren, siblings and their children and, in case justified interest is demonstrated, other close person (a definition of a close person is contained in the aforementioned Art. 116 of the Civil Code). However, this definition only serves for cases related to the application of this act.

The Family Act also defines the institution of engagement as a male and a female willing to contract marriage. However, the act does not confer any legal effects to this institution, i.e. the Slovak legislation does not tie any consequences to the withdrawal from the intention to contract marriage by any of the engaged persons.

The Slovak legislation does not define forms of partners’ cohabitation other than marriage. On the other hand, the law does not ban it. According to legal theory, a male and a female who are not married, but jointly take care for a household to satisfy their needs and raise children are considered as partners.³ The term “partner” occurs in legal regulations scarcely and is usually replaced with the term “other close persons”. This form of cohabitation is in a disadvantaged position in Slovak legislation compared to traditional marriage, caused by non-existence of a registration of such bond, non-uniform way of demonstrating such bond and related fears of the possibility of abusing it.⁴

Act No. 404/2011 Coll. on Stay of Aliens and on Changes and Amendments to Some Acts (hereinafter referred to as “Act on Stay of Aliens”) is an exception in this regard. This act has transposed Art. 3, par. 2, letter b) of 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 (hereinafter referred to as “Directive 2004/38/EC”). Pursuant to Art. 2, par. 5 of this Act, a family member of a EU national is understood as a third-country national who is his/her partner with whom the EU national is in a permanent, duly certified relationship.⁵ The

² In Slovak legislation, a court decision cannot be deemed as a precedent in the way it is in the Anglo-American legal system. Hence, if a judge defines in a decision a term the definition of which is absent from a normative legal act, such definition shall not be binding in any other cases. However, other judges can identify themselves with such definition and can respect it in their decision-making.

³ For instance, Horváth, E., Varga, E.: *Zákon o rodine – Komentár*. Iura Edition, Bratislava 2007; Svoboda, J., Ficová, S.: *Zákon o rodine*. Eurounion, Bratislava 2005.

⁴ This relates, for example, to situations where marriage is the condition for inheritance, social security related issues, tax benefits, etc.

⁵ For perception of the legal status of a partner in Slovak legislation, refer to the previous paragraph.

SR, however, has not transposed Art. 2, par. 2, letter b) of Directive 2004/38/EC concerning registered partnership of same-sex persons, since the Slovak legislation does not consider such form of co-habitation equivalent to marriage.

Definitions Related to the Institution of Family and Parenthood

A legal definition of motherhood is comprised in Art. 82, par. 1 of the Family Act under which a woman who has given birth to a child is the mother of that child. This applies to cases of natural insemination or artificial insemination of the mother's ovum, or in case the genetic material of another woman is provided. The rule under which the woman who gives birth to the child is the mother of the child also applies in the case of surrogate motherhood. Any agreements contrary to these rules are considered invalid under the Family Act.

In the case of doubts about who is the mother of the child, a court would decide about the motherhood on the basis of facts related to the child's birth.

In determining fatherhood, legislation is based on the concept of legal fatherhood, i.e. in legal terms the father is not necessarily the biological father of a child. According to the Family Act, fatherhood is determined on the basis of three refutable assumptions:

- a) The husband of the mother is considered the father of a child if the child is born in the period starting from the contracting of marriage until 300 days following the termination of marriage; in case the woman contracts new marriage during that period, the new husband is considered the father of the child. (Art. 85, par. 1 and 2 of the Family Act);
- b) The man whose fatherhood has been determined on the basis of a concurring statement of the parents at the register authorities or court is considered to be the father of the child. (Art. 91, par. 1 and 2 of the Family Act);
- c) The man who had sex with the mother of the child in the period from not less than 180 days and not more than 300 days before the birth of the child is considered the father of the child, unless his fatherhood is excluded due to serious circumstances. This assumption is applied in court proceedings at the proposal by the child, the mother or the father claiming to be the father of the child in absence of a concurring statement of the parents. (Art. 94 of the Family Act).

These assumptions follow a fixed order. The application of any one of them excludes the use of any of the other assumptions. This means that the determination of fatherhood cannot be based on different assumptions of fatherhood from different men. The first assumption concerning the husband of the mother arises automatically. Only in case the assumption for its application (non-existence of marriage) is not fulfilled or if fatherhood is denied by the husband of the mother, the second assumption is applied. In the event of an absence of a concurrent declaration of parents, the child, the mother, or the man claiming to be the father of the child can file a proposal to determine the fatherhood by court. In case the parents make a concurrent declaration throughout the court proceedings, the court shall suspend the proceedings.

2.2 The Institute of Family Reunification in the Slovak Legislation

Based on the study assignment, there are four basic scenarios related to family reunification:

- I. A third-country national with a valid residence permit in the SR who wishes to reunify with a third-country national (from a country outside of the EU) pursuant to the provisions of Directive 2003/86/EC on family reunification;

II. An EU national who has used his/her right to free movement (not living in his/her home country, but in the SR, or lived in the SR in the past for a longer period of time) – for the purposes of this study called “a mobile EU national” who wants to reunify with a third-country national pursuant to the provisions of Directive 2004/38/EC on free movement;

III. An EU national living in his/her home country (in this case, a national of the SR), for the purposes of this study called “non-mobile EU citizen”, who wants to reunify with a third-country national, where the right to residence of a third-country national is based on the right and status of the EU national based on the jurisprudence Zambrano⁶/Dereci⁷/McCarthy⁸;

IV. An EU national living in his/her home country (national of the SR), for the purposes of this study called “a non-mobile EU citizen”, staying in his/her country, i.e. national of the SR who wishes to reunify with a third-country national under the national legislation.

Since it is not possible to make a clear division between the legal provisions concerning family reunification between spouses (for the purposes of examining marriages of convenience) and family reunification with descendants (for the purposes of examining false declarations of parenthood), we will present the general provisions concerning both parts of the study only in the part related to marriages of convenience; in the part about false declaration of parenthood, we will focus on the specific provisions concerning descendants.

All cases of family reunification in the SR are regulated in the Act on Stay of Aliens. This act also specifies marriage of convenience, defining it in Art. 2, par. 1, letter o) as a marriage concluded for the purposes of obtaining a residence permit. The Slovak legislation does not contain a legal definition of false declaration of parenthood.

Marriage of Convenience

Scenario I

A third-country national applying for family reunification with a third-country national who has a residence permit in the SR (temporary or permanent residence) may be granted temporary residence. The temporary residence permit entitles a third-country national to stay, leave and re-enter the territory of the SR within the period determined by the police department. Temporary residence is tied to one purpose only. In this case, the purpose of temporary residence is family reunification.

Under Art. 27, par. 1 of the Act on Stay of Aliens, a temporary residence permit for the purpose of family reunification can be granted to a third-country national who is:

- a) a family member of third-country national with permanent or temporary residence;
- b) a relative in a direct ascending line of a person under 18 years of age who has been granted asylum; or
- c) a dependent person under an international treaty (treaty between states which are parties to the North-Atlantic Treaty and other states involved in the Partnership for Peace related to the status of their armed forces).

⁶ The decision in the Zambrano case is available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009C0034:SK:HTML> (consulted on 14/02/2012).

⁷ The decision in the Dereci case is available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CJ0256:EN:NOT> (consulted on 14/02/2012).

⁸ The decision in the McCarthy case is available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009C0434:SK:HTML> (consulted on 14/02/2012).

In this case, the following are considered as family members of a third-country national:

- a) a spouse, if the married couple is at least 18 years of age;
- b) a single child under 18 years of age of a third-country national and his/her spouse;
- c) his/her single child under 18 years of age;
- d) a single child of his/her spouse under 18 years of age;
- e) his/her unattended single child over 18 years of age or dependent single child over 18 years of age of his/her spouse who cannot take care of him/herself due to a long-term unfavourable health condition;
- f) his/her parent or a parent of his/her spouse who is dependent on his/her care and lacks appropriate family support in the country of origin (does not apply to cases where the third-country national with whom the applicant wishes family reunification has temporary residence in the SR for the purpose of study).

A special case is family reunification with a third-country national with long-term residence in another EU Member State pursuant to the Directive No. 2003/109/EC concerning the status of third-country nationals who are long-term residents, who has obtained or fulfilled the conditions for being granted a temporary residence permit in the SR for the purpose of working, doing business, studying, performing research activities, etc.

The family member of a third-country national who is a long-term resident, being the same persons as in the case of temporary residence for the purpose of family reunification, may obtain the same type of temporary residence (temporary residence of a third-country national with the status of a long-term resident of another Member State), provided that the family had already lived in the Member State which granted the third-country national the long-term resident status.

The SR has not transposed Art. 4, par. 3 of Directive 2003/86/EC on the right to family reunification concerning the possibility to allow family reunification with an unmarried partner or registered partner.

Scenario II

A family member of an EU national who is the holder of a valid travel document is entitled to reside in the SR⁹, if he/she can demonstrate in a trustworthy way his/her family relationship with the EU national. The family member of an EU national has the right of residence unless he/she becomes a person in material need. (Art. 69 of the Act on Stay of Aliens).

A family member of an EU national is understood as a third-country national who is:

- a) his/her spouse;

⁹ Such persons are not granted a residence permit under an administrative procedure, but directly pursuant to the Act on Stay of Aliens or Directive 2004/38/EC on free movement. The Act on Stay of Aliens deals with three different categories: residence up to three months (Art. 69), residence exceeding three months (Art. 70), and permanent residence of a family member of an EU national (Art 71). Contrary to the scenarios of third-country nationals (scenario I, III and IV) who must apply for a residence permit and where the aliens police decides on granting/non-granting of the residence permit, the family member of an EU national residing in the SR for a period of up to three months does not need to apply for the residence permit, and is automatically granted such residence. A family member of an EU national must register his/her residence at the Aliens Police Department of PF SR if it exceeds three months. If he/she stays in the country legally and constantly for a minimum period of five years, he/she can be issued a special card – “EU national’s residence card” – which entitles him/her to permanently reside in the territory of the SR.

- b) his/her child under 21 years of age, his/her dependent child and dependent children of his/her spouse;
- c) his/her and his/her spouse's dependent direct relative in descending or ascending line;
- d) any other family member not subject to letters a) to c) who is a dependent person in the country of his/her origin;
- e) any other family member not subject to letters a) to c) who is a member of his/her household;
- f) any other family member not subject to letters a) to c) who depends on his/her care due to serious health reasons;
- g) his/her partner with whom the EU national has a permanent, duly certified relationship;
- h) a third-country national with the right of residence as a family member of the EU national in the member state in which the Slovak Republic national is the EU national with whom the third-country national returns or joins him/her to reside back in the Slovak Republic territory and fulfils some of the conditions specified in letters a) to g) in relation to the Slovak Republic national. (Art. 5, par. 5 of the Act on Stay of Aliens).

The case specified in letter g) is the only case where the Act on Stay of Aliens grants the right to residence to a person other than the spouse, whereas the EU national must demonstrate that it is a duly certified and permanent relationship. However, the SR has not transposed Art. 2, par. 2, letter b) of the Directive 2004/38/EC concerning registered partnership of same-sex persons, since the Slovak legislation does not consider such form of cohabitation equivalent to marriage.

Scenario III

Applies in the case of false declaration of parenthood.

Scenario IV

The situation of a Slovak national with permanent residence in the SR who plans family reunification with a third-country national is regulated by Art. 43, par. 1, letter a) of the Act on Stay of Aliens.

Under this provision, the police department shall grant permanent residence for five years if there are no reasons for the refusal of an application to a third-country national who is a spouse of the SR national with permanent residence in the SR or dependent relative in direct line of the national of the SR with permanent residence in the SR.

False Declaration of Parenthood

Scenario I

Besides cases described in the section on marriages of convenience, it is possible to directly obtain a permanent residence permit in the case of third-country nationals who are descendants of a third-country national with a residence permit in the SR. For this purpose, the Act on Stay of Aliens defines two types of permanent residence—permanent residence for five years, and permanent residence permit for unlimited period.

1. A police department shall grant permanent residence for five years to a third-country national,

- a) who is a single child under 18 years of age of a third-country national with permanent residence for five years, or a child under 18 years of age entrusted into personal care of a third-country national with permanent residence for five years;
- b) who is a dependent child under 18 years of age who cannot take care of himself/herself due to long-term unfavourable health condition, of a third-country national with permanent residence (Art. 43, par. 1, letters c) and d) of Act on Stay of Aliens).

A police department shall grant, upon the application of a third-country national, permanent residence for unlimited period to a third-country national who is a child under 18 years of age of a third-country national with permanent residence for unlimited period. (Art. 46, par. 1, letter b) of the Act on Stay of Aliens).

Scenario II

Applies to marriages of convenience.

Scenario III

The Slovak legislation defines the institute of tolerated stay covering the cases of the European Judicial Court's judicature (Zambrano/Dereci/McCarthy). The legislation has not arisen as a reaction to the jurisdiction of the European Judicial Court, but its objective has been to ensure respect for private and family life under Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Pursuant to Art. 58, par. 2 of the Act on Stay of Aliens, a police department shall grant tolerated residence to a third-country national, if there is no reason for the refusal of a request, if required due to the respect for his/her personal and family life and it does not threaten the state safety or public order.

This institute can be used in case the third-country national does not belong to any category of persons entitled to apply for temporary or permanent residence for the purpose of family reunification. In case the third-country national belongs to this category of persons, he/she may be granted tolerated stay only in case he/she is not a holder of a valid travel document, but is able to demonstrate his/her identity in any other manner in a trustworthy way.

This suggests that the provisions concerning tolerated stay due to the respect for private and family life mainly relate to cases of third-country nationals who are parents of a child that has acquired the nationality of the SR and has permanent residence in the SR.

Scenario IV

Pursuant to Art. 43, par. 1, letter b) of the Act on Stay of Aliens, a police department shall grant permanent residence for five years, if there are no reasons for the refusal of an application, to a third-country national who is a single child under 18 years of age entrusted into personal care of a third-country national who is a spouse of the national of the SR with permanent residence in the Slovak Republic.

Besides this situation, no other specific cases related to false demonstration of parenthood exist, since the SR applies *ius sanguinis* upon birth of a child; hence, if at least one of the parents is a national of the SR, the child acquires the same citizenship, irrespective of the place of birth or the fact that with birth the child has acquired the citizenship of another state, too (except for cases specified by bilateral treaties). The same principle applies to the adoption of a child by a national of the SR.

2.3 Preventative Measures under Slovak Legislation

Marriage of Convenience

Scenario I

The foreign mission of the SR abroad which has received the application for temporary residence permit for the purpose of family reunification shall perform an interview with the applicant for the temporary residence permit in order to preliminarily review the application. The foreign mission shall prepare a written record about the interview which is to be attached to the application for temporary residence. The foreign mission of the SR shall send its statement on the granting of temporary residence to the police department together with the record; and the statement shall specify, whether the granting of temporary residence is recommended or not, giving specific reasons (Art. 31, par. 2 of the Act on Stay of Aliens).

The previous Act No. 48/2002 on Stay of Aliens and on Changes and Amendments to Some Acts did not stipulate the obligation to perform a preliminary interview with the applicant at the foreign mission. This obligation has been introduced as a practical requirement in order to eliminate the abuse of residence permits.

Under Art. 33, par. 4, letter d) of the Act on Stay of Aliens, a police department shall refuse an application for temporary residence for the purpose of family reunification with a third-country national with temporary or permanent residence in the SR, if the third-country national has contracted marriage of convenience.

A police department shall refuse an application for the renewal of temporary residence to a third-country national who was granted temporary residence for the purpose of family unification, if the married couple does not live together as a family (Art. 34, par. 11 of Act on Stay of Aliens).

Once the temporary residence has been granted, the police department may perform control of the legality of the residence, and of the fulfilment of the conditions of residence and alien's obligations.

For this purpose, the police department can enter premises aimed for business, employment or study, as well as accommodation facilities, and request proof of identity and ask questions concerning the subject-matter of the control.

In case a police department, in the course of the control, gains suspicion of a marriage of convenience, it is entitled to initiate administrative proceedings to withdraw the temporary residence permit and, if the marriage of convenience is proved, to withdraw the residence permit.

Scenario II

In the case of a third-country national who is a family member of an EU national, the police department may, on the basis of a decision, withdraw the right of permanent residence, if they discover that the marriage is a marriage of convenience (Art. 72, par. 7, letter b) of the Act on Stay of Aliens).

Scenario III

Pursuant to Art. 59, par. 4 of the Act on Stay of Aliens, a police department can repeatedly extend tolerated stay; whereas they shall be obliged to investigate whether the reasons for which tolerated residence was granted to a third-country national further persist. For this reason the third-country national may be required by the police department to demonstrate the persistence of the reason for which he/she was granted tolerated stay.

Once the tolerated stay has been granted, the police department may perform control of the legality of the residence, and of the fulfilment of the conditions of residence and alien's obligations.

A police department shall refuse an application for tolerated stay or an application for the extension of tolerated stay to a third-country national, if he/she gives false or misleading data or submits falsified or counterfeit documents or a document belonging to another person (Art. 59, par. 12, letter a) of the Act on Stay of Aliens). If such facts are discovered after the tolerated stay has been granted, the police department may cancel the tolerated stay (Art. 61, par. 1, letter c) of the Act on Stay of Aliens).

Scenario IV

The rules concerning *Scenario I* similarly apply in this case; we therefore only present the specific provisions applying to a third-country national who plans family reunification with a national of the SR with permanent residence in the SR.

Under Art. 48, par. 2, letter d) of the Act on Stay of Aliens, a police department shall refuse an application for permanent residence, if the third-country national contracted a marriage of convenience.

Under Art. 50, par. 1, letter d) of the Act on Stay of Aliens, a police department shall cancel permanent residence, if the married couple does not live together as a family.

False Declaration of Parenthood

With regard to the way of perceiving parenthood (especially fatherhood) in the SR as a legal status which is not necessarily identical to biological parenthood, in the case of doubts the authenticity of the documents demonstrating the parenthood by the third-country national is examined.

The procedure by the competent authorities is similar to cases of marriages of convenience. The text below only provides references to the relevant provisions of the Act on Stay of Aliens with a different wording or those reflecting cases where it is possible to directly obtain permanent residence.

Scenario I

Pursuant to Art. 33, par. 4, letter e) of the Act on Stay of Aliens, a police department shall refuse an application for temporary residence for the purpose of family reunification with a third-country national with temporary or permanent residence in the SR, if the third-country national gives false or misleading data or submits falsified or counterfeit documents or a document belonging to another person.

Pursuant to Art. 48, par. 2, letter f) of the Act on Stay of Aliens, a police department shall refuse an application for permanent residence, if a third country national gives false or misleading data or submits falsified or counterfeit documents or a document belonging to another person.

Scenario II

Pursuant to Art. 72, par. 2 of the Act on Stay of Aliens, the police department can, on the basis of a decision, withdraw the right of residence from a family member of an EU national, if

- a) he/she has submitted a falsified or counterfeit document which shows the fulfilment of the conditions of residence when applying for the issuance of the document of residence; or if he/she has given false data regarding the fulfilment of the conditions which relate to his/her right of residence;

- b) they discover, during his/her residence, that the family member of the EU national has obtained the right of residence on the basis of submitting falsified or counterfeit document showing the fulfilment of the conditions of residence, or has given false data regarding the fulfilment of conditions which relate to his/her right of residence;

Scenario III

The rules concerning marriages of convenience shall fully apply in this case.

Scenario IV

Pursuant to Art. 48, par. 2, letter f) of the Act on Stay of Aliens, a police department shall refuse an application for the granting of permanent residence, if a third-country national gives false or misleading data or submits falsified or counterfeit documents or a document belonging to another person.

2.4 Impacts of the Decisions of the European Court of Justice

The decisions of the European Court of Justice related to family reunification (cases of Zambrano, Dereci and McCarthy) did not have any impact on the Slovak legislation and practice in the field of marriages of convenience or false declaration of parenthood.

3. CURRENT SITUATION IN THE SLOVAK REPUBLIC

3.1 Situation in the Slovak Republic

Marriages of convenience and the use of false documents to demonstrate family bonds with the aim to obtain a residence permit for the purpose of family reunification are considered as cases of abuse of the residence permit in the SR. Based on available statistics and practical experiences of police authorities, these issues have not been so far perceived as acute in Slovakia, and political documents, the media and the activities of non-governmental organisations have not paid increased attention to them.

As described above, the Slovak legislation does consider such cases and regulates them through several provisions. As far as strategic political documents¹⁰ are concerned, none of them explicitly deals with marriages of convenience or false declaration of parenthood. These documents tackle irregular migration and the fight against this phenomenon in general, for example, in the context of violation of the residence regime.

These issues get a very marginal attention also from the Slovak media. In 2011, various media presented the only case of marriage of convenience contracted by a Slovak citizen of Armenian origin who had convinced another Slovak citizen to commit a marriage fraud with an Armenian woman for EUR 850, who subsequently applied for a temporary residence permit for the purpose of family reunification, but the police detected the case. In the same year, the media presented a case of a marriage fraud by a Slovak female national with a Macedonian national for EUR 2,000.¹¹

¹⁰ For example, Migration Policy of the SR with a Perspective until 2020; National Plan of State Border Protection Management of the SR; National Plan of Border Control Management of the SR for the Period 2011-2014.

¹¹ For example pravda.sk: Na Slovensku sa začali rozmáhať sobášne podvody, available at http://spravy.pravda.sk/na-slovensku-sa-zacali-rozmahat-sobasne-podvody-fud-/sk_domace.asp?c=A110615_172047_sk_domace_p12 (consulted on 14/02/2012); Krimi Noviny TV JOJ: Sobášne podvody v Bratislave! S Arménkou sa oženil za 850 EUR, available at <http://krimi.noviny.sk/cierna->

It should be mentioned in this context that, in 2011 and in previous years, the Slovak media rather presented cases where Slovak female citizens abroad, especially in the United Kingdom, contracted marriages of convenience with third-country nationals (mainly from Pakistan or Nigeria).¹² This issue, however, is not the subject of this study.

3.2 Other Forms of Misuse of the Right to Family Reunification

The practical experiences of police authorities suggest that the police have not faced forms of misusing the right to family reunification other than e.g. “adoptions of convenience”, etc.

3.3 Prevention of the Misuse of the Right to Family Reunification

The SR applies all prevention measures in compliance with the current legislation (for more details refer to Chapter 2.3). Upon assessment of the application for residence permit for the purpose of family reunification, the police examine, for example, the previous stays in the SR, the inviting party or the person with whom the third-party national reunifies, through a personal interview, for instance. These measures appear to be satisfactory so far. As mentioned in Chapter 3.1, no political documents deal explicitly with the misuse of the right to family reunification.

3.4. Detection of Cases of Misuse of the Right to Family Reunification

Marriage of Convenience

Cases of misuse of the right to family reunification are detected after receiving the application for temporary or permanent residence or after granting the residence permit, which can give rise to justified suspicion that the marriage is a marriage of convenience. The indicators for such suspicion include, for example, initiatives from other authorities or natural persons, notices from foreign missions of the SR, excessive age difference between the spouses, contracting the marriage shortly after the entry to the SR, unfavourable financial situation of the person (Slovak or EU citizen) who contracted the marriage, etc. From the experiences of the police authorities we can mention one case when the marriage of convenience was detected based on the statement of the person with whom the marriage was concluded. In this case a citizen of the SR was invited to make a statement within the residence granting procedure while the application for a next residence permit of a Chinese citizen (wife) was examined.

After granting the residence permit, the police department may verify the legality of the residence and control the fulfilment of the conditions of residence and alien’s obligations.

For this purpose, the police department can enter premises aimed for business, employment or study and to accommodation facilities, and request proof of identity and ask questions on the subject-matter of the control.

False Declaration of Parenthood

As stated in Chapter 2.3, with regard to the way of viewing parenthood (especially fatherhood) in the SR as a legal state which is not necessarily identical to biological parenthood, in the case of doubts the authenticity of the documents demonstrating the parenthood of the third-country national is examined.

kronika/16-06-2011/sobasne-podvody-v-bratislave-s-armenkou-sa-ozenil-za-850-%E2%82%AC.html (consulted on 14/02/2012).

¹² For example, sme.sk: Briti zatkli Slovenky za sobášny podvod s Nigérijčanmi, available at <http://www.sme.sk/c/4943616/briti-zatkli-slovenky-za-sobasny-podvod-s-nigerijcanmi.html> (consulted on 14/02/2012); cas.sk: Sobášny podvod? Britská polícia zatkla Slovenku priamo na svadbe, <http://krimi.cas.sk/clanok/194519/sobasny-podvod-britska-policia-zatkla-slovenku-priamo-na-svadbe.html> (consulted on 14/02/2012).

3.5 Evidencing Cases of Misuse of the Right to Family Reunification

The cases of misusing the right to family reunification are examined by the aliens police, the burden of evidence laying on the administrative authority, the aliens police and the police force investigator.

In case of a suspicion of marriage of convenience contracted solely for the purpose of obtaining the permanent residence permit for an alien, the investigator of the National Unit to Combat Illegal Migration of BBAP PFP may proceed in compliance with the Penal Code by using technical intelligence devices and operating search devices to prove, especially, the subjective aspect of the crime of smuggling under Art. 356 of the Penal Code.

3.6 Institutions Responsible for the Detection and Investigation of Misuse of the Right to Family Reunification

The institution responsible for the detection and investigation of misuse of the right to family reunification is the Ministry of Interior of the SR. In the fight against irregular migration, which involves misuse of the right to family reunification, the Ministry implements measures mainly through the different departments of the Police Force Presidium (PFP), in this case specifically by the Aliens Police Department and the National Unit to Combat Illegal Migration, which in terms of organisation fall under the Bureau of the Border and Aliens Police of PFP (BBAP PFP).

BBAP PFP is a section of the Police Force Presidium which directly manages the organisational departments in the fulfilment of tasks in the fight against illegal migration and smuggling, border control, granting of residence permits to aliens, control of the legality of aliens' stay, and expulsion of aliens; focuses on the fight against falsification of travel documents and other documents; ensures exchange of information with foreign partners on the suppression of irregular migration and state border protection; compiles analytical reports; and provides statistical data on irregular migration.

The aliens police services are in particular provided at the regional and local levels through the organisational units of BBAP PFP, specifically through the *Border and Aliens Police Directorates* and the *Aliens Police Directorate* and their subordinate units—*Border and Aliens Police Departments* and *Aliens Police Departments*.

Under the BBAP PFP structure, the *National Unit to Combat Illegal Migration* has been established. This unit focuses on the fight against smuggling and fulfils tasks concerning prevention, detection and documentation of crimes related to irregular migration (unauthorised state border crossing, smuggling including misuse of the right to family reunification¹³, falsification and counterfeiting of documents) and other cross-border crime within the entire territory of the SR up to internationally organised irregular migration. The unit determines the basic directions of operational and search activities, evaluates the security situation, compiles analyses, and makes statistical overviews of crimes related to irregular migration.¹⁴

3.7 Impacts of Misusing the Right to Family Reunification

Marriage of Convenience

Contracting a marriage of convenience can mean committing the crime of smuggling under Art. 356 of Act No. 300/2005 Coll. Penal Code as Amended.

¹³ Art. 356 of Act No. 300/2005 Coll. Penal Code as Amended.

¹⁴ Grušovský, Š.: *Ochrana vonkajších hraníc EÚ*, Police Force Academy, 2008.

“Who with the intention to obtain a financial benefit for himself/herself or for any other persons directly or indirectly, or any other material advantage to a person who is not a citizen of the Slovak Republic or a citizen of any other European Union Member State or a citizen of a contracting state to the Agreement on the European Economic Area or who does not have permanent residence in their territory, and allows or helps to reside or get illegally employed in the territory of the Slovak Republic, of another European Union Member State or of a contracting state to the Agreement on the European Economic Area, shall be punished with imprisonment from two to eight years.”

Scenario I

Marriage of convenience represents a reason for refusal of the application for temporary residence. If a marriage of convenience is proven after the temporary residence permit has been granted, this fact represents a reason for cancellation of temporary residence. The police department may also expel the third-country national and ban him/her entry for a period from three to five years. In case the third-country national fails to leave the territory of the SR by the last day of the set period for departure, he/she is deemed to have committed an offence for which the police department can impose a fine of up to EUR 1,600.

Scenario II

Marriage of convenience represents a reason for withdrawal of the right to permanent residence. The police department shall impose the offending family member of the EU national, in its decision, the obligation to leave the territory of the SR not later than 30 days following the effective date of the decision. If the offending family member of the EU national fails to depart, the police department shall ensure enforcement of the decision. At the same time, such person is deemed to have committed an offence for which the police department can impose a fine of up to EUR 300.

Scenario III

The rules applying to false declaration of parenthood apply in this case.

Scenario IV

A marriage of convenience represents a reason for refusal of the application for permanent residence. If a marriage of convenience is proven after the permanent residence permit has been granted, this fact represents a reason for cancellation of permanent residence. The police department may also expel the third-country national and ban him/her entry for a period from three to five years. In case the third-country national fails to leave the territory of the SR by the last day of the set period for departure, he/she is deemed to have committed an offence for which the police department can impose a fine of up to EUR 1,600.

False Declaration of Parenthood

False declaration of parenthood may also mean committing the crime of smuggling, as stated in the case of marriages of convenience.

Scenario I

If the applicant, while a decision is being made on his/her application for temporary residence or its extension or for permanent residence, provides untrue or misleading data or submits false or counterfeit documents or documents belonging to another person, the police department shall refuse his/her application. If this fact is proven after the residence permit has been granted, this represents a reason for cancellation of residence. The police department may also administratively expel the third-country national and ban him/her entry for a period from three to five years. In case the third-country national fails to leave the territory of the SR

by the last day of the set period for departure, he/she is deemed to have committed an offence for which the police department can impose a fine of up to EUR 1,600.

Scenario II

The submission of a false or counterfeit document demonstrating the fulfilment of the conditions for permanent residence is a reason for withdrawal of the right to permanent residence. The police department shall impose the offending family member of the EU national, in its decision, the obligation to leave the territory of the SR not later than 30 days following the effective date of the decision. If the offending family member of the EU national fails to depart, the police department shall ensure enforcement of the decision. At the same time, such person is deemed to have committed an offence for which the police department can impose a fine of up to EUR 300.

Scenario III

If the applicant, while a decision is made on his/her application for tolerated stay or its extension, provides untrue or misleading data or submits false or counterfeit documents or documents belonging to another person, the police department shall refuse his/her application. If this fact is proven after the residence permit has been granted, this represents a reason for cancellation of residence. The police department may also administratively expel the third-country national and ban him/her entry for a period from three to five years. In case the third-country national fails to leave the territory of the SR by the last day of the set period for departure, he/she is deemed to have committed an offence for which the police department can impose a fine of up to EUR 1,600.

Scenario IV

The presentation of untrue or misleading data or the submission of false or counterfeit documents or documents belonging to another person represents a reason for refusal of the right to permanent residence. If this fact is proven after the permanent residence permit has been granted, this represents a reason for cancellation of the permanent residence. The police department may also administratively expel the third-country national and ban him/her entry for a period from three to five years. In case the third-country national fails to leave the territory of the SR by the last day of the set period for departure, he/she is deemed to have committed an offence for which the police department can impose a fine of up to EUR 1,600.

In any of these cases, a child under 18 years of age may be administratively expelled only in case it is in its best interest.

3.8 Right to Appeal

The decisions on refusal of an application for residence permit, on withdrawal of residence permits and on administrative expulsion are issued under administrative procedures (Act No. 71/1967 Coll. on Administrative Procedures as Amended), and it is possible to appeal against them. After an administrative decision enters into force, it can be reviewed by court. This rule applies both to cases of marriages of convenience and to cases of false declaration of parenthood.

3.9 International Co-operation in the Fight against the Misuse of the Right to Family Reunification

The SR has not concluded any bilateral or multilateral agreements with EU countries or third countries the sole objective of which would be to fight against the misuse of the right to family reunification. However, the SR has concluded several treaties on police cooperation or on cooperation in the fight against organised crime which do not explicitly mention marriages

of convenience or false declaration of parenthood, but aim, among other things, to enhance cooperation in the fight against irregular migration in general, and specifically in relation to illegal stay of persons. Table 1 provides an overview of such treaties.

Table 1 Overview of bilateral agreements concluded by the SR with the aim to reduce and combat irregular migration

Type of agreement	EU/EEA Member States	Third countries
Agreements on co-operation in the fight against organised crimes	Cyprus, Czech Republic, Lithuania, Latvia, Hungary, Malta, Germany, Poland, Romania, Slovenia, Spain, Italy, UK	Belarus, Bosnia and Herzegovina, Egypt, Croatia, Kazakhstan, FYROM, Moldova, Serbia, Turkey, Turkmenistan, Ukraine, Uzbekistan
Agreements on police co-operation	Belgium, Bulgaria, France, Austria	Serbia

Source: MoI SR

In addition to that, the SR intensively co-operates with other international organisations and agencies in combatting irregular migration, such as FRONTEX, ICMPD and IOM.

The activities of the advisors for documents appear to be important in this regard. The task of these advisors is to provide counselling and expertise at the foreign missions of the SR abroad which face increased submission of false or counterfeit documents attached to visa applications or applications for residence permits. Advisors for documents have been so far deployed to the Consulate General of the SR in Uzghorod.¹⁵

3.10 Motivation to Misuse the Right to Family Reunification

Since the issues related to the misuse of the right to family reunification are not acute in the SR, they have not been tackled by any in-depth or other research or by the media so far. Hence, no information about the motives of the sponsor or of the third-country national to misuse this institution is available.

However, we can assume that the primary motive leading the sponsor to misuse this right are financial reasons (refer, for example, to Chapter 3.1). As far as the third-country national is concerned, it is mainly an effort to obtain the permit for residence in an EU country and within the Schengen Area.

4. STATISTICS

4.1 Statistics: General Context

The statistical data below is based on the Eurostat statistics compiled according to the data provided by BBAP PFP in compliance with Regulation 862/2007 on Community statistics on migration and international protection. In line with this regulation, the statistical data is available for the period 2008–2010. Eurostat has not processed so far the data for 2011.

¹⁵ For complex information about the fight against irregular migration refer to: Mrlianová, Ulrichová, Zollerová, Practical Measures for Reducing Irregular Migration in the Slovak Republic, European Migration Network, Bratislava 2011.

Table 2 Number of permitted residences for the purpose of family reunification by citizenship, category of family member, and type of reunification (year 2008)

Country of origin	Residence permits issued – TOTAL	Reunifying with an EU national				Reunifying with a third-country national			
		T	S	C	O	T	S	C	O
Total	1,224	605	526	79	0	619	259	360	0
Korea	206	10	7	3	0	196	84	112	0
Ukraine	167	102	79	23	0	65	41	24	0
USA	107	43	38	5	0	64	19	45	0
Vietnam	89	43	30	13	0	46	26	20	0
China	88	35	30	5	0	53	10	43	0
Russia	83	36	30	6	0	47	16	31	0
Serbia	51	36	35	1	0	15	9	6	0
FYROM	36	26	23	3	0	10	7	3	0
Libya	34	0	0	0	0	34	10	24	0
Turkey	26	21	20	1	0	5	2	3	0

Source: Eurostat; Explanatory note: T – Total, S – Spouse, C – Child, O – Other

Note: The category of persons reunifying with an EU national comprises 84% of Slovak nationals.

Table 3 Number of permitted residences for the purpose of family reunification by citizenship, duration of permit, category of family member, and type of reunification (years 2009 and 2010)

Country of origin	Number of issued residence permits TOTAL	Residence permit valid for a period of 3-6 months								Residence permit valid for a period of 6-12 months								Residence permit valid for a period over 12 months							
		Reunifying with an EU national				Reunifying with a third-country national				Reunifying with an EU national				Reunifying with a third-country national				Reunifying with an EU national				Reunifying with a third-country national			
		T	S	C	O	T	S	C	O	T	S	C	O	T	S	C	O	T	S	C	O	T	S	C	O
YEAR 2009																									
TOTAL	1,156	0								0								516	437	66	13	640	276	348	16
Ukraine	223	0								0								119	101	13	5	104	53	49	2
Korea	154	0								0								4	3	1	0	150	65	79	6
Russia	113	0								0								27	17	8	2	85	33	52	1
China	93	0								0								25	10	14	1	68	23	43	2
Vietnam	85	0								0								41	24	15	2	44	24	16	4
USA	67	0								0								37	31	6	0	30	9	21	0
Libya	34	0								0								1	1	0	0	33	10	23	0
FYROM	32	0								0								12	8	4	0	20	8	12	0
Serbia	25	0								0								21	17	4	0	4	4	0	0
Iran	24	0								0								3	3	0	0	21	8	13	0
YEAR 2010																									
Country of origin	Number of issued residence permits TOTAL	Residence permit valid for a period of 3-6 months								Residence permit valid for a period of 6-12 months								Residence permit valid for a period over 12 months							
		Reunifying with an EU national				Reunifying with a third-country national				Reunifying with an EU national				Reunifying with a third-country national				Reunifying with an EU national				Reunifying with a third-country national			
		T	S	C	O	T	S	C	O	T	S	C	O	T	S	C	O	T	S	C	O	T	S	C	O
TOTAL	1,162	0	0	0	0	45	45	0	0	0	0	0	0	176	176	0	0	465	448	17	0	476	401	75	0
Ukraine	212	0	0	0	0	7	7	0	0	0	0	0	0	35	35	0	0	92	83	9	0	78	65	13	0
Korea	167	0	0	0	0	7	7	0	0	0	0	0	0	51	51	0	0	4	3	1	0	105	95	10	0
Russia	107	0	0	0	0	8	8	0	0	0	0	0	0	14	14	0	0	34	33	1	0	51	39	12	0
China	101	0	0	0	0	6	6	0	0	0	0	0	0	21	21	0	0	16	15	1	0	58	53	5	0
USA	75	0	0	0	0	3	3	0	0	0	0	0	0	12	12	0	0	31	28	3	0	29	27	2	0
Vietnam	64	0	0	0	0	4	4	0	0	0	0	0	0	5	5	0	0	16	16	0	0	39	22	17	0
FYROM	36	0	0	0	0	1	1	0	0	0	0	0	0	2	2	0	0	14	14	0	0	19	9	10	0
Libya	33	0	0	0	0	0	0	0	0	0	0	0	0	7	7	0	0	2	2	0	0	24	24	0	0
Serbia	31	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	24	24	0	0	6	6	0	0
Turkey	31	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	19	19	0	0	12	9	3	0

Source: Eurostat; Explanatory note: T – Total, M – Spouse, C – Child, O – Other

Note: The category of persons reunifying with an EU national comprises 92% of Slovak nationals both in 2009 and 2010.

The statistical data on residence permits for the purpose of family reunification suggests that the statistics only copy the overall migration flows of third-country national to/from the SR. Just as Ukraine nationals occupy the first places of the statistics on issued residence permits in general, they also lead the statistics on residence permits for the purpose of family reunification. The same can be stated about the nationals of Serbia, the former Yugoslav Republic of Macedonia, Vietnam, Russia and China. In relation to these nationalities, the third-country nationals with legal residence in the SR reunify with their spouse or child, and, almost in the same number, with EU nationals, most of them being Slovak nationals. As far as the nationals of Korea and Libya are concerned, these cases related almost exclusively to family reunification between a third-country national – a national of Korea or Libya, respectively, with legal residence in the SR, with his/her spouse. This fact is mainly related to the investment of the KIA car concern in the SR and to the arrival of the company's top management in Slovakia, and with the business activities of Libyan nationals in the SR.

4.2 Statistics: Specific Indicators Suggesting the Intensity of the Problem

As mentioned above, since the issues of marriages of convenience and false declaration of parenthood have not become urgent in the SR so far, the SR does not systematically collect specific statistical data describing in detail this phenomenon, such as number of refused applications for residence permit for the purpose of family reunification due to suspicions of a marriage of convenience or false determination of parenthood, granted and withdrawn permits for the same reason, etc.

4.2.1 Intensity of the Problem

Marriage of Convenience

In the case of marriages of convenience, only data relevant to the above-described *Scenario IV* is available.

In 2011, six cases were detected and analysed, and charges were made against seven persons (six nationals of the SR, one national of Austria) in four cases of marriage of convenience under Art. 356 of the Penal Code.

In 2012, a charge was made against two persons (one national of the SR and one national of Vietnam) in one case of marriage of convenience under Art. 356 of the Penal Code.¹⁶

False Declaration of Parenthood

Data is not available.

4.2.2 Characteristics of Persons Misusing the Right to Family Reunification

Marriage of Convenience

Based on the documents of the law-enforcement authorities, it is possible to identify the data on the places where the right to family reunification is most frequently misused by contracting marriages of convenience, and on the nationality of such persons (Table 4).

¹⁶ The data for the previous years is not available, since BBAP PFP units did not identify any case of contracting a marriage for the purpose of obtaining the alien's permanent residence.

Table 4 Places of misusing the right to residence due to marriage of convenience, gender and nationality of persons concerned

Year	Place of abuse	EU or SR national/Gender	Third-country national/Gender
2011	SR – Bratislava	SR/male	China/female
	SR – Dunajská Streda	SR/female	Turkey/male
	SR – Bratislava	SR/male	Armenia/ female
	SR – Šaľa	SR/ female	FYROM/male
2012	SR – Lučenec	SR/female	Vietnam/male

Source: BBAP PFP

Note: No similar cases are reported for the previous years.

On the basis of this data, it is not possible to identify any characteristics or models of misuse of the right to family reunification through a marriage of convenience.

False Declaration of Parenthood

Data not available.

4.2.3 Place of Abuse

The available data is provided in Table 4.

5. CONCLUSION

The issues concerning the misuse of the right to family reunification through marriages of convenience or false declaration of parenthood have not become a severe topic in the SR so far. The available statistical data suggest that marriages of convenience concern just a few cases annually. Since false declaration of parenthood, as described in the chapter above, can only be detected through examination of the authenticity documents, no specific statistics is maintained in this regard, and it is therefore difficult to find out whether such cases occurred at all.

Though, the Slovak legislation takes into consideration such cases and is ready to fight against this phenomenon. In addition to that, some of the measures are applied within a wider context of the fight against illegal migration, which has been considered satisfactory so far, and hence, it is not necessary to implement specific measures or to change the relevant legislation in the near future.

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European Legislation

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Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents

Regulation 862/2007 on Community statistics on migration and international protection

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