



IOM International Organization for Migration



Misuse of the Right to Family Reunification

MARRIAGES OF CONVENIENCE AND FALSE DECLARATIONS OF PARENTHOOD



**Focussed Study of the
European Migration Network**

The opinions presented in the study are those of the author and do not necessarily represent the position of the Austrian Federal Ministry of the Interior and/or the International Organization for Migration (IOM).

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THE EUROPEAN MIGRATION NETWORK

The European Migration Network (EMN) was launched in 2003 by the European Commission by order of the European Council in order to satisfy the need of a regular exchange of reliable information in the field of migration and asylum on a European level. Since 2008 the Council Decision 2008/381/EC constitutes the legal basis of the EMN and National Contact Points were established in the EU Member States (with the exception of Denmark, which has observer status) plus Norway.

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

The National Contact Point for Austria is located at the Country Office Austria of the International Organization for Migration in Vienna, established in 1952 when Austria became one of the first members of the organisation. The main responsibility of the IOM Country Office is to analyse national migration issues and emerging trends to develop and implement national projects and programmes to address these.

The main task of the National Contact Points is to implement the annual work programme of the EMN including the drafting of the annual policy report and theme-specific focussed and main studies, publishing of studies, answering Ad-Hoc queries from other National Contact Points, carrying out a visibility strategy and networking in several forums. Furthermore, the National Contact Points in each country set up national networks consisting

of organisations, institutions and individuals working in the field of migration and asylum.

In general, the National Contact Points should not conduct primary research but collect and analyse primarily existing data, exceptions might occur, if existing data and information is not sufficient. EMN studies are elaborated in accordance with uniform specifications valid for all European Union Member States plus Norway in order to achieve comparable EU-wide results. Since the comparability of the results is frequently accompanied by challenges, the EMN has also elaborated a Glossary, which assures the application of a similar terminology in all national reports. The second edition of the Glossary was available as of February 2011.

Upon completion of the national reports, the European Commission and a service provider issue a synthesis report, which summarises the most significant results of the national reports. All national studies and synthesis reports as well as the Glossary are available on the website of the European Migration Network at www.emn.europa.eu.

INTRODUCTION

This publication of the National Contact Point Austria in the EMN entails two outputs of the EMN. The EMN Inform as well as the Austrian National Report on “Misuse of the Right to Family Reunification: Marriages of Convenience and False Declarations of Parenthood in the EU Member States”.

The EMN Inform, which was compiled by the Service Provider of the EMN (ICF-GHK-COWI), summarises the main findings of the contributions of National Contact Points to this EMN Focussed Study, which was conducted in the framework of the EMN’s Annual Work Programme 2012.

The study on Austria was compiled by Adelnaim Reyhani, and was co-ordinated by Mária Temesvári, both from the Research and Migration Law Department of the Country Office of the International Organisation for Migration (IOM) in Vienna as the National Contact Point Austria in the EMN. Special thanks go to Katie Klaffenböck for proofreading the text.

The study was drafted on the basis of a common template developed by the EMN to ensure comparability amongst EU Member States. The study is based on latest information available at the Austrian level including legislation, case law, publications, statistics, press and other media documents as well as internet sources. An overview of the type and sources of information used is listed in the bibliography below. During research it became apparent that only limited material in literature focussing on misuse of the right to family reunification is available. In order to complete the information gained, qualitative semi-structured face-to-face interviews were carried out with five experts, namely: Tamara Völker and Renate Dissauer, Federal Ministry of the Interior, Unit III/4 (Residence- and

Citizenship Affairs); Eva Pflieger and Viola Kainz, Federal Ministry of the Interior, Unit II/3 (Aliens’ Police and Border Control) and Richard Ber, Federal Police Headquarters Vienna, Aliens’ Police Department.

Misuse of the Right to Family Reunification

MARRIAGES OF CONVENIENCE AND FALSE DECLARATIONS OF PARENTHOOD IN THE EU MEMBER STATES

1. AIM

The aim of the Study was to identify the scale and scope of two instances of misuse, namely marriages of convenience and false declarations of parenthood and to provide clear evidence, to the extent possible and including available statistics, of these types of misuse and how best to address them. The Study also summarises (Member) States' current practices in the detection and prevention of these types of misuse, which is a concern for all (Member) States.

2. OVERALL CONCLUSIONS

- Whilst the perception amongst policymakers, and the media in particular, indicates that misuse of the right to family reunification through marriages of convenience or false declarations of parenthood may be a widespread phenomenon, the evidence presented in this Study suggests that, while marriages of convenience do occur, it is not yet possible to fully quantify it across all (Member) States in a comparable manner.
 - Where misuse has been detected, this seems to be primarily for marriages of convenience rather than false declarations of parenthood.
 - A number of (Member) States are developing policy or amending legislation in order to (better) tackle the misuse.
 - Of particular concern for some Member States are marriages of convenience between a third-country and an EU national which, for them, occurs more often than between third-country nationals.
- (Member) States have a range of approaches in place to identify and investigate both marriages of convenience and false declarations of parenthood, although they vary between the (Member) States. There is limited involvement of civil society, with (Member) State authorities primarily responsible for detecting misuse.
 - Generally a case-by-case approach is followed with evidence from the combination of techniques that the (Member) States use serving to inform the decision made by the responsible authority(ies).
 - (Member) States face many common challenges in identifying a marriage of convenience from a genuine marriage. Not only is this a sensitive matter in terms of respecting fundamental rights, and the (Member) States are fully committed to their obligations in this respect, but also an investigation tends to be time and resource intensive with the burden of proof most often placed on the (Member) State Authority(ies). The lack of clear methodological guidelines may also hamper this process.
 - In this respect, whilst some exchanges of information (and best practice) between (Member) States does occur, there may be scope to develop this further via a dedicated forum, so that (Member) States may also have a better overview, and be updated on, the situation and practice across the EU.
 - The lack of consistent statistics, as a result of the different approaches followed, clearly makes it challenging to share information within or amongst (Member) States in a comparable manner. However, at least a better understanding of how statistics are obtained, can already serve to support information exchange.

3. OTHER KEY FINDINGS

Wide variation in the perception of the extent of the issues exists across (Member) States.

Whilst (national) legislation exists, or is in the process of being amended, to address misuse in all (Member) States, there is wide variation in the perceptions of its extent. This ranges from it being unclear, to a minimal or marginal issue, to increased observations, to being a policy priority. Of particular concern for some (Member) States, are marriages of convenience concluded by their nationals (often women) in other Member States. There is also some evidence to suggest the involvement of organised crime groups.

Main motivations for sponsors and applicants were found to be for economic and financial reasons, plus obtain the right of residence and associated benefits. Other factors also play a part.

Motivations identified in almost all (Member) States for a sponsor to participate in a marriage of convenience were principally economic and financial, with some indication that organised crime groups pay the sponsor; through coercion; so-called “grey marriages,” where the sponsor enters into a marriage unaware that the motivations of the applicant are purely to obtain legal residence; helping out a friend or acquaintance; compassionate or humanitarian grounds, or idealism, where the sponsor disagrees with the authorities or the immigration rules; to gain lawful residence or to bypass an entry ban; and for a younger third-country national to act as a carer for an older sponsor. From the perspective of an applicant, the main motivations cited were to obtain the right of residence and associated benefits, or to remain in the (Member) State.

Motivations of both sponsors and applicants for false declarations of parenthood appear to be less well developed and reported. They were predominantly for financial and economic reasons; to prevent a negative international protection ruling; and with the intention of regularising an irregular residence situation.

National measures developed to prevent misuse are implemented through a range of authorities and agencies.

National means of preventing misuse of marriages of convenience range from measures taken by embassies in the countries of origin; collection of facts and interviews; checks on family ties; information about lifestyle, national and religious traditions; and interviews with both sponsors and applicants. Measures taken by the Police include inspections in registered residences, places of employment and schools, consultation with municipal authorities and cross-checks with police information systems. In some cases, non-governmental organisations may also play a role in prevention of misuses.

In terms of authorities responsible for investigating marriages of convenience, these tend to be the responsibility of law enforcement agencies, such as the police and public prosecutor’s office, working with a range of national or regional / local authorities, such as civil registries and institutions with responsibility for migration, borders and residence. In some situations, consular staff may be involved. Misuse has also been identified by authorities detecting benefit fraud. Civil registrars in particular are expected to play a role by reporting any suspicions they may have. For false declarations of parenthood, similar authorities are involved with the addition of case workers.

For false declarations of parenthood, a difficulty is that authorities have little or limited means of addressing misuse once the conditions for establishing recognition (consent of parent, child or legal representative) and formal conditions for recognition (civil status, nationality, identity and birth related documents) are respected. Where a family is unable to provide any documentation to prove a relationship between the parent(s) and the child, some (Member) States may conduct DNA tests.

Comprehensive techniques have been developed, but (Member) States face challenges in detecting, investigating and proving misuse.

Authorities may trigger an investigation where the sponsor has previously been involved in a fam-

ily reunification; where either spouse has been involved in a marriage of convenience previously; where there is evidence of a record of previous short-term marriages; or where they receive a report about a suspicious marriage (e.g. from civil registries, clergy or the public). Techniques then used include, frequently in combination and depending on individual circumstances, interviews with the sponsor and applicant; background checks; home visits; third party and community based checks, to test the couple is living together, including checks with public services and utility providers, document checks and, in some cases, the couple is asked to independently complete a questionnaire and their individual responses are subsequently compared.

Challenges that exist in detecting and investigating marriages of convenience include both the sponsor and applicant being well-prepared for interviews; being both time consuming and resource intensive; the absence of methodological guidelines; and respecting rights conferred under EU or national law. For false declarations of parenthood, triggers are less developed in part owing to the no or very limited experience in the (Member) States, but include assessing the strength of the relationship; unusual age or nationality difference; parents living at different addresses; concerns expressed by a case worker; and where the child keeps the mother's maiden name not the father's.

To prove a marriage of convenience based on these various triggers, (Member) States generally take a case-by-case approach and review the various elements that might constitute evidence to support or oppose the notion that a marriage of convenience has been contracted. The burden of proof, however, lies with the (Member) States in a majority of cases, unless it is part of criminal proceedings. A similar approach is used with false declarations of parenthood with, in addition, some (Member) States also using DNA testing. Again the burden of proof rests mainly with the (Member) State authorities although there are some exceptions where at least part of the burden rests with the applicants.

Where misuse is proven, penalties vary across (Member) States, but can include imprisonment and fines (for the sponsor) and refusal or revocation of a residence permit (for the applicant).

If a marriage of convenience is detected, likely penalties can include, for the sponsor, imprisonment, fines, or both. The extent and amount of these vary between the (Member) States with imprisonment of up to 5 years and fines of up to 15 000. For the applicant, penalties (additionally) include the refusal of a residence permit or, if already granted, its revocation or invalidation. Similar penalties exist for false declarations of parenthood, but with imprisonment of up to 10 years and fines of up to 750 000. In all cases, there is the right to appeal.

(Member) States co-operate to address misuse in a number of ways.

European co-operation occurs in a number of ways, informal, ad hoc or via formal agreements. Examples include between Belgium and the Netherlands on the so-called "Europe Route;" between Ireland and Latvia in connection to the high incidence of suspected cases between third-country and Latvian nationals marrying in Ireland; via immigration Liaison Officers (ILOs); and a joint co-operation between the Netherlands and United Kingdom in relation to Dutch Antilleans seeking identity and then marriage in the latter.

Available statistics support the fact that marriages of convenience do occur, but it is not yet possible to fully quantify this across all (Member) States in a comparable manner. Very few statistics are available in relation to false declarations of parenthood.

To provide some context, in 2010, the EU-27 total of permits issued for family reasons was 747 785, some 510 305 (or 68.2% of the total) of which were issued to a third-country national joining with a third-country national.

With regard to the identified cases of marriages of convenience, and noting that in many cases no distinction between those occurring between third-country nationals and those occurring between a

third-country and an EU national was possible, residence permits refused or revoked by a (Member) State ranged, in 2011, from 5 up to 990, and in 2010 again from 5 up to 1 360.

In terms of marriages of convenience detected in other ways by a (Member) State, this varied, in 2011, from 5 to 130 and, in 2010, from again 5 up to 425. Suspected marriages of convenience in a (Member) State ranged in 2011 from 1 740 down to 35.

The very few statistics available on false declarations of parenthood may be indicative that this form of misuse is rare. Alternatively, it may indicate that the problem is simply not monitored to a sufficient degree.

Misuse of the Right to Family Reunification

MARRIAGES OF CONVENIENCE AND FALSE DECLARATIONS OF PARENTHOOD IN AUSTRIA

Adel-Naim Reyhani

EXECUTIVE SUMMARY

Legal definitions

In Austria's legislation governing family reunification, concepts relating to the terms 'core family', 'family', 'marriage' or 'spouse' are differently defined, depending on the applicable regulations and the legal status of the persons involved. Marriages and registered partnerships¹ (for same-sex couples) are treated equally, whereas confessional marriages are not considered valid.

Possibilities of family reunification

Family reunification is possible in all of the scenarios as outlined under 2.2, but for different groups of relatives and with different legal consequences depending, mainly, on the status of the sponsor. Due to the fact that the European Court of Justice (CJEU) leaves significant room for discretion for the national courts in its Dereci judgement, the scope of possibilities for reunification between non-mobile Union Citizens and third-country nationals on the basis of recent CJEU jurisprudence remains unclear for the moment.

Preventing misuse and sanctions

Contracting a marriage of convenience is understood as a form of misusing resident permits: apart from the reporting obligations of authorities that are aimed at facilitating the effective detection of misuse, the legal instruments of non-issuance of a title and measures terminating residence can be used to address the phenomenon, whereby differentiation between cases according to the scenarios (see 1.2) is irrelevant in practice. Moreover, various criminal sanctions are provided in cases of such misuse.

If misuse in the form of false declarations of parenthood is determined, measures terminating residence are possible, notwithstanding the non-issuance of the title.

Scope of the issue

Whereas NGOs and relevant literature do not consider marriages of convenience as a major problem and argue for a broad understanding of the right to marriage, policy makers and authorities see it as a significant challenge for Austria's aliens' law system. As the collection of convincing data is almost impossible, the exact scope of the issue, however, remains unclear. Furthermore, adoptions of convenience are considered to be a form of misuse and respective legislation similar to that on marriages of convenience exists.

Austrian investigators do not perceive false declarations of fatherhood in cases of children born in

1 For the sake of convenience hereafter referred to as marriages.

Austria to be a significant phenomenon; however, handling them is challenging. In cases of children born outside of Austria, fake birth certificates constitute a further challenge for authorities. False declarations of motherhood are less relevant.

Competence and co-operation

Various Austrian authorities are involved in the prevention, detection and persecution of (alleged) marriages of convenience. These tasks can fall within the competence of aliens' police authorities, settlement and residence authorities as well as criminal courts and public prosecutors, whereby the reporting system (see 2.2) plays an important role to ensure the initiation of aliens' police and criminal proceedings in relevant cases. Authorities of civil status, representation authorities and civil courts may also be indirectly involved. To prove a marriage of convenience, aliens' police authorities and criminal courts, which generally have the burden of proof, base their assessments on a 'free consideration of evidences'. Co-operation between most of the relevant authorities exists, but such co-operation is not yet systematised or institutionalised.

Investigations

Beyond reports by other authorities, reports of individuals or self-indictment can lead to (also criminal) investigations; whereby no shared language amongst persons concerned, the involvement of 'socially weak persons' and the previous behaviour of persons concerned can trigger such investigations. Investigation methods, in general, vary depending on the individual case. However, interviews and home visits are regularly used. Marriages of convenience 'not involving a foreign element' are, according to investigators, easier to handle, as the actual presence of family life can be investigated more effectively. A major impeding factor for investigations is the fact that, according to investigators, applicants are well prepared and aim to delay the proceedings. In cases of allegedly false declarations of fatherhood, authorities often have to deal with (allegedly) fake birth certificates submitted in proceedings for family reunification.

Motivations and intentions

According to investigators, most marriages of convenience include a payment to the sponsor, although cases where the sponsor has no intention of unjust enrichment do also occur.

Remedies

In criminal procedures, appeals can be made to the Regional Criminal Courts. In most aliens' police proceedings, the Independent Administrative Senates serve as second instance. The Federal Ministry of the Interior decides on appeals in procedures governed by the Settlement and Residence Act.

Trans-national co-operation

Trans-national co-operation, although not institutionalised or systematised, mostly takes place with neighbouring countries, especially with Germany and Hungary.

1. LEGISLATIVE FRAMEWORK

1.1 Concepts and Definitions

In Austria's legislation governing family reunification, concepts relating to the terms 'core family', 'family', 'marriage' or 'spouse' are differently defined.²

For the scope of the Settlement and Residence Act³, the legal definition of the term 'core family' comprises the spouse or registered partner and minor unmarried children (also adopted children, stepchildren and adopted stepchildren).⁴ All spouses or registered partners must be older than

2 In cases falling under the scope of Art. 8 of the European Convention of Human Rights (ECHR), which is part of Austria's constitutional law, the definition of the concept 'family' as developed by respective judiciary of the European Court of Human Rights applies. Art. 8 ECHR and relevant case law must also be applied in cases of marriage of convenience to assess whether a couple is leading a family life according to the Convention.

3 This law, generally speaking, applies to all procedures related to the issuance of residence titles.

4 Art. 2 para 1 subpara 9.

21 when filing the application and the sponsor must be permanently resident in Austria. A similar definition of the term is found in the Asylum Act, where spouses and registered partners (if marriage or registered partnership was contracted in the country of origin), parents of minor children and minor (at the time of application) children are included.⁵

The scope of the term ‘family’ in the framework of the Settlement and Residence Act depends on the status of the sponsor. If the sponsor (EEA-citizen) has exercised his/her right to freedom of movement (mobile)⁶, spouses and registered partners as well as dependent relatives (also of the spouse and registered partner) in direct ascending and descending line (third-country national must be under the age of 21) and life partners in durable relationships are encompassed by family reunification regulations.⁷ If the sponsor (EEA or Swiss citizens) is permanently resident in Austria but has not exercised his/her right to free movement (non-mobile), additionally members of the core family, dependent relatives of the sponsor (also of the spouse or registered partner) in direct ascending line, dependent life partners in durable relationships and relatives who were dependents in the country of origin or have lived with the sponsor in a common household in the country of origin or cases in which individual care provided by the sponsor is absolutely necessary are encompassed.⁸

In general, the term ‘marriage’ or ‘spouse’ includes lawfully contracted civil marriages; while same-sex couples are exempted from marriage in the narrow or traditional sense⁹, nonetheless, they

do have same rights. Marriages of convenience are understood as valid but defeasible. Confessional (non-civil) marriages, however, are not considered relevant before Austrian law.¹⁰ Regarding the authenticity of marriages not contracted according to Austria’s legislation (abroad), the reservation clause must be applied.¹¹ Accordingly, ‘foreign marriages’ are valid if in harmony with the fundamental principles of Austria’s legal order (*ordre public*).

1.2 Legislation on Family Reunification

Reunification between third-country nationals

The conditions for family reunification in Austria vary depending on the status or residence title¹² of the sponsor and sometimes also on the relation of the sponsor to the family member.

Third-country nationals who are part of the core family (as described above) of a third-country national sponsor holding the residence title “Red-White-Red Card plus”, “Red-White-Red Card”¹³, “EU Blue Card”, a long-term residence title or with refugee status¹⁴, can obtain the residence title “Red-White-Red Card plus” (entitles to unrestricted access to the labour market).¹⁵ If the sponsor holds the residence title “Settlement Permit” or “Settlement Permit – Relative”, the third-country national can obtain the title “Settlement Permit”.¹⁶ If the sponsor holds the title “Settlement Permit” because he/she enjoys freedom of establishment based on a legal act of the European Union and is self-employed or holds the title “Settlement Permit – except employment”, the third-country national can obtain the title “Settlement Permit – except

5 Art. 2 para 2 Asylum Act.

6 Austria’s legislation concerning mobile EU-citizens was influenced by the European Court of Justice’s ruling in the cases of *Metock* (C-127/08) and *Sahin* (C-551/07) and respectively amended in 2009. See also Kutscher/Völker/Witt 2010: 60. Amendments to the Settlement and Residence Act in 2009, Government Proposal, Explanatory Notes, available at: http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_00330/fname_orig_167909.html (accessed on 1 February 2012).

7 Art. 54 in conjunction with 52 Settlement and Residence Act.

8 Art. 47 Settlement and Residence Act.

9 Art. 44 General Civil Code.

10 Art. 15 para 1 Marriage Act.

11 Art. 6 International Private Law Act.

12 There are in total 21 different titles. The Austrian legislation envisages different residence titles depending on the purpose and the lengths of the stay of the third-country national.

13 This title can be obtained by highly qualified workers, skilled workers and key workers without quota regulations.

14 This applies to persons under the scope of the Settlement and Residence Act. Regarding family reunification within the asylum procedure, please see below.

15 Art. 46 Settlement and Residence Act.

16 Art. 46 para 4 Settlement and Residence Act.

employment”.¹⁷ If the sponsor holds a “Residence Permit”¹⁸, the third-country national family member can obtain a residence permit derived from the sponsor’s title.¹⁹

In all of the abovementioned cases, the third-country national must meet general requirements, namely adequate means of subsistence and accommodation according to local standards as well as public security considerations. Furthermore, quota regulations apply to family reunification amongst third-country nationals, although exceptions are provided.²⁰ In general, third-country nationals must prove basic German language knowledge at A1 level of the Common European Framework of Reference when applying for family reunification; however, family members of highly qualified sponsors and EU Blue Card holders are exempt.²¹

Further regulations within the scope of the Settlement and Residence Act apply to third-country nationals holding residence titles of other Member States.²²

Different provisions exist regarding the reunification of family members of third-country nationals granted asylum or subsidiary protection, whereby the term ‘(core) family’ is defined according to the Asylum Act. The authority must, pursuant to

an application of a family member of a third-country national who has been granted asylum or subsidiary protection status, grant the same status by administrative decision to the family member if it is not possible to continue an existing family life, within the meaning of Article 8 of the ECHR, with the family member in another country.²³

Reunification between mobile EU nationals and third-country nationals

In accordance with Directive 2004/38/EC, the abovementioned relatives of mobile EEA-nationals (see under 2.1.) are entitled to residency of more than three months and can apply for a residence card valid for five years or a shorter period depending of the planned length of stay.²⁴ After five years of legal stay – which is assumed as long as the requirements are met –, these third-country nationals can acquire permanent settlement permission.²⁵ The (general) requirements as provided for family reunification amongst third-country nationals are not applicable.

Reunification between non-mobile EU nationals and third-country nationals on the basis of the CJEU’s jurisprudence

The impact of recent CJEU rulings on “Union Citizenship” (cases of *McCarthy*, *Zambrano* and *Dereci*) for Austrian legislation remains unclear for the moment. This is due to the fact that the CJEU leaves significant room for discretion for the national courts in its *Dereci* judgement.

However, the Austrian Administrative High Court recently ruled that the competent authorities must carry out a case-by-case assessment concerning the question if an exceptional case – where the (mobile or non-mobile) EU-citizen is deprived of the genuine enjoyment of the substance of the rights attaching to his/her status – as defined by the abovementioned CJEU rulings is at hand. Detailed jurisprudence of the Austrian Administrative High

17 Art. 46 para 5 Settlement and Residence Act.

18 Austria’s legal system provides for the specific category of residence titles, namely “Residence Permits” entitling to limited residency for a certain purpose (Art. 8 para 1 subpara 10 Settlement and Residence Act).

19 Art. 69 para 1 Aliens’ Police Act. Family reunification is possible if the sponsor is holding a permit for one of the following purposes: rotational workers, artists, special cases of dependent gainful occupation, students as well as for individual protection (Art. 69 para 2 Settlement and Residence Act).

20 According to Art. 46 Settlement and Residence Act, family members of holders of “Red-White-Red Card” or “EU Blue Card” as well as “Red-White-Red Card plus”, provided they were previously holding a ‘Red-White-Red Card’, a “Residence Permit” for researchers, the title “Settlement Permit” because he/she is enjoying freedom of establishment based on a legal act of the European Union and is self-employed or the title “Residence Permit – except employment”, if he/she is a holder of privileges and immunities, do not have to meet a quota.

21 Art. 21a Settlement and Residence Act.

22 Art. 49 et. seq. Residence and Settlement Act.

23 Art. 34 Asylum Act.

24 Art 54 para 1 Settlement and Residence Act.

25 Art. 54a Settlement and Residence Act.

Court regarding the criteria for such a deprivation has yet to be developed.²⁶

Reunification between non-mobile EU nationals and third-country nationals

If the general requirements (adequate means of subsistence and accommodation according to local standards as well as public security considerations) are met, third-country nationals who are members of the core family of non-mobile sponsors (Austrian, EEA and Swiss citizens) are granted the residence title “Family Member”. Further relatives of the sponsor – as described above – can obtain a residence title “Settlement Permit – Relative”.²⁷

1.3 Legislation on the Misuse of the Right to Family Reunification

Marriage (and registered partnership) of convenience

Contracting marriages of convenience, namely if spouses or registered partners do not intend to lead a family life in the meaning of Art. 8 ECHR but rather intend to obtain residence rights, is defined as a misuse of the right to family reunification and is specifically covered and addressed in Austria’s legislation.²⁸ Austrian legislation makes use of various instruments to deal with misuse of the right to family reunification: a reporting system amongst relevant authorities, legal instruments of non-issuance and termination of residence titles, and the possibility of entry bans, exclusion orders or return bans. The sanctions provided in cases of misuse are outlined in chapter 3.7.

The prevention of misuse of resident permits is particularly intended by the following regulations in Austria’s migration and aliens’ police law, whereby a distinction based on the status of the sponsor is not made in this regard: If an Austrian settlement and residence authority, when performing an official duty or taking a decision, finds substantiated

reason to suspect a marriage for purposes of residence with regard to a specific third-country national, it must inform the competent aliens’ police authority thereof²⁹, which will then investigate said circumstance and communicate the result to the settlement and residence authority within a period of three months, which can be prolonged by a further 2 months. If no communication is made within such period, the settlement and residence authority must assume that the investigations by the aliens’ police authority have not produced any result and that the marriage or registered partnership is legitimate.³⁰ Further, authorities of civil status are, when investigating nubility, obliged to inform the competent aliens’ police authority if at least one of the fiancées is a third-country national.³¹ Moreover, additional and more general reporting obligations exist.³²

Although Austrian legislation on family reunification provides distinctions depending on the status of the persons concerned, the practical outcome in cases relevant for this study is similar, as persons contracting a marriage of convenience cannot claim residence rights based on their marriage (of convenience). This regulation also explicitly applies to cases with mobile EU-citizen sponsors.³³

Furthermore, residence titles, in general, may not be issued to third-country nationals if a ‘marriage of convenience’ exists³⁴ and an application for family reunification with a mobile EEA-citizen in such cases must be rejected.³⁵

Contracting a marriage of convenience constitutes a ground for the issuance of an expulsion or even exclusion order against third-country nationals holding a residence title.³⁶ Irregularly resident third-country nationals may be issued a return de-

26 Administrative High Court, 21 December 2011, 2009/22/0054. In this ruling, the court did not interpret the scope of the CJEU rulings.

27 Art. 47 Settlement and Residence Act.

28 A definition of misuse can, inter alia, be found in Art. 30 para 1 Settlement and Residence Act.

29 Art. 37 para 4 Settlement and Residence Act, Art. 109 Aliens’ Police Act.

30 Art. 110 Aliens’ Police Act and Art. 37 para 4 Settlement and Residence Act.

31 Art. 38 para 2 Civil Status Act.

32 Art. 105 Aliens’ Police Act and Art. 37 Settlement and Residence Act.

33 Art. 30 para 1 and 3 Settlement and Residence Act.

34 Art. 11 para 1 subpara 4 Settlement and Residence Act.

35 Art. 54 para 7 Settlement and Residence Act.

36 Art. 62 and 63 para 2 Aliens’ Police Act.

cision in conjunction with an entry ban for a period of, generally, up to five years on the basis of the presence of misuse.³⁷ Asylum seeking third-country nationals who contract marriages of convenience may be issued a return ban.³⁸ Furthermore, residence titles and documentations of residence rights secured by European Union law become invalid if an exclusion order, which can be based on the existence of a ‘marriage of convenience’³⁹, becomes enforceable.⁴⁰

False declaration of parenthood

In this context, a general distinction between cases in which the child is born inside or outside of Austria must be made.

In the Austrian legal system, the woman who delivered the child is determined as the mother.⁴¹ Consequently, only false declarations of fatherhood are relevant for children born in Austria. If the child is born at a time when the mother is married, Austrian legislation provides for the assumption that the child is born in marriage and thus is the legitimate child of the mother’s husband (assumption of legitimacy)⁴², whereby proving the opposite is rather difficult.⁴³ If an alleged father who is not the husband wishes to declare his paternity to a child born in marriage, the mother and the child (represented by the youth welfare if the child is a minor) must consent and the child must be an Austrian

citizen.⁴⁴ In the case of a child born in Austria out of wedlock, Austrian legislation assumes that the man who had sexual intercourse with the mother during the time of conception⁴⁵ is the father.⁴⁶ The alleged father of a child born out of wedlock can declare his paternity, whereby the mother and the child can contradict the claim within two years.⁴⁷

According to investigators⁴⁸, false declarations of fatherhood in the abovementioned case configurations are a relatively inconvenient tool to misuse the right to family reunification in Austria. Even if cases occur, Austrian authorities have *de facto* few effective possibilities to take action⁴⁹ – also due to the fact that only the persons concerned have a right to contest fatherhood.⁵⁰

As regarding the prevention of misuse of the right to family reunification in cases of children born outside of Austria, the general principle of “free consideration of evidence” applies for the aliens’ police and asylum and settlement and residence authorities.⁵¹ Thus, if an alleged father or mother claims rights to family reunification, authorities are, if in doubt, required to investigate facts and collect evidence in order to prove possible misuse.⁵² If misuse is determined, the issuance of an exclusion order is, notwithstanding the non-

37 Art. 53 para 1 and 2 Aliens’ Police Act.

38 Art. 54 Aliens’ Police Act.

39 Art. 66 para 1 Aliens’ Police Act in conjunction with Art. 55 para 3 and 54 para 2 Settlement and Residence Act.

40 Art. 10 para 1 Settlement and Residence Act. According to Art. 67 Aliens’ Police Act an exclusion order is possible in cases of misuse. In concrete, exclusion orders against third-country nationals unifying with mobile and non-mobile Austrian, EEA and Swiss citizens are only possible under rather stricter circumstances, namely if the personal conduct of the concerned person represents an actual and significant threat to public order or security according to Art. 67 para 1 Aliens’ Police Act.

41 Art. 137b General Civil Code.

42 Art. 138 General Civil Code.

43 In general, only the child and the alleged father have a right to contest fatherhood. Describing Austrian legislation in this regard in detail is beyond the scope of this study. The respective regulations can be found in Art. 156 et. seq. General Civil Code.

44 Art. 163e General Civil Code.

45 180 to 320 days before birth.

46 Art. 163 para 1 General Civil Code.

47 Art. 163c and 163d General Civil Code.

48 Richard Ber, Federal Police Headquarters Vienna, Aliens’ Police Department, 16 February 2012.

49 According to Art. 63 para 2 in conjunction with Art. 120 para 2 Aliens’ Police Act, providing false statements in settlement and residence as well as asylum proceedings to gain residence rights constitutes an administrative offence and the issuance of an exclusion order, inter alia, can be possible.

50 Richard Ber, Federal Police Headquarters Vienna, Aliens’ Police Department, 16 February 2012. However, the Austrian Administrative High Court (31.10.2002, 2002/18/0145) ruled that, in such cases, authorities can determine that the persons concerned are not leading a family life in the meaning of Art. 8 ECHR and thus assume the presence of a marriage of convenience, even if the assumption of parenthood according to legislation is given.

51 Art. 45 para 2 General Administrative Act.

52 According to Tamara Völker, Federal Ministry of the Interior, Unit III/4, 16 February 2012, misuse in this context oftentimes involves fake documents.

issuance of a respective residence title, possible on grounds of the provision of false statements.⁵³

Impact of recent rulings of the CJEU

As mentioned above, the impact of recent CJEU rulings on the scope of the Union Citizenship for Austria's legal situation remains unclear for the moment. This is due to the fact that the CJEU leaves significant room for discretion for the national courts in its Dereci judgement.

However, legislation on the prevention of 'marriages of convenience' also considers forms of misuse with the aim of obtaining residence rights secured by European Union law⁵⁴; thus, similar cases as in relevant CJEU case law on Union Citizenship would be encompassed by this regulation.

2. THE PRACTICAL SITUATION IN AUSTRIA

2.1 Scope of the Issue

Marriage (and registered partnership) of convenience

In Austria, marriages of convenience are largely recognised as examples of misuse of the right to family reunification.

The Austrian media does not regularly report on this issue. In 2011, only one relevant article covering the question of marriage of convenience could be identified.⁵⁵ Similarly, the last major amendments to Austria's legislation regarding marriages of convenience were not of significant interest to the media (Messinger 2011: 183).

Relevant stakeholders have a variety of opinions on the question of the scope of the issue and appropriate measures to meet the phenomenon. A prominent NGO specialised on counselling couples in bi-national marriages or relationships does not consider the misuse of the right to family reunification as a major problem and argues for a broad understanding of the right to marriage, blaming Austrian policy-makers and authorities of putting bi-national couples under a general suspicion of misuse.⁵⁶ Similar opinions are also raised in relevant literature, where the criminalisation of persons contracting 'marriages of convenience' is criticised and misuse of the right to family reunification described as an 'artificial concept' (Messinger 2011: 313). At the same time, policy makers and authorities consider the misuse of the right to

53 Art. 120 para 2 Aliens' Police Act.

54 Art. 30 para 3 Settlement and Residence Act).

55 Therein, a representative of the NGO 'Ehe ohne Grenzen' ('Marriage without Borders') argued that Austrian criminal legislation is increasing pressure on bi-national couples. Denunciations of bi-national couples would thus become a more dangerous tool, although public prosecutors would not pick up every report. (Der Standard, Neun statt sieben Gründe, draußen zu bleiben (Nine instead of seven reasons to stay outside), 24 February 2011, p. 6.)

56 Ehe ohne Grenzen, *Über Ehe ohne Grenzen*, available at <http://www.ehe-ohne-grenzen.at/> (accessed on 7 February 2012)

family reunification to be a relevant challenge for Austria's aliens' law system (Messinger 2011: 150), albeit the exact scope of the issue remains unclear, especially as the collection of convincing data is almost impossible.⁵⁷ Nevertheless, forms of contracting marriages have been criminalised and respective sanctions have been postulated mainly in the framework of major amendments to the aliens' law in 2005 (see above under 3.7). A prohibition of marriage for irregularly resident third-country nationals, which was initially intended in the framework of the amendments, was taken out of the law proposal after respective criticism by many stakeholders (NGOs, Office of the Federal Chancellor – constitutional law service, Association of Austrian Cities and Towns, Austrian Car Association Conference, amongst others).⁵⁸

False declaration of parenthood

As already indicated, the relevance of false declarations of parenthood is considered to be low, whereby false declarations of motherhood have even less relevance. Concerning fake birth-certificates, the scope of the phenomenon seems to be limited to countries where falsified documents can be procured with relative ease.⁵⁹

Other forms of misuse

Adoptions of convenience (also amongst adults) are similarly considered as a form of misuse and respective legislation exists similar to that regarding marriages of convenience as described above.⁶⁰ However, the scope of this form of misuse is considered to be relatively low compared to marriages of convenience.⁶¹

2.2 National Means against Misuse

Marriage (and registered partnership) of convenience

As described above under 2.3, the identification of marriages of convenience is facilitated, *inter alia*, through reporting obligations of settlement and residence authorities as well as authorities of civil status to the competent aliens' police authorities in cases of possible relevance. Additionally, reports of individuals to the aliens' police authority or public prosecution or even self-indictment by persons concerned can lead to investigations. Regardless of the information source, aliens' police authorities and public prosecution investigate individual cases, if considered relevant.⁶²

Although every case must be assessed individually, some (exemplary) factors triggering an investigation were identified by investigators: the couple has no common language; the involvement of socially weak women (e.g. unemployed, high debts and credits, drug-addicted, sex workers), the previous behaviour of persons concerned (e.g. convictions because of the presence of a marriage of convenience, several divorces) or rejected asylum applications.⁶³

In Austrian practice, investigation methods vary depending on the individual case. In most cases, controls are carried out after the marriage was contracted. These can encompass, *inter alia*, home visits⁶⁴ as well as interrogations or interviews with the persons concerned and others in their surroundings.⁶⁵

If the sponsor lives in Austria, planned marriages as well as the marriage itself can be investigated rather easily, as the partners should, in general, live together. However, if the sponsor is, for example, an EEA citizen who has his/her habitual residence

57 Tamara Völker, Federal Ministry of the Interior, Unit III/4, 16 February 2012.

58 Comments to the Ministerial Proposal for the Enactment of the Aliens' Police Act 2005, available at: http://www.parlament.gv.at/PAKT/VHG/XXII/ME/ME_00259/index.shtml (accessed on 7 February 2012);

59 Tamara Völker, Federal Ministry of the Interior, Unit III/4, 16 February 2012.

60 See Art. 105 and 115 Aliens' Police Act.

61 Eva Pflieger, Federal Ministry of the Interior, Unit II/3, 16 February 2012.

62 Richard Ber, Federal Police Headquarters Vienna, Aliens' Police Department, 16 February 2012.

63 Ibid.

64 If the concerned persons do not voluntarily agree on entering their apartments/rooms, aliens' police officers are allowed to enter under specific circumstances as described in Art. 36 Aliens' Police Act.

65 Richard Ber, Federal Police Headquarters Vienna, Aliens' Police Department, 16 February 2012.

outside of Austria, investigations are rather complicated, as partners in such cases typically do not permanently live together.⁶⁶ According to investigators, it is oftentimes difficult to bring about confessions, as amnesties, as described below, are not possible in every case. Confessions occur, however, if the third-country national has already obtained a residence title and problems concerning payment to the sponsor occur.⁶⁷ According to Pflieger, most applicants planning to misuse the right to family reunification are well prepared for investigations of authorities, especially for interviews, thus constituting an impeding factor for these. As a consequence, the use of standardised questionnaires should be avoided.⁶⁸ As legislation allows the applicants to provide evidence (for example new witnesses) in every stage of the aliens' law and settlement and residence proceedings, persons concerned oftentimes try to delay procedures by repeatedly filing new applications to produce evidence.⁶⁹ Such and similar delaying tactics are seen as major impeding factors, especially as legislation stipulates that, if no relevant communication is made by the aliens' police to the settlement and residence authority within a period of three or five months, the settlement and residence authority must assume that the marriage or registered partnership is legitimate.⁷⁰

In limited cases, Austrian legislation envisages amnesties in criminal law for persons admitting misuse. Accordingly, a person who collaborates in determining the relevant facts before the authority has learned from his/her fault must not be sanctioned if no intention of unjust enrichment was present.⁷¹

66 Richard Ber, Federal Police Headquarters Vienna, Aliens' Police Department, 16 February 2012.

67 Ibid.

68 Eva Pflieger, Federal Ministry of the Interior, Unit II/3, 16 February 2012. She also stated that the existence of a network of persons supporting misuse of the right to family reunification in Austria is indicated by some factors.

69 Eva Pflieger, Federal Ministry of the Interior, Unit II/3, 16 February 2012.

70 Art. 110 Aliens' Police Act and Art. 37 para 4 Settlement and Residence Act.

71 Art. 117 para 5 Aliens' Police Act.

False declaration of parenthood

In general, investigations concerning children born in Austria follow the same rules and principles as outline above. Austrian legislation provides the possibility for DNA analyses, but only by request of the applicant who wants to prove his/her relationship to a sponsor. It is, furthermore, explicitly mentioned in legislation that if an applicant does not request the DNA analyses, it cannot be assumed that he/she is not willing to collaborate in procedures.⁷² Thus, the instrument of DNA analyses does not constitute an effective tool to prove misuse.⁷³

According to Völker, authorities frequently have to deal with fake birth certificates submitted in proceedings for family reunification in cases of children born outside of Austria. This phenomenon, however, is prominent in countries where it is relatively easy to obtain false documents. In such cases, Austrian authorities aim to co-operate with authorities abroad.⁷⁴

Evidence

To prove a marriage or registered partnership of convenience, aliens' police authorities and criminal courts, which generally have the burden of proof, base their assessments on a free consideration of evidences.⁷⁵ Indicators for the presence of marriages of convenience or triggers for investigations were outlined above.

Competent authorities and co-operation

As already outlined above, dealing with (alleged) marriages of convenience can fall within the competence of aliens' police authorities (responsible for procedures regarding return decisions, entry bans and exclusion orders), settlement and residence authorities (responsible for the issuance or non-issuance of residence titles to third-country nationals in the framework of family reunification)

72 Art. 12a Aliens' Police Act and Art. 29 Settlement and Residence Act.

73 Tamara Völker, Federal Ministry of the Interior, Unit III/4, 16 February 2012.

74 Ibid.

75 Art. 45 para 2 of the General Administrative Act.

as well as the criminal courts and the public prosecutors (responsible for criminal procedures against persons contracting marriages of convenience). Regarding the legal contracting of marriages, authorities of civil status, which also have an important role within the reporting system, have overall competence. Furthermore, Austrian representation authorities, who receive applications for family reunification, and civil courts if the marriage is terminated, are indirectly involved in procedures.⁷⁶

Public prosecutors will, in general, decide on the initiation of investigations in criminal procedures after receiving reports by aliens' police authorities or other relevant authorities or individual reporters, while the same is true for aliens' police as well as settlement and residence authorities, and respective procedures.

Settlement and residence authorities and aliens' police authorities cooperate in dealing with misuse. For example, in Vienna meetings are held by aliens' police authorities and the "MA 35"⁷⁷ to discuss the latest relevant challenges.⁷⁸

Co-operation of aliens' police or settlement and residence authorities with criminal courts or public prosecutors is limited or non-existent, as, according to Ber, criminal courts and aliens' police authorities have different approaches. Moreover, as criminal judges are independent, co-operation would be difficult.⁷⁹

According to Pflieger, the effectiveness of co-operation between settlement and residence or aliens' police authorities and representation authorities mainly depends on the experience of the involved persons with the issue.⁸⁰ If co-operation is effective, settlement and residence authorities in Austria can, as an example, base their assessment on an interview with the applicants made at the representation authority containing questions aiming at the

detection of planned misuse. Furthermore, simultaneous interviews by the settlement and residence authority, questioning the sponsor in Austria, and the representation authority are a helpful tool to detect misuse.⁸¹

Sanctions in cases of misuse

Various criminal sanctions are stipulated in the framework of Austria's legislation on the misuse of the right to family reunification, whereby the status of the sponsor does not play any role in this regard.

An Austrian national or a non-national entitled to settlement in Austria who enters into marriage or registered partnership with a third-country national without the intention of leading a family life within the meaning of Art. 8 ECHR and is, or must have been, aware that the third-country national intended to rely on this contract to obtain or retain a residence title or residence rights secured by European Union law, to acquire Austrian nationality or to prevent measures terminating residence, must be sentenced by the court to a fine of up to 360 daily units. If the intention of 'unjust enrichment' is additionally present, a term of imprisonment of up to one year can be imposed. Any person who consciously arranges or sets up marriages of convenience on a commercial basis is to be sentenced by the court to a term of imprisonment of up to three years. Any person who voluntarily cooperates in establishing the facts of the case before a prosecution authority learns of his/her guilt must not be punished. The third-country national who intends to rely on such a marriage or registered partnership must be punished as a party to the offence.⁸²

Right to appeal

In criminal procedures, appeals against first instance decisions of the District Criminal Courts can be made to the Regional Criminal Courts, which will then decide as a last instance.⁸³

76 Richard Ber, Federal Police Headquarters Vienna, Aliens' Police Department, 16 February 2012.

77 Magistrate Department 35, the competent settlement and residence authority in Vienna.

78 Richard Ber, Federal Police Headquarters Vienna, Aliens' Police Department, 16 February 2012.

79 Idem.

80 Eva Pflieger, Federal Ministry of the Interior, Unit II/3, 16 February 2012.

81 Tamara Völker, Federal Ministry of the Interior, Unit III/4, 16 February 2012.

82 Art. 117 Aliens' Police Act.

83 Art. 61 para 6 subpara 1 Criminal Procedure Code.

In aliens' police proceedings, the Independent Administrative Senates are, according to the wording of the respective article, competent to decide on appeals in cases concerning EEA citizens, Swiss citizens and privileged third-country nationals as well as return decisions, while all further cases generally fall within the competence of the Security Headquarters⁸⁴.⁸⁵ Austria's Administrative High Court ruled in May 2011 that exclusion orders and expulsion orders must be understood as return decision according to the Return Directive (Eberwein/Pfleger 2011: 38). Through this and subsequent rulings, the competence of the Security Headquarters was significantly restricted.

The governors of the Austrian provinces, who typically delegate this competence to the district administration authority, decide as first instance in procedures according to the Settlement and Residence Act. The Federal Ministry of the Interior decides on appeals against decisions of the first instance (Eberwein/Pfleger 2011: 94).

Trans-national co-operation

Trans-national co-operation traditionally takes place with neighbouring countries, especially Germany and Hungary. However, no institutionalised or systematic trans-national co-operation exists. Effectiveness of co-operation depends on personal networks.⁸⁶

2.3 Reasons and Motivations

According to investigators⁸⁷, most cases of marriages of convenience include payment to the sponsor, while cases where the sponsor has no intent of unjust enrichment do occur.⁸⁸ Furthermore, in some cases the sponsor may not intend to not lead a family life according to Art. 8 ECHR and is

not aware that the third-country national intends to rely on the marriage to obtain or retain a residence permission.⁸⁹ The last-mentioned cases do not constitute a breach of respective regulations as outlined under 2.3.

84 These are bound by instructions of the Federal Minister of the Interior.

85 Art. 9 para 1 and 1a Aliens' Police Act.

86 Tamara Völker, Federal Ministry of the Interior, Unit III/4, 16 February 2012.

87 Richard Ber, Federal Police Headquarters Vienna, Aliens' Police Department, 16 February 2012.

88 In the interview, Pfleger mentioned cases of students who would contract marriages of convenience without financial intentions but rather goodwill.

89 Viola Kainz, Federal Ministry of the Interior, Unit II/3, 16 February 2012.

3. AVAILABLE STATISTICS

The table below illustrates the number of first residence titles issued for the purpose of family reunification in 2008, 2009 and 2010 disaggregated by the general status of the sponsor.

Reunification	2008	2009	2010
EU-citizen	6,509	6,921	6,721
Non-EU-citizen	7,891	7,651	7,838
Total	14,400	14,572	14,559

(Eurostat Database, as of 19 March 2012)

In the context of marriages of convenience, only very few statistics are available: The table below illustrates the cases in which the aliens' police imposed an exclusion order or return ban on the third country national based on the presence of a marriage of convenience. It is obvious that numbers of aliens' police measures against marriages of convenience have considerably dropped in the last years, presumably due to tightened regulations and the fact that persons concerned are better prepared for investigations than in the past. However, it does not encompass cases in which misuse could not be sufficiently proven, in which aliens' police measures were not taken for other reasons or where the marriage of convenience was not detected at all. Thus, it is not possible to determine the scope of the issue and the statistics available cannot be used to indicate the scope of the issue. There are no statistics available concerning false declarations of parenthood. Further research is needed in this field.

	2007	2008	2009	2010	Jan – Jun 2011	Jul – Dec 2011
Exclusion orders*	399	231	163	94	22	9
Return bans**	21	2	4	2	0	2 (entry bans)

(Federal Ministry of the Interior 2007-2011)

* Since July 2011, exclusion orders cannot be issued against asylum seekers.

** For Jul - Dec 2011, return decisions in conjunction with entry bans are meant; no return bans were issued. Please consider the major amendments to Austria's aliens' police law in July 2011. Return decisions cannot be issued against asylum seekers.

4. CONCLUSIONS

It can be concluded that Austrian aliens' law, which was significantly tightened in 2005, provides a clearly formulated but complex framework that directly and indirectly addresses marriages and registered partnerships of convenience. Although cross-connections may exist, the Austrian policy makers' approach focuses solely on the identification of marriages of convenience and how to deal with persons concerned, rather than on the prevention of misuse. Numerous and diverse authorities are involved in cases of misuse, whereby co-operation, which is – apart from reporting obligations – not yet systematic or institutionalised, can be effective in some areas, provided that authorities have same viewpoints or approaches and personal contact between competent officers exists. In practice, the settlement and residence as well as aliens' police authorities' approach is predominantly determined by the circumstances of the individual case – great emphasis is placed on the flexibility of the investigation. These investigations may be triggered by the investigator's perception of the previous behaviour of the applicants for family reunification or their social standing and are, according to authorities, mainly impeded by well-prepared applicants aiming at a delay of procedures or challenges in cases involving a foreign element. As only limited data is available, and available data is not convincing, the scope of the phenomenon remains unclear. In this regard, further research is needed. However, it is obvious that the number of aliens' police measures against marriages of convenience has considerably dropped in recent years, presumably due to tightened regulations and the fact that persons concerned are better prepared for investigations than in the past.

The legal situation and Austria's policy regarding false declarations of parenthood are comparatively vague and the scope of misuse in this field is similarly unclear, but presumably rather limited. According to competent authorities, allegedly fake birth certificates are the main issue. There are few effective instruments to tackle or prevent such forms of misuse.

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