

**Misuse of the right to
family reunification:
Marriages of convenience and
false declarations of parenthood.
The portuguese case**

September 2012

**Misuse of the Right to Family Reunification: Marriages
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The Portuguese Case**

European Migration Network

2012

Disclaimer:

The approach adopted in this Study aims, primarily, to provide a contribution to the Synthesis Report for the above-titled EMN Focussed Study.

In this context, the contributing EMN NCPs provide information that is, to the best of their knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of the relevant Member State in this matter.

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1 – Introduction

This study integrates the 2012 work programme of the European Migration Network, in accordance with the specifications, on a new model that is more suitable to the production of information for political decision-making and to the diffusion of the themes to other audiences.

In order to identify legislative measures and practices adopted in the prevention of the misuse of the right to family reunification, this Study is focused on marriages of convenience and false declarations of parenthood.

The main sources used on this Study relate to the legal framework as regards matters such as migration, family right and criminal law, as well as a brief review of reading material and media consultation. It should be noted that the misuse of the right to family reunion is not a matter under social scrutiny or of relevance in the Portuguese society, as can be observed by the recent criminalization of marriage of convenience, with Act 23/2007, of July 4.

It should be noted that the common specifications of the study prescribed the analysis of four proposed scenarios regarding family reunion, which are not strongly regulated in national legislation (i - A third-country national residing lawfully who applies for family reunification for other third-country national; ii - A national of another European Union Member-State reunifying with a third-country national; iii - A Portuguese national reunifying with a third-country national in accordance with jurisprudence concerning the European Union Treaty (Zambrano, McCarthy, Dereci cases); iv - A Portuguese national reunifying with a third-country national). The first option is regulated by Act 23/2007, of July 4, and the remaining, without distinction, are regulated by Act 37/2006, of August 9. It

should also be noted that the recent case-law has not yet had an impact on national legal order, or in practice.

This study was conducted by Pedro Dias and Alexandra Bento. Mention should also be made to the contribution of João Ataíde and Verónica Nogueira, as well as all SEF's officers who granted their important contribution in providing clarifications and information regarding the formal reality of marriages of convenience, especially Isabel Alho, Luís Frias, Luísa Maia Gonçalves, Maria José Torres and Paulo Torres. The translation of the bilingual edition was carried out by Ana Rita Ferreira.

With the purpose of simplifying the reading of this publication, its structure has been altered in relation to the common specifications of the European Migration Network focussed study. In the following chapter contextualizes the object of this study, and is followed by the legislative, institutional and factual framework of the marriage of convenience in Portugal. Identically, Chapter 4 has the framework of false declarations of parenthood, taking as reference the above-mentioned regarding marriages of convenience. Chapter 5 presents statistics, sources of information and trends, followed by the conclusions and bibliographic references.

2 – Object of study

This Chapter provides general considerations on ‘marriage of convenience’ and ‘false declarations of parenthood’ as actions of misuse of the right to family reunification.

First of all, it should be stated that in Portugal there is a generic equality in family law and in rules governing the entry and stay of foreign citizens regarding the concepts of ‘marriage’ and ‘de facto relationships’ in terms of law. Furthermore, in Portugal there is the possibility of celebrating a marriage or a de facto relationship between same-sex citizens.

Marriage of Convenience is not a recent phenomenon, although legally it was only considered a crime in 2007 (Article 186 of Act 23/2007, of July 4). This crime is punishable with one to four years imprisonment, and fostering or creating conditions – on an organized way or repeatedly – is punishable with two to five years imprisonment.

In Portugal, judicial and police authorities [Public Prosecution Service (*Ministério Público*), the Immigration and Borders Service (*Serviço de Estrangeiros e Fronteiras*) and the Criminal Police (*Polícia Judiciária*)] are the ones responsible for combating and preventing marriage of convenience. The Immigration and Borders Service, within the scope of its duties, is the most capable authority to detect and indicate this type of crime.

The lack of scientific study on marriage of convenience and the little attention provided by the media indicate the small relevance of this phenomenon in Portuguese society, supported by the quantitative expression of detected crimes. However, the criminalisation of marriage of convenience has a preventive

relevance as regards the misuse of the right to family reunification, the violation of the rules for entry and stay of foreign citizens in national territory and of the law of nationality and also on other possible transversal impacts on society (economic, social, cultural, security and well-being).

In the Portuguese case, false declarations of parenthood is a phenomenon with little social expression, yet it has been receiving an increasing attention from the administrative authorities, particularly by the Directorate-General for Consular Affairs and Portuguese Communities [*Direcção-Geral dos Assuntos Consulares e das Comunidades Portuguesas* –DGACCP], the Immigration and Borders Service [*Serviço de Estrangeiros e Fronteiras* –SEF] and the Institute of Registration and Notary Affairs [*Instituto dos Registos e Notariado* – IRN]. These authorities, within the scope of their duties, have been detecting several cases of use of this type of crime for purposes of obtaining visas, residence permits and other stay permits in national territory, and also for obtaining Portuguese citizenship.

However, this phenomenon is not recognized as an autonomous crime, once it is punishable in accordance with the general rules regarding document forgery and counterfeiting, i.e., there is no other aggravation of the penalty apart from the one laid down by the general rules (imprisonment up to three years or a fine). On the other hand, as regards the administrative procedure, there are different criteria concerning the way to produce evidence that may confirm the family tie on medical/legal examinations. This type of evidence is only legally established in cases of family reunification between third country citizens (case i)), and is limited on cases where the applicant to such right is a national of an EU Member State (or equivalent).

3 – Marriage of Convenience

3.1 National legislative framework and definitions

3.1.1 Legal Framework

According to the Constitution of the Portuguese Republic, the right to family and marriage under conditions of full equality is a fundamental right (Article 36 of Constitutional Act 2/2005, of August 12). This Article also states that marriage is governed by the Civil Code.

Thus, in accordance with Article 1577 of the Civil Code, marriage is the *contract celebrated between two persons who plan for a family in full communion of life*. It should be noted that in 2010 marriage became possible between same-sex persons (Act 9/2010, of May 31).

On the other hand, *de facto* relationships are recognised under Act 7/2001, of May 11, with the following definition in paragraph 1 of Article 1: *legal situation of two persons who, regardless of gender, live in conditions similar to those of spouses, for more than two years*. Also in this context, the equality in the relationship between same-sex persons is safeguarded (Act 23/2010, of May 31).

The main legal instruments for family reunification are Act 23/2007, of July 4, the Regulatory Decree 84/2007, of November 5 and Act 37/2006, of August 9.

Act 23/2007, of July 4, approves the legal framework of entry, stay, exit and removal of foreigners into and out of national territory. Regarding family

reunification, due to the transposition of the Council Directive 2003/86/CE, of September 22, this Act sets out the terms under which the personal scope of this right is extended, particularly in Section IV “Residence permit for purposes of family reunification” (Articles 98 and following: rights, recipients, requirements and procedures), not considering if the family members are staying – or not - in national territory. In case the family members are not in Portugal, Subsection II “Residence Visa” (Article 64) establishes the issuance of a residence visa which allows entering national territory when the application for family reunification is granted.

This diploma also includes long-term residents in another Member State (Section VI “Residence permit granted to holders of long-term resident status in another European Union Member State”).

The family members covered by the right to family reunification, under paragraph 1 of Article 99 of Act 23/2007, of July 4, are the following:

- Spouse;
- Underage or incapable children under guardianship of the couple or of one spouse;
- Minors adopted by an unmarried applicant, by a married applicant or by the spouse, (this decision needs to be acknowledged by Portugal);
- Children who are of age, and of whom the couple or one of the spouses is in charge, and study in a Portuguese teaching institution;
- Progenitors in first direct line of kindred to the resident or the respective spouse provided they depend from either of those;
- Underage brothers or sisters provided they are under the tutelage of the resident, (this decision needs to be acknowledged by Portugal).

Family reunification for *de facto* relationships is established in Article 100 of the same Act for the following cases where:

- A *de facto* relationship between the foreign resident citizen and the partner is duly proved, under the terms of law;
- There are unmarried underage or incapable children, including the adopted children of the *de facto* partner, provided that they are under his/her legal tutelage.

Regulatory Decree 84/2007, of November 5, establishes on Section IV “Family Reunification” (Article 66 and following) the necessary conditions for application, procedural steps, notification of approval and cancelation of residence permit.

Act 37/2006, of August 9, regulates the right of European Union citizens and respective family members to move and reside freely within national territory (it transposes the Directive 2004/38/EC, of 29 April, of the European Parliament and Council). The concept “family member” of a European Union citizen is established in Article 2, as follows:

- Spouse;
- Partner with whom the Union citizen lives in a *de facto* union, under the terms of law
- Direct descendant under the age of 21 (or descendant of the spouse or partner);

- Direct ascendant in charge of a Union citizen (or of the spouse or partner).

The exercise of the right to free movement and reside freely is established in Chapter IV “Right of residence for more than three months” (Articles 7 and 8) and in Chapter V “Right to permanent residence” (Article 10). This Act also establishes the rights, recipients, requirements and procedures to family members of European Union citizens reside in Portugal.

3.1.2 Applicable legislation in distinct cases

This section analyses the four proposed scenarios regarding family reunification, particularly concerning marriages of convenience: i - A third-country national residing lawfully who applies for family reunification for other third-country national; ii - A national of another European Union Member-State reunifying with a third-country national; iii - A Portuguese national reunifying with a third-country national in accordance with jurisprudence concerning the European Union Treaty (Zambrano, McCarthy, Dereci cases); iv - A Portuguese national reunifying with a third-country national).

(i) a third-country national residing lawfully in the EU / Norway reunifying with a third-country national applying to enter / reside there in order to preserve the family unit.

Act 23/2007, of July 4, establishes the regulation of family reunification for third country nationals. Section IV “Residence permit for family reunification purposes” determines the subjective right (paragraphs 1 and 2 of Article 98); listing the family members covered (Article 99) and the conditions for the exercise of this

right (Article 101). This Act defines the applicable regulation for de facto relationships (Article 100), guaranteeing a system identical to that of marriage. Moreover, this Act includes the administrative rules (Articles 102 to 106) which are also established in Regulatory Decree number 84/2007, of November 5, in Chapter IV (Articles 66 to 68).

The right and conditions to family reunification for long-term residents in another European Union Member States are established in Article 118 of Act 23/2077, of July 4.

(ii) A mobile EU national reunifying with a third-country national

The right of residence of European Union citizens and their family members is enshrined in Act 37/2006, of August 9 (article 7, paragraph 2). Administrative formalities for issuance of a residence card to the Union citizen family member are established in Chapter VI, for a period of more than three months (Article 15) or permanent (Article 17).

(iii) A non-mobile EU citizen reunifying with a third-country national on the basis of jurisprudence (and reference to the EU Treaty)

The exercise of the right to family reunification of Portuguese citizens with third country nationals is governed by Act 37/2006, of August 9. This Act establishes the concept of family member (Article 2 e) and also the personal scope of application of the law (Article 3, paragraph 5). The restrictions to the right of entry and residence of family members of European Union citizens apply on grounds of public policy, public security or public health (Article 22).

(iv) A non-mobile EU citizen reunifying with a third-country national.

In this situation one applies the same legislation mentioned in (iii).

3.1.3 Preventive Measures

The preventive measures against the misuse of residence permits for purposes of family reunification are implicit in the Aliens Act (Act 23/2007, of July 4) and in the Portuguese Penal Code.

As regards Act 23/2007, of July 4, it is important to note the rules concerning granting of residence permits on grounds of family reunification, as well as the criminal measures provided for such crimes.

Granting of residence permits for purposes of family reunification requires a set of formalities, including proof of the family tie, identification documents, means of subsistence, criminal record, among others (Articles 66 and 67 of the Regulatory Decree 84/2007, of November 5). On the other hand, when examining an application for family reunification, SEF may interview the family reunification applicant, and his / her family members, and conduct any other inquiries deemed necessary, and *when examining an application regarding a de facto partner of the family reunification applicant, SEF must ponder factors such as the existence of common children, former cohabitation, and the register of the partnership as well as any other trustworthy means of proof* (Article 104 of Act 23/2007, of July 4).

Apart from the required formalities – whose non-compliance implies the refusal of the applications (Article 106 of Act 23/2007, of July 4) - one may consider as a preventive measure against the misuse of residence permits for purposes of family reunification the legal provision of cancellation (and processing) of such right. The cancellation may thus take place when the marriage, *de facto* relationship or adoption had for only purpose allowing the concerned party to entry or reside in the country (Article 108 of Act 23/2007, of July 4). In case there are any indications of fraud, there may be inquiries and specific control actions.

On the other hand, the following preventive measure ought to be noted: the sentence of imprisonment of 1 to 4 years to *whoever marries with the sole purpose of favour the granting or earn a visa or a residence permit or defraud the legislation in force on the subject of nationality* (Article 186 of Act 23/2007, of July 4). This punitive force is also applicable to *whoever in a repeated and organised way foments or creates the conditions for the practice of marriage of convenience*, and is punishable with an imprisonment sentence from 2 to 5 years. The legal framework laid down for this type of crime is enhanced in so far as the final sanction stipulates that even an attempted crime is equally punishable.

All these legal provisions comply with Directive 2003/86/CE, of September 22, Chapter VII “Penalties and Redress”, paragraph 2 a) and b) and 4 of Article 16 “Penalties and Redress”.

Act 37/2006, of August 9, provides the refusal and withdrawn of the rights of residence and social benefits under that legal framework in cases where there are

indications of misuse of the right, fraud, simulated marriage / relationship or marriage / relationship of convenience (Article 31).

As regards the Penal Code (Decree-Law 400/82, of September 23), the legal provisions related with falsification of civil status (Article 248) and falsification of documents (Article 256) may be considered as preventive measures against the misuse of the right to family reunification for residence permit purposes.

The legal framework regarding falsification of the civil status establishes punishment with imprisonment up to 2 years or fine up to 240 days to those *who state in civil registry an inexistent birth, or usurp, change, assume or hide his/her civil status or the family legal position of another person* in such way that may endanger the official verification of the civil status or of the family legal position (Article 248 of the Portuguese Penal Code).

Regarding document falsification or counterfeiting (Article 256 of the Penal Code), the imprisonment sentence may amount to three years (or fine) for those who *intend to cause harm to another person or to the State, in order to illegally obtain - for him/herself or someone else - any benefit, or who prepare, ease, execute or hide another crime, such as:*

- a) *Production or elaboration of a false document, part of the document or any component of the same;*
- b) *Falsification or change of a document or any of its components;*
- c) *Abuse of someone else's signature in order to falsify or counterfeit a document;*
- d) *Include in a document, or in any of its components, any false fact that may be legally relevant;*
- e) *Use a document as referred to in the previous sub-paragraphs;*

f) By any means, provide or hold a falsified or counterfeited document; shall be punished with imprisonment up to three years or fine.

In contrast to the family reunification scheme, in this scheme there is no rule establishing the possibility of providing the Administration with medico-legal expertise. Given that Act 67/98, of October 26, on Protection of Personal Data, prevents the processing of genetic data if there is no legal provision for that effect or a previous authorization by the Portuguese Data Protection Authority (see Article 7, paragraphs 1 and 2), it is not possible to use this type of evidence to grant the right of residence to the interested parties (cases (ii), (iii) and (iv)).

Thus, resorting to medico-legal expertise for purposes of determining parenthood is only possible in those applications for family reunification involving third country nationals (case (i)).

3.1.4 Impact of the European Court of Justice case law on family reunification

The recent decisions of the European Court of Justice on family reunification (Zambrano, McCarthy, Dereci) did not have much of an impact in Portugal.

However, one must highlight the fact that the right to free movement in national territory outlines the principles derived from the European Court of Justice case law relating to Article 8 of the European Convention on Human Rights and the transposition of the Family Reunification Directive (Directive 2003/86/EC, of the Council, of September 22) and the Free movement and residence of European

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Union citizens and their families in the territory of Member-States (Directive 2004/38/EC, of the European Parliament and Council, of April 29).

As an example, one ought to mention the protection on the removal of foreign citizens from national territory, paying due regard to the safeguard of social and family integration, as well as the suspensive effect of judicial remedies. In the Aliens Act there are restrictions to removal (Article 135 of Act 23/2007, of July 4), particularly in cases where foreign citizens meet at least one of the following conditions:

- Were born and residence in Portuguese territory;
- Have effective custody of minor children of Portuguese nationality and residing in Portugal;
- Have minor children, nationals from a third-country and residents in Portuguese territory over who have effective parenthood and ensure their livelihood and education;
- Who live in Portugal since less than 10 years old and live in the country.

On the other hand, there can only be restrictions to the right to free movement and residence of European Union citizens and their family members, regardless of their nationality, for grounds of public policy, public security or public health (Article 22, paragraph 22, of Act 37/2006, of August 9).

This framework also establishes protection against removal (Article 23 of Act 37/2006, of August 9). It is important to note that removal can only take place on grounds of public policy, public security or public health and taking into consideration personal, social and integration issues. European Union citizens have

a greater level of protection regarding removal, once it can only occur for imperative grounds of public security, except if the decision concerns a minor and is in the best interest of the child, in accordance with the United Nations Convention on the Rights of the Child, of November 20 1989.

3.2 The situation in Portugal

3.2.1 Misuse of residents' permits for purposes of family reunification

In the last few years, marriage of convenience has been recognised as an improper way of misuse of the right to family reunification.

From the national political-legislative point of view, it should be pointed out the recent criminalisation of marriage of convenience and the reinforcement of criminal measures for this type of action which were introduced by Act 23/2007, of July 4 (Act that transposes Directive 2003/86/EC, of September 22, on family reunification). Thus, the legal documents governing the permanence of foreign citizens in national territory, more specifically Act 23/2007, of July 4, the Regulatory Decree 84/2007, of November 5, and Act 37/2006, of August 9, lay down a set of preventive measures regarding the administrative procedure for granting of residence permits. Such measures are based and linked to the main Portuguese regulatory and legal instruments, including the Constitution of the Portuguese Republic, the Administrative Procedure Code, the Penal Code and the Code of Criminal Procedure (rights, freedoms, guarantees and administrative and criminal supervision).

Regarding Public Administration entities, the relevance of the marriage of convenience is recognised, particularly by those entities with powers related with this type of crime. SEF has been proceeding to the investigation, prevention and combating this type of crime, acting as a police authority on immigration matters. Apart from recognising the impacts as regards the granting of residence titles, SEF has been paying particular attention to the decrease on the number of applications for residence titles under Act 37/2006, of August 9, on grounds of marriage with third country citizens with Portuguese citizens, with the possibility of obtaining Portuguese nationality after three years of marriage.

On the other hand, legal measures are supported by rules of procedure adopted by entities with subsidiary powers to those of SEF as regards immigration matters. As an example, one may outline the collaboration between SEF and the Institute of Registration and Notary Affairs [*Instituto dos Registos e Notariado* – IRN] on supporting the investigation and inspection of marriages of convenience. On a IRN’s opinion on marriage of convenience (P.º C.C. 34/2009 SJC-CT: “Marriage between a Portuguese citizen and a foreigner citizen. Marriage of convenience. Procedures to be followed so as to avoid any disciplinary or criminal liability, without prejudice to full compliance with the law”), the legal implications on this type of action are herein debated, concluding that there is the need to inform the judicial and police authorities (Public Prosecution and SEF) of any fact that may indicate the possibility of a marriage of convenience to be celebrated or recorded by the Registrar.

The academic debate on this matter, although still very limited, has been gaining more relevance due to the increase of this problem as a way to legalize immigration. Grassi (2006) studied marriage as a way for immigration, categorising it as an emerging phenomenon in contemporary Europe, linked to the

most recent migratory flows to European Union member countries. Grassi outlines the existence of three perspectives on this problem. On the one hand, the marriage stakeholders view “marriage with the passport” as an informal economical activity which allows legalising the citizen’s stay in the country (the right to reside in Europe becomes therefore possible through the payment of a certain amount of money. Moreover, the agreement also comprises the granting of the divorce immediately after obtaining the residence permit). On the other hand, the academy sheds light to the negative aspect that the arbitrary criminalisation of this type of marriage holds within the complex migration framework. Finally, the police authorities’ standpoint on this type of crime evidences the unlawfulness based on criminalisation, the threat to security and potential negative social impacts.

Raposo and Togni (2009) outline the sensibility of the State’s “ambiguous interference” in the intimacy of immigrant citizens’ private life as regards the public policies on immigration in Portugal. Taking as an example the marriage of convenience, the authors underline the prevalence of a security perspective (opting for solutions of control and monitoring) over a situation of negotiation and debate of public measures.

Regarding media coverage on “marriages of convenience” one may refer to occasional cases which stand out specially for being newsworthy, rather than being an actual criminal reality of this type of strategy to enter national territory. For example, one may mention the news¹ concerning an appeal of a foreign female citizen married to a Portuguese citizen, who was refused a residence card under

¹Sources: <http://www1.ionline.pt/conteudo/7191-tribunal-considera-irrelevante-exercer-o-amor-remunerado-e-contraria-sef>; http://www.dn.pt/inicio/portugal/interior.aspx?content_id=1473161

Article 15 of Act 37/2006, of August 9 (Judgement of the South's Central Administrative Court²).

Due to the recent criminalization of this problem, and to the lack of methods, sources and harmonized criteria for the production of information, it becomes impossible to set an exact identification of the patterns and types of marriage of convenience. However, the identified cases allow us to list a number of elements in order to draw a profile on marriage of convenience:

- The problem is not only confined to the family reunification framework (case (i)). It assumes a significant expression within the framework for free movement of people, taking into consideration the requests for residence titles on grounds of marriage of third country citizens with citizens nationals of European Union Member States (cases (ii) and nationals (case (iv)));
- The most relevant nationalities are the following: Brazilian, Ukrainian and Pakistanis;
- The main motivations are the regularization of entry and stay in national territory, and also financial matters;
- The profiles and strategies differ in accordance with nationality, gender, motivation and presence (or absence) in national territory;

²Source:

<http://www.dgsi.pt/jsta.nsf/0/c0a526751d1f3e65802575fd00344fbe?OpenDocument&ExpandSection=1>.

The grounds for refusal were based on the following facts: the foreign citizen was a prostitute and did not live in cohabitation with the national citizen (who could exercise the right to family reunification). The afore-mentioned judgement considered that the matter fell under the domain of the citizen's private life, and the alleged non-cohabitation with the husband or the "exercise of paid love" with other persons was irrelevant, given that the family relationship by way of marriage prevailed because it has still not been dissolved. On the other hand, the Judgement stated that it is not up to police authorities the investigation of facts concerning the private and familiar life of citizens, once that violates the fundamental right established in Article 26 of the Constitution of the Portuguese Republic.

- There are some constraints concerning the handling of administrative procedures and the safeguard of the private life of the stakeholders.

3.2.2 Preventive Measures

Prevention on the misuse of the right to family reunification is made through the legal framework for granting of this right, particularly the provided formal requirements, such as evidence of the cited family ties, of accommodation and subsistence means, certified copies of identification documents, criminal record and evidence of the de facto relationship (Article 67 of Regulatory Decree 84/2007, of November 5). In case of a positive decision, the family member must go to the nearest Portuguese consular representation for issuing of residence visa in accordance with Article 64 of Act 23/2007, of July 4.

The application may be refused in case the necessary conditions for the exercise of the right to family reunification do not meet (paragraph 1 of Article 106 of Act 23/2007, of July 4).

Residence titles issued under the right to family reunification may also be cancelled if there is any proof that the family relationship (marriage, de facto relationship, adoption) was established with the sole purpose of allowing the concerned party to enter or reside in the country (paragraph 1 of Article 108 of Act 23/2007, of July 4), operating independently of any process of other nature (Article 69 of the Regulatory Decree 84/2007, of November 5).

On the other hand, the criminal provision (Article 186 of Act 23/2007, of July 4) and the establishment of the marriage of convenience as a priority investigation crime within the guidelines of criminal policy established for 2009-2011

biennium (Act 38/2009, of July 20) are also considered as preventive instruments. In addition to the formal instruments for complaint to Public Prosecution (the responsible entity for the criminal procedure), or to the competent authorities who are responsible for communicating the complaint to the Public Prosecution, the Ministry of Foreign Affairs provides an online instrument for non-anonym complaints: <http://queixaselectronicas.mai.gov.pt> (one must provide the date, place and description of the crime, complainant, suspects, witnesses, among other information). This instrument is also a deterrent of this type of crime.

From the administrative point of view, SEF may carry out a set of preparatory investigations, in accordance with Article 104 of Act 23/2007, of July 4, including interviews with the stakeholders of family reunification, or other investigations such as verification of documents proving the family relationship.

As preventive measure, it should also be mentioned the level of accuracy and complexity of the documentary evidence required by the Consulates (application for family reunification abroad) and by the Institute of Registration and Notary Affairs [*Instituto dos Registos e Notariado* – IRN] (marriages celebrated in Portugal).

3.2.3 Detecting misuse situations

The detection of cases of marriage of convenience occurs generally during the processing of the family reunification procedure, although there may be cases under investigation regarding suspicions of practice of this type of crime.

Once there is any indication of a case of marriage of convenience, actions will be carried out so as to establish the facts, including the instruments provided in the

Administrative Procedure Code (articles 86 to 105 of Decree-Law 6/96, of January 31), in Act 23/2007, of July 4, and in Regulatory Decree 84/2007, of November 5.

There are several aspects to help identifying any indication of fraud related to marriages of convenience, including:

- The spouses do not speak a language that is understood between both of them;
- There is no previous history of legalization (or attempt) of the concerned parties in national territory;
- The systematic use of interpreters in acts related to the marriage;
- The spouse is completely unfamiliar (they have never met previously), or there is a misinterpretation of each other data (name, address, nationality, job);
- They reside in different countries;
- The absence of any type of communication between both spouses;
- Marriage with pre-nuptial agreements, such as separation of marital property;
- They do not live together after marriage;
- The national of third country has a change of address shortly after obtaining a residence card of a EU citizen family member;
- Absence of any cultural or social sharing between spouses;
- Accusations of marriages of convenience, or physical / psychological abuse and blackmail which can indicate the existence of a marriage of convenience;

- Difficulty in reporting consistent facts of the relationship that may justify the will to marry;
- Significant differences in the ages of the spouses;
- Marriages by power of attorney;
- Marriages celebrated after the initiation of an expulsion procedure, or after decisions rejecting the application for residence permit under other legal instruments;
- Marriages with indigents, prostitutes or persons with mental disabilities;
- Marriages in which the nationalities of the spouses match the risk profile as regards marriage of convenience;

Once the existence of a crime is determined, the Public Prosecution must be informed in accordance with Articles 242 and 288 of the Code of Criminal Procedure, in order to start the criminal investigation. The investigation of marriage of convenience cases follows the provisions established in the Code of Criminal Procedure (Articles 85 to 123) and the taking of evidence (Articles 124 to 190).

In case of confession and repentance of the marriage of convenience, these elements will be taken into consideration by the court in determining the punishment. On the other hand, if the marriage of convenience may set off the existence of the crime of trafficking in human being or facilitation to illegal immigration, the victims may be covered by the protection framework which provides the granting of a residence permit to victims of these crimes (Articles 109 to 115 of Act 23/2007, of July 4).

3.2.4 Evidence

In the application for family reunification, the burden of proof rests with the interested parties, who have to prove the alleged facts, in this case the existence of a marriage (Articles 87 and 88 of the Administrative Procedure Code), without prejudice to the right of the administrative authorities of determining the need of obtaining other forms of evidence, such as interviews, request for documents, investigations, inspections (Article 89 of the Administrative Procedure Code and Article 104 of Act 23/2007, of July 4).

If there is any indication of a marriage of convenience (as stated above), the competent authorities (Public Prosecution and Criminal Police) hold the burden of proof regarding the demonstration of the action and the fraudulent motivation for celebrating such marriage for purposes of regularizing the concerned person's legal documents in national territory. Hence, these authorities take the necessary arrangements so as to proceed with the investigation and taking evidence in accordance with the terms laid down in the Code of Criminal Procedure (Articles 124 to 190).

3.2.5 Responsible authorities

In Portugal, SEF is the authority responsible for detecting the misuse of the right to family reunification for purposes of obtaining a residence permit, given that this authority is the one responsible for regulating the entry, stay, exit and removal of foreigners, as well as for implementing a significant part of national immigration and asylum policies. Thus, and in accordance with SEF's organic law (Article 2

of Decree-Law 252/2000, of October 16), this service has the mission of checking and supervising the permanence and activity of foreigners in Portugal; investigation of crimes related with illegal immigration; granting of titles authorizing foreigner's stay in Portugal (extensions of stay, residence permits); and recognition of the right to family reunification.

Mention should also be made to the key role of the Institute of Registration and Notary Affairs [*Instituto dos Registos e Notariado* – IRN] in detecting this type of action, and also on this Institute's powers regarding the celebration of marriages as well as in processing the applications for granting of Portuguese nationality.

If there is any indication of crime (it shall be recalled that marriage of convenience is considered a crime, as stated), a communication is made to Public Prosecution which will endorse the investigation with the assistance of the competent criminal police bodies, of SEF (specific competence in this matter) or of the Judicial Police (general competence).

It should be noted that the crime of marriage of convenience is established in the priorities and guidelines of criminal policy for 2009-2011 biennium (Act 38/2009, of July 20) as a crime of priority investigation (Article 4 f).

3.2.6 Penalties Imposed

The crime of marriage of convenience is punishable with imprisonment of 1 to 4 years (exceptionally, it can be diminished in case of attempt). The promotion or creation of conditions for the actions of marriage of convenience on a repeated or organised way is punishable with imprisonment from 2 to 5 years. These criminal provisions are provided in paragraphs 1 and 2 of Article 186 of Act 23/2007, of July 4.

If there is any substantiated evidence of a case of marriage of convenience, and once the criminal proceedings against the suspects of practicing this crime starts, they are declared defendants and are subject to the coercive measures provided in the Criminal Procedure Code (Articles 57 to 67 and 196 to 226), as also established in Act 23/2007, of July 4 (Article 190).

From an administrative standpoint, marriage of convenience between third country nationals implies the refusal of the application for family reunification (Article 106 of Act 23/2007, of July 4) or cancelation of the residence permit (Articles 85 and 108 of Act 23/2007, of July 4). Cancelation of a residence permit is conducted independently of any process of other nature, provided that in the relevant procedure evidence of the marriage or of de facto union is presented (Article 69 of Regulatory Decree 84/2007, of November 5). Marriages of convenience involving at least one national of a EU Member State entail the refusal and withdrawn of the rights of residence and social benefits provided under Act 37/2006, of August 9 (Article 31).

3.2.7 Right to appeal

Generally speaking, there is always the right to appeal administrative or judicial decisions.

As regards the decision of refusal or cancelation of a residence permit, the right to appeal follows the requirements established in Articles 158 to 177 of the Administrative Procedure Code. However, the administrative decision for cancellation of a residence permit on grounds of marriage of convenience is subject to judicial review with suspensive effect (paragraph 7 of Article 108 of Act

23/2007, of July 4) up to decision of the criminal procedure under Article 186 of Act 23/2007, of July 4.

3.2.8 Trans-national cooperation on combating situations of misuse of the right to family reunification

In recent years there have been some joint operations and investigations in cooperation with other Member-States, as well as within the scope of Europol and Eurojust.

3.2.9 Reasons and motivations

There are a lot of constraints when determining the motivations for the sponsor engaging in a marriage of convenience. First, one should consider that marriage is a matter of the individual's private domain, thus it becomes difficult to ascertain his/her reasons for engaging in a marriage. On the other hand, establishing the truthfulness of a relationship - both from an academic or police standpoint - runs up against the complexity of the relationship itself, as well as with social and cultural aspects that go beyond the legislator's powers. Finally, the different perspective of the politic and academic approach leads to distinct interpretations. Politically, it is recognised that marriage of convenience is a threat to social order and stability of the security of States, particularly as regards the control of illegal immigration. Hence, marriage of convenience involves fraud to legislation regarding immigration and nationality³.

³ Justification on the reasons for change of the Framework for entry, stay, exit and removal of foreign citizens from and into Portuguese territory, on the basis of Act 23/2007, of July 4; Act 38/2009, of June 20 which establishes the goals, priorities and guidelines for criminal policy for 2009-2011 biennium.

From an academic point of view, the sociological dimension takes a particular importance, specially as regards the level of integration in the country of destination, or on how certain cultural realities face marriage of convenience (level of acceptability or condemnatory):

- Grassi (2006) observes that the motivation to cooperate in a action of this type is primarily material, given that some groups of immigrants holders of residence permits see this type of action as a way to complement their low incomes. On the other hand, in Portugal there is a growth trend of recruitment of women living in fragile social situations (in terms of poverty, work conditions, family support and integration into society) by transnational networks who organized marriages with foreigners with the purpose of facilitating legal circulation in Schengen Area.
- Raposo e Togni (2009) mention that the decision to engage in a marriage of convenience may be connected with the predisposition to marry that is intrinsic to the age structure of potential migrants. It also referred that it may correspond to a strategy of migration/integration (acquisition of Portuguese citizenship or obtaining a residence permit) or to economic or social reasons.

Regarding the media, the information provided on this matter demonstrates, generally, indications to relationships of convenience, often associating this phenomenon with the networks of trafficking in persons for purposes of prostitution.

In addition, it should be mentioned the detection of cases where the use of marriage of convenience is an attempt (apart from regularizing the foreigner's situation in national territory) to achieve the following:

- Avoid paying fines (cases ii) and iv)) for overstay (particularly by Brazilian citizens of both genders, aged between 25 and 45 years old);
- Remove entry bans resulting from administrative expulsions (marriages celebrated in Brazil with power of attorney – all cases);
- Avoid fines, supplementary penalties ordered by a judicial authority, the execution of administrative decisions of removal or the effects of measures for entry ban resulting from administrative expulsions (particularly male Cape Verdean citizens with criminal record who try to marry female citizens with the same origins but with Portuguese nationality – case iv)).

4 - False Declarations of Parenthood

4.1 National legislative framework and definitions

4.1.1 Legal Framework

Parentage emanates from birth in relation to the mother and from the presumption (if within marriage bond) or from the acknowledgement of paternity (Article 1796 of the Civil Code).

Establishment of maternity can be done by declaration (Articles 1803 to 1807 of the Civil Code), by ex officio investigation (Article 1808 to 1813 of the Civil Code) or by judicial ruling (Articles 1814 to 1825 of the Civil Code).

Concerning the establishment of paternity, presumption (Articles 1826 to 1846 of the Civil Code and acknowledgement (Articles 1847 to 1873 of the Civil Code) are the two legal forms provided for in general law.

In the Aliens Act (Act 23/2007, of July 4) there is no specific reference to false declaration of parenthood. However, this Act mentions the possibility of cancelation of residence permits in cases where the residence permit has been granted *on grounds of false or fraudulent declarations, or false or forged documents, or through fraudulent means* (Article 85, paragraph 1b). Regarding family reunification - and in case there is any indication of fraud - investigations and specific control may be carried out in order to ascertain the veracity of the cited family ties (paragraph 2 of Article 108).

4.1.2 Applicable legislation in distinct cases

Regarding the analysis of the four proposed scenarios⁴ for family reunification, particularly concerning the use of false declarations of parenthood, and considering that there is a lack of specific legislation on false declarations of parenthood, the general legislation shall apply in these cases, as set out in ‘marriages of convenience’.

4.1.3 Preventive Measures

There is a lack of a specific legal framework as regards false declarations of parenthood. The applicable framework is the afore-mentioned related with falsification or counterfeit of documents (Article 256 of the Penal Code).

However, Act 23/2007, of July 4, provides the possibility of using means of civil identification in order to confirm the identity of foreign citizens, particularly in gathering facial images, fingerprints and, when possible, biometry and expertise (Article 212, paragraph 1). This is a relevant aspect as regards the possibility to carry out with medico-legal examinations for ascertaining the parenthood in the administrative procedure for family reunification.

Act 45/2004, of August 19 regulates medical-legal and forensic examinations, establishing that they must take place in the Forensic Medicine Institute of Portugal [*Instituto de Medicina Legal*] (or, exceptionally in contracted entities or other

4 - A third-country national residing lawfully who applies for family reunification for other third-country national; ii - A national of another European Union Member-State reunifying with a third-country national; iii - A Portuguese national reunifying with a third-country national in accordance with jurisprudence concerning the European Union Treaty (Zambrano, McCarthy, Dereci cases); iv - A Portuguese national reunifying with a third-country national.

entities indicated by this Institute). Charges related with medical examinations are established in Ordinance 175/2011, of April 28, with information on rates for examination on genetics and forensic biology.

In accordance with the framework for protection of personal data (Act 67/98, of October 26, which transposes Directive 95/46/EC, of the European Parliament and Council, of October 24 1995), processing personal genetic data requires a legal provision or an authorisation by the Portuguese Data Protection Authority [*Comissão Nacional para a Protecção de Dados*] (Article 7).

In family reunification applications that comprise only third country nationals (case i)) (Act 23/2007, of July 4), if there is any doubt evidence of parenthood may be requested (Articles 53, paragraph 3 and 67, paragraph 4 of Regulatory Decree 84/2007, of November 5). Furthermore, when processing the application, Portuguese diplomatic or consular authorities have the authority to require the submission of medico-legal expertise proving the cited parenthood ties (paragraph 1 i) of Article 13 of the Regulatory Decree 84/2007, of November 5).

In accordance with Article 20 of Act 37/2006, of August 9, (framework for free movement and residence of European Union citizens and their family members), on an application for family reunification involving at least one European Union Member-State national citizen, all the parties shall enjoy equal treatment in relation to Portuguese citizens. Unlike the family reunification framework, this Act does not include the possibility to provide the Administration with medico-legal expertise. Given that Act 67/98, of October 26, on Protection of Personal Data, prevents the processing of genetic data if there is no legal provision for that

effect or a previous authorization by the Portuguese Data Protection Authority (see Article 7, paragraphs 1 and 2), it is not possible to use this type of evidence to grant the right of residence to the interested parties (cases (ii), (iii) and (iv)).

Thus, the use of medico-legal expertise for purposes of determining parenthood is only possible in those applications for family reunification involving third country nationals (case (i)).

4.1.4 Impact of the European Court of Justice case law on family reunification

There is nothing to report regarding the impact of the European Court of Justice case law on family reunification in terms of use of false declarations of parenthood.

4.2 The situation in Portugal

4.2.1 Misuse of residents' permits for purposes of family reunification

The low awareness on the use of false declarations of parenthood may be explained by the lack of politic-legislative recognition, by its small quantitative expression and also by the little academic and media approach to this subject.

However, Public Administration, particularly those entities competent for the granting of visas, residence permits and nationality (DGACCP, SEF and IRN), has been registering the increase of the use of this instrument as a way to circumvent the rules on entry and stay of foreign citizens and granting of Portuguese nationality.

Given that a significant part of this problem – falsification of proof of parenthood – takes place out of national territory, the control, investigation and punishment of this type of crime is quite complex.

Nevertheless, there has been an increase on the number of family reunification applications by citizens who recently obtained Portuguese citizenship. In most cases these citizens are Guineans (Bissau) and have as beneficiaries their children, and there are some doubts regarding the validity of the supporting documents (birth certificate), and also regarding the reliability of the cited family tie.

As regards the means used for entering national territory, the detected cases allow the definition of two types of action:

- Acquiring Short Stay Visas for purposes of entering national territory and apply for a residence title under the rules for free movement of family members of European Union citizens, in the case of Portuguese nationals (case (iv));
- Entry into Schengen territory via Spain (by sea routes with origin in Senegal and Mauritania) and afterwards by land into Portugal, of undocumented citizens who acquire a new passport issued by Guinea Bissau Embassy in Lisbon and, thus, get their entry registered in national territory (declaration of entry, see Article 14 of Act 23/2007, of July 4) avoiding as well the payment of fines for overstay.

The detected cases also allowed identifying some similar formal aspects, as follows:

- Submission of birth registrations made ten years after the date of birth (usually of people born between 1987 and 1990);
- Physical appearance indicating that the national citizens and their children are close in age;
- The parents allege they profess Islamic religion and, therefore, they have children with the same age, born of different mothers;
- All the stakeholders are represented by a legally registered lawyer.

4.2.2 Preventive measures

The prevention of the use of false declarations of parenthood follows, *mutatis mutandis*, the same principles outlined for marriages of convenience. In addition, if the applications for family reunification are made outside national territory, it is necessary to submit reports related to medico-legal expertise proving the cited family ties in the Portuguese diplomatic or consular authority (paragraph 1i) of Article 13 of Regulatory Decree 84/2007, of November 5). On the other hand, any document proving the cited family ties must be properly certified.

4.2.3 Detecting situations of misuse

The detection of any indication of false declarations of parenthood, as well as the legal and administrative procedures concerning the investigation of this type of crime are similar to the above stated regarding marriages of convenience.

In order to detect any indication of existence of false declarations of parenthood, many aspects can be taken into consideration, including the following:

- Individual profiles concerning the migratory route of the applicant and beneficiaries of family reunification;
- Cited family tie;
- Doubts regarding the authenticity of documents proving the family relationship (birth certificates or others);
- Nationalities of the stakeholders that match the risk profile as regards the use of false declarations of parenthood;
- Confirmation of the diplomatic representation of the document's country of origin.

It should also be noted that the prevention and investigation of this type of fraud provides some constraints, particularly as regards the legal limitations on medico-legal expertises, as well as on the origin and authenticity of the submitted documents proving the family relationship. This last facet is likely to conflict with the best interest of the fraud investigation and with the implementing rules within criminal law (Articles 4 and 5 of the Penal Code), where the crime of document falsification might not be covered by criminal law when committed abroad.

4.2.4 Evidence

The same scheme set out for marriages of convenience applies in those cases of false declarations of parenthood.

However, if the family members of the applicant for family reunification are outside national territory, they may have to submit reports on medico-legal expertise that can prove the cited family ties in the nearest Portuguese

diplomatic or consular authority (paragraph 1i) of Article 13 of the Regulatory Decree 84/2007, of November 5). This framework is only applicable to third country nationals who are family members of third country nationals residing in Portugal (case i)). The use of medico-legal expertise (e.g., DNA test) seems to be a crucial form of evidence for confirming the existence of false declarations of parenthood.

4.2.5 Responsible authorities

The same scheme as in “marriage of convenience” is applied as regards false declarations of parenthood.

4.2.6 Penalties Imposed

The applicable framework for false declarations of parenthood is the general framework for document falsification or counterfeit (Article 256 of the Penal Code). This crime is punishable with imprisonment up to three years. As regards criminal procedure, the same guidelines set out in ‘marriages of convenience’ apply.

Relating to administrative procedures, the use of false declarations of parenthood implies the refusal (Article 106 of Act 23/2007, of July 4) or cancellation of the residence permit (Article 85 b) of Act 23/2007, of July 4). As regards the nationals of EU Member-States, the same framework described in ‘marriages of convenience’ is applied.

4.2.7 Right to appeal

The same framework described in ‘marriages of convenience’ is applied. However, the decision for cancelling a residence permit is liable to judicial contesting, with devolutive effect (paragraph 7 of Article 85 of Act 23/2007, of July 4), i.e., regardless of the court decision.

4.2.8 Trans-national cooperation on combating situations of misuse of the right to family reunification

Efforts for cooperation of Portuguese Liaison Immigration Officers have been developed in the main countries of origin with reports of cases concerning the use of false declarations of parenthood.

4.2.9 Reasons and motivations

The motivations for using false declarations of parenthood (even though there is a lack of information regarding this matter) are essentially related with obtaining residence permits or nationality, as a strategy for immigration.

5 - Available statistics, data sources and trends

5.1 Statistics: General Context

The available Eurostat statistic data regarding residence permits granted to third country nationals, in the period 2008 to 2010, show a decrease of about -32,5% on the number of new grants. From a total of 54.834 new issues in 2008, the value in 2010 decreased to 37.010. As regards the granting of residence permits on grounds of family reunification, the decrease is approximately -33,1%.

New granting of residence permits on grounds of					
Year	Total	Family Reunification	Education and Study	Exercise of Paid Activities	Other Grounds
2008	54.834	26.115	3.756	23.381	1.582
2009	46.398	19.937	4.302	18.275	3.884
2010	37.010	17.478	5.414	10.869	3.249

There are no significant alterations regarding the information on the main representative nationalities, apart from the fact that the order has changed. The most representative nationalities are Brazilian, Cape Verdean, Ukrainian and Guinean-Bissau. However, throughout these three years there has been a decrease on the relevance of the 10 most representative nationalities (92,2% in 2008 to 86,7% in 2010), and also of the most representative 5 (81,1% in 2008 to 71,8% in 2010), suggesting an increase of the diversity of new residents in national territory.

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New granting of residence permits on grounds of							
Year	Position	Nationality	Total	Family Reunification	Education and Study	Exercise of Paid Activities	Other Grounds
2008	1.º	Brazil	31.329	11.295	1.498	18.132	404
	2.º	Cape Verde	5.273	3.112	1.112	766	283
	3.º	Ukraine	3.329	2.454	22	823	30
	4.º	Guinea-Bissau	2.339	1.684	76	345	234
	5.º	Moldova	2.209	1.712	11	451	35
	6.º	China*	1.940	1.206	54	663	17
	7.º	Angola	1.869	1.175	207	280	207
	8.º	Sao Tome and Principe	967	564	188	153	62
	9.º	India	808	304	32	449	23
	10.º	Russian Federation	467	280	20	154	13
2009	1.º	Brazil	23.650	8.655	1.675	12.703	617
	2.º	Cape Verde	5.054	2.313	1.114	973	654
	3.º	Ukraine	2.413	1.749	21	563	80
	4.º	Guinea-Bissau	2.095	902	60	411	722
	5.º	China*	1.982	1.089	128	708	57
	6.º	Angola	1.825	878	218	290	439
	7.º	Moldova	1.596	1.055	10	457	74
	8.º	Sao Tome and Principe	1.404	502	272	235	395
	9.º	India	1.057	475	30	481	71
	10.º	Russian Federation	417	252	22	102	41
2010	1.º	Brazil	16.256	7.019	2.457	6.397	383
	2.º	Cape Verde	4.483	2.056	1.132	682	613
	3.º	Ukraine	2.064	1.490	26	508	40
	4.º	Guinea-Bissau	2.008	1.006	71	295	636
	5.º	China*	1.767	1.058	84	501	124
	6.º	Sao Tome and Principe	1.552	593	409	191	359
	7.º	Angola	1.522	790	180	177	375
	8.º	Moldova	1.139	885	7	231	16
	9.º	India	940	441	33	399	67
	10.º	Turkey	347	15	297	14	21

* China (including Hong Kong)

It should be noted that the decrease in 2008 of the five main nationalities regarding the granting of permits on grounds of family reunification (Brazil: 11295 to 7019; Cape Verde: 3112 to 2056; Ukraine 2454 to 1490; Moldova: 1712 to 885; Guinea-Bissau: 1684 to 902) was still higher than the average of this subject (-33,1%).

5.2. Statistics: Specific indicators

As regards administrative procedures, Portugal does not hold detailed statistic elements once the criminalization of the marriage of convenience is quite recent (2007), and also due to the fact that there is a lack of a defined methodology with harmonized criteria that may promote an efficient production of information. However, there was data collection based on the survey methodology with a view to quantify this phenomenon, applied to SEF’s Regional Directorates (units that have powers to receive and decide on applications for family reunification). 2011 preliminary data show 77 cases of rejection of family reunification applications on grounds of marriage of convenience, and the cancellation of 7 residence permits after detection of fraud (marriages of convenience, false declarations of parenthood).

Rejected Application on grounds of Marriages of Convenience (2011)					
Nationalities	Total	Territory where the offence was committed			
		National	Other MS	Third State	Not identified
Brazil	52	4	0	0	48
Morocco	8	2	0	1	5
Pakistan	6	0	0	0	6
Algeria	2	0	0	0	2
Other	9	2	0	0	7
Total	77	8	0	1	68

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Cancellation of Residence Permits due to fraud detection (Marriages of Convenience, False Declarations of Parenthood) (2011)					
Nationalities	Total	Territory where fraud was committed			
		National	Other MS	Third State	Not identified
Brazil	4	3	0	0	1
Other	3	1	0	1	1
Total	7	4	0	1	2

One should emphasize that Brazilian nationality is first in line in both charts, fact that demonstrates the representativeness of this community in the totality of residents in national territory. Also quite representative are the Moroccan and Pakistani nationalities, in line with the identified trend regarding the evolution of marriages of convenience or simulation of de facto relationships between Portuguese female citizens and males nationals from the North of Africa and from the Hindustan Peninsula.

As regards criminal matters, justice statistics show a decrease of crimes registered by police authorities concerning marriage of convenience. In 2011, 24 crimes were registered, while in the previous year 45 were registered. Concerning the perpetrators, from a total of 32 defendants/suspects in 2011, there were more females (17 observations) than males (15). This trend was even more relevant in 2010, where there were 68 defendants/suspects, from which 30 were males and 38 were females.

However, as regards marriage of convenience the values of the justice statistics are not consistent with the criminal information provided by the Portuguese

Immigration and Borders Service [SEF]. In fact, SEF indicated 55 crimes (54 defendants) of marriage of convenience in 2010 and 46 crimes (79 defendants) in 2011.

Hence, the analysis of data herein presented shall take into consideration the risk associated with different sources, criteria and methodologies during the statistical production process. Moreover, the information on criminal matters is subject to many reservations as regards its disclosure on grounds of legal confidentiality.

Regarding false declarations of parenthood, in terms of administrative procedures, the same methodology used in marriages of convenience was adopted (survey in SEF's Regional Directorates on false declarations of parenthood). Only two applications for residence permit were detected. These applications were rejected on grounds of use of false declarations of parenthood relating to Guinea-Bissau nationals.

As regards criminal matters, there is a lack of statistical information on false declarations of parenthood, given that this concept is not classified as a specific crime (it fits into the general framework of forgery crimes), as well as a lack of a defined methodology with harmonised criteria that may promote an efficient production of information.

5.2.1 Characteristics of those involved

The lack of sources, methodologies and criteria for statistical production makes profile identification a more complex procedure; hence it was not possible to obtain the sufficient amount of data with the adequate quality to be disclosed. However, parcelled data (obtained in accordance with the methodology referred in 4.2.a)) make it possible to establish gender parity in about 12% of refused

residence permit applications, regardless of nationality (see 4.2.a)). This sample relates to crimes predominantly committed in national territory. As regards the cancellation of residence permits on grounds of marriage of convenience, there is a similar trend, although in a relatively smaller amount.

On the other hand, based on qualitative data collected in SEF's bodies with powers on matters of criminal investigation, it is possible to observe that cases involving Brazilian citizens have as sponsor Brazilians (case i)), or Portuguese citizens (case iv)). With regard to nationals of North Africa countries, the sponsor is usually Portuguese (case iv)), the same happening in the identified cases of citizens from the Hindustan Peninsula. In cases regarding Sub-Saharan Africa nationals, one has been observing marriages between nationals from the same countries (case i)).

False declarations of parenthood have been mostly used by Guinea-Bissau nationals; there have been several doubts regarding the authenticity of Birth Certificates submitted by these citizens.

6 – Conclusions

The misuse of the right to family reunification, particularly as regards marriage of convenience and false declarations of parenthood is not a matter under close scrutiny or with a social relevance in Portuguese society.

The resource to marriage of convenience in Portugal has a small dimension, although there has been an increase on the use of this misuse of the right to family reunification with the purpose of circumventing the legislative framework as regards legal immigration. Hence, the criminalization of this phenomenon constitutes a practical response within the scope of a policy for prevention and fight against illegal immigration and trafficking in human beings.

However, there have been some limitations, specially as regards the investigation complexity and methods of taking evidence in this type of crime; on raising awareness of all agents to the negative component of this phenomenon (illegality, exploitation of persons, organized crime networks); and on the practical applicability of this crime, given that it has been gaining a transnational dimension. In this way, it seems that harmonizing the penalisation of this type of action, and a more effective collaboration on prevention and fight against this type of crime, becomes more and more relevant within the framework of the European immigration policy.

As regards the use of false declarations of parenthood for purposes of obtaining a residence permit or Portuguese citizenship, the lack of a specific framework for penalizing this type of crime can make of it a frequent fraudulent infringement to the legal immigration framework. Furthermore, there is a difficulty in taking evidence, particularly in those cases of documents obtained in countries of origin with big fragilities as regards the organization of Public Administration, and also

there is the legal impossibility, within the Portuguese administrative scope, to make use of medico-legal expertise for family members of EU Member-States nationals.

Hence, there are some instruments that may be important in the prevention on the use of this type of offences, such as revising the administrative procedure concerning the legal provision for admissibility of medico-legal expertise to family members of EU Member-States nationals, and providing a specific penal framework for this type of crime.

In addition, the adoption of a harmonized set of principles and rules for reporting information on both offences, especially within the scope of the actions of the European immigration agencies, could represent an added value for typifying these crimes.

Nevertheless, these actions are not the only forms of misuse of the right to family reunification.

The misuse of the right to family reunification may also occur with the allegation of financial dependence of family members (ascendants or of age) who afterwards start carrying out paid activities, thus violating one of the requirements for granting this right (paragraph 2 d) of Article 67 of the Regulatory Decree 84/2007, of November 5). Also detected and associated to this type of fraud is another type of action: adults who are dependent of the holders of family reunification status apply for family reunification for their spouse and children.

Moreover, it was also detected the use of supporting documents whose reliability is not ensured (in particular as regards some cases of citizens of Chinese nationality).

It should also be noted that the common specifications of the study prescribed the analysis of four proposed scenarios regarding family reunification, which are not strongly regulated in national legislation (i - A third-country national residing lawfully who applies for family reunification for other third-country national; ii - A national of another European Union Member-State reunifying with a third-country national; iii - A Portuguese national reunifying with a third-country national in accordance with jurisprudence concerning the European Union Treaty (Zambrano, McCarthy, Dereci cases); iv - A Portuguese national reunifying with a third-country national). The first option is regulated by Act 23/2007, of July 4, and the remaining, without distinction, are regulated by Act 37/2006, of August 9.

7 – Bibliographical References

7.1 General bibliography

- Grassi, M., (2006), “*Formas*” migratórias: casar com o passaporte no espaço Schengen. Uma introdução ao caso de Portugal, *Etnográfica*, Vol. X, nº 2, Lisboa
- IRN (2009), *Casamento entre um nubente português e um nubente estrangeiro. Casamento de conveniência. Procedimentos a adoptar para evitar responsabilidade disciplinar e até criminal, sem prejuízo do cumprimento da lei (P.º C.C. 34/2009 SJC-CT)*, Not published
- Pascouau, Y., Labayle, H. (2011) *Conditions for family reunification under strain: A comparative study in nine EU member states*, Brussels, European Policy Centre
- Raposo, P., Togni, P. (2009), *Fluxos Matrimoniais Transnacionais entre Brasileiras e Portugueses, Colecção de Estudos do Observatório da Imigração*, n.º 38, Lisbon, ACIDI.
- SEF (2011), Contributo do SEF para a elaboração do Relatório de Segurança Interna – RASI 2010, Not published
- SEF (2012), Contributo do SEF para a elaboração do Relatório de Segurança Interna – RASI 2011, Not published
- SEF (2010), Casamento de conveniência: parecer DCIPAI, Not published
- SEF (2008), Casamento de conveniência: Relatório DRA, Not published

7.2 Legislation

7.2.1 National legislation

- Constitutional Law 1/2005, of August 12 – Constitution of the Portuguese Republic
- Act 23/2010, of May 31 – First amendment to Act 7/2001, of May 11, which adopts the protection measures of ‘de facto’ relationships, third amendment to Decree-Law 322/90, of October 18, which sets out and rules protection in case of death of the beneficiaries of the social security general scheme, 53rd amendment to the Civil Code and 11th amendment to Decree-Law 142/73, of March 31, which approves the Status of survivors’ pensions
- Act 9/2010, of May 31 – Allows civil marriage between people of the same sex
- Act 38/2009, of July 20 – Priorities and directions of criminal policy for 2009-2011
- Act 23/2007, of July 4 – establishes the legal scheme of entry, permanence, exit and removal of foreign citizens from national territory
- Act 37/2006, of August 9 – right of free movement and residence of European Union citizens and their family members in national territory, and transposes to national law Directive 2004/38/EC, of the European Parliament and Council, of April 29. Civil Code.
- Act 7/2001, of May 11 – measures for protection of ‘de facto’ relationships
- Decree-Law 129/2007, of April 27 – Organic law of the Institute of Registries and Notaries (IRN)
- Decree-Law 252/2000, of October 16 – Organic Law of the Immigration and Borders Service (SEF)

- Decree-Law 6/96, of January 31 – Code of Administrative Procedure
- Decree-Law 78/87, of February 17 – Code of Criminal Procedure (successive modifications to Act 23/2010, of August 30)
- Decree-Law 400/82, of September 23 – Penal Code (successive modifications up to Act 4/2011, of February 16)
- Regulatory Decree 84/2007, of November 5 – enacts Act 23/2007, of July 4
- Regulatory Decree 47/2007, of April 27 – Organic Law of the Directorate General of Consular Affairs and Portuguese Communities (DGACCP)

7.2.2 European legislation

- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities
- Directive 2003/86/EC, of the Council, of September 22, regarding family reunification
- Directive 2004/38/EC, of the European Parliament and of the Council, of April 29, on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC

7.3 Case-law

- Judgement of the South Administrative Central Court, of July 14 2009, regarding Proceedings 0718/09 – false marriage (or similar situation)
- Judgement of the European Court of Justice, of March 8 2011: Citizenship of the Union - Article 20 TFEU - Grant of right of residence under European Union law to a minor child on the territory of the Member State of which that child is a national, irrespective of the previous exercise by him of his right of free movement in the territory of the Member States - Grant, in the same circumstances, of a derived right of residence, to an ascendant relative, a third country national, upon whom the minor child is dependent - Consequences of the right of residence of the minor child on the employment law requirements to be fulfilled by the third-country national ascendant relative of that minor – Zambrano case
- Judgement of the European Court of Justice, of May 5 2011: «Freedom of movement for persons — Article 21 TFEU — Directive 2004/38/EC — ‘Beneficiary’ — Article 3, paragraph 1 - National who has never made use of his right of free movement and has always resided in the Member State of his nationality — Effect of being a national of another Member State — Purely internal situation» - McCarthy case
- Judgement of the European Court of Justice, of November 15 2011: « Citizenship of the Union — Right of residence of nationals of third countries who are family members of Union citizens — Refusal based on the citizen’s failure to exercise the right to freedom of movement — Possible difference in treatment compared with EU citizens who have exercised their right to freedom of movement — EEC-Turkey Association Agreement — Article 13

of Decision 1/80 of the Association Council — Article 41 of the Additional Protocol — ‘Standstill’ clauses» - Dereci case

7.4 Other sources

- Eurostat: ec.europa.eu/eurostat
- SEFSTAT: <http://sefstat.sef.pt>
- DGPI Statistics:
http://www.siej.dgpj.mj.pt/webeis/index.jsp?username=Publico&pgmWindowName=pgmWindow_634689589257343750
- (2009, June), *Tribunal considera irrelevante "exercer o amor remunerado" e contraria SEF*, Ionline, <http://www1.ionline.pt/conteudo/7191-tribunal-considera-irrelevante-exercer-o-amor-remunerado-e-contraria-sef>,
- (2010, January), *Amor pode ser remunerado*, Diário de Notícias Online, http://www.dn.pt/inicio/portugal/interior.aspx?content_id=1473161