



European Migration Network National Contact Point for LITHUANIA

Marriages of convenience as a channel for irregular migration

Summary of the study

Context

Entry of third-country nationals to the EU for the purpose of family reunification is becoming increasingly important. In 2010, the EU Member States issued approximately 2.5 millions of first residence permits, with 30 per cent of them issued for the purpose of family reunification. Similar tendencies are observed also in Lithuania, where annually approximately 700 residence permits are issued for the first time for the purpose of family reunification, and approximately 3000 decisions on replacement of a residence permit based on family reunification are adopted.

Lithuania implements a restrictive immigration policy, hence migrants from third countries wishing to enter Lithuania, but not meeting the requirements set forth for entry attempt/may attempt to search for ways of obtaining a visa or a residence permit by unlawful means. One of such means is contraction of a marriage/registered partnership of convenience with Lithuanian citizens or aliens legally residing in Lithuania as well as fake adoption. Lithuania's experience in preventing and combating such offences is not extensive, the ways of deception have not been analysed in greater depth. This study is the first attempt to review and evaluate the situation. It presents legal basis and identifies the practical problems arising in the course of detecting and investigating of marriages of convenience.

Legal basis and definitions

The *Law on the Legal Status of Aliens* (Official Gazette, No 73-2539, 2004) (hereinafter – the “Law”) does not define the concept “**family**”. However, the Law stipulates who is to be considered family members in the context of migration. What “**family members**” refers to depends on the status of the sponsor who is to be joined by his family members, that is, whether he is a third-country national, or a non-mobile citizen of the Republic of Lithuania, or an EU citizen or a mobile citizen of the Republic of Lithuania. It should be noted that the spouse/partner from a third country must be at least 21 years old, and children – not older than 18 years old.

The Law does not define the content of a **marriage** and a **registered partnership**. This is defined by the law of every country of origin of a third-country national, i.e., Lithuanian migration institutions recognise a marriage or registered partnership contracted abroad without any additional formalities. Under the Law, unmarried cohabitation (non-registered partnership) would not be considered as living in a family relationship and the basis for gaining entry to Lithuania.

A marriage/registered partnership between same-sex persons would not be considered legitimate, and an alien would not be issued a residence permit based on such a marriage/registered partnership. Although the Law stipulates the concept of a registered partnership, a registered partnership between same-sex persons would not be accounted for by the Civil Registrar's Office, which keeps records of all marriages contracted by citizens of the Republic of Lithuania both in

Lithuania and abroad. However, the marriages/registered partnerships contracted abroad between two aliens are not accounted for and examined by Lithuanian institutions. Therefore, it remains unknown what action would be taken if a residence permit was applied for by an alien who has contracted a registered partnership recognised abroad with another alien lawfully residing in Lithuania. Most likely, this issue would be referred to court.

The Law defines the concepts of a **marriage of convenience**, a **registered partnership of convenience** and **fake adoption**. A marriage or registered partnership are defined by the Law are those of convenience when they are contracted with the aim of obtaining a residence permit to reside in the Republic of Lithuania and not seeking to create other legal consequences of marriage or registered partnership established by the legal acts of the Republic of Lithuania. The concept “**false declaration of paternity**”, though not defined, is derived from the concept “**fake adoption**”, which is defined as the adoption procedure carried out with the aim of obtaining a residence permit to reside in the Republic of Lithuania and not seeking to create other legal consequences of adoption established by the legal acts of the Republic of Lithuania.

The Law currently provides for the possibility of revoking a residence permit due to contracting of a marriage of convenience or a registered partnership of convenience only when such a residence permit is held by a third-country national who enters the country for reunification with another third-country national or a non-mobile citizen of the Republic of Lithuania. However, marriages of convenience may also be contracted by EU citizens or mobile citizens of the Republic of Lithuania. Therefore, the amendments to the Law submitted to the Seimas provide for the possibility of revocation of a residence permit of a family member of an EU citizen if a third-country national contracts a marriage of convenience or a registered partnership of convenience with an EU citizen or a mobile citizen of the Republic of Lithuania.

It must be emphasised that the concepts defined by the Law apply only in the field of regulation of the Law, i.e., in procedures concerning migration of aliens. In the fields of social security, civil law and in other fields, the concepts of family members may differ from those defined by the Law.

Verification of legitimacy of a marriage/registered partnership

When a spouse or a partner enters the country and applies for the issuance of a residence permit based on family reunification, the officers of the Migration Department under the Ministry of the Interior of the Republic of Lithuania (hereinafter – the “Migration Department”) and a migration service must assess whether a contracted marriage or registered partnership is not that of convenience. The object of assessment is the alien’s marriage or registered partnership contracted over the period of 5 years preceding submission of an application for the issuance/replacement of a residence permit and raising grounded suspicions.

Orders of the Minister of the Republic of Lithuania¹ list the **factors** permitting to determine whether a registered partnership or a marriage of convenience has been contracted:

¹ Order No 1V-329 of 12 October 2005 of the Minister of the Interior of the Republic of Lithuania on Approval of the Description of the Procedure for Submitting Documents to Obtain a Temporary Residence Permit in the Republic of Lithuania and Issuing to Aliens, Replacing and Revoking Temporary Residence Permits in the Republic of Lithuania, Also Assessing Whether a Marriage or a Registered Partnership has been Contracted or a Child has been Adopted for the Alien to Obtain a Temporary Residence Permit in the Republic of Lithuania (Official Gazette, No 126-4509, 2005; 62-2501, 2009) (see p. 43) and Order No 1V-445 of the Minister of the Interior of the Republic of Lithuania of 21 December 2005 on Approval of the Rules for Issuance of Permanent Residence Permits in the Republic of Lithuania to Aliens and Assessing the Marriage of Convenience (Official Gazette, No 5-157, 2006) (see p. 28).

- the persons who have contracted a marriage or a registered partnership do not have a common domicile;
- the spouses or the persons who have contracted a registered partnership do not run a common household;
- the spouses or the persons who have contracted a registered partnership do not speak a language understood by both;
- before contracting the marriage or the registered partnership, the persons have never met each other;
- the spouses or the persons who have contracted the registered partnership are inconsistent about important circumstances;
- money has been paid for contracting the marriage or the registered partnership (except for money offered as a dowry, if prospective spouses come from the countries in which offering of a dowry is customary);
- there is evidence that one or both spouses contracted marriages of convenience or registered partnerships of convenience in the past.

Officers are usually suspicious about the spouses who communicated little before contracting the marriage, do not speak a language understood by both, are of a different social standing, and differ considerably with respect to their age or education.

In order to evaluate suspicions, officers of migration services verify whether the spouses have a common domicile, whether they run a common household, whether they speak a language understood by both, how long they communicated with each other before contracting the marriage. This information is obtained by interviewing the spouses in writing and conducting on-spot verifications. In the case of an interview, special questionnaires are compiled in order to ask both spouses separately about the same facts – how they became acquainted, what common friends they have, how their dwelling looks like, etc. If the information provided by the spouses is inconsistent, there are grounds to suspect that a marriage of convenience may have been contracted. Moreover, parents, neighbours, friends, acquaintances may also be interviewed. If one of the spouses or partners who is a third-country national resides abroad, an interview is conducted by an officer of a diplomatic mission of the Republic of Lithuania at a written request of the Migration Department. A refusal to participate in an interview is a reasonable ground for believing that the contracted marriage is that of convenience. In the event of a failure to collect sufficient data and information allowing to believe that a marriage of convenience or a partnership of convenience has been contracted, the Migration Department takes a decision on the issuance of a temporary residence permit in Lithuania and authorises a migration service to further monitor the spouses. Upon collecting additional data, the Migration Department decides whether there is a sufficient ground to believe that the marriage or the registered partnership is that of convenience and, on this ground, to revoke/not to extend a residence permit issued for the purpose of family reunification.

A similar procedure would apply to identify fake adoption. If there are suspicions that a fake adoption has been effected, the parents of a child are interviewed in writing according to special questionnaires.

Statistics/ current situation

The first case of a marriage of convenience was identified at the end of 2001, when a female alien contracted a marriage with a male citizen of the Republic of Lithuania and applied for the issuance of a temporary residence permit. As there were suspicions that a marriage of convenience had been contracted and in order to determine the fictitious character of the marriage, relevant data were collected in 2002 and submitted to the prosecutor's office. The *Law on the Legal Status of Aliens* in

force at that time (Official Gazette, No 115-3236, 1998) did not contain a definition of the concept “marriage of convenience”. The concepts “marriage of convenience” and “ground for refusing to issue a residence permit” appeared for the first time in the version of the *Law on the Legal Status of Aliens* passed on 29 April 2004.

Although the number of suspicious cases (cases verified) concerning the fictitious character of a marriage is growing (from 18 suspicious cases and verifications in 2008 to 59 verifications in 2011), the number of refusals to issue residence permits for the purpose of family reunification remains small (in 2011, the issuance of temporary residence permits was refused in 16 cases due to grounded suspicions that a marriage of convenience has been contracted, and 3 permits were revoked). This problem has become more acute upon Lithuania’s accession to the Schengen Area (aliens often view a temporary residence permit in Lithuania as a possibility of entering the Schengen Area). Therefore, the numbers may grow in the future.

Table 1. Trends in the field of marriages of convenience over 2006-2011

Year	Decisions to issue/replace a temporary residence permit based on family reunification	Suspicious cases verified	Refusals to issue temporary residence permits	Permits revoked
2006	1965	...	13	...
2007	2304	28	8	...
2008	2698	18	4	1
2009	2985	21	10	2
2010	2924	61	20	1
2011	2867	59	16	3
Total		187	71	7

Source: Migration Department under the Ministry of the Interior of the Republic of Lithuania

Currently, Lithuania records only the cases of marriages of convenience. No cases of a partnership of convenience or fake adoption have so far been established. Moreover, there has so far been no case of contraction of a marriage of convenience between two third-country nationals.

Marriages of convenience are most often contracted with citizens of Ukraine, Belarus, Georgia and Russia.

Table 2. Number of third-country nationals refused residence permits in the presence of reasonable suspicions that a marriage of convenience has been contracted over 2008-2011

CITIZENSHIP/SEX	2008		2009		2010		2011		2012	Total
	F	M	F	M	F	M	F	M	M	
AZERBAIJAN				2		1				3
ARMENIA		1								1
BELARUS			2		1	5	1	2		11
GEORGIA		1		4	1	3		1	1	11
PAKISTAN						2		1		3
RUSSIA					1	1	2	1		5
TURKEY				1		1		1		3
MOLDOVA	1			1						2
UKRAINE	1				2	2	4	3		12
Total	2	2	2	8	5	15	7	9	1	51

Source: Migration Department under the Ministry of the Interior of the Republic of Lithuania. F-female, M-Male.

During 2008-2011, 16 female third country nationals and 35 male third country nationals sought to receive a residence permits by contracting a marriage of convenience.

Motives for contracting marriages of convenience

The main reason why third-country nationals attempt to contract marriages of convenience is the possibility of free movement within the EU and the possibility of employment in Lithuania without a work permit. In the case of Lithuanian citizens, the main reason is financial gain.

It should be pointed out that if an alien enters Lithuania as a family member, greater guarantees of the alien's protection will apply than applied when entering on other grounds. Under Lithuanian laws, family relationships, especially with a Lithuanian citizen (marriages of convenience are most frequently contracted with Lithuanian citizens), guarantee that an alien will be allowed to reside in Lithuania for 5 years and obtain a permanent residence permit. In other cases, it is a rather difficult task to reside in Lithuania for 5 years, e.g., work permits, if issued for the purposes of employment, are valid for as few as 2 years; if enterprises are established, there is no guarantee that an enterprise will not become bankrupt.

Moreover, if an alien enters the country for the purpose of family reunification and does not obtain a temporary residence permit, the alien may attempt to avail himself also of legal protection of the EU. For example, in the event of state institutions commencing the procedures of revocation of a residence permit and expulsion aliens resort to guarantees as stipulated in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe on respect for family life. Therefore, it is a much more complicated task for the state institutions to prove that expulsion of the alien is more important for the public than the alien's right to family reunification.

Determination of fictitiousness, verifications, problems

Lithuania's national policy does not single out marriages / partnerships of convenience as a phenomenon posing a considerable threat in the field of irregular migration. Determination of fictitiousness is regulated at the statutory level. However, officers stress that combating marriages of convenience is a practical problem, and it is not possible to solve it by legal acts alone. The main measure enabling to conclude whether a marriage is that of convenience is monitoring of suspicious cases and interviews, which requires involvement of human resources. There is also a lack of methodological guidelines for conducting investigations.

Officers indicate that it is a highly complicated task to establish whether a marriage of convenience has been contracted when an application for the issuance of a residence permit for family reunification is lodged for the first time, because a third-country national needs to wait for the residence permit in a third country, and officers are unable to assess whether a marriage is genuine. It is also complicated when one of the spouses following contraction of a marriage leaves to another EU Member State, and the remaining spouse conceals the fact (e.g., claims that the other spouse has left to visit friends, ailing parents, on a business trip). It is not practically possible to check such marriages, because there is no uniform EU data transmission / exchange system. Verifications are conducted when an alien enters Lithuania for the purpose of extension of a residence permit. Neither is there any practice of detecting the cases when a marriage is contracted between a third-country national and a mobile citizen of the Republic of Lithuania in another EU Member State.

The study has allowed to identify a legal loophole relating to nullification of marriages. Presently, a marriage may be declared null and void by court at the request of the spouses or a prosecutor. Migration institutions are not authorised to refer to court / prosecutor's office for nullification of a marriage. In some cases, a residence permit is revoked (in the presence of grounded suspicious that a marriage of convenience has been contracted), but the marriage is not annulled. An alien whose residence permit has been revoked, but whose marriage has not been annulled, may apply for the issuance of a national visa on the basis of family reunification. It is proposed to improve legal regulation of nullification of marriages in all cases when a marriage of convenience has been contracted.

In identifying marriages of convenience, the Migration Department performs the co-ordination function, and also, upon considering the entire available information, adopts a decision to issue or refuse a temporary residence permit. It also acts as a party to court proceedings if a decision to refuse/ revoke a residence permit is appealed against.

Liability and sanctions

Until 2011, neither criminal, nor administrative liability had been stipulated in Lithuania for marriages or partnerships of convenience or fake adoptions. On 22 December 2011, the Code of Administrative Offences was supplemented with Article 206⁵, which provides for administrative liability of a Lithuanian citizen for aiding an alien in obtaining, by unlawful means, a document confirming the right to stay or reside in the Republic of Lithuania.² This offence is subject to a fine in the amount from two hundred and fifty Litas up to one thousand Litas for natural persons, heads of legal persons or authorised representatives of heads of legal persons. This Article of the Code has not been applied in practice yet.

If there is a valid ground for believing that a marriage or partnership of convenience has been contracted or fake adoption has been effected, a residence permit issued to a third-country national will be revoked or its issuance will be refused. Moreover, the Migration Department may prohibit the alien from entering Lithuania for a period of up to 5 years (Article 133 of the Law). The Migration Department may adopt such a decision at its own discretion or on the recommendation of migration services, consular posts or other institutions.³

Marriages of convenience, if contracted in Lithuania, may be declared null and void on the petition of either spouse or a public prosecutor (Article 3.39 of the Civil Code). The marriages contracted abroad may be declared null and void in Lithuania only if evidence is provided that both spouses residing in Lithuania contracted a marriage abroad solely to avoid nullification of the marriage in Lithuania. A marriage of convenience is declared null and void by a court of general jurisdiction (civil court). Prosecutors refer to court for nullification of a marriage in defence of public interest.

Appeal procedure

A person has the right to appeal to an administrative court (of the first instance) against any decision of the Migration Department within 14 days from delivery of the decision. In the case of marriages of convenience, a decision of the Migration Department refusing the issuance / extension of validity

² Code of Administrative Offences of the Republic of Lithuania (Official Gazette, No 163-7758, 2011).

³ Government of the Republic of Lithuania Resolution No 436 of 20 April 2005 on Approval of the Rules for Compiling and Managing the National List of Aliens Refused Entry to the Republic of Lithuania (Official Gazette, No 52-1747, 2005; No 107-4085, 2008).

of a residence permit is appealed against. The majority of decisions are appealed both to administrative courts of the first instance, and under appellate review to the Supreme Administrative Court. In 2011, 3 decisions were appealed against, with 1 appeal dismissed as unfounded, and 2 appeals – upheld. If a third-country national who has appealed against a decision is staying in Lithuania, the alien has the right to remain in Lithuania until a court adopts the final decision.

Conclusions

1. This is the first study of this kind. The study was carried out on the basis of secondary sources, available statistical information and expert survey. This study revealed certain problems but there is need for a more in-depth analysis.
2. The number of recorded cases when a marriage of convenience has been contracted is not large. Small numbers may also be associated with difficulties in identifying such cases. According to statistical data, the majority of marriages of convenience are contracted with citizens of the neighbouring countries, i.e., the persons having a similar outlook (mentality) and speaking the Russian language.
3. Among the main reasons encouraging to contract marriages of convenience is the possibility of free movement within the EU and the possibility of employment in Lithuania without limitations (it is not obligatory to hold a work permit). Moreover, if an alien enters Lithuania as a family member, greater guarantees of the alien's protection will apply than applied when entering on other grounds. In the case of Lithuanian citizens, the main reason is financial gain. All the reasons will remain topical also in the nearest future, thus the number of marriages of convenience will not decrease.
4. The practice of verification of marriages of convenience is so far rather limited. Most verifications are conducted in Vilnius. Moreover, there exist problems of human resources, the lack of experience. There are no methodological guidelines for conducting of investigations. Therefore, it is expedient to organise trainings for officers of migration services on the identification and investigation of marriages of convenience based on the experience accumulated by other EU Member States.
5. The criteria which serve as a basis for grounded suspicions concerning the fictitious character of a marriage have been specified. However, the system of initiation of investigations is not fully developed. Investigations are initiated by an officer who has suspicions over the genuine character of a marriage. It is proposed to consider the possibility of verifying certain marriages / registered partnerships without any exceptions (e.g., newly contracted ones).
6. Determination of fictitiousness often lasts for a long time (may take up to a couple of years), because in the absence of sufficient evidence, it is not possible to draw a conclusion that a marriage of convenience has been contracted. All decisions of the Migration Department may be appealed against to court, hence the data must be accurate and grounded.
7. The majority of decisions of the Migration Department to refuse the issuance / extension of a residence permit are appealed against by third-country nationals. Appeal procedures take a long time, which permits migrants to stay in Lithuania, and frequently to leave to another EU country.

8. In the presence of grounded suspicions that a marriage / registered partnership of convenience has been contracted, the Migration Department adopts a decision to refuse the issuance / extension of a temporary residence permit in Lithuania. Further procedures regarding the nullification of a marriage are not thoroughly regulated. This may create conditions for abuse.
9. The only sanction against an alien upon establishing that he has contracted a marriage of convenience in order to obtain a residence permit in Lithuania is revocation of the permit. The Migration Department may also prohibit such a person to enter Lithuania for a period of up to 5 years. Until 2011, Lithuanian citizens had been subject to neither criminal, nor administrative liability. The amendments to the Code of Administrative Offences adopted in December 2011 should function as a preventive measure, though it remains unclear whether the specified penalty will deter from abusing.